



**Federal Competition and Consumer Protection Commission
Leniency Rules 2022**

FEDERAL COMPETITION AND CONSUMER PROTECTION ACT, 2018

FEDERAL COMPETITION AND CONSUMER PROTECTION LENIENCY RULES, 2022

ARRANGEMENT OF RULES

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2. Categories of Leniency.
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SCHEDULE

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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 regard, the **Federal Competition and Consumer Protection Commission** (Commission) hereby makes the following Rules to govern applicable principles, conditions, and procedures of the Commission with respect to considering and granting leniency under the Act:

RULE 1

PURPOSE AND SCOPE

Purpose of Leniency Rules

- 1.1 These Rules are made pursuant to the Federal Competition and Consumer Protection Act 2018 (the Act), to specify the principles, conditions, and procedure to be applied by the Federal Competition and Consumer Protection Commission (the Commission) with respect to the processing and granting of leniency to undertakings.
- 1.2 The Rules provide guidance regarding parties to horizontal agreements and to undertakings, advisors and the public with respect to how the Commission considers leniency requests/applications.
- 1.3 The Rules seek to enhance the Commission's investigation and enforcement action, by encouraging undertakings that have engaged in conduct that violates Parts VIII and XIV of the Act, to cooperate in investigations and enforcement action in exchange for partial or full immunity, and/or reduced penalties, monetary or otherwise.
- 1.4 The overall purpose of the Commission's leniency programme is to promote compliance with the Act, especially as it relates to the prohibitions laid down in Parts VIII and XIV of the Act. These Rules constitute a part of the Anti-Competitive Agreements and Practices Framework of the Commission, and as such are supplementary and complementary to the Act, with relevant ancillary subsidiary legislation, particularly the Restrictive Agreement and Trade Practices Regulations.

Scope of Rules

- 1.5 The Rules cover the full range of prohibitions specified in Parts VIII and XIV of the Act and are not limited to restrictive agreements between two or among more than two competitors on the same level of production or distribution.
- 1.6 The Rules apply to undertakings as corporate entities, individuals, associations, groups, or other entities. The benefits contemplated herein include reduced penalties, waiver of prosecution/non-prosecutorial understandings, or immunity from penalties that would otherwise have been imposed. In the case of corporate entities, the Commission may also provide protection from director disqualification proceedings (if a reduction in corporate penalty is granted).

- 1.7 Any consideration under these Rules shall where applicable and decided by the Commission, supersede provisions and limits under the Commission's Administrative Penalties Regulations, 2020.
- 1.8 The Commission reserves and retains the power and discretion to determine which cases or circumstances to which these Rules and its policies may apply, including the nature and extent of any benefit that may be considered or conferred.

RULE 2

CATEGORIES OF LENIENCY

Grant of leniency

- 2.1 **Conditional Leniency-** where an applicant applies for leniency in writing to the Commission, and the Commission is satisfied that the applicant has provided material evidence and information that will assist its investigations, findings, decision and/ or subsequent proceedings (judicial or otherwise), the Commission may grant provisional immunity to be known to as conditional leniency.
- 2.2 The grant of conditional leniency requires the applicant's cooperation with the Commission and compliance with all other conditions specified in these Rules.
- 2.3 **Full/Total/Permanent leniency-** Upon the completion and disposal of the entire investigation, including any hearings where applicable, and a determination issued, the Commission may grant permanent leniency to an undertaking or individual already subject to conditional leniency.
- 2.4 The effect of permanent leniency is that it succeeds and supersedes conditional leniency.

Persons that may Apply for Leniency

- 2.5 An applicant for leniency may be-

- 2.5.1 an individual including an independent director of a corporate body or other entity;
- 2.5.2 an undertaking, corporate or unincorporated entity, organisation, group, or association who may seek corporate leniency.

Eligibility and Governing Principles for Corporate Leniency Applications

- 2.6 The following shall apply to undertakings, and divisions and business units within undertakings -

- 2.6.1 An undertaking, or a division or business unit within an undertaking shall be eligible for leniency.

- 2.6.2 In the case of a division or business unit, it may apply for corporate leniency as an entity so long as it controls its decision-making process.

- 2.7 The following shall apply to subsidiaries and parent undertakings-

- 2.7.1 If a subsidiary applies for corporate leniency, it shall be eligible for leniency in relation to its participation in the cartel, but not in relation to its parent's participation in the prohibited conduct (as the parent undertaking is not under the control of the subsidiary).

- 2.7.2 A parent undertaking of a subsidiary shall be eligible for leniency in relation to its own participation in the cartel as well as its subsidiary's participation in the prohibited conduct (as the subsidiary is under the control of the parent).

- 2.8 The following shall apply to joint ventures-

- 2.8.1 Corporate leniency shall only be granted to one of the legal entities involved in a joint venture.

- 2.8.2 Notwithstanding Rule 2.8.1, if a joint venture is constituted as a separate legal entity under the joint control of two parent companies, it shall be eligible for leniency.

2.8.3 Where the parent companies of a joint venture are directly involved in any prohibited conduct under Parts VIII and XIV of the Act, such parent companies shall not be eligible for leniency since the joint venture does not exercise control over its parents.

2.8.4 Generally, the involvement of the joint venture in a prohibited conduct is not covered by one of the parent's leniency application because control over the joint venture does not rest solely with the parent applicant.

RULE 3

CONDITIONS FOR BENEFITS UNDER LENIENCY

Conditions for Benefits under Leniency

- 3.1 An applicant seeking the benefit of leniency under the Act, shall-
 - 3.1.1 cease to have further participation in the cartel or restrictive agreements from the time of its disclosure (unless otherwise expressly directed by the Commission);
 - 3.1.2 provide vital disclosure in respect of violation of Sections 59 to 66, 107, 108 and 109 of the Act;
 - 3.1.3 cooperate genuinely, fully, continuously, and expeditiously throughout the course of investigation and proceedings before the Commission which includes-
 - i promptly providing all relevant evidence and information elements in its possession, or that it would be aware of, and as may be required by the Commission;
 - ii remain at the Commission's disposal to timeously respond to any requests that, in the opinion of the Commission, could assist the investigation;

- iii ensure that all personnel are available for questioning, such as employees and current directors, and to the extent possible, former employees and directors;
- iv not conceal, destroy, manipulate, or remove information or evidence relating to the alleged cartel; and
- v not allowed to disclose the existence or content of its application before the Commission has issued a statement of objections in the case to other parties involved in the alleged cartel (except written permission is given by the Commission).

3.2 In relation to a grant of immunity under Rule 5.1, the applicant must not have taken steps to initiate, induce or coerce another undertaking or individual to take part in the cartel activity and the following shall apply-

3.2.1 Where there is a claim that the applicant initiated, induced, or coerced another undertaking to take part in the alleged cartel, it needs to be substantiated with direct evidence and the burden of proof for any such claim shall rest on the undertaking or individual alleging these grounds for disqualification from immunity.

3.2.2 An undertaking which took steps to initiate, induce or coerce other undertakings although being disqualified from receiving the benefit of immunity, may still qualify for a reduction of penalty if it fulfils the relevant requirements and meets all the conditions outlined in Rule 5.2.

3.3 Where an applicant fails to comply with the conditions specified in Rule 3.1, the applicant will not be considered to benefit from any favorable treatment under these Rules and the Commission shall be at liberty (subject to prevailing law) to use the information and evidence submitted by the applicant.

3.4 Without prejudice to other Regulations or Rules, the Commission may subject the applicant to further restrictions or conditions, as it may deems fit, upon consideration of the applicable facts and circumstances.

RULE 4
BENEFITS OF LENIENCY

Benefits of Leniency

4.1 The following shall apply with respect to the benefits of leniency-

- 4.1.1 An applicant may receive immunity from penalties, waiver of prosecution/non-prosecutorial understandings, or reduced penalties that may otherwise be imposable under law, in a manner proportionate to the applicant's cooperation/assistance and upon consideration of the Act and other subsidiary legislation of the Commission.
- 4.1.2 Consideration under these Rules/Procedures shall, where applicable, supersede provisions and limits under the Commission's Administrative Penalties Regulations, 2020.
- 4.1.3 In the case of a corporate body, undertaking, association, groups or other entities, the Commission may also provide protection from director disqualification proceedings (if a reduction in corporate penalty is granted).
- 4.1.4 The grant of corporate leniency will cover the applicant's directors and employees to the extent that they adhere to the obligation to cooperate with the Commission.

Prosecutorial Discretion

- 4.2 The Commission is empowered under the Act to exercise prosecutorial discretion including waiving, or deferring prosecution, referring prosecution, or prosecuting by itself, and the Commission, in exercise of the statutory discretion, may-
 - 4.2.1 waive, limit or defer prosecution (including mutual bargain and agreement for reduced penalties under law) of any violation of the Act including a separate violation that is not the subject of the instant investigation.
 - 4.2.2 reserves the right to waive notification and or collaboration having 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 other regulators or authorities.

Assessment and Mitigating Considerations

- 4.3 The assessment and determination of benefits and penalties shall be within the discretion of the Commission.
- 4.4 In considering any benefits with respect to reduced penalties or immunity, the Commission may rely on the totality of the circumstances including but not limited to:
- i) the timing and stage at which the applicant comes forward with the disclosure;
 - ii) evidence already in possession of the Commission;
 - iii) the procedural and administrative efficiencies gained by the Commission in the investigation;
 - iv) the quality and/or the extent/scope of detail of the information provided by the applicant in aiding the Commission's ability to prove the alleged cartel; and
 - v) the entire facts and circumstances of the case.

Rule 5

GRANT OF IMMUNITY FROM PENALTY

5 Requirements to qualify for immunity from penalty

- 5.1 Subject to the conditions laid down in Rule 3, the applicant shall be granted benefit of immunity as the Commission may decide, in accordance with this Rule 5.

For bodies corporate

- 5.2 The following shall apply to applicants where they are corporate entities-
- 5.2.1 The Commission may grant an applicant immunity from any penalty which would have ordinarily been imposed on the entity, if:
- (a) the applicant is the first through the door to make a vital disclosure by submitting evidence of a cartel, enabling the Commission to:
 - i. carry out a targeted investigation regarding the existence of a cartel; and
 - ii. establish a violation of Parts VIII, and XIV of the Act;

- (b) the Commission did not, at the time of the application, have sufficient evidence to carry out the investigation or establish such a contravention.

5.2.2 An undertaking shall only be granted immunity if no other body corporate or individual has already been granted immunity from penalties in connection with the cartel in question.

5.2.3 Where the applicant is a corporate body, it shall provide the names of the individuals who have been involved in the cartel on its behalf and for whom leniency is sought by such an undertaking.

5.2.4 Such corporate immunity shall extend to immunity from criminal prosecution for all cooperating current and former employees and directors of the undertaking.

5.2.5 The Commission shall also provide automatic protection from director disqualification proceedings which would otherwise have been imposed by virtue of the cartel proceedings (if a corporate immunity is granted).

For Individuals

5.3 The following shall apply to applicants where they are natural persons-

5.3.1 The Commission may grant the benefit of individual immunity when an individual makes an approach for criminal immunity on their own account.

5.3.2 The applicant may be granted immunity from any penalty which would have ordinarily been imposed on the individual, if:

- (a) the individual is the first through the door to make a vital disclosure by submitting evidence of a cartel, enabling the Commission to:
 - i. carry out a targeted investigation regarding the existence of a cartel; and
 - ii. establish a contravention of the provisions of Sections 59, 61 and 62 of the Act;and
- (b) the Commission did not, at the time of application, have sufficient evidence to carry out the investigation or establish such a contravention.

5.3.3 Such an individual shall only be granted immunity if no other individual or corporate body has already been granted immunity from penalties in connection with the cartel in question.

5.3.4 Such individual leniency shall provide immunity from criminal prosecution for the individual.

5.3.5 The individual immunity also extends to automatic protection from director disqualification proceedings which would otherwise have been imposed by virtue of the cartel proceedings (if individual immunity is granted).

Requirements to qualify for reduction of penalty

5.4 Subject to the conditions prescribed in Rule 3, the applicant shall be granted benefit of a reduction in penalty as the Commission may decide, in the following manner-

5.4.1 Applicants who are not the first to make a vital disclosure or who do not meet the conditions under Rules 5.2 and 5.3 may be eligible to benefit from a reduction in penalty that would have ordinarily been imposed, if they submit evidence which in the opinion of the Commission, provides significant added value to the evidence already in possession of the Commission.

***Explanation** — For the purposes of these Rules, “significant added value” means the extent to which the evidence provided enhances or strengthens the ability of the Commission to prove the cartel, which is alleged to have contravened the provisions of the Act. In this assessment, the Commission shall generally consider written evidence originating from the period to which the facts pertain to have a greater value than evidence subsequently established. Incriminating evidence directly relevant to the facts in question will generally be considered to have a greater value than that with only indirect relevance. Similarly, the degree of corroboration from other sources required for the evidence submitted to be relied upon against other undertakings involved in the case, shall have an impact on the value of that evidence, so that compelling evidence shall be attributed a greater value than evidence such as statements which require corroboration if contested.*

5.4.2 Any reduction of penalty must reflect an undertaking's actual contribution, in terms of quality and timing, to the Commission's establishment of the infringement.

5.4.3 The reduction in penalty referred to in Rule 5.4.1 above shall be in the following order:

- (a) the applicant and individual marked as second in the priority status may be granted reduction of penalty up to or equal to fifty percent (50%) of the full penalty leviable;
- (b) the applicant and individual marked as third or subsequent in the priority status may be granted reduction of penalty up to or equal to thirty percent (30%) of the full penalty leviable;
- (c) subsequent applicants in the priority status may be granted reduction of penalty up to or equal to twenty percent (20%) of the full penalty leviable.

5.4.4 In the case of a corporate body, the Commission *may* also grant a discretionary waiver of prosecution/non-prosecutorial understandings.

5.4.5 The reduction in corporate penalty may also extend to a reduction in criminal sentence for directors of the corporate body, and/or protection from director disqualification proceedings, provided the directors cooperate fully with the Commission.

5.4.6 In the case of an individual application for reduction in penalty, the Commission may in addition to Rule 5.4.3, grant a discretionary waiver of prosecution/non-prosecutorial understandings, a reduction in criminal sentence, and/or protection from director disqualification proceedings, as the case may be.

5.4.7 In order to determine the level of reduction, the Commission will take into account the time at which the evidence fulfilling the condition in Rule 5.4.1 was submitted and the extent to which it represents significant added value. The Commission will also consider the level of fulfilment of the conditions set out in Rule 3 above.

RULE 6

PROCEDURE FOR GRANT OF LENIENCY

Procedure for grant of leniency

6.1 For the grant of leniency, the applicant or its authorised representative may make a written application containing all the material information as specified in the Schedule, furnishing the Commission with information and evidence relating to the existence of a cartel.

- 6.2 The Commission upon receiving the written application shall confirm receipt which will serve as “marker” of the date and hour of receipt of the application for leniency, and the following shall apply:
- 6.2.1 a "marker", establishes the applicant’s place and priority status in the queue for leniency for a period to be specified on a case-by-case basis.
- 6.2.2 the acknowledgment does not however constitute a grant of leniency by the Commission.
- 6.3 The Commission shall, thereafter, [within five working days], constitute an investigation team to consider the application.
- 6.4 Where the Commission is of the view that the applicant has provided the necessary information to be in a position to apply for leniency, the Commission shall within five (5) working days, mark the provisional priority status of the applicant and convey same to the applicant.
- 6.5 Conditional leniency, which precedes permanent leniency, shall be provisionally granted at this initial stage of the investigation pending final determination by the Commission.
- 6.6 If the information received from the applicant is insufficient, the Commission shall grant a temporary marker and direct the applicant to provide the outstanding information as specified in the Schedule within a period not exceeding three (3) days or as may be extended by the Commission.
- 6.7 Where the application is submitted without supporting evidence, the applicant may forfeit its claim for priority status and consequently for the benefit of grant of leniency.
- 6.8 Until the evidence submitted by the first applicant has been evaluated, the next applicant shall not be considered by the Commission.
- 6.9 Where the Commission is of the opinion that the applicant or its authorized representative, seeking the benefit of leniency or priority status, has not provided full and true disclosure of the information and evidence as described in the Schedule or as required by the Commission, the Commission may take a decision rejecting the application after considering the facts and circumstances of the case within ten (10) days of providing an opportunity of hearing to such applicant .

- 6.10 Where the benefit of the priority status is not granted to the first applicant, the subsequent applicants shall move up in order of priority for grant of priority status by the Commission and the procedure applicable in the case of the previous applicant, shall apply.
- 6.11 The final decision of the Commission in granting or rejecting the application for leniency shall be communicated to the applicant.
- 6.12 Only a serious breach of the obligations under these Rules can preclude an applicant from obtaining permanent leniency.
- 6.13 The Commission shall communicate its final decision to each applicant and shall determine in each such decision:
- a) in the case of an application for immunity, whether the evidence provided by the applicant enables the Commission to carry out an investigation regarding the existence of a cartel or establish a contravention of the provisions of Parts VIII, and XIV of the Act ;
 - b) In the case of a reduction, whether the evidence represents significant added value with respect to the evidence in the Commission's possession at that same time;
 - c) in the case of a reduction, the exact level of reduction an applicant will benefit from within the bands specified in Rule 5.2 (c);
 - d) whether the conditions set out in Rule 3.1 above have been met.
- 6.14 If the Commission finds that the applicant has not met the conditions set out in Rule 3.1 the applicant will not benefit from any favorable treatment under this Rules.

RULE 7

CONFIDENTIALITY

7

- 7.1 Notwithstanding anything contained in the Act and under these Rules, the Commission shall, except as otherwise agreed, treat as confidential:
- i. the identity of the applicant; and
 - ii. the information, documents and evidence furnished by the applicant;

- 7.2 Exceptions to Rule 7.1 shall be limited to circumstances where:
- i. the disclosure is required by law; or
 - ii. the applicant has agreed to such disclosure in writing; or
 - iii. the applicant has otherwise disclosed their identity, the existence of the leniency application and or information/evidence provided in the cooperation/assistance
- 7.3 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 an applicant qualifies or becomes necessary to share, the Commission shall not disclose the source of the information/evidence provided by the Applicant or the identity of the Applicant unless otherwise agreed in writing by the Applicant.
- 7.4 Any information that an Applicant 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 and 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 Applicant's assertion of confidentiality.
- 7.5 The Applicant is precluded from disclosing any engagement or leniency arrangement or understanding (or content thereof) with the Commission, to any party without the Commission's express consent.

RULE 8

MISCELLANEOUS, DEFINITIONS AND SHORT TITLE

8 Miscellaneous

- 8.1 The Commission may periodically revise these Rules or issue additional rules or guidance on any aspect of these Rules.

Definitions

- 8.2 In these Rules, 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) **Applicant** means an undertaking, a person (natural or legal), as defined in Section 167(1) of the Act, association, group and other entities seeking the benefits of leniency; or someone acting in or on their behalf ;
- (c) **Cartel** means an association of undertakings engaging in restrictive agreements as contained in Sections 59, 61 and 62 of the Act;
- (d) **Commission** means the Federal Competition and Consumer Protection Commission established under Section 3(1) of the Act;
- (e) **Conditional Leniency** means provisional immunity initially granted in writing to an applicant upon successful application for Leniency, once the Commission is satisfied that the applicant has provided material evidence and information that will aid in its investigations, findings, decisions and or subsequent proceedings. The conditional leniency requires the applicant to cooperate with the Commission as well as to respect the other conditions specified in the Leniency Rules;
- (f) **Executive Vice-Chairman** means the Chief Executive of the Commission;
- (g) **Full/Total/Permanent leniency** this succeeds the conditional leniency and is given to an applicant upon the completion of the entire investigation process, when a determination is issued;
- (h) **Party(ies)** includes an undertaking 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);
- (i) **Priority** status means the position of the applicant marked for giving the benefit of leniency in the queue of the applicants;
- (j) **Marker** means a formal acknowledgement by the Commission of a leniency application intent, which records the timing of the application and priority relative to other applicants, and reserves a place for an applicant for a specified period in the queue whilst it conducts further internal investigation and attempts to perfect its application for leniency;
- (k) **Person** means a natural or legal person;
- (l) **Restrictive Agreement** means an agreement as defined in Section 59 of the Act;
- (m) **Undertaking** means any “person”, public or private, involved in the production of, or the trade in, goods, or the provision of services.
- (n) **Vital disclosure** means full and true disclosure of information or evidence by the applicant to the Commission, which is sufficient to enable the Commission to form a

prima-facie opinion about the existence of a cartel or which helps to establish the contravention of the provisions of section 59 of the Act.

Short title and commencement

8.3 These Rules may be cited as the **Leniency Rules, 2022**.

SCHEDULE

CONTENTS OF THE APPLICATION

1. The application for leniency shall, *inter-alia*, include the following, namely:
 - (a) name and address of the applicant or its authorized representative as well as of all other undertakings in the cartel;
 - (b) in case the applicant is based outside Nigeria, the address of the applicant in Nigeria for communication including the telephone numbers and the e- mail address, etc.;
 - (c) a detailed description of the alleged cartel arrangement, including its aims and objectives and the details of activities and functions carried out for securing such aims and objectives;
 - (d) the goods or services involved;
 - (e) the geographic market covered;
 - (f) the commencement and duration of the cartel;
 - (g) the estimated volume of business [affected in Nigeria by the alleged cartel];
 - (h) the names, positions, office locations and, wherever necessary, home addresses of all individuals who, in the knowledge of the applicant, are or have been associated with the alleged cartel, including those individuals which have been involved on behalf of the applicant;
 - (i) the details of other Competition Authorities, forums or courts, if any, which have been approached or are intended to be approached in relation to the alleged cartel;

- (j) a descriptive list of evidence regarding the nature and content of evidence provided in support of the application for leniency; and
- (k) any other material information as may be directed by the Commission.