



## External Guidelines on the Informant Reward Scheme Policy

This publication is a guidance and contains general information intended for the convenient use and guide on how to handle the informant reward scheme policy of the Competition Authority of Kenya. This publication can be made available in alternative formats upon request. Please contact the Competition Authority of Kenya using the contact information provided below. This publication may not be reproduced, in part or in whole by any means without the expressed permission of the Competition Authority of Kenya.

## DEFINITION OF TERMS

- I. **Confidential Informant** is any person, either natural or juristic, who provides relevant, useful and credible information to the Authority regarding violations of competition law and regulations and from whom the Authority intends to obtain additional useful and credible information for the purposes of any investigation which the Authority decides to carry out.
  
- II. **Cooperating defendant** is a person who has violated competition laws and has admitted the same but seeks to give assistance to the Authority beyond solely testifying based on past violations. This person may or may not be charged with the identified violation. This is upon the discretion of the Authority. This person shall not be remunerated as their motivation for being an informant is premised on limiting their liability based on the information that they provide to the Authority.
  
- III. **Source of Information** refers to any person who meets the definition of a confidential informant. Such a person provides information to the Authority solely as a result of legitimate access to information or records and not as a result of any criminal association with persons under investigation by the Authority. The information shall be provided in a manner consistent with applicable law.  

Law enforcement officials and other government officials acting within the scope of their mandate, which is to provide information to the Competition Authority of Kenya, shall not be considered as Informants.
  
- IV. **Information** refers to any data or document or record, which in the opinion of the Authority is deemed to be worthy, has material value, relevant, useful, credible,

indispensable, accurate, and verifiable and results in the detection and investigation of cartels.

**NB: Any other terms not specifically defined in this Guidelines shall have the same meaning as construed in the Competition Act No. 12 of 2010 (the Act). Further, in the event of disparity between the terms herein and those in the Act and/or the Competition (General) Rules, 2019, the later shall be definitive.**



## A. INTRODUCTION

1. Pursuant to the Authority's mandate to promote and enforce compliance with the Competition Act No.12 of 2010 (herein the Act), the Authority has developed these guidelines to increase its efficiency in detection and enforcement of restrictive trade practices, abuse of dominance; control of mergers and maintain consumer welfare through an informant reward scheme policy.
2. These guidelines shall be known as the **External Informant Reward Scheme Guidelines**; they contain the collection of principles and conditions adopted by the Competition Authority of Kenya (the Authority) to govern the processing and granting of rewards to informants. The Authority has developed these guidelines to increase its efficiency in the detection and enforcement of restrictive trade practices, abuse of dominance; control of mergers and maintenance of consumer welfare through the usage of the informant reward scheme.

## B. PURPOSE OF THE INFORMANT REWARD SCHEME GUIDELINES

3. This Guidelines sets out the external policy regarding the role of informants, the applicable procedure or process when approaching the Authority to disclose information, the nature of cooperation expected between informant and the Authority, the principles which govern reward payments and the types of persons eligible for obtaining rewards.

## C. SCOPE OF THE GUIDELINES

4. These guidelines shall apply only to Confidential Informants unless the Authority, in its sole discretion, chooses to apply these guidelines to such other person as it may

deem fit. This does not include persons engaging with the Authority under the Leniency Program.

#### **D. ELIGIBILITY CRITERIA FOR A CONFIDENTIAL INFORMANT**

5. A Confidential informant must be one who is *privy to inside* information. In order to differentiate between informant reward scheme and leniency application the informant should not have participated **directly** in the cartel decision making process, in which case a leniency application is the most relevant.
6. A confidential informant role targets neutral third parties or those playing a peripheral role within the cartel such as secretaries. For example, an employee who was directed by their superiors to attend a meeting but did not actively participate in the decision making of the cartel shall be considered eligible for reward scheme.

#### **E. OBLIGATION OF A CONFIDENTIAL INFORMANT**

7. The following are the guiding principles and values that a confidential informant must know before being engaged as an informant, during the conduct of investigation and after the investigation when the matter is completed:
  - i. The confidential informant must provide truthful information at all times;
  - ii. The information provided must be indispensable, have material value, useful, reliable and relevant to the investigation. The information must also be accurate, verifiable and useful to the Authority cartel enforcement.
  - iii. The confidential informant's assistance and the statements made are entirely voluntary;

- iv. The confidential informant has no immunity or protection from investigation, arrest or prosecution if they engage in any criminal activity;
- v. The informant must abide by the instructions of the case investigator and must not take or seek to take any independent action on behalf of the Authority;
- vi. The informant is neither an employee nor agent of the Competition Authority of Kenya and may not represent themselves as such;
- vii. The informant may not enter into any contract or incur any obligation on behalf of the Authority, except as specifically instructed and approved by the Authority; and
- viii. The informant may be called upon to testify as a witness in matters before courts if the need so arises.

## **F. OBLIGATION OF AUTHORITY TO MAINTAIN CONFIDENTIALITY AND ANONYMITY**

- 8. The Authority shall during and after the process of investigation, take utmost care to ensure that the identity of the confidential informant is not disclosed. In order for this to be attained, an investigator shall be required to keep the identity of the confidential informant, including any information that may lead to their identification, confidential and treat such information as outlined below:
  - i. The investigator shall be obliged to keep the information confidential by placing it into a locked file cabinet or safe.
  - ii. That access to the said information shall be restricted to the Case Officer, the Manager (ME&C) and the Director Competition and Consumer Protection (DCCP).

- iii. The DCCP and the ME&C shall be responsible for ensuring that each person allowed access to the information is informed of the need to preserve the security and confidentiality of the said information.
- iv. That a pseudonym shall be used in furtherance of all communications relating to the investigation in order to protect the identity of the informant.
- v. The Authority cannot guarantee any rewards, payments, or other compensation to the informant in the event the above criteria is not met.

## **G. REGISTERING CONFIDENTIAL INFORMANTS**

9. Confidential Informants who wish to disclose information to the Authority must agree to be subjected to an initial suitability assessment. This assessment criteria shall enable the Authority to determine whether the confidential informant is motivated by the financial reward, or is a consenting party to a monitored conversation. In this case the confidential informant shall be required to fill out the following details which shall be in a form of questionnaire:
- i. The informant's age
  - ii. The informant's nationality
  - iii. Profession or occupation of the informant
  - iv. The extent to which the informant would make use of their affiliations with legitimate organizations in order to provide information or assistance to the Authority and the ability of the authority to ensure that the informant's information or assistance is limited to relevant matters.
  - v. The extent to which the informant's information or assistance would be relevant to a present or potential investigation and the importance of such investigations.
  - vi. The nature of any relationship between the informant and the subject or target of an existing or potential investigation, including but not limited to a current or

former spousal relationship or other family member and any current or former employment or financial relationship.

- vii. The informant's motivation in providing information or assistance, including any consideration sought from the Authority for this assistance.
- viii. Account for the risk that the informant's might adversely affect a present or potential investigation
- ix. The extent to which the informant's information or assistance will be corroborated
- x. The informant's reliability and truthfulness.
- xi. Whether the informant has a criminal history, is reasonably believed to be the subject or target of a pending criminal investigation, is under arrest or has been charged in a pending case.
- xii. Whether the informant is a substance or alcohol abuser or has a history of any abuse.
- xiii. Whether the informant is a relative of an employee of the Authority.
- xiv. The risk of harm that may occur to the informant, their immediate family, close associates as a result of providing information or assistance to the Authority.
- xv. The record of the informant's prior or current service as a confidential informer, cooperating defendant or witness, source of information with the Authority and/or any other regulatory body / law enforcement agency including but not limited to any information regarding whether the informant has at any time been terminated for cause.

## H. MONETARY COMPENSATION

10. Monetary compensation shall be granted to a confidential informant if the Authority is sufficiently satisfied that the confidential informant has sufficiently cooperated and



the information provided is credible, relevant and authentic to the process of investigation.

11. The specific monetary compensation shall be computed by the Authority once it assesses the material value of the information (its relevance, credibility and authenticity) provided, then the same shall be relayed to the informant. The monetary compensation shall be in the form of a one-off sum at the end of an investigation.
12. The following principles shall guide the process of compensation of the informant:
  - i. The monetary compensation shall be made after the Authority has pursued the matter and necessary administrative penalties have been remitted to the Authority. The amount shall be up-to one percent of the administrative penalty and in any event not more than one(1) million Kenyan shillings.
  - ii. No informant shall hold the Authority bait and require it to pay the informant before providing the information.
  - iii. Payments made to the confidential informant must be documented in their file;
  - iv. At the time of payment, a receipt shall be obtained and the informant shall be required to sign the receipt indicating the date the information was received, the date of payment, and the amount of paid.
  - v. The confidential informant shall be required to sign their fictitious name or code on the receipt.
  - vi. The confidential informant, upon receiving any rewards, payments or other compensation from the Authority, shall be liable for any taxes that may result from the payment.

## **I. DEACTIVATION OF A CONFIDENTIAL INFORMANT**

13. Deactivation refers to the instance when a confidential informant may no longer be required to provide further information or assistance to the Authority in regards to a matter. An informant may be deactivated on the following grounds:

- i. If the informant conduct is no longer cooperative and they are no longer providing information or assistance to the Authority,
- ii. If the informant engages in a conduct that violates their Agreement with the Authority
- iii. The finalization of the investigation, for which they were engaged, by the Authority; or
- iv. For any other viable reason that the Authority deems fit.

14. In either of the above scenarios the confidential informant shall not be viable or qualify to benefit from the reward scheme and the same shall effectively be communicated to the informant.

15. In either case, the reasons for deactivation shall be documented in writing and the confidential informant notified of the deactivation in writing. The confidential informant must ensure to acknowledge receipt and must confirm that they have understood the contents of the deactivation report.

## **J. EFFECTIVE DATE AND REVIEW OF THE GUIDELINES**

16. These Guidelines shall, upon approval, come into effect from 1<sup>st</sup> January 2021.

17. The Authority shall undertake review of the market periodically to establish if there have been major changes that might warrant a review of these Guidelines.

18. For the purposes of applying to be an informant or inquiring about the Scheme, contact the Authority's Manager, Enforcement and Compliance via the designated e-mail address: [informant@cak.go.ke](mailto:informant@cak.go.ke) or telephone number: +254 (20) 2779000.