

**FEDERAL COMPETITION AND CONSUMER PROTECTION  
COMMISSION**  
**PUBLIC NOTICE**  
**EXPOSURE DRAFTS AND INVITATION FOR PUBLIC COMMENTS**  
**AUTHORISATION, EXEMPTION AND GUIDANCE REGULATIONS**  
**(NON-MERGER MATTERS), 2026**  
**AND**  
**EXPLANATORY GUIDELINES TO THE AUTHORISATION,**  
**EXEMPTION AND GUIDANCE REGULATIONS**  
**(NON-MERGER MATTERS), 2026**

*Dated: April 13, 2026*

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## **1. INTRODUCTION**

The Federal Competition and Consumer Protection Commission (“the Commission”) hereby issues, for public consultation and comment, exposure drafts of two complementary instruments:

- (a) the Authorisation, Exemption and Guidance Regulations (Non-Merger Matters), 2026 (“the Regulations”); and
- (b) the Explanatory Guidelines to the Authorisation, Exemption and Guidance Regulations (Non-Merger Matters), 2026 (“the Guidelines”).

The Regulations and the Guidelines are issued pursuant to the Federal Competition and Consumer Protection Act, 2018 (“the Act”), including sections 17, 18, 60, 68, 72, 73, 163 and 167 thereof. Together, they establish a consolidated analytical, procedural and interpretive framework for the treatment of restrictive agreements and the conduct of dominant undertakings in non-merger matters.

This Notice is issued in furtherance of the Commission’s commitment to transparency, regulatory due process and evidence-based rule-making. The Commission accordingly invites comments from all interested stakeholders on the exposure drafts.

## **2. LEGAL BASIS AND SCOPE**

The Regulations are made pursuant to the rule-making powers of the Commission under the Act. They apply to all undertakings operating in or affecting markets in the Federal Republic of Nigeria and address non-merger matters only. Merger review continues to be governed by the Commission’s existing merger instruments and is not affected by this consultation.

The Guidelines do not themselves create rights or obligations. They set out, in a single integrated document, the Commission’s interpretation of the Regulations, its analytical and evidentiary expectations, and worked illustrations of how key provisions are expected to operate in practice.

### 3. PURPOSE OF THE INSTRUMENTS

The Regulations and the Guidelines are intended to:

- (a) establish a transparent and predictable framework for the grant of individual exemptions and block exemptions in respect of restrictive agreements under section 60 of the Act;
- (b) clarify the treatment of the statutory exceptions in section 68 of the Act, including the operation of the professional services power;
- (c) articulate a coherent doctrinal bridge between Part VIII (restrictive agreements) and Part IX (abuse of dominance) of the Act, grounded in the definition of “engaging in conduct” in section 167(2);
- (d) provide a structured process for the administrative confirmation of arrangements between affiliated or interconnected undertakings under section 73(2) of the Act; and
- (e) set out the Commission’s non-binding guidance framework for unilateral conduct falling outside the section 60 exemption pathway.

### 4. STRUCTURE OF THE REGULATIONS

The Regulations are organised progressively, moving from substantive prohibition through exemption, guidance, administrative confirmation, and procedural and fee provisions. The structure is as follows:

- **Part I** — Scope and Objectives.
- **Part II** — Authorisation and Exemption of Restrictive Agreements (Divisions 1–3).
- **Part III** — Conduct by Dominant Undertakings (Divisions 1–4).
- **Part IV** — Decision Timelines and Compliance Obligations.
- **Part V** — Application Fees and Classification of Undertakings.
- **Part VI** — Pre-Notification Consultation.
- **Part VII** — Review, Appeals and Miscellaneous Provisions.
- **Part VIII**— Conclusion

The following sections describe the substantive content of Parts II and III in sequence, Division by Division, followed by a summary of the procedural Parts (IV to VII).

## 5. KEY FEATURES — PART II: AUTHORISATION AND EXEMPTION OF RESTRICTIVE AGREEMENTS

Part II establishes the complete exemption architecture for restrictive agreements caught by Part VIII of the Act. It addresses the treatment of section 59 and, distinctly, each of the specific prohibitions in sections 61, 62, 63, 64 and 65, and it situates the statutory exceptions in section 68 within the broader framework. The Part is organised in three sequential Divisions.

### 5.1 Division 1 — Individual Exemption

Division 1 sets out the substantive and procedural framework for individual exemption applications under section 60 of the Act. Its principal features are:

- (a) **The four cumulative conditions.** A detailed operational articulation of the statutory conditions for exemption contribution to efficiency, indispensability, fair share to consumers, and no substantial elimination of competition including the sequence in which they are assessed and the evidentiary threshold attaching to each.
- (b) **Treatment of the specific Part VIII prohibitions.** The Regulations express that section 60 is available in respect of agreements prohibited under section 59 as well as each of the distinct prohibitions in sections 61 (exclusionary provisions), 62 (agreements by suppliers), 63 and 64 (minimum resale price maintenance including patented products), and 65 (resale price maintenance more generally). The Commission’s approach to each category is clarified in the Guidelines.
- (c) **Statutory exceptions under section 68.** The Regulations confirm that agreements falling within any of the seven categories enumerated in section 68(1)(a)–(g) of the Act are outside Part VIII entirely and therefore do not require exemption. The Guidelines set out, for each category, the scope of the exception, the burden of proof on the party asserting it, the principle of strict construction, and the operation of the professional services power, including the First Schedule list of professional associations.
- (d) **Evidentiary and quantification expectations.** The Regulations articulate, and the Guidelines illustrate, the evidentiary standards applicable to applicants. These include the quantification of claimed efficiencies, net present value analysis, the treatment of dynamic efficiencies, and the application of the SSNIP (small but significant and non-transitory increase in price) framework for market definition.
- (e) **Environmental sustainability and climate-change mitigation agreements.** Division 1 recognises the growing relevance of sustainability agreements and sets out the Commission’s approach to in-market and out-of-market consumer benefits, consistent with the objectives of the Act and Nigeria’s climate commitments.
- (f) **Worked examples.** The Guidelines include illustrative worked examples drawn from sectors of particular relevance to Nigeria including telecommunications, pharmaceuticals, agriculture and fast-moving consumer goods to give applicants a concrete sense of the Commission’s expected analytical approach.

## 5.2 Division 2 — Block Exemption

Division 2 establishes the framework for the issuance of block exemption notices declaring that specified categories of agreements are presumed to satisfy the conditions for exemption under section 60. Its principal features are:

- (a) **Categorical design.** Block exemption notices are directed at well-defined categories of agreements where the Commission has determined, on the basis of experience and economic reasoning, that the four conditions in section 60 are generally satisfied.

- (b) **Conditions and thresholds.** Each notice will specify the conditions, market share thresholds and safe-harbour criteria applicable, together with the mechanism for withdrawal in individual cases where the presumption is displaced.
- (c) **Reliance and self-assessment.** Parties may rely on a block exemption notice by self-assessment. The notification form in Schedule 3 provides a structured vehicle for reliance and for the provision of market information where appropriate.

### 5.3 Division 3 — Guidance, Enforcement Interface and Ancillary Provisions

Division 3 addresses the interface between the exemption framework and the Commission’s wider enforcement functions, and provides a pathway for non-binding guidance in cases of genuine interpretive novelty. Its principal features are:

- (a) **Non-binding guidance on novel questions.** Where an agreement raises a genuinely novel interpretive question on which there is no existing decisional practice, the Commission may, in its discretion, issue non-binding guidance to inform the applicant’s self-assessment. Guidance does not amount to a decision under section 60 and does not bind the Commission in any subsequent enforcement proceeding.
- (b) **Enforcement interface.** Division 3 clarifies the sequencing between an exemption application and any parallel or subsequent investigation, including the treatment of interim measures and the effect of a granted exemption on the Commission’s enforcement discretion.
- (c) **Ancillary provisions.** These include variation and revocation of exemption decisions, treatment of successors in title, and confidentiality protections for commercially sensitive information provided to the Commission.

## 6. KEY FEATURES — PART III: CONDUCT BY DOMINANT UNDERTAKINGS

Part III addresses the treatment of conduct by dominant undertakings. It resolves, on a transparent doctrinal basis, the long-standing question of whether and how the section 60 exemption framework can reach conduct that is also potentially abusive under section 72, and it provides a separate, non-binding pathway for unilateral conduct that is not embedded in an agreement. It is organised in four sequential Divisions.

### 6.1 Division 1 — Agreement-Based Conduct by Dominant Undertakings

Division 1 establishes that where the conduct of a dominant undertaking is embedded in an agreement (for example, an exclusive dealing arrangement, a loyalty rebate schedule, or a tying arrangement incorporated into a supply contract), that conduct may be considered for exemption under section 60. Its principal features are:

- (a) **The section 167(2) bridge.** Section 167(2) of the Act provides that “engaging in conduct” includes entering into contracts and arrangements, and making or giving effect to provisions of contracts or arrangements. This statutory definition is the doctrinal bridge that allows agreement-based conduct otherwise assessed under Part IX to be routed through the section 60 exemption pathway established in Part II.

- (b) **Dual classification.** The Regulations recognise that the same conduct may fall simultaneously within section 72(2)(d)(i) (exclusionary act by a dominant undertaking) and within Part VIII as a restrictive agreement.
- (c) **Assessment framework and burden of proof.** The Regulations set out the evidentiary and analytical steps applicable to an exemption application in respect of agreement-based conduct by a dominant undertaking, including the treatment of foreclosure effects, efficiency justifications, and the indispensability condition.

## 6.2 Division 2 — Non-Binding Guidance on Unilateral Conduct

Division 2 addresses unilateral conduct that is not embedded in an agreement and which therefore falls outside the section 60 exemption pathway. It provides a non-binding guidance mechanism designed to give undertakings greater predictability while preserving the integrity of the Commission’s ex post enforcement discretion under section 72. Its principal features are:

- (a) **Guidance, not exemption.** Guidance issued under Division 2 is non-binding. It reflects the Commission’s preliminary view on the application of section 72 to the conduct described, based on the information provided, and does not operate as an exemption or a pre-clearance.
- (b) **Eligibility and threshold.** Guidance is directed at cases of genuine interpretive novelty, including emerging digital and platform contexts, where there is insufficient decisional practice to guide self-assessment. The Commission retains discretion to decline a request where the question does not meet that threshold.
- (c) **Procedural design.** The Regulations set out the form of request, the information to be provided, the Commission’s expected response time, and the status of the guidance in any subsequent enforcement proceeding.
- (d) **Ex post insight.** Guidance requests generate a structured stream of real-time information on market conduct and interpretive difficulty, which the Commission will use as an input to the development of decisional practice, subsequent block exemption notices, and amendments to the Guidelines.

## 6.3 Division 3 — Administrative Confirmation under Section 73(2)

Division 3 operationalises the statutory carve-out in section 73(2) of the Act, which provides that the exclusive dealing and market restriction prohibitions in section 73 do not apply to arrangements between affiliated or interconnected undertakings. It establishes a structured administrative confirmation procedure to give parties early certainty on the scope of the carve-out. Its principal features are:

### *(i) Affiliation and interconnection threshold*

- (a) **Statutory definition.** “Affiliated” is defined by section 167(4) of the Act by reference to the subsidiary concept in the Companies and Allied Matters Act. The Regulations confirm this threshold and set out how it is to be evidenced in a request for administrative confirmation.
- (b) **Interconnection as an equivalent condition.** “Interconnected” is treated as a functionally equivalent condition capturing entities that are, in substance, under common control or that

form part of a single economic unit, and is evidenced by ownership, board composition, management integration and operational control.

- (c) **Single economic entity doctrine — interpretive aid.** The single economic entity doctrine is recognised as an interpretive aid to the section 73(2) carve-out and not as an independent substantive defence. Its use is subject to three limitations clarified in the Guidelines, which distinguish the Act's approach from the structurally different treatment in some other jurisdictions.

*(ii) Ejusdem generis framework — Regulation 29*

- (a) **The interpretive problem.** Section 73(2) carves out "exclusive dealing arrangements or market restrictions" between or among affiliates or interconnected undertakings. The expression "market restrictions" is not defined in the Act and, read in isolation, is potentially open-ended.
- (b) **Genus.** Regulation 29(2) identifies the genus of restrictions caught by the phrase: restrictions of the same general character as exclusive dealing arrangements, namely restrictions that allocate or ring-fence the commercial space within which an affiliated or interconnected undertaking may operate.
- (c) **Species.** Regulation 29(3) identifies illustrative species within the genus, including territorial restrictions, customer restrictions, and field-of-use limitations.
- (d) **Delimitation.** Regulation 29(4) articulates the outer limit of the genus and includes a substance-over-form anti-avoidance clause to prevent artificial structuring around the carve-out.
- (e) **Exclusions.** Regulation 29(5) sets a negative boundary, identifying arrangements that do not constitute market restrictions for the purposes of section 73(2), including administrative reporting obligations, internal governance arrangements, and conduct directed at external counterparties.

*(iii) The administrative confirmation procedure*

- (a) **Request and information.** Parties seeking confirmation must complete the form in Schedule 5, setting out the identity of the affiliated or interconnected undertakings, the arrangement in issue, and its classification under the Regulations.
- (b) **Standard of review and effect.** The confirmation is declaratory in nature and is made on the basis of the information provided. It confirms that, on the facts stated, section 73 does not apply, and does not create a substantive exemption.

**6.4 Division 4 — Common Provisions**

Division 4 sets out provisions applicable across the whole of Part III, including:

- (a) the interaction between agreement-based exemption, unilateral guidance and administrative confirmation, with clear routing rules to avoid forum-shopping or strategic re-characterisation;
- (b) confidentiality and treatment of commercially sensitive information; and

- (c) coordination with sector regulators and other agencies exercising concurrent competition mandates.

## **7. PROCEDURAL PROVISIONS — PARTS IV TO VII**

The procedural provisions of the Regulations are intended to ensure predictability, proportionality and accessibility. Respondents are particularly invited to comment on the calibration of these provisions.

### **7.1 Part IV — Decision Timelines and Compliance Obligations**

Part IV establishes indicative decision timelines for individual exemption applications, block exemption reliance, guidance requests and administrative confirmation requests, together with the continuing compliance obligations attaching to parties that have benefited from an exemption.

### **7.2 Part V — Application Fees and Classification of Undertakings**

Part V, together with Schedule 1, sets out the application fees applicable to each pathway and the classification of undertakings by reference to turnover and sector. Fees have been calibrated with a view to proportionality and to avoid imposing disproportionate burdens on micro and small enterprises.

### **7.3 Part VI — Pre-Notification Consultation**

Part VI establishes an optional pre-notification consultation mechanism allowing parties to engage with the Commission in advance of a formal application, with a view to clarifying scope, information requirements and likely timelines.

### **7.4 Part VII — Review, Appeals and Miscellaneous Provisions**

Part VII addresses review and appeal pathways, the interaction with the Competition and Consumer Protection Tribunal, and miscellaneous matters including commencement, transitional arrangements and the treatment of matters pending at commencement.

## **8. THE EXPLANATORY GUIDELINES**

The Guidelines are designed to sit alongside the Regulations as an integrated interpretive companion. They are organised to follow the sequence of the Regulations, Part by Part and Division by Division. The Guidelines include, among other things:

- the Commission’s analytical framework for each category of application;
- detailed treatment of the section 68 statutory exceptions, including the professional services power and the First Schedule list of professional associations;
- an extended doctrinal treatment of the section 167(2) bridge and the dual classification framework for agreement-based conduct by dominant undertakings;
- the single economic entity doctrine as an interpretive aid to section 73(2), including its three doctrinal limitations and its distinction from the structurally different European Union position;
- the *ejusdem generis* framework for the interpretation of “market restrictions” under section 73(2);
- guidance on environmental sustainability and climate-change mitigation agreements;

- sectoral illustrations in telecommunications, pharmaceuticals, agriculture and fast-moving consumer goods; and
- worked economic examples covering net present value analysis, dynamic efficiency valuation, SSNIP market definition and pass-through assessment.

## 9. INVITATION FOR COMMENTS — CONSULTATION QUESTIONS

The Commission invites comments from all interested persons and organisations, including undertakings, sector regulatory agencies, industry associations, legal practitioners, economists, consumer groups, academic institutions, civil society organisations and members of the public. Respondents may address any aspect of the exposure drafts and are particularly invited to consider the following questions, which are grouped to track the Part and Division structure of the Regulations.

### 9.1 General

- Do the exposure drafts, taken as a whole, provide a clear, coherent and workable framework for the treatment of restrictive agreements and the conduct of dominant undertakings in non-merger matters?
- Is the relationship between the Regulations and the Guidelines clearly articulated, and is the Guidelines' non-binding status appropriately framed?

### 9.2 Part II — Authorisation and Exemption of Restrictive Agreements

- Division 1 — Individual Exemption.** Are the four cumulative conditions, the evidentiary expectations, the quantification requirements and the worked examples clear, proportionate and workable? Is the treatment of agreements caught by sections 61 to 65 appropriately differentiated? Is the treatment of section 68 statutory exceptions, including strict construction and the professional services power, sufficiently clear?
- Division 2 — Block Exemption.** Are the categories, thresholds, safe-harbour criteria and withdrawal mechanisms for block exemption notices appropriately calibrated? Are additional categories merited in the Nigerian context?
- Division 3 — Guidance and Enforcement Interface.** Is the non-binding guidance pathway appropriately limited to cases of genuine interpretive novelty? Is the enforcement interface, including the treatment of parallel investigations, clearly articulated?

### 9.3 Part III — Conduct by Dominant Undertakings

- Division 1 — Agreement-Based Conduct.** Is the doctrinal bridge based on section 167(2) clearly explained? Is the dual classification framework appropriately calibrated and practically applicable?
- Division 2 — Non-Binding Guidance on Unilateral Conduct.** Is the non-binding guidance mechanism for unilateral conduct appropriately designed and free of any implication of pre-clearance? Is the eligibility threshold (genuine interpretive novelty) appropriately calibrated?
- Division 3 — Administrative Confirmation under Section 73(2).** Are the affiliation and interconnection criteria appropriate? Is the treatment of the single economic entity doctrine as

an interpretive aid (with its three limitations) correctly framed? Is the ejusdem generis framework in Regulation 29, including its genus, species, delimitation and negative boundary, appropriately calibrated? Is the administrative confirmation procedure workable?

- (d) **Division 4 — Common Provisions.** Are the routing rules between exemption, guidance and administrative confirmation clear? Is the coordination with sector regulators appropriately addressed?

#### 9.4 Parts IV to VII — Procedural Provisions

- (a) Are the decision timelines in Part IV realistic and proportionate, for the Commission and for applicants of different sizes?
- (b) Are the application fees in Part V and Schedule 1 proportionate and appropriately differentiated, in particular for micro and small enterprises?
- (c) Is the pre-notification consultation mechanism in Part VI a useful addition, and is its scope appropriate?
- (d) Are the review, appeals and transitional provisions in Part VII clear and workable?

#### 9.5 Cross-Cutting Issues

- (a) Are there additional categories of agreement, conduct or sector-specific issues that the Regulations or the Guidelines should address?
- (b) Are there any provisions that may impose a disproportionate burden on micro and small enterprises or on entrants in nascent markets?
- (c) Is the treatment of environmental sustainability and climate-change mitigation agreements appropriate and consistent with the objectives of the Act?

### 10. SUBMISSION OF COMMENTS

Comments should be submitted in writing to the Commission on or before May 4, 2026, being three (3) weeks from the date of this Notice.

Comments may be submitted by any of the following means:

- (a) Email: [regulatorycomments@fccpc.gov.ng](mailto:regulatorycomments@fccpc.gov.ng)
- (b) Post: The Executive Vice Chairman/Chief Executive Officer, Federal Competition and Consumer Protection Commission, No. 23 Jimmy Carter Street, Asokoro, Abuja, Federal Capital Territory, Nigeria. Attention the Head of Anti-Competitive Practices Department.
- (c) Online: via the Commission’s website at [www.fccpc.gov.ng](http://www.fccpc.gov.ng).

All submissions should clearly indicate:

- (i) the name and contact details of the respondent;
- (ii) the capacity in which the submission is made (for example, undertaking, industry association, legal practitioner, academic, consumer group, or individual);

- (iii) the specific provision(s) of the Regulations or the Guidelines to which the comment relates, with reference where possible to the relevant Part, Division and Regulation number; and
- (iv) whether any part of the submission is confidential and, if so, the reasons for the claim of confidentiality. A non-confidential version of the submission must be provided in all cases.

The Commission encourages respondents to organise their submissions to track the Part and Division structure used in this Notice, as this materially assists in the orderly analysis and publication of responses.

## **11. ACCESS TO THE EXPOSURE DRAFTS**

The exposure drafts of the Regulations and the Guidelines, together with this Notice, are available for download from the Commission’s website at:

[www.fccpc.gov.ng/regulations/](http://www.fccpc.gov.ng/regulations/)

## **12. NEXT STEPS**

Following the close of the comment period, the Commission will:

- (a) review and consider all submissions received;
- (b) make such revisions to the exposure drafts as the Commission considers appropriate in light of the comments received; and
- (c) publish the final Regulations and the Guidelines.

The Commission reserves the right to extend the comment period if it considers this necessary to ensure adequate consultation.

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*Issued by the Federal Competition and Consumer Protection Commission  
April 13, 2026*