



REQUEST FOR PROPOSAL

BACKGROUND

As part of carrying out its statutory duties, the Commission investigates the activities and operations of companies in Nigeria to ensure compliance with prevailing competition and consumer protection laws and regulations.

In December 2020, the Commission opened an investigation with respect to possible anti-competitive conduct in the tobacco industry. In furtherance of the investigation, the Commission identified a particular company in the industry (“the Company”) regarding possible anti-competitive conduct. The investigation concluded with a Mutual Consent Order of the Commission in December 2022.

Through the investigative process, the Commission gathered substantial evidence sufficient to conclude that the Company had engaged in conduct that constitutes infringements of the Federal Competition & Consumer Protection Act 2018 (“FCCPA”), the National Tobacco Control Act 2015 and the National Tobacco Control Regulations 2019 (herein referred to as “the NTCA” and “NTPCR” respectively).

Further, issues emerging from discoveries in the course of the investigation raise questions of multiple infringements and business/operational practices that undermine competition, a fair market and consumer protection.

The FCCPA empowers the Commission to among others, conduct investigations, issue directives and apply sanctions, where necessary, including prohibiting the execution of agreements or understandings and terminating or preventing any arrangements that violate the law or constitute anti-competitive conduct. Additionally, a combination of multiple provisions in the FCCPA mandate the Commission to use appropriate tools to ensure compliance with the FCCPA and maintain fair and stable markets. One of the tools or mechanisms the Commission uses is periodic supervision and monitoring.

In furtherance of these mandate, powers, and on account of business and trade practices and systems discovered in the course of this investigation, the Commission intends to subject the Company to supervision and compliance oversight under a monitoring framework by an independent Monitor appointed by the Commission. The framework and Monitor will conduct routine, continuous and periodic oversight over relevant aspects of the business that have been implicated in the course of the investigation and provide reports to the Commission including activities, findings, infractions (if any), analysis and recommendations where applicable under the framework, and in accordance with extant law.

The statutory framework for establishing, imposing and conducting the monitoring and supervision include Sections 17(a),(e),(h), (w), 18(1)(c); 18(3),(h) of the FCCPA.

As such, and as part of the resolution of the investigation, the Commission and Company by the Consent Order have agreed, and the Company shall be subject to monitoring for a period commencing from the selection/appointment of the Monitor and onboarding of the monitoring framework/process.

MONITORING FRAMEWORK / SCOPE

The monitoring framework will cover business processes and activities identified below, and any ancillary or collateral activities, actions or functions reasonably linked to the objective of the monitoring:

TRADE AND OTHER RELEVANT LEGAL/STATUTORY CHARGES AND FINANCIAL OBLIGATION

To ensure the Company is transparent and in compliance regarding applicable legal and statutory charges and other financial obligations including custom duties; and not exploiting customs valuation principles or engaging in questionable or dubious excise management strategies which are invariably detrimental to competition. The Commission will require the appointed Monitor to conduct oversight with respect to:

1. **Post Entry Audits:** A review of all import declarations and duty payment receipts – specifically, the SGDs (Single Goods Declaration), bank receipts on payments for all import transactions, details of valuation methods used to determine transaction values between the Company and all other related entities.
2. **Audit Of Inter-Company/Intra-Group Or Affiliated/Related Company Transactions:** Examination of all transactions carried out by the Company and its related entities and/or all its related distributors and marketing agencies both in Nigeria and abroad.
3. **Audit Of Excise Transactions:** Audit of excise transactions carried out by the Company, including excise payment receipts versus production volumes. This information is required to ensure the company is not using excise payment adjustments in a manner that provides inappropriate leverage to the detriment of competition.
4. **Review Of Production Plans/Strategies:** Monthly review of planned production volumes to mitigate forestalling or otherwise illegal stock-building activities that may constitute anti-competitive conduct under prevailing law or the Company's policies.

REGULATORY AUDIT

Information, records, and employee testimonies procured during the course of investigation demonstrate that the Company exploits its relationships to stymie, sway or influence laws, policy and regulations in a manner that is either anti-competitive or inconsistent with vital national priorities such as public health. Evidence also establishes a pattern of deploying government engagement or policy advocacy strategies to circumvent, delay, water-down or otherwise prevent restrictions under regulatory control enactments, policies or prevention efforts.

To ensure compliance with extant laws and fair competition, the Commission would require a monthly or other periodic detailed reporting and review of:

1. **Government Interactions:** Information on all government/regulatory engagement activities including, but not limited to correspondence, meetings logs, records/reports from all engagements, all requests to government agencies such as classification opinions, exceptional approvals, and any additional information in a format to be mutually agreed between Monitor and the Commission, including details of location of such meetings, travel required, individuals involved and any notes or memorialization of the engagement{s}.
2. **Stakeholder Map:** The list of all government agencies engaged or to be engaged by the Company or by any other agency or consultant on its behalf for regulatory discussions not limited to laws, regulations, fiscal policies and measures, other operational issues.
3. **Policy Advocacy:** The Company would be required to provide information regarding its policy advocacy strategies and all vehicles used for policy advocacy such as Organised Private Sector Bodies (MAN, NACCIMA, NECA, e.t.c), its Foundation, Non-Governmental Organisations/Civil Society Organisations, private consultants, or local and international consulting firms etc.
4. A bespoke platform for monitoring engagement which will necessarily include opportunity for periodic tracking, a dashboard available to the Commission, archiving information received and procured during the monitoring, in useable and easily retrievable format, and, possible hardware and required support

KEY TOPICS OF INTEREST

- Product regulation
- Extant laws/regulations
- All legal and statutory obligation/Fiscal Policies and Measures – foreign exchange, outbound payments, central, 3rd party, bilateral or multilateral procurement, Direct and Indirect charges (excise, import/customs duties, Unit Cost Analysis/Ex-factory Price etc.)
- Any other policy issue the Commission may deem necessary.

AUDIT OF MARKETING ACTIVITIES

The investigation revealed that the Company engages in various marketing activities in contravention of both the FCCPA and the NTCA. Therefore, a review of marketing activities of the Company would be relevant to ensure compliance with the prevailing laws.

1. **New Product Introduction Plans:** Audit of marketing strategies for all products the Company intends to introduce, continue, distribute or sell.
2. **Strategies / Plans:** For any and all products commercialised by the Company.

OTHER INFORMATION

Marketing Mapping	Purpose of information gathered
Price Marketing Strategies	To mitigate interference with government competition and other relevant policies applicable, or that impact fair competition.
Product Marketing Strategies	To mitigate interference with product regulation and address concerns of using new product regulatory initiatives to circumvent extant control laws and regulations.
Product Placement Strategies	To address concerns regarding product placement and promotion strategies adopted by the Company.
Publicity Marketing Strategies	To ensure the Company complies with the regulatory control measures regarding advertising, promotion and sponsorship under current applicable laws and regulatory framework.

PREQUALIFICATION REQUIREMENT

The Commission hereby publishes this Request for Proposal (RfP) and invites interested firms, consultants, or combinations thereof with requisite expertise and experience, skills and qualifications in similar, or functionally equivalent work or engagements to propose accordingly.

The proposal/response to this RFP must identify and articulate a broad and detailed intended plan to execute this engagement if appointed the Monitor, tools required, requisite qualifications and expertise, confirmation of capacity, and availability for the engagement for a period of no less than 24 (Twenty Four) months; and a fee/cost proposal for discharging the obligations under the engagement.

The proposal or response to RFP that will be successful shall be by an indigenous provider, combination of same, or led wholly by a domestic indigenous provider. Completely indigenous experts preferred. Evidence of this must be provided, including domestic tax status.

Subject to legally binding agreement, the Commission will require the Monitor to transfer (including assignment of all intellectual property rights and technological or technical or innovative know-how) any platform or application deployed for, or in the monitoring engagement which will necessarily include opportunity for periodic tracking, a dashboard available to the Commission, archiving information received and procured during the monitoring in usable and easily retrievable format.

Other requirements include Evidence of incorporation with the Corporate Affairs Commission; Tax clearance/Tax identification Number.

CONFLICT CHECK

On account of the nature of the monitoring, or sensitive information that will be procured in the process, all responses to this RFP must include disclosure of complete information about any representations or provision of services to the tobacco industry or any tobacco company that has business or operations in Nigeria specifying the identity of such company, nature and scope of the representations or services, dates thereof, and or whether the same is recurrent, or ongoing

MONITORING TIMEFRAME

24 months

RESPONSE TO RFP

Interested providers, combinations thereof or proposals/responses to this RFP must be received by the Commission in electronic format no later than 10 days from the publication of this RFP, i.e. March 4, 2023.

Responses should be sent to Florence.abebe@fccpc.gov.ng