

THE COMPETITION AND CONSUMER PROTECTION (ADMINISTRATIVE PENALTIES GUIDELINES) 2024

No.	Narration	Provision	Justification
PART I PRELIMINARY			
1	Policy Objective	<p>The policy objectives of these Penalties Guidelines are to;</p> <ul style="list-style-type: none"> a. Impose penalties which reflect the seriousness of the violation. b. Act as a deterrent measure, provide for appropriate restitution and promote compliance and raise awareness of the Competition and Consumer Protection Act No.24 of 2010 as amended by Act No. 21 of 2023("the Act"). c. Provide for consistency, fairness and certainty in the imposition of penalties 	Maintained from previous guidelines
2	Preamble	These Guidelines are issued subject to the Act and the Competition and Consumer Protection (General) Regulations No. of 20... (the Regulations) made thereunder and shall apply to the extent that they are not inconsistent with both the Act and the Regulations.	Maintained from previous guidelines

		<p>The Competition and Consumer Protection Commission (the Commission) in accordance with Section 84 of the Act is mandated to issue Guidelines with respect to the effective implementation of provisions of the Act. Specifically, Section 84 (1) of the Act states that-</p> <p style="text-align: center;"><i>(1) In the exercise of its functions under this Act, the Commission may make such guidelines as are necessary for the better carrying out of the provisions of this Act.</i></p> <p>These Guidelines are hereby established to set forth the manner in which penalties to be imposed by the Commission will be determined.</p> <p>Imposition of penalties is an administrative action taken by the Commission to address a violation of the Act. This document describes the principles that the Commission will follow in imposing administrative penalties.</p> <p>Pursuant to Section 86 of the Act, a penalty payable under this Act shall be a debt due to</p>	
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		<p>the state.</p> <p>These guidelines are not a substitute to the Act and the Regulations, and may be revised from time to time, should the need arise. Any examples in these guidelines are for illustrative purposes only and should not be taken as exhaustive. In applying these guidelines, the facts and circumstances of each case will be considered. Persons in doubt about how their commercial activities may be affected by the Act or these Guidelines may wish to seek independent legal advice.</p>	
1	Title	<p>These Guidelines may be cited as the Competition and Consumer Protection Commission Administrative Penalties Guidelines (Penalties Guidelines) and shall come into force on the date of their publication pursuant to section 84(2) of the Competition and Consumer Protection Act, No. 24 of 2010 as amended by Act No.21 of 2023 (“the Act”).</p>	<p>Amended to align with section 34 of the Competition and Consumer Protection (Amendment) Act No. 21 of 2023</p>

2	Interpretation	<p>In these Guidelines unless the context otherwise requires-</p> <p>“Gross sales” means the total amount of sales without factoring in any deductions.</p> <p>“Person” includes, for the purposes of computation of penalties, a sole trader.</p> <p>For purposes of these Guidelines, any word or phrase to which a meaning has been assigned in the Act shall have such meaning.</p>	<p>A definition of what constitutes gross sales has been included to provide clarity. The definition enhances the implementation of the law because it clarifies which figure, in the books of accounts, will be relied upon when computing the payable penalty.</p>
3	Calculation of Penalties	<p>Penalties are calculated based on the turnover of an enterprise(s) that has violated the Act. Turnover has been defined under the Act. The</p>	<p>Imported from the previous guidelines. The last paragraph has been inserted to offer further insight</p>

		<p>turnover to be considered in the calculation of the penalties will be the latest audited turnover of an enterprise. In the event that the requested audited books of accounts are not available, the Commission will use the previous year's audited accounts to determine the penalty to be paid by an enterprise.</p> <p>If a conduct has been perpetuated for a period of over five years, the Commission will impose a penalty for each year in which the conduct was perpetuated to a maximum of five years from the time the investigation was commenced.</p> <p>When determining the penalty, due care will be exercised in ensuring that the penalty is substantial enough not only to deter the offender, but also other would be offenders from engaging in similar conduct. In doing so, the Commission will consider the broader economic impact of the penalty on the enterprise, especially if it's a small or medium-sized business in order not to affect the competitive dynamics of the market and ensuring that the penalty does not</p>	<p>into the factors considered by the Commission when determining the payable penalty.</p>
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		disproportionately disadvantage smaller competitors.	
4.	Aggravating and Mitigating Factors	<p>In determining the penalty to be imposed, the Commission will consider both the aggravating and mitigating factors which can lead to an increase or reduction in the penalty.</p> <p>The Commission will be fair, equitable and consistent in the application of mitigating and aggravating factors.</p> <p>1) The aggravating factors may include, but will not be limited to:</p> <ul style="list-style-type: none"> a) The role of the enterprise or person as a leader in, or an instigator of the infringement; b) The nature and gravity of the offence including, but not limited to, the impact on consumers, the extent of the effect of the conduct on the market; c) The retaliatory or other coercive measures taken by an enterprise or person against other enterprises including leniency applicants aimed at ensuring the continuation of the violation; d) The repeated violation (i.e. having previously violated the Act) by the same person or enterprise or its 	<p>To clarify that the retaliation has to be done by an enterprise.</p>

		<p>branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them;</p> <p><i>e)</i> The prevalence of the alleged conduct, i.e. whether the conduct is widespread, and the application of a sanction is likely to have a wide deterrent effect;</p> <p><i>f)</i> Whether the alleged offender has demonstrated resistance by being obstructive or defiant towards the Commission;</p> <p><i>g)</i> The duration the offender has been engaged in the prohibited conduct;</p> <p><i>h)</i> Whether the alleged conduct raises public interest concerns; or</p> <p><i>i)</i> The impact on consumers. The extent of the effect of the conduct on the market or on consumers.</p> <p>2) Mitigating factors may include, but will not be limited to:</p> <p>a) The role of the person or enterprise, for example, that the enterprise was acting under duress or pressure;</p> <p>b) The person or enterprise voluntarily reported the violation to the Commission before it could be discovered through enforcement action;</p>	
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5	Offences Punishable by Administrative Penalties	Administrative penalties are financial penalties that the Commission has discretion to impose on persons or enterprises that violate the Act. Offences subject to administrative penalties under the Act	

		<p>include Section 8, Section 9, Section 10, Section 16, Section 21, Section 23A, Section 34, Section 37, Section 46, Section 47, Section 48, Section 49, Section 51, Section 55, Section 58 and any other such provisions.</p> <p>These provide for offences punishable by administrative financial penalties to be imposed by the Commission without prior recourse to any court or arbiter.</p> <p>However, Section 49(2), Section 50 and Section 52 of the Act or any other such provisions are subject to recourse to the courts.</p>	
6	Procedure for Imposing an Administrative Penalty and Date of Payment	When the Commission makes an order imposing an administrative penalty on an enterprise or a person, such order shall be in writing, shall specify the offence, the factors the Commission took into consideration in arriving at the penalty to be paid and the date before which the penalty is required to be paid.	
7	Payable penalty	The steps below are followed in assessing the payable penalty:	

		<ul style="list-style-type: none"> (i) The starting point for imposing an administrative penalty will be the base fine as indicated in the annex. (ii) The mitigating factors will reduce the base penalty for purposes of offences under Parts III and IV of the Act by 0.25% and for purposes of offences under Part VII of the Act by 0.1% of the maximum payable for each mitigating factor. (iii) The aggravating factors will increase the base penalty for purposes of offences under Parts III and IV of the Act by 0.25% and for purposes of offences under Part VII of the Act by 0.1% of the maximum payable for each mitigating factor. (iv) The penalty determined in step two above shall not be less than 0.1% and the penalty determined in step three above shall not exceed the statutory limit which is 10% of the annual turnover. (v) The Final percentage fine determined in step three above will thereafter be applied on the annual turnover of an enterprise or the applicable penalty 	
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		<p>units in the case of a person.</p> <p>The penalty determined from the above steps will not be above 10% but may be below the base fine depending on the aggravating and mitigating factors on a case by case basis.</p>	
8	Adjustment for leniency application/consideration	<p>In cases where the leniency program applies as stipulated in the document, the penalty will be adjusted to consider Leniency applications. This implies that the calculated penalty may be reduced further if the applicant qualifies for partial immunity in the case of cartels.</p>	
9	Adjustment for Settlement Considerations	<p>In cases where Settlement applies as stipulated in the Settlement Procedure Guidelines, the penalty will be adjusted to consider the settlement discussions.</p>	
10	Assessment of penalties imposed under Section 58 of the Act	<p>The imposition of a penalty will not be restricted to only one year of the period of the infringement but may cover the period of the breach up to a maximum of five (5) years.</p> <p>In the calculation of a financial penalty, each year of the breach will have a</p>	

		penalty levied on the corresponding turnover or penalty units, as the case may be, of the Respondent enterprise or Person.	
10	Procedure for Payment of Penalty	The procedure to be followed in the payment of a financial penalty shall commence with the submission of audited financial statements in the case of an enterprise, and in the case of a Person, issuance of a demand letter in the absence of an appeal against the decision of the Board.	
11	Recovery of un-paid penalties	<p>Penalties not paid are a debt owed to the state and shall be recovered by the Commission through summary proceedings which will be commenced before the Courts.</p> <p>Before the application to recover the penalty is made, the Commission shall send a demand letter which shall indicate the specific period within which the said penalty ought to be paid.</p>	

Offences and Penalties

PART III

No.	Offence	Current Base (%) on Turnover	Proposed Base (%) on Turnover	Maximum (%) on Turnover
1.	Restrictive Business Agreements-Section 8	2	2	10
2.	Cartels-Section 9	7	7	10
3.	Resale Price Maintenance-Section 10	7	7	10
4.	Abuse of Dominant Position-Section 16	3	3	10

PART IV MERGERS

No.	Offence	Current Base (%) on Turnover	Proposed Base (%) on Turnover	Maximum (%) on Turnover
1.	Implementation of Merger without Approval – Section 37 (1) (a)	1 (Capped at One million penalty fee units)	1	10
2.	Implementation of Rejected Merger- Section 37 (1) (b)	3	3	10

PART VII CONSUMER PROTECTION

1. PERSONS

No.	Offence	Base 2% of maximum Penalty Unit	Base Penalty Payable (40n x Base)	Maximum (Penalty Unit)
1	Unfair Trading Practice-Sections 45 and 46	3,000	K1,200	150,000
2	False or Misleading Representation- Section 47	3,000	K1,200	150,000

3	Display of Disclaimer- Section 48	3,000	K1,200	150,000
4	Supply of Defective or Unsuitable Goods and services Section 49	10,000	K4,000	500,000
5	Charging Consumer More Than Price Displayed- Section 51	1,000	K400	50,000
6	Sale of Goods not conforming to Approved Standards- Section 52	10,000	K4,000	500,000

2. ENTERPRISES

No.	Offence	Current Base (%) on Turnover	Proposed Base (%) on Turnover	Formula for Proposed Base(%) on Turnover showing how base penalty will either increase or decrease	Maximum (%) on Turnover
1	<p>Unfair Trading Practice- Sections 45 and 46;</p> <p>False or Misleading Representation- Section 47;</p> <p>Supply of Defective or Unsuitable Goods and services - Section 49;</p> <p>Supply of Products that are not properly labelled - Section 50</p>	<p>0.5% with a cap of 3,333.33 (K1,333.33) penalty units for turnover of below 166,666.67. (K66,666.68)</p> <p>0.5% with a cap of 33,333.33 for turnover of 166,666.67 – 833,333.33</p>	0.3	<p>Starting point: 0.3%</p> <p>Per mitigating factor: -0.1%</p> <p>Per aggravating factor: +0.1%</p> <p>Note: Minimum payable penalty shall be 0.1% and Maximum 10%</p>	10

	<p>Charging Consumer More Than Price Displayed- Section 51;</p> <p>Sale of Goods not conforming to Approved Standards- Section 52</p>	<p>0.5% with a cap of 133,333.33 for turnover of 833,333.33 – 1,666,666.67</p> <p>0.5% with a cap of 233,333.33 for turnover of 1,666,666.67 – 5,000,000.00</p> <p>0.5% with a cap of 500,000.00 for turnover of 5,000,000.00 – 10, 000,000.00</p> <p>0.5% with a cap of 666,666.67 for turnover of 10,000,000.00 – 16,666,666.7</p> <p>0.5% with a cap of 1,666,666.67 for turnover above 16,666,666.7</p>			
2	Display of Disclaimer- Section 48	0.5% with a cap of 99,999.9	0.5		10

PART VIII INVESTIGATIONS

1. PERSONS

No.	Offence	Base (Penalty Units)	Base Penalty Payable (40n x Base)	Maximum (PU)
1.	Failure to Give Statement	5,000	K2000	100,000
2.	Failure to Produce Document/Article	5,000	K2000	100,000
3.	Failure to Appear to Give Evidence or Produce Document/Article	5,000	K2000	100,000

2. ENTERPRISES

No.	Offence	Base (%) on Turnover	Maximum (%) on Turnover
1.	Failure to Give Statement	0.3	10
2.	Failure to Produce Document/Article	0.3	10
3.	Failure to Appear to Give Evidence or Produce Document/Article	0.3	10