

Extraordinary



Federal Republic of Nigeria Official Gazette

No. 211

Lagos - 25th December, 2020

Vol. 107

Government Notice No. 206

The following is published as supplement to this *Gazette* :

<i>S.I. No.</i>	<i>Short Title</i>	<i>Page</i>
68	The Federal Competition and Consumer Protection Commission (Administrative Penalties) Regulations, 2020	B3215-3228

Printed and Published by The Federal Government Printer, Lagos, Nigeria
FGP 79/022021/600

Annual Subscription from 1st January, 2021 is Local : ₦45,000.00 Overseas : ₦60,500.00 [Surface Mail]
₦75,000.00 [Second Class Air Mail]. Present issue ₦2,500 per copy. Subscribers who wish to obtain *Gazette*
after 1st January should apply to the Federal Government Printer, Lagos for amended Subscriptions.

B 3214

**THE FEDERAL COMPETITION AND CONSUMER
PROTECTION ACT, 2018**
A29 (Act No.1 of 2019)
ADMINISTRATIVE PENALTIES, REGULATIONS, 2020



ARRANGEMENT OF REGULATIONS

Regulation :

1. Scope of the regulations.
 2. Objectives of the regulations.
 3. Methodology.
 4. Egregious violation.
 5. Time Restriction.
 6. Aggravating and mitigating factors.
 7. Procedure in imposing an administrative penalty.
 8. Consent Order.
 9. Appeals.
 10. Omnibus provisions.
 11. Discretion.
 12. Definitions.
 13. Short title and commencement.
- SCHEDULE 1
SCHEDULE 2

B 3216

S. I. No. 68 of 2020

**FEDERAL COMPETITION AND CONSUMER
PROTECTION ACT, 2018
A29 (Act No.1 of 2019)**

ADMINISTRATIVE PENALTIES REGULATIONS, 2020

[21st Day of December, 2020]

Commence-
ment.

In exercise of the powers conferred upon it by sections 17, 18 (1)(h) and 163 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 hereby makes the following Regulations.

1. These Regulations provide a regulatory framework for the administration and imposition of administrative penalties under the Act and all matters related thereto.

Scope of the
Regulations.

2. These Regulations shall—

Objectives
of the
regulations.

(a) provide the applicable principles relevant in the determination of administrative penalties pursuant to the Act ;

(b) outline the methodology for calculation and determination of penalties in the process leading to the imposition of administrative penalties ;

(c) clarify the process relating to administrative penalties including understanding mitigating and or aggravating factors considered in determining administrative penalties ;

(d) provide certainty and transparency in the method of determining administrative penalties.

3.—(1) The Commission shall apply the following methodology in imposing administrative penalties, more particularly described in the steps and formula specified in Schedule 2,—

Methodology.

(a) determine the nature or type of the violation under the Act, applicable law, or any regulation or order of the Commission ;

(b) determine the base amount ;

(c) consider the duration of the violation ;

(d) consider mitigating and/ or aggravating factors ; and

(e) round off any amount that exceeds the cap provided by the Act.

(2) The Commission shall in addition to initially considering the inappropriateness of the conduct or action subject of regulatory action, consider the nature of the conduct which constitutes that violation to determine whether it is negligent, reckless, unconscionable, wilful, deliberate or egregious.

(3) The Commission shall, subsequent to sub-regulation 2, determine the base amount as specified in Schedule 1 which may be—

- (i) a proportion of the relevant annual turnover ; or
- (ii) a proportion of the statutory fine/penalty provided under the Act ; or
- (iii) a fixed amount.

(4) The Commission shall, subsequent to sub-regulation 3, determine the duration of the violation and add a component of the duration to the amount determined under sub regulation 3 as specified in Schedule 2.

(5) The Commission shall, subsequent to sub-regulation 4, round off the figure obtained in sub-regulation 4 if it exceeds the cap provided by the relevant section of the Act.

(6) The Commission shall, subsequent to sub-regulation 5, consider factors that may mitigate and/or aggravate the amount attained in subregulation 5, by way of a discount or premium expressed as a percentage of that amount, between ten and fifty percent, that is either subtracted from or added to it.

(7) Where the amount attained in sub-regulation 6 exceeds a cap provided under the Act, the Commission shall round off the amount which shall constitute the administrative penalty.

Egregious Violation.

4. Where the Commission determines subsequent to sub-regulation 2 of regulation 3 that the violation is egregious in nature, it shall seek the maximum allowable penalty, and may in addition, pursue criminal prosecution as appropriate under the Act.

Time Restriction.

5. The imposition of an administrative penalty shall not be restricted to the year in which the investigations were concluded.

Aggravating and Mitigating Factors.

6.—(1) In assessing the penalty to be imposed, the Commission may consider any aggravating or mitigating factors.

(2) Aggravating factors include but are not limited to—

(a) role of the undertaking as a leader, active participant, or instigator in or, of the violation ;

(b) involvement in or awareness of the violating conduct by directors and key operatives including senior management as defined in the organogram of the undertaking under consideration who knew or reasonably ought to have known that the conduct in issue constituted a violation ;

(c) retaliatory or other coercive actions or measures taken against other persons or undertakings including whistle-blowers or leniency applicants aimed at ensuring the continuation of the violation ;

(d) Timely acceptance of responsibility, meaningful assistance to the investigation, non-responsiveness, failure to cooperate, or delay by an undertaking.

(e) repeat violations which refers to an undertaking or other undertaking in the same group having previously violated the same/similar provisions of the Act or similar provisions in any regulations or orders ;

(f) prevalence of the alleged violation, which refers to whether the conduct is widespread and the application of sanctions is likely to have a wide deterrent effect ;

(g) whether the alleged violator has demonstrated resistance by being obstructive or defiant towards the Commission ;

(h) period (extended or otherwise) violation has existed and or continued without remedy or abatement ;

(3) Mitigating factors include but are not limited to—

(a) role of the undertaking, such as duress, pressure or other involuntary or mitigating circumstances ;

(b) record of previous of same or similar conduct, including under other laws/regulations or other regulators ;

(c) appropriateness of, and willingness of violator to swiftly and remorsefully accept modified/less punitive enforcement remedies such as consent agreements or understandings, undertakings, written assurances, conditional or unconditional supervision or any other compliance mechanism permitted by law ;

(d) participation in the Commission’s leniency programme ;

(d) full, complete and transparent cooperation including timely acceptance of responsibilities, full and frank disclosure and provision of information and a collaborative approach that limits expenditure and resources in investigating and enabling speedy/effective disposition or conclusion of investigation or enforcement process ;

(e) termination of the violation as soon as the Commission intervenes ;

(f) violation is on account of innocent mistake or misapprehension that does not result in meaningful loss or injury, the violation is committed by the defaulter as a result of a genuine and/or innocent mistake ; and

(g) size of violator, nature of business, sophistication, and expectations with respect to resources and opportunity to ensure compliance with law and avoid violations.

7.—(1) When the Commission makes an order imposing an administrative penalty on an undertaking or a person, such order shall be in writing, identify the violation, factors the Commission took into consideration in determining the penalty and deadline by which the penalty is required to be paid.

Procedure in imposing an administrative penalty.

(2) Nothing in these regulations shall affect the discretion of the Commission to review an amount payable as penalty under this regulation upon a request for reconsideration made by an undertaking or individual.

B 3220

(3) In making a review of the penalty payable, the Commission shall have due consideration to—

(a) errors in computation of the penalty payable ;

(b) the undertaking's or individual's desire to timeously reach a settlement with the Commission before prosecution or dissipation of the Commission's resources on investigation activities ;

(c) the undertaking's assistance to the Commission towards investigating other violators of the Act in the industry.

(4) A request for reconsideration under subregulation 2 shall be for the purpose of reviewing the quantum of the penalty and shall not affect the underlying findings and order of the Commission.

Consent
Order.

8. The Commission and the defaulter may reach an agreement on the terms of an appropriate order for the payment of an appropriate administrative penalty.

Appeals.

9. Pursuant to section 47 of the *Act*, any appeal against an administrative penalty may be referred to the Competition and Consumer Protection Tribunal for determination.

Omnibus
Provisions.

10.—(1) Where there is no specific penalty imposed under the Act or a base sum specified under Schedule 1, the Commission shall impose an administrative penalty following the methodology specified by regulation 3 and Schedule 2 by applying a base sum as it deems fit given the circumstances of the case.

(2) Notwithstanding the imposition of an administrative penalty, the Commission may consider other remedies that seek to address the harm caused to competition or consumers as a result of the violation.

(3) In certain cases, the Commission may impose a nominal administrative penalty taking into account the facts of each case.

(4) Where applicable, the Commission will determine the interest payable in relation to the imposed administrative penalty in terms of the applicable monetary policy rate in force at the time of the determination.

(5) Upon conclusion of an investigation or enforcement, the Commission shall be reimbursed for every expense incurred and resource including reasonable time and effort expended in the course of the investigation or enforcement.

Discretion.

11. Nothing in these regulations shall be construed as circumscribing or limiting the Commission's general statutory discretion to consider administrative penalties on a case-by-case basis as the circumstances require.

12.—(1) In these regulations,

Definitions.

“*Act*” means the Federal Competition and Consumer Protection Act 2018 ;

“*Administrative Penalties*” means the monetary penalties or fines prescribed in this Regulation for violation of the provisions of the Act ;

“*Defaulter*” means a person (either a private individual or a corporate entity) who is adjudged by the Commission to have breached a provision of the Act or any subsidiary legislations made thereto ;

“*Regulations*” means these Administrative Penalties Regulations, and in some instances, it may refer to other regulations issued by the Commission pursuant to the Act.

(2) Terms used in this Regulation shall unless otherwise stated, have the meaning ascribed to them in the Act.

13.—(1) These regulations may be referred to as the Federal Competition and Consumer Protection Commission (Administrative Penalties) Regulations, 2020.

Short title
and
Commence-
ment.

(2) These Regulations shall become effective on the date of publication in the Federal *Gazette*.

DATED at Abuja this 21st day of December, 2020.

BABATUNDE IRUKERA
Chief Executive Officer
Federal Competition and Consumer
Protection Commission

SCHEDULE 1

TABLE OF APPLICABLE BASE SUMS FOR COMPUTATION OF ADMINISTRATIVE PENALTIES

<i>Description of Violation</i>	<i>Base Sum</i>	<i>Base Sum</i>	<i>Base Sum</i>
	<i>(Where Act does not distinguish between corporate and individual violations)</i>	<i>(Individual)</i>	<i>(Corporate)</i>
PART VI			
1. Failure to allow an authorised officer entry into any premises as required under Section 27 of the Act.	₦500,000		
2. Obstruction of officer executing a warrant under Section 28(5) of the Act.	25% of ₦5,000,000 = ₦1,250,000		
3.(a) Failure to appear before the Commission after being served a summons under Section 33(3) of the Act.	25% of ₦20,000,000 = ₦5,000,000		
3.(b) Failure to produce document after being served a summons under Section 33(3) of the Act.	25% of ₦20,000,000 = ₦5,000,000		
4. Wilful obstruction or Interruption of proceedings of the Commission under Section 33(4) of the Act.		₦5,000,000	50% of ₦20,000,000 = ₦10,000,000
5. Publication or communication of any information, document or evidence contrary to the order of the Commission under section 35 (3) of the Act.		50% of ₦1,000,000 = ₦500,000	25% of ₦ 50,000,000 = ₦12,500,000
6. Destruction of any records required by the Commission under section 36 of the Act.	25% of ₦50,000,000 = ₦12,500,000		
PART VIII			
7. Market division under section 59(2)(b) of the Act.		50% of ₦5,000,000 = ₦2,500,000	1% of Annual Turnover

8.	Imposition of non-customary supplementary obligations under 59(2)(e) of the Act.		50% of N5,000,000 = N2,500,000	1% of Annual Turnover
9.	Solicitation of exclusionary conduct contrary to Section 61 of the Act.		50% of N5,000,000 = N2,500,000	1% of Annual Turnover
10.	Agreements by suppliers in derogation of Section 62 of the Act.		50% of N5,000,000 = N2,500,000	1% of Annual Turnover
11.	Maintenance of minimum resale price under Section 63-65 of the Act.		50% of N 5,000,000 = N2,500,000	1% of Annual Turnover
12.	Failure to comply with the order of the Commission under Section 67(1) of the Act to immediately cease anti-competitive practice.		50% of N50,000,000 = N12,500,000	2% of Annual Turnover
	PART IX			
13.	Abuse of a dominant position under Section 72 & 73 (3) of the Act.	1% of Annual Turnover		
14.	Failure to comply with the order of the Commission under Sections 73 (1)(b) and 74 of the Act to immediately cease abusive practice.		50% of N50,000,000 = N12,500,000	2% of Annual Turnover
	PART X			
15.	Failure to furnish Commission with information on any monopoly investigation under Section 80(1) of the Act.	50% of N10,000,000 = N5,000,000		
16.	Providing false information or statement to the commission in respect of monopoly investigation under Section 80(2) of the Act.	50% of N2,000,000 = N1,000,000		
	PART XI			
17.	Failure to comply with order under Section 88 and 90 (3) and (4)		25% of N50,000,000 = N12,500,000	1% of Annual Turnover
	PART XII			
18.	Implementing merger without approval (gun-jumping) under Section 96 (4) and (7) of the Act.	2% of Annual Turnover		

B 3224

PART XIV				
19.	Price fixing and refusal to supply under Section 107 (1) and (4) of the Act.		50% of ₦10,000,000= ₦5,000,000	2% of Annual Turnover
20	Conspiring to restrain or injure competition under Section 108 (1) and (3) of the Act.		50% of ₦10,000,000= ₦5,000,000	2% of Annual Turnover
21.	Entering into an agreement for bid-rigging under Section 109 (1) and (3) of the Act.		50% of ₦10,000,000= ₦5,000,000	2% of Annual Turnover
22.	Obstructing investigation of the Commission under Section 110 of the Act.	50% of ₦2,000,000= ₦1,000,000		
23.	Refusal to produce, destruction, alteration, delay or withholding of document or information under Section 111 (1) and (2) of the Act.		50% of ₦10,000,000= ₦5,000,000	2% of Annual Turnover
24.	Giving false or misleading information under Section 112 Part XII of the Act.		50% of ₦10,000,000= ₦5,000,000	2% of Annual Turnover
25.	Failure to appear before Commission without reasonable excuse or refusal to take oath or answer questions under Section 113 (1) of the Act.	50% of ₦10,000,000= ₦5,000,000		
PART XV				
26.	Failure to adequately display consumer-relevant information in plain and understandable form under Section 114 of the Act.		₦50,000-	₦500,000
27.	Failure to adequately display price of goods and services under Section 115 of the Act.		₦50,000	₦500,000
28.	Applying trade description/labelling to mislead consumers under Section 116 of the Act.		₦1,000,000	₦5,000,000
29.	Failure to apply conspicuous notice on reconditioned, rebuilt, remade, second hand goods under Section 117 of the Act.		₦1,000,000	₦5,000,000

30.	Failure to enforce consumers' right to return goods in approved circumstances provided under Section 122 of the Act.	₦100,000	₦500,000
31.	Failure to comply with the general standards prescribed under Section 123 of the Act, for the marketing of goods and services.	₦1,000,000	₦5,000,000
32.	Applying physical force, coercion, undue influence or pressure, unfair tactics in the marketing or supply of goods or services or taking advantage of consumer ignorance or impairment under Section 124 of the Act.	₦1,000,000	₦5,000,000
33.	Making false, misleading or deceptive representation to a consumer under Section 125 of the Act.	₦1,000,000	₦5,000,000
34.	Publishing a false testimonial or representation as to a test under Section 126 of the Act.	₦1,000,000	₦5,000,000
35.	Employing unfair, unreasonable or unjust contract terms in the manner prohibited under Section 127 of the Act.	₦1,000,000	₦5,000,000
36.	Entering into an agreement to subvert the provisions of the Act.	₦1,000,000	₦5,000,000
37.	Failure to enforce consumer's rights to quality and safety of goods and services under Section 130 and 131 of the Act.	₦1,000,000	₦5,000,000
PART XVI			
38.	Failure of a manufacturer to label goods properly contrary to Sections 134 & 135 of the Act.	25% of ₦10,000,000 = ₦2,500,000	1% of Annual Turnover
39.	Failure of a manufacturer or distributor to withdraw hazardous goods from the market.	25% of ₦10,000,000 = ₦2,500,000	1% of Annual Turnover
PART XVIII			
40.	Failure to comply with Notice under section 159.	50% of ₦1,000,000 = ₦500,000	50% of 10,000,000 = ₦5,000,000

B 3226

41. Providing false or misleading information under Section 159.		50% of ₦1,000,000 = ₦500,000	50% of ₦10,000,000 = ₦5,000,000
42. Resistance, obstruction or delay the Commission pursuant to warrant under Section 30(3).		50% of ₦1,000,000 = ₦500,000	50% of 10,000,000 = ₦5,000,000
GENERAL PROVISIONS	₦5,000,000		
43. Disobedience of Commission's Order/ Directives.			

SCHEDULE 2

(Regulation 3)

STEPS AND FORMULAR FOR CALCULATION

1. These are the steps to calculating administrative penalties—

Step 1 : Calculation of the base amount as specified in Schedule 1.

Step 2 : Adding M to Step 1, which is a factor of the number of months of violations divided by 12 multiplied by the base penalty. For instance, if the violation has lasted 6 months, and the base penalty is ₦1,000,000, M will be $6/12 \times ₦1,000,000$. M will be ₦500,000.

Step 3 : Rounding off the figure obtained in step 2 if it exceeds the cap provided by the Act.

Step 4 : Considering factors that might mitigate and/or aggravate the amount reached in step 3, by way of a discount or premium expressed as a percentage of that amount that is either subtracted from or added to it, AM.

Step 5 : Rounding off this amount if it exceeds the cap provided for in the Act.

2.—(a) For the purposes of the formular, the following are taken into account—

(i) the base penalty ;

(ii) the duration of the months of the violations, M ;

(iii) the ratio of the aggravating factors (i.e., RAF) ;

(iv) the ratio of the mitigating factors (i.e., RMF) ;

(b) The penalty formula therefore shall be as follows :

$$P = B + M \pm [X\% \text{ of } (B+M)] ;$$

Where :

* P is the final penalty.

* B is the base penalty.

* M is the factor of the number of months divided by 12 multiplied by the base penalty. For instance, if the violation has lasted for 6 months, and the base penalty is ₦1,000,000, M will be $6/12 \times ₦1,000,000$. M will be ₦500,000.

* X% represents the net result of RAF and RMF represented as a discount or premium.

* RAF represents the ratio of aggravating factors.

* RMF represents the ratio of mitigating factors.

It should be noted that in the formula the resulting figure from the terms RAF, RMF, X is always in percentage form.

B 3228

3. For the purposes of illustration, assume the case of a violation with a base sum of ₦1,000,000 a violation for the duration of 6 months and a RAF of 40% and RMF of 10%. The formular will be applied as follows—

$$* P = B + M \pm [X\% \text{ of } (B+M)]$$

$$B = \text{₦}1,000,000$$

$$M = 6/ 12 \times \text{₦}1,000,000 = \text{₦} 500,000$$

$$X = \text{RAF-RMF}$$

$$X = 40\% - 10\% = 30\%$$

$$P = B + M \pm [X\% \text{ of } (B+M)]$$

$$P = \text{₦}1,000,000 + \text{₦} 500,000 + 30\% (\text{₦} 1,000,000 + \text{₦} 500,000)$$

$$P = \text{₦}1,500,000 + 30\% \text{ of } \text{₦} 1,500,000$$

$$P = \text{₦}1,500,000 + \text{₦}450,000$$

$$P = \text{₦}1,950,000$$