

Federal Competition and Consumer Protection Commission Investigative Cooperation/Assistance Rules & Procedures 2021

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FEDERAL COMPETITION AND CONSUMER PROTECTION ACT, 2018

**FEDERAL COMPETITION AND CONSUMER PROTECTION INVESTIGATIVE COOPERATION/ASSISTANCE
RULES & PROCEDURES, 2021**

In exercise of the powers conferred upon it by Sections 17, 18, 68(4) and 163(2) of the Federal Competition and Consumer Protection Act, 2018 (“the Act”), and all other powers enabling it in that behalf, the **Federal Competition and Consumer Protection Commission (Commission)** hereby makes the following Rules:

PART 1

1. Purpose and Scope

- 1.1 Pursuant to the Act, the Commission has established a cooperation/ assistance procedure.
- 1.2 Undertakings or persons may cooperate and or assist the Commission in investigations under the Act; (excluding cartel investigations which are covered under the Leniency Rules). Such cooperation and assistance can result in immunity, waiver of prosecution/ exercise of prosecutorial discretion; or reduced penalties.
- 1.3 This Rules/Procedures cover the policy of the Commission with respect to its cooperation/assistance procedure for targets and or persons subject of investigation for prohibited conduct or business practices. Such targets or persons who fully cooperate and or assist the Commission’s investigations may in return receive or be considered for benefits such as reduced penalties, non-prosecutorial understandings, or immunity.
- 1.4 The scope of this Rules/Procedures covers all conduct, actions or practices to which the Act applies or otherwise prohibits.
- 1.5 The Commission reserves and retains the power and discretion to determine which cases or circumstances to which its policy and this Rules/Procedures may apply; including the nature and extent of any benefit that may be considered or conferred.

PART 2

2. Types of Procedures

An undertaking or individual who is a candidate for cooperation/assistance may:

- (a) as an individual, enter into cooperation/assistance
- (b) as an undertaking, corporate body, organisation, group or association enter into cooperation/assistance as an entity.

3. Conditions for Benefits under the Cooperation/Assistance Rules

3.1. A Candidate for cooperation/assistance, for the benefits of cooperation/assistance under this Rules, shall-

- (a) unequivocally acknowledge and accept responsibility and or liability (where applicable) for the candidate's conduct, action(s) or infringement of the Act;
- (b) the Candidate shall make full and frank disclosures of any and all information and facts within the candidate's knowledge about the subject(s) of investigation and other individuals, undertakings or entities involved;
- (c) in the event that the conduct is continuing, the Candidate shall cease to engage and or participate in the prohibited conduct;
- (d) cooperation/assistance shall be timely and continuous through the investigative process and any further procedural progression or enforcement;
- (e) not conceal, destroy, manipulate or remove information relevant to the investigation.

3.2. In addition to Rule 3.1, a Candidate may also cooperate by:

- (a) voluntarily clarifying or providing additional information or evidence that strengthens the Commission's knowledge and ability to prove an infringement;
- or

- (b) provide information/evidence revealing an infringement the Commission has not become aware of, or implicating other undertakings, individuals, associations, groups or entities; or
- (c) proposing, creating and implementing suitable remedies to effectively terminate the infringement, to the extent that this substantially assists the Commission in its investigation and relevant oversight.

- 3.3. Where conduct or action constitutes or results in liability, a Candidate agrees not to contest or refute liability as an indispensable prerequisite for benefit under this Rules/Procedures.
- 3.4. Where a Candidate fails to comply with any applicable conditions in Rule 3.1, the Candidate will not be considered for benefit under this Rules/Procedures and the Commission shall be at liberty (subject to prevailing law) with respect to how it uses the information or evidence provided by the Candidate.
- 3.5. Without prejudice to other Regulations, Rules, Guidelines or Directives, the Commission may subject the Candidate to further restrictions or conditions, as it may deem fit, upon consideration of the applicable facts and circumstances.

4. Benefits of Cooperation/Assistance

- 4.1 A Candidate may receive reduced monetary penalties in a manner proportionate to the Candidate's cooperation/assistance and upon consideration of other Rules, Regulations or Procedures of the Commission.
- 4.2 Consideration under this Rules/Procedures shall, where applicable supersede provisions and limits under the Commission's **Administrative Penalties Regulations, 2020**.
- 4.3 In the case of a body corporate, undertaking, association, groups or other entities, the Commission may also provide protection from director disqualification proceedings (if a reduction in corporate penalty is granted).

5. Prosecutorial Discretion

- 5.1. The Commission is empowered under the Act to exercise prosecutorial discretion including waiving, or deferring prosecution, referring prosecution or prosecuting by itself.
- 5.2. Pursuant to this Rules/Procedures, the Commission may in exercise of that discretion waive or defer prosecution of any infringement of the Act including a separate violation that is not the subject of the instant investigation.
- 5.3. Pursuant to this Rules/Procedures, the Commission reserves the right to, and may waive notification and or collaboration with other regulators or relevant authorities with jurisdiction over conduct, actions, or practices discovered by the Commission which violate other laws and are within the regulatory purview of the other regulators or authorities.
- 5.4. In furtherance of 5.3 above, a Candidate must agree to take appropriate steps to address any other violations of law.

6. Assessment and Mitigating Considerations

- 6.1 Assessing and determining benefits and monetary penalties are within the Commission's discretion.
- 6.2 In considering any benefits with respect to reduced monetary penalties, the Commission will depend on the totality of the circumstances including but not limited to the:
 - (i) timing and stage at which the Candidate enters into cooperation/assistance;
 - (ii) extent and value of the cooperation/assistance;
 - (iii) the procedural and administrative efficiencies gained by the Commission in the investigation; and
 - (iv) the entire facts and circumstances of the case.

7 Procedure for Securing Benefits of Cooperation/Assistance

- 7.1 To obtain benefits under this Rules/Procedures a Candidate or authorized representative of a Candidate may cooperate and assist in any manner acceptable to the Commission.
- 7.2 Where initiation of cooperation/assistance; and or cooperation/assistance is oral, and the Candidate is an individual, the cooperation/assistance must be in-person by the Candidate without prejudice to the assistance and support of an authorized representative.
- 7.3 The Commission reserves the prerogative to record or memorialize the cooperation/assistance in a manner it deems fit where such is important to the cooperation/assistance.
- 7.4 The Commission shall not make any audio, video or verbatim recording of any cooperation/assistance without the express consent of the Candidate.
- 7.5 The Commission however reserves the right to make notes during any cooperation/assistance.
- 7.6 Where the nature of a cooperation/assistance makes it inevitable to record or memorialize; or it would be impracticable for the cooperation/assistance to be of any meaningful value, the Commission will inform the Candidate. If the Candidate declines, the Candidate shall be at liberty to exit the cooperation/assistance procedure forthwith.
- 7.7 In all circumstances whether a recording is permitted or otherwise, the Commission will respect and enforce any understanding or apprehension regarding confidentiality and anonymity of the Candidate and the existence of any cooperation/assistance.
- 7.8 A Candidate may cooperate/assist in writing. In such circumstances, the cooperation/assistance may be a written submission in any manner acceptable to the Commission.
- 7.9 In circumstances applicable, the cooperation/assistance may retain confidentiality and anonymity.
- 7.10 A written cooperation/assistance as applicable, will comply with Rules 3.1 and 3.2 of this Rules/Procedures.

- 7.11 A Cooperation Submission may be made conditionally in anticipation of a reduction of monetary penalties. A Candidate may withdraw cooperation/assistance in the event that there will be no benefit in return.
- 7.12 Upon consideration, recognition and agreement that cooperation/assistance is meritorious, beneficial and in compliance with this Rules/Procedures; or otherwise, the Commission shall decide whether to provide benefit and what benefit or the extent thereof is applicable.
- 7.13 The parameters and applicable scope of benefit under this Rules/Procedures shall be communicated in writing and mutually executed by the Commission and the Candidate.

PART 3

8 Confidentiality

- 8.1 Notwithstanding anything contained in the Act and under this Rules/Procedures, the Commission shall, except as otherwise agreed, treat as confidential:
- i. the identity of the Candidate; and
 - ii. the information, documents and evidence provided by the Candidate;

Exceptions to Rule 8.1 shall be limited to circumstances where:

- i. the disclosure is required by Law; or
- ii. the Candidate has agreed to such disclosure in writing; or
- iii. the Candidate has otherwise disclosed their identity, the existence of the cooperation/assistance understanding and or information/evidence provided in the cooperation/assistance.

- 8.1.1 In the event that it becomes necessary and or in furtherance of the Commission's investigation or any discretion or obligation to share information/evidence of, or procured in the course of an investigation with any other party (public or otherwise), and information/evidence provided by a

Candidate qualifies or becomes necessary to share, the Commission shall not disclose the source of the information/evidence provided by the Candidate or the identity of the Candidate unless otherwise agreed in writing by the Candidate.

- 8.2 The Candidate is precluded from disclosing any engagement or cooperation/assistance, arrangement or understanding (or content thereof) with the Commission to any party without the Commission's express consent.

9 Information/Document Sharing

- 9.1 Any information that a Candidate asserts confidentiality over; and which the Commission in accordance with this Rules/Procedures, the Act or any other Guidelines issued by the Commission agrees, and determines to be confidential shall remain so and not be disclosed to any other party. In the event that such information or document which the information forms part of becomes inevitable to disclose, the Commission shall redact portions where the Commission has agreed with the Candidate's assertion of confidentiality.

PART 4

10 Miscellaneous

The Commission may periodically revise this Rules/Procedures or issue additional rules or guidance on any aspect of this Rules/Procedures.

11 Definitions

In this Rules/Procedures, terms defined in the Act shall have the same meanings as in the Act and in addition:

- (a) **Act** means the Federal Competition and Consumer Protection Act, 2018;

- (b) **Candidate** includes an undertaking, a person (natural or legal), as defined in Section 167(1) of the Act, association, group and other entities; or someone acting in or on their behalf.
- (c) **Commission** means the Federal Competition and Consumer Protection Commission established under Section 3(1) of the Act;
- (d) **Party(ies)** includes any enterprise or person against whom inquiry or proceeding is instituted and shall include the Federal Government, any State Government or any statutory authority and shall also include any person permitted to join the proceedings;
- (e) **Prohibited conduct** includes conduct that is subject of investigation, a violation of the functions or powers of the Commission as well as inconsistent with the objectives of the Act or specifically prohibited by any section of the Act.

12 Short title and commencement

12.1 This Rules/Procedures may be cited as the FCCPC Investigative Cooperation/Assistance Rules & Procedures, 2021.