

COMUNIDADE ECONÓMICA  
DOS ESTADOS DA ÁFRICA  
OCIDENTAL

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DOS ESTADOS AFRICANOS  
DO OESTE

ECOWAS REGIONAL COMPETITION AUTHORITY

## MANUAL OF SCALE OF FINES AND COMPENSATION

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## **Article 1: Definitions**

For the purposes of this Manual-

- (a) "CCR" is the Supplementary Act A/SA.01/12/08 adopting the Community Competition Rules and its Application Modalities
- (b) "Days" refers to Calendar days including Saturdays and Sundays
- (c) "ED" is the Executive Director of ERCA
- (d) "ERCA Council" is the Council of the ECOWAS Regional Competition Authority

## **Article 2: Objective**

1. This Manual sets out the basis and methodology for the imposition of financial penalties by the ERCA Council for-
  - (a) infringements of the CCR;
  - (b) persons who fail to comply with its decisions in a timely manner; and
  - (c) persons who obstruct investigations and the performance of the functions of ERCA.
2. This Manual also sets out the basis and methodology for computation of compensation for persons who have suffered damage as a result of anti-competitive activity.
3. In line with ERCA's mission to enforce the CCR this Manual ensures that imposition of financial penalties by ERCA:
  - (a) is transparent;
  - (b) reflects the gravity of an infringement of the CCR;
  - (c) shows the seriousness of failure, refusal to comply with or obstruction of ERCA's investigative processes; and
  - (d) deters enterprises engaged in, or who may be considering engaging in anti-competitive practices, or flouting ERCA's procedures.

## **Article 3: Legal Framework**

1. The ECOWAS Competition Framework is based on:
  - (a) Supplementary Act A/SA.1/12/08 adopting the Community Competition Rules and the modalities of their application within ECOWAS;
  - (b) Supplementary Act A/SA.2/12/08 on the establishment, functions and operation of the ECOWAS Regional Competition Authority;
  - (c) Supplementary Act A/SA.3/12/21 relating to the amendment of Supplementary Act A/SA.2/12/08 on the establishment, functions, and operation of the ECOWAS Regional Competition Authority;
  - (d) Regulation C/REG.21/12/21 on the Powers and Composition of the Council of the ECOWAS Regional Competition Authority;

- (e) Regulation C/REG.22/12/21 on the rules on leniency and immunity procedures in competition within ECOWAS;
  - (f) Regulation C/REG.23/12/21 on the Rules of Procedures for Mergers and Acquisitions in ECOWAS; and
  - (g) Regulation C/REG.24/12/21 of the ERCA's rules of procedure in competition matters;
2. ERCA is charged with the implementation of the CCR and its functions include:
    - (a) keeping under review commercial activities within the Community Market to ascertain practices which may distort the efficient operation of the market; or which may adversely affect the economic interests of consumers.
    - (b) ERCA on its own initiative or upon request may investigate conduct of businesses in the Common Market to determine whether any enterprise is engaging in any conduct which is in contravention of the CCR.
  3. In accordance with the provisions in paragraph 1 of this article 2:
    - (a) at the request of a complainant or on its own initiative, ERCA after finding an infringement of the CCR shall recommend to the ERCA Council for sanctions and/or compensation against enterprises or association of enterprises concerned.
    - (b) the ED shall refer to the ERCA Council a request for compensation submitted by a person who has suffered damage as a result of anti-competitive behavior.
    - (c) the ERCA Council shall impose financial penalties on enterprises that obstruct the proper conduct of ERCA's investigation or that are convicted of violating the CCR.
    - (d) the ERCA Council shall impose civil fines of up to 10% of the annual turnover of the enterprise concerned.
    - (e) the Fine may be accompanied by periodic penalty payments ranging from UA 300,000 to UA 750,000.
    - (f) the ERCA Council may also order an enterprise or association of enterprises to pay compensation to a person who has suffered damage as a result of anti-competitive behaviour.
  4. The procedure for the imposition of a financial penalty shall be in accordance with ERCA's Manual on Investigation Procedures and Notification.

#### **Article 4: Methodology for Assessment of Financial Penalty**

1. Step 1: the basic starting point for calculation of the relevant penalty as set out in Annex 1 is either:
  - (a) a proportion of the relevant annual turnover where the CCR has been infringed; or
  - (b) in relation to Administrative and Periodic Penalties a proportion of the statutory fine/penalty provided under the relevant ECOWAS legislation on competition; or
  - (c) a fixed amount.



2. Step 2: the basic starting point determined in Step 1 is adjusted to take into account the duration of the infringement or offence. The starting percentage point may be either increased or reduced depending on the duration of the infringement or offence as follows:
  - (a) penalties for infringements or offences that last more than a year will be multiplied by the number of years of the infringement; or
  - (b) in exceptional cases, where the infringement lasted less than a year, the starting point may be decreased.
3. Step 3: the adjusted penalty following application of Steps 1 and 2 may be increased by 50% where there are aggravating factors including:
  - (a) in cartel cases, whether the enterprise was an instigator or forced others to join the cartel;
  - (b) whether the enterprise continued to engage in the unlawful conduct despite commencement of the investigation;
  - (c) whether an individual willfully engaged in the commission of the offence;
  - (d) whether Directors or senior officials of the enterprise were involved or knew about the unlawful conduct or violation;
  - (e) whether the person or enterprise engaged in unreasonable behaviour, deliberate and willful obstruction and refusal to cooperate with the investigation, for example persistent refusal to comply with requests for information;
  - (f) in the case of cartels, whether the enterprise has taken retaliatory measures against other enterprises with a view to continuing the anti-competitive conduct;
  - (g) whether the enterprise has engaged in anti-competitive behaviour in the past; and
  - (h) whether an individual has committed the same offence in the past.
4. Step 4: the penalty following application of Steps 1-2 may be decreased by 50% where there are mitigating circumstances, including-
  - (a) whether the enterprise has applied for leniency;
  - (b) whether the enterprise ended the unlawful conduct at the start of the investigation;
  - (c) in exceptional cases, genuine uncertainty on the part of the enterprise or individual as to whether conduct amounted to a violation;
  - (d) role of the enterprise or individual in the infringement, for example, whether the enterprise or person was acting under pressure, or forced in cartel cases; and
  - (e) 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 the investigation.
5. Step 5: the amount of penalty following Steps 1-4 may be increased by 30% on a case-by-case basis to ensure that the penalty imposed is sufficient to deter the enterprise and others from engaging in unlawful conduct. The following factors shall be taken into account:

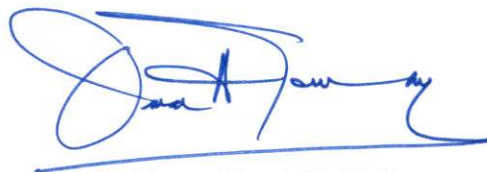
- (a) the size and financial position of the enterprise or person involved in the unlawful behaviour; and
  - (b) an estimate of any economic or financial benefit gained from the infringement or offence.
6. Step 6: the penalty imposed following application of Steps 1-5 will be adjusted to ensure that it does not exceed the maximum penalty set out in the relevant ECOWAS legislation on Competition.

#### **Article 5: Compensation of victims of anti-competitive behaviour**

In addition to the penalties imposed for infringement and the offences above, the ERCA Council shall also require a person who has infringed the CCR to pay compensation to a person who has suffered damage as a result of anti-competitive behaviour.

- (a) Step 1: the basic starting point for calculating the compensation will be 0.5% of the financial penalty imposed on the enterprise.
- (b) Step 2: the starting point will then be adjusted to take into account the nature of the damage suffered by the applicant.
- (c) Step 3: for serious infringements, such as abuse of dominance or cartel cases the starting point shall be increased to 0.75% of the amount of penalty imposed on the enterprise.

**Done at Abuja on the ..... of January 2024**



Dr. Omar Alieu TOURAY

**PRESIDENT OF THE ECOWAS COMMISSION**



## Annex 1: Basic starting point for calculation of penalty

Offence/Violation	Individual	Enterprise	Unit of Measurement	Maximum Penalty
Abuse of dominant position  Supplementary Act A/SA.01/12/08 - Article 6 Supplementary Act A/SA.02/12/08 - Article 7 Reg. C/REG. 24/12/21 - Article 14(1) & (2)	UA 300,000	0.75%	Turnover	10%
Anti-competitive agreements  Supplementary Act A/SA.01/12/08 - Article 5 Supplementary Act A/SA.02/12/08 - Article 7 Reg. C/REG. 24/12/21 - Article 14(1) & (2)	UA 300,000	1%	Turnover	10%
Cartel Offence  Supplementary Act A/SA.02/12/08 - Article 7 Reg. C/REG. 24/12/21 - Article 14(1) & (2)	UA 300,000	0.75 %	Turnover	10%
Failure to bring an abuse of dominance infringement to an end  Reg. C/REG. 24/12/21 - Article 14(3)	UA 300,000	UA 500,000	Each Working Day	Number of days of violation
Implementation of Merger or Acquisition without Authorisation  Supplementary Act A/SA.02/12/08 - Article 7		UA 500,000	Each Working Day	Number of days of violation
Failure or refusal to appear before ERCA when a summons is validly served  Supplementary Act A/SA.02/12/08 - Article 4 (14)(a)(i)	UA 500	UA 5000	Each Working Day	Number of days of violation
Failure to produce a document which he/she is required by such summons to produce  Supplementary Act A/SA.02/12/08 - Article 4 (14)(a)(ii) Reg. C/REG.24/12/21 - Article 10 (3)(a)	UA 500	UA 5,000	Each Working day	Number of days of violation
Destruction of any record likely to be required for an investigation with the intention to mislead ERCA or to prevent or impede the investigation  Supplementary Act A/SA.01/12/08 - Article 4 (14)(b)	UA 500	UA 5,000	Fixed Amount	UA10,000
As a witness, leaves a sitting of ERCA without permission  Supplementary Act A/SA.01/12/08 - Article 14(c)	UA 500	UA 5,000	Fixed Penalty	UA10,000
Willfully insults any member or officer of ERCA  Supplementary Act A/SA.01/12/08 - Article 14(d)(i)	UA 500	UA 5,000	Fixed Penalty	UA10,000
Willfully obstructs or interrupts the proceedings of ERCA  Reg. C/REG. 24/12/21 - Article 4 (14) (d) (ii)	UA 500	UA5,000	Fixed Penalty	UA10,000
Failure to terminate an anti-competitive agreement or concerted practice within timeframe determined by ERCA  Supplementary Act A/SA.01/12/08 - Article 8(2)	UA 300,000	UA 750,000	Each Working Day	Number of Days of violation

## Annex 2: Request for compensation as a result of anti-competitive behaviour

### INSTRUCTIONS

This Form must be completed to the best of your ability and submitted to the ERCA Registry. Please attach any documents or relevant information to support your complaint. The information provided in this Form is confidential to the extent possible to enable ERCA investigate your complaint. However, ERCA may disclose this information where necessary to assist its investigation. ERCA will contact the Complainant where it considers that it is necessary to disclose such information. However, for the avoidance of doubt, you have the right to identify which information you consider confidential by submitting a request for confidentiality together with this complaint.

#### 1. DETAILS OF APPLICANT

Full Name of Applicant or Authorised Representative:		Website:
Address and name of contact person:		
Phone:		Email:
Description of Industry/sector		
If this application is being submitted jointly with other natural and/or legal person(s), please indicate and provide full details of the other applicants.		
Where this Form is completed by an Authorised Representative, please state the nature of your relationship with the beneficiary and whether you have the legal mandate to represent the beneficiary. (attach copy of legal mandate if applicable)		

#### 2. DETAILS OF THE RESPONDENT

Identify the enterprise or association of enterprises whose conduct the Request relates to (the Respondent), including, where applicable, all available information on the corporate group to which the enterprise or association of enterprises belong and the nature and scope of the business activities pursued by them.

Full Name of Respondent(s):
Address/Location:



Phone:		Email:
Other Contact Details of the Respondent:		
Website:		
Nature and scope of business:		

### 3. DETAILS OF THE ALLEGED INFRINGEMENT

Provide details of the alleged infringement, which was investigated by ERCA. Indicate the goods or services affected by the infringement and explain, where necessary, the commercial relationships concerning these products or services.

### 4. ERCA DECISION

Provide any available details on ERCA's decision in relation to the anti-competitive activity including sanctions imposed by ERCA.

### 5. IMPACT OF INFRINGEMENT

Please explain why and to what extent the infringement has affected your competitive position / the competitive position of the person/enterprise you represent. Provide as much concrete evidence as possible.

### 6. EXPLAIN AND PROVIDE EVIDENCE OF THE DAMAGE YOU HAVE SUFFERED AS A RESULT OF ANTI-COMPETITIVE BEHAVIOUR. PLEASE PROVIDE CONCRETE EVIDENCE.

**7. PROCEEDINGS BEFORE REGIONAL/NATIONAL COMPETITION  
AUTHORITIES OR NATIONAL COURTS**

Please indicate whether you have approached any other Regional/National Competition Authority in relation to the same or closely related alleged infringement and/or whether you have brought legal proceedings before any national court. If so, provide full details about the authority contacted and your submissions to such authority or court.

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**8. SWORN DECLARATION**

I ..... declare that the information in this Form and all supporting documents I have attached are accurate and provided to ERCA in good faith.

Print Name:

Position:

Signature:

Date:

<b>OFFICIAL USE ONLY</b>	
<b>ERCA REGISTRY</b>	
<b>Received By</b>	
Print Name:	Signature:
Date Received:	Case Reference Number:
Acknowledgement letter issued:	Date Issued:
<b>ERCA REGISTRAR</b>	
Print Name:	Signature: