

NOTIFICATION

S.R.O. 362/2020 — In exercise of the powers conferred under Section 58 of the Competition Act, 2010, the Competition Commission of Pakistan is pleased to make the following Regulations, namely:-

COMPETITION (EXEMPTION) REGULATIONS, 2020

Part – I

PRELIMINARY

1. **Short title and commencement.**__
 - (1) These Regulations may be called the Competition (Exemption) Regulations, 2020.
 - (2) They shall come into force at once.
 - (3) These Regulations shall apply to all the undertakings that are party to a prohibited agreement, whether incorporated in Pakistan or not.
2. **Definitions.**__ (1) In these Regulations, unless there is anything repugnant in the subject or context:
 - (a) “Act” means the Competition Act, 2010.
 - (b) “Applicant” means a party to a prohibited agreement who have filed an application under these Regulations.
 - (c) “Application” means an application for seeking exemption under these Regulations.
 - (d) “Authorized Representative” means and include,
 - (i) where the applicant is an individual, by the individual, or a person duly authorized by the individual;
 - (ii) where the applicant is a company or other body corporate, by any Person duly authorized by the company or other body, in accordance with its Articles of Association;
 - (iii) where the applicant is a partnership firm, by a partner of that firm, or a representatives duly authorized by the Partners;

- (iv) where the applicant is an unincorporated association (other than a partnership), by an officer of that association or a member of its governing body or any person duly authorized by that entity.
 - (e) “Commission” means the Competition Commission of Pakistan established under the Act.
 - (f) “Complainant” means an undertaking or registered association of consumers filing such information to the Commission which allegedly has been concealed or omitted by the Applicant(s) or reporting a material change in circumstances since the Commission granted the exemption or reporting a violation of Chapter II of the Act.
 - (g) “Designated Officer” means the Director General concerned or in his absence, the senior most officer of the department concerned not below the rank of Joint Director.
 - (h) “Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by any other means, used or intended to be used for the purpose of recording that matter.
- (2) Words and expressions used in these Regulations, but not defined herein shall have the meanings assigned in the Act or the rules and Regulations prescribed under the Act.

3. Exemptions – types of.— Under these Regulations the Commission may grant following types of the exemptions:

- (a) **Individual Exemptions:** Agreement which attracts the provision of Section 4 of the Act may be granted individual exemption, provided the agreement meets the criteria given for exemption in Section 9.
- (b) **Template Exemptions:** Vertical Agreements entered into by and between the manufacturer and supplier or distributor which attracts the provisions of Section 4 of the Act may be granted exemption in a template form, provided they meet the criteria given for exemption under Section 9 of the Act.
- (c) **Block Exemptions:** Agreements which fall within the particular category of agreements, which *inter alia* satisfies the following criteria may be considered for granting of block exemption:
 - (i) The market share of the concerned undertakings does not exceed 40%,

- (ii). The agreement does not contain any of the hardcore restrictions,
- (iii). The agreement does not contain non-compete clauses, and
- (iv). The agreement:
 - (a) improves the production or distribution channels, or
 - (b) promotes technical or economic progress, while allowing consumers a fair share of the resulting benefit; and
 - (c) the benefits thereof clearly outweigh the adverse effect of absence or lessening of competition.

Part – II

APPLICATION & ENQUIRY PROCEDURE

- 4. Applications for exemption.** — (1) The undertakings concerned i.e. any party to the prohibited agreement through a duly authorized representative, shall, as soon as they agree in principle *vis-à-vis* the agreement, shall file an application on the prescribed Form under the Schedules to these Regulations.

Provided that in case of Block Exemption, the Commission may on its own, if it is of the opinion that it is necessary in the public interest, may issue the Block Exemptions to any category of agreement(s).

- (2) Unless, the information or document is necessary for the examination of the application, the Commission may, by giving notice to the Applicant(s), dispense with the obligation to submit any particular information or document, as required in the prescribed Forms under these Regulations.
- (3) Every application shall be submitted in triplicate, and shall be recorded in the public register in such manner as the Commission may deem appropriate.
- (4) No Application under sub-regulation (1) shall be deemed to have been made or shall be entertained unless it is accompanied by a processing fee at the rates prescribed in Schedule II of these Regulations.
- 5. Power to call for information.**— The Commission or the Designated Officer, as the case may be, subject to the provisions of Section 33 or Section 36 of the Act, may call for any information from the Applicant(s) for the purposes of considering the Application.

6. Power to commence enquiry.— (1). Where the Commission receives an application made under regulation 4 above, the Commission may proceed to decide the matter on the basis of the record made available or it may decide to commence an enquiry in accordance with these Regulations.

(2). Any third party may file a complaint with the Commission alleging violation of the provisions of Sections 4(1) of the Act read with Sections 5 to 9 thereof or alleging material change since issuance of exemption or alleging that certain information has been withheld or concealed from the Commission or false statements have been made to the Commission in the Application.

Provided that no Complaint under Regulation 6(2) above shall be entertained unless it is accompanied with the fee as prescribed under Schedule II of these Regulations and duly supported with prima facie evidence to substantiate the allegations made thereunder.

(3). The Designated Officer, upon receipt of the Complaint for the purposes of these Regulations, may carry out the assessment thereof, in accordance with Section 37(2) of the Act, *inter alia*:

- (a). The Complaint is filed by the Undertaking or Registered Association of Consumers, and
- (b). The Complaint is not frivolous and is substantiated with *prima facie* evidence in support of the allegations made thereunder.

(4). The Designated Officer, upon completion of the assessment as provided in sub-regulation (3), may initiate a formal enquiry on the complaint.

(5). The Designated Officer, may use the powers under Section 33 or Section 36 of the Act, during the enquiry to collect information and for the purposes of conducting and concluding the enquiry.

(6). The Commission, or Designated Officer, during the enquiry or proceedings, may issue a notice to the Applicants or any other person, through registered post or courier:

- (a) On the last known address of the person; or
- (b) By facsimile or, with the consent of that person, by electronic mail; or
- (c) In case of a company or a body corporate at the last known registered address.

(7). Where the Commission or the Designated Officer has taken all reasonable steps to give notice to the person but has been unable to give such notice, it shall publish the same in at least one national daily newspaper circulated:

- (a) In case of an undertaking being a company or body corporate, in the province where the registered office is situated;
- (b) In any other case, in the province where the notice has been served under sub-regulation (6) above.

(8). Where these Regulations allow or require notice to be given to a person, such notice shall be treated as if it had been received by or served on that person —

- (a) in the case of personal delivery, on the day of delivery;
- (b) when left at the last known address, on the day of leaving;
- (c) when sent by courier, on the working day after the day on which it was couriered; or
- (d) in the case of a facsimile transmitted on a working day before 5 p.m., on that day or in any other case on the working day after the day on which it is transmitted.

(9). Where sub-regulation (7) applies, the notice shall be treated as having been given on the date of its publication.

(10). Any notice given under these Regulations shall be in writing and shall *inter alia* state –

- (a) the facts on which the Commission or Designated Officer relies, the objections or questions; the response whereof is required by the Commission or the Designated Officer, the actions proposed and the reasons for the proposed action: and
- (b) the period within which a relevant person may make written representations to the Commission or the Designated Officer, provided, however, such period shall not exceed a period of 30 days.

(11). Where, in written representation on the matters referred to in a notice given to a relevant person, that relevant person requests to make oral representations to the Commission or the Designated Person on such matters,

the relevant person may be given a reasonable opportunity to make such oral representations.

Provided that where the Commission or Designated Officer has given the relevant person a reasonable opportunity to make oral representation under sub-regulation (11) above but no oral representations have been made within the prescribed time, the Commission may proceed with the case in the absence of such representations.

(12). Whereupon conclusion of the enquiry, the Commission proposes to make a decision that any of the provisions of the Act and the rules, Regulations, orders or directions made or issued thereunder have been infringed, the Commission shall provide an opportunity of hearing to the undertaking(s) concerned and proceed accordingly.

(13). A party to any enquiry or proceedings under these regulation with reference to Section(s) 5 to 9 of the Act, before the Commission may on an application made in that behalf be allowed to inspect or obtain copies of the documents or records submitted during enquiry or proceedings on payment of fee as prescribed under Schedule II to these Regulations; provided that, an inspection shall be allowed only in the presence of an officer(s) so authorized by the concerned Member.

7. Burden of proof. — (1) The Applicant desirous of obtaining an exemption under these Regulations shall bear the burden of proving that the agreement substantially contributes to:

- (a). improving production or distribution; or
- (b). promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit; and
- (c). the benefits of that clearly outweigh the adverse effect of absence or lessening of competition.

8. Hearings.— (1)¹ *The Commission may, before passing an Order with respect to Block Exemption, provide the concerned undertakings an opportunity of being heard.*

(2). If the concerned undertaking does not appear personally or through its attorney or counsel, on the date of hearing in spite of notice, *ex-parte* decision

¹ Amended vide SRO NO 1469(II)/2020 dated 04-11-2020

shall be taken on the basis of facts of the case placed on record before the Commission.

(3). The hearings before the Commission shall normally be in private. But in exceptional circumstances and that too after having the views of the parties to the case, decide to conduct hearings in public.

(4). In case of Block Exemption, before issuing the Order, the Commission shall notify the proposed order by publishing it in one English and one Urdu national daily newspaper, with a summary thereof, stating:

- (a). brief facts;
- (b). grounds for grant or refusal of exemption; or
- (c). conditions, if any, to which the exemption shall be subject to; and
- (d). the period for which such exemption is valid.

Part – III

CANCELLATIONS, DIRECTIONS, ORDERS AND COMPLIANCE

9. Power to grant or refuse an exemption. — The Commission may ~~by Order~~², subject to the provisions of Regulation 7 above read with Section 9 of the Act, may grant an exemption with or without conditions or refuse to grant an exemption under these Regulations, if-

- (a) the application is not made in accordance with these Regulations;
- (b) in the opinion of the Commission, burden of proof as required under Regulation 7 read with Section 9 of the Act is not discharged;
- (c). the Commission has reasonable grounds for suspecting that any information submitted to it under these Regulations is incomplete, false or misleading or omits to state any material information;
- (d) the Commission's direction for any information is not complied with; or
- (e) the Commission has reasonable grounds to believe that there has been a material change in any information submitted to the Commission under these Regulations and such change has not been notified to the Commission.

² The term "by Order" is deleted vide SRO NO 1469(II)/2020 dated 04-11-2020

- 10. Cancellation, variation of exemptions.** — (1). Where, either on its own or upon a complaint being filed, the Commission has reasonable grounds for believing that:

Provided that no complaint under Regulations 10 (1) read with Section 6 of the Act shall be entertained unless it is accompanied with the fees as prescribed under Schedule II to these Regulations.

- (a). there has been a material change of circumstances since the Commission granted an exemption, or
- (b). the information on the basis of which an exemption was granted was incomplete, false or misleading, or
- (c). the conditions imposed by the Commission has not been complied, despite sufficient notice.

(2).³ *The Commission may, by notice in writing proceed in accordance with sub-sections (1), (2) or (3) of Section 6 of the Act in relation to cancellation of individual and template exemptions and in terms of sub-section (3) of Section 7 of the Act for cancellation of block exemptions.*

(3). Prior to cancellation of the individual, template or block exemption granted by the Commission, the Commission shall comply with the notice and hearing requirements as provided in Regulation 8.

- 11. Interim measures.** — Subject to the provisions of Section 32 of the Act, the Commission may pass an interim order for the reasons to be recorded thereto.

- 12. Directions in relation to agreements.** — The Commission may give such directions as it may consider appropriate in the circumstances.

- 13. Enforcement of Directions.**— (1) If an undertaking fails, without reasonable cause, to comply with a direction issued under Regulation 12, the Commission may-

- (a) require such undertaking to make good its default within the period specified in this behalf; or
- (b) cancel the exemption in respect of the agreement;
- (c) proceed to impose the penalty in accordance with Section 38 of the Act; or

³ Amended vide SRO NO 1469(II)/2020 dated 04-11-2020

- (d) initiate proceedings in a court of competent jurisdiction for non-compliance.
- 14. Compliance .—** In order to ensure compliance with any condition(s) imposed and the directions issued, by the Commission while granting exemption, the concerned undertaking may be required to provide to the Commission a monthly compliance statement. In addition, the Commission may require further information or a further statement of compliance to be provided to it on periodical basis.
- 15. Confidentiality.—** Upon request by the Applicant, the Commission may endeavor, to the extent that if consistent with its obligations under the Act to disclose or exchange information, to keep any documents submitted by the Applicant, confidential until such time as deemed appropriate by the Commission.
- 16. Issuance of guidelines.—** (1) The Commission may issue from time to time guidelines in respect of the exemption frame work.
- (2). The guidelines shall be illustrative and not exhaustive and shall not set a limit on the investigation and enforcement powers of the Commission.
- (3). The guidelines shall not be a substitute for the Act, the rules, regulations and orders.
- 17. Overriding effect.—** These Regulations shall have effect in all matters relating to exemptions, notwithstanding anything inconsistent therewith contained in any other regulations framed under the Act.
- 18. Repeal.—** On coming into force of these Regulations, the Competition (Exemption) Regulations, 2014 shall stand repealed.

SCHEDULE I

[See regulation 4]

FORM OF APPLICATION FOR EXEMPTIONS

FORM A

PART-1

1. INFORMATION ABOUT THE APPLICANT(S) AND OTHER PARTIES TO THE AGREEMENT:

- 1.1. Please give the full name, address (registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available) of the Applicant(s) and a brief description of the nature of its business. If the applicant(s) is a partnership, sole proprietor or other unincorporated body trading under a business name, give the name(s) and address(es) of the partners or proprietor(s). In case the address of the applicant changes, the same shall be intimated in a prompt manner to the Commission.
- 1.2. Please give the full name, address, telephone and fax numbers and e-mail address (where available) of any representative(s) who has been authorised to act for the applicant(s), indicating whom they represent and in what capacity (e.g. an advocate). In case the authorized representative is changed by the applicant, the same shall be informed to the Commission and the details of the new authorized representative shall be provided to the Commission.
- 1.3. Where the declaration to be made in the form set out in Part 2 is signed by an advocate or other representative of the applicant(s), please provide written proof of that representative's authority to act on behalf of the applicant(s).
- 1.4. If a joint application is being submitted, state the full name of the joint representative, his address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available). Where the joint applicants have appointed separate representatives, the particulars listed in this paragraph must then be furnished for each representative.
- 1.5. Please identify the groups to which each party to the agreement or conduct which is the subject of the application belongs. For the purposes of the information required by this Form, a group relationship exists where one undertaking:
 - 1.5.1. Owns more than half the capital or business assets of another undertaking;

- 1.5.2 has the power to exercise more than half the voting rights in another undertaking;
- 1.5.3. has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking; or
- 1.5.4. has the right to manage the affairs of another undertaking.
- 1.6. An undertaking which is jointly controlled by several other undertakings (e.g. a joint venture) should be treated for the purpose of this application as being part of the group of each of these undertakings.
- 1.7. Please inform the Commission if any of the applicant(s) is party to a merger, which is subject to review by the Commission, along with documentary proof of the subject merger or the clearance by the Commission thereof.

2. PURPOSE OF THE APPLICATION

Please specify that the application is being made to seek exemption, for an Agreement as provided in Section 4 of the Act, explain how:

- (a). The agreement contributes to improving production or distribution; or
- (b). It contributes to promoting technical or economic progress, and how consumers will be allowed a fair share of the resulting benefit, and
- (c). Each restriction imposed under the agreement is indispensable to the attainment of those objectives, and
- (d). The benefit of the that clearly outweigh the adverse effect of absence or lessening of competition.

3. DETAILS OF THE AGREEMENT OR CONDUCT

- 3.1. Please provide a brief description of the agreement or conduct which is the subject of the application (including the nature, content, purpose, date(s) and duration).
- 3.2. Please provide the date of execution of the agreement and the duration of such agreement.

- 3.3. If the application is made in relation to a written agreement, attach either an original of the most recent text of that agreement, or a copy certified by the applicant to be a true copy of the original. If the application is made in relation to an agreement which is not written, applicants are to provide a full description of the agreement. If the application is made in relation to conduct, provide a full description of that conduct.
- 3.4. Identify any provisions in the agreement or aspects of the conduct which may restrict the parties in their freedom to take independent commercial decisions or to act on those decisions.
- 3.5. If the application relates to standard form terms and conditions, indicate the number of agreements expected to be entered into on those terms and conditions.

4. INFORMATION ON THE PARTIES TO THE AGREEMENT OR CONDUCT AND THE GROUPS TO WHICH THEY BELONG

- 4.1. Please give the applicable turnover in the last financial year, of each party to the agreement or conduct which is the subject of the application and the consolidated applicable turnover for the group (within the meaning of 1.5) to which each party belongs. Please also indicate what proportion of the turnover figures are attributable to the relevant product or geographic market. Please attach the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and the most recent annual report and accounts for the ultimate parent company of these undertakings.
- 4.2. Please list the product and/or services market(s) in which each party to the agreement or conduct and each member of the groups (within the meaning of 1.5) to which they belong are active. Where there are a large number of products and services, please pay particular attention to any markets in which the combined undertakings have significant markets shares, and/or the largest proportions of the turnover.

5. OTHER INFORMATION

- 5.1. Please provide any other information which the applicant(s) considers may be helpful. In particular, if you believe that an agreement:
 - 5.1.1. does not have an appreciable adverse effect on competition in Pakistan please state your reasons and provide evidence. However, certain agreements, such as those relating to price-fixing, will be regarded as having an appreciable adverse effect to the competition in the relevant market;

- 5.1.2. has net economic benefits that would not be achieved except for the agreement. In determining whether a net economic benefit exists, the Commission will consider whether the agreement contributes to improving production or distribution or promoting technical or economic progress in a way which does not impose restrictions which are not indispensable to the attainment of those objectives and which would not afford the possibility of preventing, restricting or reducing the competition substantially. Applicants should provide details of any studies or documents which have been produced to assess the feasibility of operation of the agreement and the benefits likely to result from the agreement.
- 5.2. Please specify the fee is being paid for this application and attach an evidence of the payment.

6. SUPPORTING DOCUMENTS

Please ensure that the applicant(s) has attached the following documents (where relevant) to the application:

- 6.1. if 1.3 of this form applies, written proof of the representative's authority to act on the applicant(s)' behalf;
- 6.2. if 3.2 of this form applies with regard to a written agreement, either an original or certified true copy, of the most recent version of the text of the agreement which is the subject of the application; and
- 6.3. the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and the most recent annual report and accounts for the ultimate parent company of these undertakings (see 4.1 of this form).

7. APPLICATION PROCESSING

Please ensure that all the information/documents mentioned in Regulation 6 above are provided to the Commission as only once all the requisite information/documents are received by the Commission, the application for exemption shall be processed.

PART 2

Under section 38 (1) (c) and (d), it is an offence, to provide information which is false or misleading in a material particular if the person providing it knows that it is false or misleading. The undertaking providing false and misleading information may be guilty of an offence under section 38 (1) (c) and (d) of the Act.

DECLARATION

The undersigned declare and confirm, on Oath, that all information given in the Form A and all pages annexed hereto are correct to the best of their knowledge and belief, and nothing has been concealed or withheld from the Commission, and that all estimates are identified as such and are their best estimates based on the underlying facts.

Signature(s)

Name(s) (in block capitals):

Designation(s):

Date:

Commissioner for Takings Affidavit on Oath

SCHEDULE II
(Section 20(2)(b) read with Regulations)

| Sr. No. | Description of Fee | Fee in Rupees |
|---------|---------------------------------------------------------------------------------------------------------------------------|-----------------|
| 01. | For an application of Individual Exemption | Rs. 400,000/- |
| 02. | For an application of Template Exemption | Rs. 1,000,000/- |
| 03. | For an application of Block Exemption | Rs. 2,250,000/- |
| 04. | For an application for extension of Individual Exemption | Rs. 200,000/- |
| 05. | For an application for extension of Template Exemption | Rs. 500,000/- |
| 06. | For an application for extension of Block Exemption | Rs. 1,200,000/- |
| 07. | For a complaint under Regulation 6(2) of these Regulations | Rs. 50,000/- |
| 08. | For a complaint under Regulation 10(1) read with Section 6 of the Competition Act, 2010 | Rs. 50,000/- |
| 09. | For inspection of Record of any Exemption Case decided or under consideration under Regulation 6(13) of these Regulations | Rs. 25,000/- |