

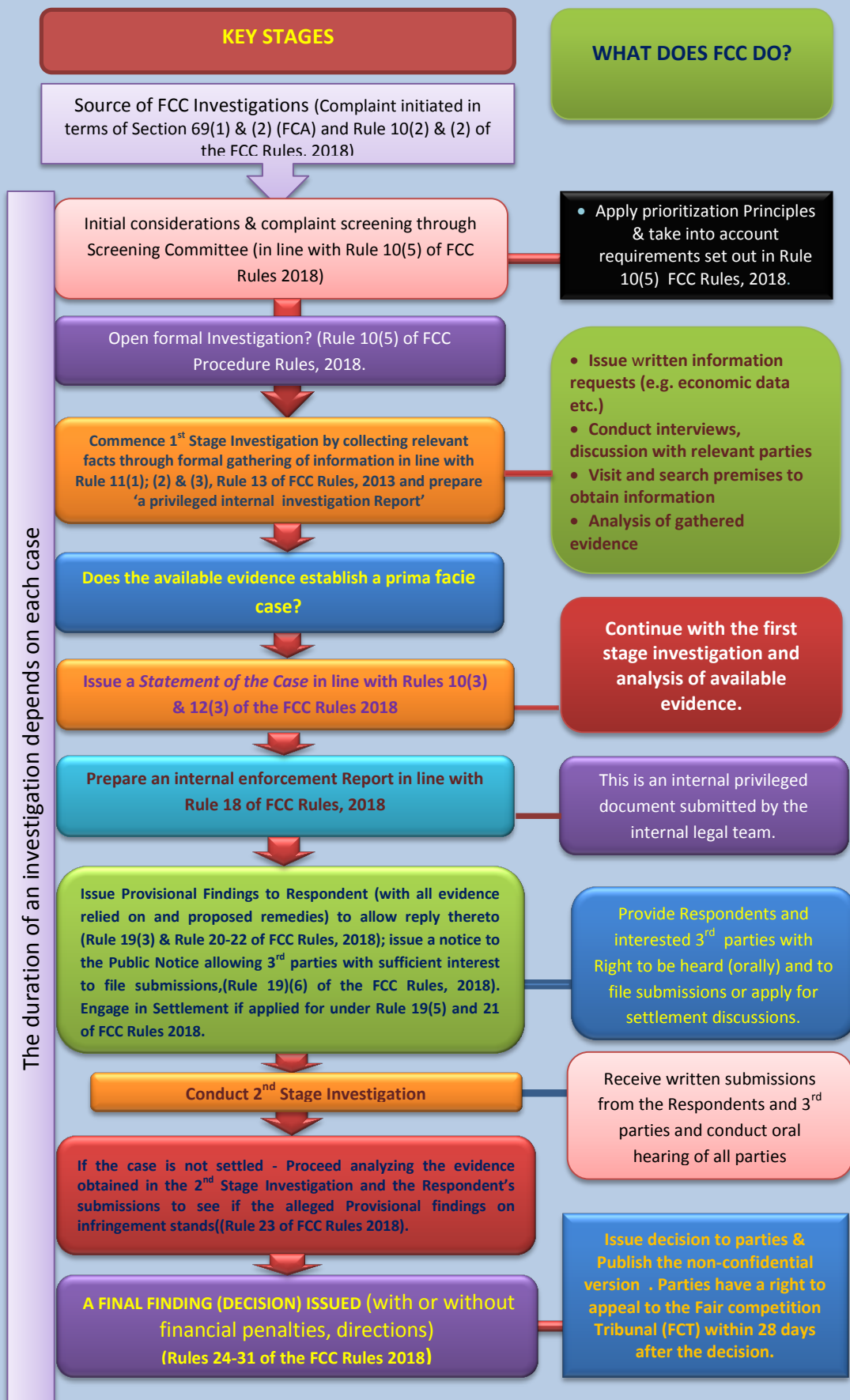
FAIR COMPETITION COMMISSION'S INVESTIGATION & ENFORCEMENT GUIDELINES

(FOR COMPETITION CASES)

1.0 Introduction

- 1.1 These guidelines provide general information to the business, Government departments, legal and non-legal entities, consumers and other stakeholders on the processes that the Fair Competition Commission (FCC) adopts when executing its mandate under the Fair Competition Act (FCA) 2003, (Cap.285), which is to investigate suspected infringements of competition law. Thus, it may be helpful to read this document alongside the FCA and the FCC Procedure Rules, 2018.
- 1.2 These guidelines are an elaboration of the FCC investigation procedures. They represent the FCC's practice as at the date of publication of this document. The guidelines will be revised from time to time to reflect changes in best practice, the law or the FCC Procedure Rules. Stakeholders are therefore advised to pay frequent visit to the FCC's website (<http://www.competition.or.tz>) .
- 1.3 The guidelines are concerned exclusively with the FCC's investigation of competition related complaints as may be initiated under Section 69(1) and (2) of the FCA, read together with Rule 10(1) and (2) of the FCC Procedure Rules, 2018.
- 1.4 While noting the usefulness of these guidelines in providing transparency on how the FCC carries out its investigations, it is worth emphasizing that this document is not a substitute for the law itself, and, it does not constitute a legal opinion. The legal tests which the FCC applies in assessing breaches of competition law are not taken into account in these guidelines. It is hereby advised that persons who consider that they or their business may be impacted by an investigation into suspected anti-competitive practices should seek independent legal advice.
- 1.5 These guidelines, therefore, set out the various procedural steps which the FCC follows when investigating a suspected infringement and a summary of the FCC's action and stages followed is as shown in **Figure 1.1. below:**

Figure 1.1 – FCC Investigation Stages



2.0 The Investigation Process

- 2.1** The investigation process on suspected breaches of competition law at the FCC is based on the existing legal framework as set out in the FCA and the FCC Procedure Rules.
- 2.2** As further described in these guidelines, the investigation process is triggered by filing a complaint with the Commission under section 69(1) or (2) of the FCA (read together with Rule 10(1) and (2) of the FCC Procedure Rules, 2018).

3.0 General Powers of the FCC in the Course of an Investigation

- 3.1** In a bid to promote and ensure compliance with the law, section 65(2) (b) and (g) of the FCA vests broad powers on the FCC to investigate impediments to competition, including entry into and exit from markets, in the economy as a whole or in particular sectors and publicize the results of such investigations.

3.2 Circumstances which Triggers the FCC Powers to Investigate

- 3.2.1** The FCC uses its powers either as a result of a complaint against an alleged prohibited practice filed by the Commission on its own initiative (*suo moto*) or upon information received from or complaint filed by an independent complainant (e.g., a competitor in business, a consumer, or any other person).
- 3.2.2** In terms of Rule 10(1) (a), (b) and (2) of the FCC Procedure Rules, 2018, all complaints filed by independent persons are deemed to have been filed by the Commission.
- 3.2.3** The Commission maintains a confidentiality code, and, thus, information supplied by an anonymous complainant is kept confidential. This is important to the Commission because the Commission's ability to effectively investigate the complaint may be impeded where a complaint is publicized or otherwise widely known from the start and before the Commission takes the necessary initial steps to deal with it. To

support the Commission's ability to conduct effective investigations, the Commission requests that Complainants keep their complaint confidential until the Commission issues a *Statement of the Case* to the accused business entity.

- 3.2.4** The Commission will not normally comment on what matters it is considering or investigating until it has established that there is a *prima facie* case and issues a Statement of the Case to the alleged offender.

4.0 Specific Powers of the FCC During Investigations

Apart from the general powers vested on the FCC by virtue of section 65(2) of the FCA, the FCC has specific powers to:

- (a)** require the production of specified documents or specified information¹;
- (b)** enter premises with a warrant²; and
- (c)** enter and search premises with a warrant;³ and can
- (d)** summon an individual to give evidence orally.⁴

4.1 Power to Require the Production of Documents and Information

Where there are reasonable grounds for suspecting that sections 8, 9, 10, or 11(2) of the FCA have been infringed, section 71(1) (a) and (b) of the FCA authorizes the FCC to formally exercise its powers of investigation outlined in these guidelines, including the power to require the production of specified documents or specified information. This power is exercised by serving the accused entity or any other person with a written notice or a summons the contents of which are described in paragraph **4.1.3** below.

- 4.1.1** The FCC powers under section 71(1) of the FCA may be used before the FCC submits a *Statement of the Case* to the Respondent or, either during or after providing the Respondent with a Case Statement and

¹ Section 71(1);(2);(3) of the FCA, 2003, as read

² See Section 71(5) of the FCA, 2003 and Rules 14, 15 and 16 of the FCC Rules of Procedure, 2018.

³ Ibid.

⁴ See Section 71(1) (c) of the FCA, 2003.

or a provisional finding where there is a need to clarify facts that have emerged in the course of hearing submissions from the parties.

4.1.2 Scope of the Power

- (a)** The powers vested on the FCC by virtue of section 71(1) and (2) of the FCA are exercised if the Commission believes that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of any of its functions.
- (b)** In this regard, the FCC may, with or without a summons, require any person to produce documents or information that it considers relate to any matter relevant to the investigation.⁵ The FCC, therefore, is not restricted when it wants to investigate entities suspected of infringement and/or their officers (past or present). On the contrary, the notice may be addressed to third parties such as complainants, suppliers, customers and competitors, a Government entity, etc.
- (c)** When requiring a person to produce a document, the FCC can:
 - (i)** take copies of or extracts from any document produced;
 - (ii)** require the person served with a notice to produce the document (or any past or present officer or employee of that person) to provide an explanation of the document produced; and
 - (iii)** if the document is not produced, require the person served with a notice to produce the document to state, to the best of that

⁵ See Section 71(1)(a) and (b) of the FCA, as read together with Rule 13 of the FCC Procedure Rules, 2018.

person's knowledge or belief, where the document can be found.

- (d) The term "*document*" includes "information recorded in any form". This definition includes records, such as invoices or sales figures, stored in any form, electronic or otherwise, for example, on a computer. If the documents are "Specified" this refers to the document or information that is specifically mentioned or described in a written notice (summons).⁶ Such documents may include, for example, invoices, agreements and minutes of meetings.
- (e) A person requested to testify or provide information to the Commission by virtue of section 71(1) (a) and (c) of the FCA, may do so by filing an affidavit.
- (f) Under the power relating to the production of specified information, the FCC can require the information to be compiled and produced if it is not already in recorded form. For instance, a person may be asked to provide market share information or to provide a description of a particular market using his knowledge and experience or the knowledge and experience of his staff.

4.1.3 Procedure of Requiring the Production of Documents and Information

- (a) Where the Commission summons an individual to appear before it by virtue of section 71(1) and (2), the summons shall be in the prescribed form FCC.7 indicating:
 - (i) the name of the parties;
 - (ii) the nature or detail of information sought from the person; and

⁶ See section 71(2) of the FCA.

- (iii) shall be issued and signed by the Chairman of the Commission or the Director General.
 - (iv) The recipient, or an authorized person, will also be required to endorse his/her signature to the copy of the summons with the service clerk/officer witnessing thereto that the recipient or authorized person was duly served.
- (b) Where the power to require the production of documents or information using section 71(1) of the Act is exercised by serving a written notice other than a Summons, the written notice must:
- (i) state the subject matter and purpose of the investigation;
 - (ii) specify or describe the documents or information, or categories of documents or information, required;
 - (iii) set out the nature of the offences that may be committed if a person fails to comply when the powers of investigation are exercised (described in Para 4.4 of these guidelines);
 - (iv) state the time and place at which a document or information must be produced and the manner and form in which it is intended to be produced. For example, a person may be required to produce the documents or information at a specified address on a designated date at a particular time. If information is provided, it may be recorded or reduced into writing by the investigating officer. The person providing the information will have the opportunity to

amend, add to or delete from the written record and will be asked to sign against the record. If a document is produced, the FCC may require that an explanation of the document be provided as well. A person required by the FCC to provide information or an explanation of a document may be accompanied by a legal adviser.

- (c)** Delivery or transmission of documents and invitations from the Commission to the addressees may be effected in any of the following ways:
- (i)** delivery by hand against receipt;
 - (ii)** registered letter with acknowledgement of receipt;
 - (iii)** fax with a request for acknowledgement of receipt; or
 - (iv)** electronic mail with a request for acknowledgement of receipt.⁷

However, where the document is delivered or transmitted outside of the office hours of the Commission (i.e., **Monday- Friday, 8:00 to 5:00**)⁸ the document shall be deemed to have been delivered on the next working day.

4.1.4 Limitations

A person or a firm shall not be excused from complying with a summons issued under section 71 of the FCA on the grounds that compliance may tend to incriminate that person or make the person liable to a penalty, save that information, documents and evidence provided in answer to a summons will not be admissible in any proceedings against the person other than proceedings under this Act.

⁷ See Rule 5(1) (a) to (d) and 5(3) of the FCC Procedure Rules, 2018.

⁸ See Rules 4(1) and (2) and 5(2) of the FCC Procedure Rules, 2018.

4.2 Power to Enter Premises for Inspection

4.2.1 FCC is empowered, in the course of conducting investigations of an alleged competition infringement, to enter into any premises to carry out inspections or search.

4.2.2 These powers enable the FCC to enter premises and to have access to documents relevant to an investigation.

4.2.3 "Premises" generally refers to 'any' premises and is not confined to business premises provided that such premises may be used in connection with the affairs of a firm or where documents relating to the affairs of a firm investigated are kept there. In this regard, even matrimonial premises may be subject to searches by the FCC. "Premises" may also include any vehicle/vessels.

4.2.4 Scope of the Power

(a) The power to enter into, and inspection of any premises is exercised if the FCC has reasonable grounds for suspecting that the sections 8, 9 or 10 of the FCA have been infringed, and the Commission has reasons to believe that a person is in possession or control of any documents that may assist it in the performance of any of its functions.⁹

(b) An investigating officer entering any premises may require:¹⁰

(i) any person on the premises to produce any document that the investigating officer considers relates to any matter relevant to the investigation. For instance, an employee may

⁹ See Section 71(3) of the FCA, 2003, read together with Rule 15(1) (a) to (i) of the FCC Procedure Rules, 2018.

¹⁰ See Rule 15(1) (a) to (i) of the FCC Procedure Rules, 2018.

be asked to produce minutes of any meetings with competitors, the diaries of specified directors, sales data, or invoices. Copies of, or extracts from, any such documents produced can be taken by the investigating officer;

- (ii)** any person on the premises to provide an explanation of any document produced. For instance, an employee may be required to provide an explanation of the entries or codes on an invoice or spreadsheet; or provide all passwords to computers.
- (iii)** any person to state, to the best of that person's knowledge and belief, where any document that the investigating officer considers relates to any matter relevant to the investigation can be found;
- (iv)** any information, which is stored in any electronic form and is accessible from the premises, and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form in which it can be read and can be taken away; and
- (v)** take any other steps which appear necessary in order to preserve the documents or prevent interference with them. This includes requiring that the premises (or any part of the premises, including offices, files and cupboards) be sealed for such time as is reasonably necessary to enable the inspection to be completed. This time period will not be for longer than seventy-two (72) hours, except where an undertaking consents to a longer time or where access to documents is unduly delayed, such as by the unavailability of a person who can provide access.

- (vi) An investigating officer may seize and take with him any equipment that he deems necessary when entering any premises under this power. For example, he may take portable computer equipment and tape recording equipment.
- (vii) The officer will cause to be provided to the occupier or occupier's representative, for checking, a list of documents to be removed from the premises at the end of the inspection as far as practicable and in any event, not later than three (3) working days from the end of the search. Documents taken will be returned within a reasonable time.
- (viii) The investigation officer shall preserve the evidential information retrieved from computers and all documents retrieved from the premises in such a manner that their integrity is maintained.

4.2.5 The Procedure of Entering Premises for Inspection

- (a) Where the FCC forms an opinion that entry into a premise to conduct a search and seizure of documents is necessary the FCC is under *no obligation to issue a prior notice* to the owner or the entity that is the subject of inspection.
- (b) The Chairman of the Commission or the FCC Director General will file *ex-parte* application to the Fair Competition Tribunal for the issuance of a warrant authorizing any police officer, accompanied by staff of the Commission duly authorized by the Chairman of the Commission to enter premises to conduct a search and make copies or take extracts of documents therein. Such accompanying employee of the FCC could include persons such as computer technicians or

industry experts who may carry out specific tasks under supervision of the named police officer.¹¹

- (c)** The Warrant shall specifically identify the intended premises that may be entered and searched and shall remain valid until one of the following events occurs:
 - (i)** the warrant is executed;
 - (ii)** the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
 - (iii)** the purpose for issuing it has lapsed; or
 - (iv)** the warrant has expired.¹²

- (d)** When entering any premises for inspection in execution of the warrant, the executing officer and all authorized persons accompanying him/her, shall produce evidence of his identity together with evidence of due authority to enter or the inspector's appointment at the point of entrance.¹³

- (e)** The police officer, and any other accompanying officers, entering premises under a warrant may take with him such equipment as they deem necessary and, in case of resistance, use reasonable force to gain such entry. This will include equipment that can be used to enter the premises using reasonable force (for example, equipment that can be used to break locks) as well as equipment that can be used to facilitate the search (for example, computer equipment).¹⁴

- (f)** The conduct of entry and search shall at all material time observe required best practices which include:

¹¹ See Section 71(5) of the FCA, read together with Rule 15(1)(c) of the FCC Procedure Rules, 2018.

¹² See Rule 14(2) of FCC Procedure Rules, 2018.

¹³ See Rule 14(3) of FCC Procedure Rules, 2018.

¹⁴ See Rule 16(4) and (5) of the FCC Procedure Rules, 2018.

- (i) Observance of basic human rights of individuals;
- (ii) Need to have independent witness, in particular a justice of peace, or two adult persons, unless the circumstances do not permit.¹⁵

4.3 Limitations on the Use of Powers of Investigation

4.3.1 The power to require the disclosure of information or documents under Part XII of the Act does not extend to privileged communication:

- (a) between a professional legal adviser and his client, or
- (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings. This will mean that communications with in-house lawyers, in addition to lawyers in private practice, including foreign lawyers, can benefit from the privilege;
- (c) which would be protected from disclosure in proceedings in a court on grounds of privilege.

4.3.2 The Commission shall not use as evidence any document collected during search which contains privileged information.¹⁶

4.4 Offences Relating to the Powers of Investigation

4.4.1 The Act provides that an offence may be committed where an undertaking or a person fails to comply or co-operate when the powers of investigation set out in the Act are exercised. In particular, any person who –:

¹⁵ See Rule 16(1) to (5) of the FCC Procedure Rules.

¹⁶ See Rule 16 (6) of the FCC Procedure Rules.

- (a) knowingly gives false or misleading information or evidence in purported compliance with a summons;
- (b) without lawful excuse refuses or fails to comply with a summons; under section, 71 commits an offence.¹⁷

4.4.2 Obstructing the lawful enforcement of the FCA may also be prosecuted under other relevant laws such as the Penal Code.

5.0 Screening of Complaint, Closure, Withdrawal or Postponement of an Investigation

5.1 All complaints filed with the Commission are subject to screening by a Screening Committee to establish, among other things whether they are relating to competition, are *sub judice* elsewhere in any court, arbitration or a tribunal, or are *res-judicata*, or are worth of committing the Commission's resource.¹⁸

5.2 Depending on the priorities of the Commission and available resources, and or other reasons as may be stated by the Commission, the FCC's Director General may close an investigation or decline to investigate or postpone an on-going investigation of a complaint.¹⁹

5.2.1 If the FCC's Director General decides to close, postpones, declines to investigate or withdraws an investigation on the grounds of administrative priorities, or as they case may be, the FCC will inform any Formal Complainants in writing, setting out the principal reasons for not taking forward the investigation.²⁰ The amount of detail given will vary according to the circumstances of each case. In more advanced investigations, the FCC is likely to give more details than in the case of complaints which have not been the subject of extensive investigation.

¹⁷ See Section 71 (6) of the FCA.

¹⁸ See Rule 10(5) of the FCC Procedure Rules, 2018.

¹⁹ See Rule 10(5) and (5) of the FCC Procedure Rules, 2018.

²⁰ See Rule 10(6) of the FCC Procedure Rules, 2018.

5.2.2 Where a Formal Complainant is aggrieved by the decision to close an investigation or otherwise as stated in Para 5.1.2 above, he may refer the matter to the Commission for determination and the Commission shall give the Formal Complainant an opportunity to submit written submissions within a prescribed time.

5.2.3 Where, in case of a withdrawal or a decision not to entertain a complaint, the Formal Complainant fails to file written submissions within the time prescribed by the Commission, the complaint shall be marked withdrawn.²¹

5.2.4 Where it appears that the relevant conduct complained of does not harm or is not likely to harm competition, the parties involved shall be informed, with reasons that the Commission shall not be taking any further action.²²

6.0 Issuance of Statement of the Case

6.1 Where, upon screening of the complaint, the FCC establishes a *prima facie* competition case, it will issue a Statement of the Case to the main parties setting out:

6.1.1 the facts of the case; and

6.1.2 the pertinent provisions of the law alleged to have been contravened.²³

6.2 The case will proceed for further investigation (a step commonly referred to as the first stage investigation²⁴ in which the FCC will collect relevant facts to enable, among other things:

6.2.1 preliminary assessment of the relevant markets; understanding of the nature of competition in those markets; and

²¹ See Rule 10(8) of the FCC Procedure Rules, 2018.

²² See Rule 12(4) of the FCC Procedure Rules, 2018.

²³ See Rule 12(3) of the FCC Procedure Rules, 2018.

²⁴ See Rule 12(3) of the FCC Procedure Rules, 2018.

6.2.2 understanding of the possible role or behavior of a person who is the subject of investigation.²⁵

6.3 The investigators may request, collect and assess facts which constitute economic data of a firm, e.g., firm's market shares; pricing policies, financial statements etc.

6.4 The investigators may convene discussion meetings with the relevant parties to obtain clarifications or explanations regarding the behavior complained against and its harm to competition.

7.0 Confidentiality

Any person who supplies information; makes submissions, comments or subsequently submits additional information to the Commission in the course of the same proceedings shall be required to clearly identify any material which he considers to be confidential on Form FCC.2.²⁶

8.0 Compilation of Investigation Report

8.1 Upon completion of an investigation the investigation team shall compile an *Internal Investigation Report (IIR)*.

8.2 An *Internal Investigation Report* compiled by the investigation team will be a privileged internal document privy only to the FCC.

8.3 The Investigation Team will make recommendations and its legal opinion will form the basis of the decision to enforce the provisions of the FCA alleged to be infringed.

9.0 Compilation of Enforcement Report

9.1 On the basis of the IIR, the FCC internal legal Team shall prepare an Internal Enforcement Report (IER).

9.2 The IER prepared by the FCC Legal Team is a privileged document containing legal opinion and shall be submitted to the

²⁵ See Rule 11(1) of the FCC Procedure Rules, 2018.

²⁶ See Section 76 of the FCA and Rue 10(10) of the FCC Procedure Rules, 2018.

Commission with recommendations on the enforcement measures that ought to be taken in respect of an infringement.²⁷

10.0 Issuing FCC's Provisional Finding

- 10.1** A 'Provisional Finding' (PF) represents the Commissioner's provisional view and proposed next steps. It allows the business accused of a breach of competition law an opportunity to know the full case against it and, if it chooses to do so, to formally respond in writing and orally or apply for settlement discussions.
- 10.2** The PF is issued by the Commissioners must contain all evidential materials upon which the findings are based and shall specify the reasons for its proposed course of action.
- 10.3** The PF will set out the facts and the Commission's legal and economic assessment of them which led to the provisional view that an infringement has occurred.²⁸ The Commission will also set out any action it proposes to take, such as imposing financial penalties, and/or issuing directions to stop the infringement if the Commission believes it is ongoing, as well as the Commission's reasons for taking that action.
- 10.4** The PF shall set an appropriate time within which the accused firm is required to respond in writing to the interim findings of the Commissioners.
- 10.5** At this stage, the Commission will also invite the recipient of PF if he would like to enter into discussions on possible settlement of the case as a matter of right, to apply for settlement discussions as well as explaining the accused's right to reply to the PF within the prescribed time.

11.0 Access to the Investigation File and Treatment of Confidential Information

- 11.1** Upon issuing the Provisional Findings, the Commission, upon application from the accused firm and subject to payment of any

²⁷ See Rule 18 of the FCC Procedure Rules, 2018.

²⁸ See Rule 19(3) and (4) of the FCC Procedure Rules, 2018.

fees that may be charged by the FCC, will give the recipient of the PF the opportunity to inspect the file. This is to ensure that they can properly defend themselves against the allegation of having breached competition law.

- 11.2** The Commission will allow a recipient of provisional findings a reasonable opportunity to inspect copies of disclosable documents on the file. These are documents that relate to matters contained in the PF, excluding certain confidential information and FCC internal documents.

12.0 Publication of the PF and Invitation for Comments

- 12.1** Upon issuing the FP, the Commission will cause to be published on its website and in widely circulating newspapers a notice regarding the issuing of the PF, and;
- 12.2** Shall invite all affected parties to file submissions within a specified period of time.²⁹

13.0 Written Representations – the Response to the Provisional Findings

- 13.1** When the Commission issues a 'PF', the Commission will invite each Respondent to the PF to respond in writing. However, there is no obligation to submit a response.
- 13.2** Written representations provide an opportunity to comment on the matters referred to in the PF. This may include comments regarding the facts relied on by the Commission and the legal and economic assessment set out in the PF.
- 13.3** The deadline for submitting written representations will be specified in the PF and will be set taking into account the circumstances of the case.
- 13.4** The Commission shall provide the formal complainant with a copy of the non-confidential version of the provisional findings.

²⁹ See Rule 19(7) of the FCC Procedure Rules as read together with Rule 10(9) of the FCC Procedure Rules, 2018.

14.0 Oral representations – the Oral Hearing

- 14.1** The Commission will offer all recipients of provisional findings (the Respondent(s)) the opportunity to attend an oral hearing to discuss the matters set out in that PF as well as to offer any further clarification to its written submissions filed with the Commission.
- 14.2** The Commission encourages all Respondents to take up the opportunity to attend an oral hearing and they should make clear in their written representations that they would like to do so.³⁰
- 14.3** Oral representations shall be used by the recipient of provisional findings as an opportunity to highlight issues of particular importance to their case which have been set out in the written submissions.
- 14.4** As a general rule, any matter raised during oral representation stage shall be limited to matters already submitted to the Commission.
- 14.5** The Respondent (recipient of the PF) can bring legal or other advisers to the oral hearing to assist in presenting its oral representations at the hearing, subject to any reasonable limits that the Commission may set in terms of the number of persons that may attend on behalf of the recipient of the PF. Formal Complainants and other interested third parties will generally not be permitted to attend the Respondent's (recipient of PF) oral hearing.³¹
- 14.6** At the end of presentation of oral representations, the Commission may ask general questions or questions for clarification which shall be in writing.
- 14.7** A record of the oral representations meeting shall be provided to the respondent for the purpose of confirming its accuracy and identification of any confidential information. However, the

³⁰ See Rule 22(1) and (2) of the FCC Procedure Rules, 2018..

³¹ See Rule 22(3) and (5) of the FCC Procedure Rules, 2018..

Commission shall not accept a blanket or any unsubstantiated confidentiality claims.

- 14.8** The Commission shall consider all written and oral representations to appraise the case as set out in the provisional findings and to assess whether the conclusions reached in the provisional findings can still be supported by the available evidence and the facts set out in the case. If the conclusions still hold, the Commission shall, in a duly constituted meeting make a final finding which will form the basis of Commission's decision.
- 14.9** The Final Finding will be communicated to the parties and will be published subject to confidentiality requirements in a Government Gazette and in the Commission's online Public Register.
- 14.10** The Final Finding will set out the penalties or remedies, reasons for the decision and shall explain to the Respondent the right to appeal to the FCT and, where no appeal is to be preferred within 28 days, then, the Commission will move to enforce its decision.

15.0 Settlement process

- 15.1** The respondents may apply for settlement discussions.
- 15.2** Settlement shall be after provisional findings are issued to the recipients of the provisional findings and before final findings are given by the Commission.
- 15.3** Each business considering settlement will be presented with a draft penalty calculation (settlement fees) which is likely to vary in each case to reflect the relevant business' particular circumstances. This is necessary to ensure that the draft penalty calculation for each business considering settlement reflects the penalty that the Commission considers to be appropriate to meet the Commission's penalty objectives and is proportionate in light of the settling business' particular circumstances.
- 15.4** The Commission will also give the business the opportunity to make limited representations on the draft penalty calculation (settlement fees) within a specified time frame as part of

settlement discussions, provided that these are not inconsistent with the business's admission of liability to be made in respect of the infringement set out in the Provisional Findings.

- 15.5** Where possible, Settlement discussions will be carried out within 45 days from the date of closing the oral representation. If the settlement discussions fail, or if either party withdraws from the discussions, then the enforcement process will be resumed and be finalized within 15 days, unless the same cannot be finalized within such time for reasons to be stated by the Commission.³²

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³² See Rule 25(2) and (3) of the FCC Procedure Rules, 2018..