

AMENDMENTS TO COMESA COMPETITION RULES, 2004

In exercise of the powers conferred by Article 39 of the COMESA Competition Regulations, the Board of Commissioners, with approval of Council, makes the amendments to the COMESA Competition Rules, 2004 as follows:

Rule 1 Citation

These Rules may be cited as the COMESA Competition (Amendment) Rules, 2014.

Rule 2 Amendment of Rule 2 of the COMESA Competition Rules, 2004

The COMESA Competition Rules 2004 (hereinafter referred to as the “principal” Rules) are hereby amended in Rule 2(2) by:

1. deleting paragraph (a) and substituting the paragraph with the following:
“(a) “acquiring firm” means a firm:
 - i. that as, a result of a merger within the meaning of Article 23 of the Regulations, would directly or indirectly acquire, or establish direct or indirect control over, the whole or part of the business of another firm;
 - ii. that has direct or indirect control over the whole or part of the business of a firm contemplated in paragraph (i); or
 - iii. the whole or part of whose business is directly or indirectly controlled by a firm contemplated in paragraph (i) or (ii);
2. inserting, immediately after paragraph (a) and paragraph (b), the following paragraphs as new paragraph (aa):
“(aa) “**Committee**” means the Committee responsible for initial determinations established in accordance with Article 13 (4 of the Regulations;”
3. inserting immediately after paragraph (b) the following paragraph as new paragraph (bb):
(bb) “**firm**” includes a person, partnership or a trust;”
4. inserting immediately after paragraph (d), a new paragraph (da) as follows:

“(da) **“party to a merger”** means any acquiring firm or target firm”;

Rule 3
Replacement of the Rule 55 of the Principal Rules

Rule 55 of the principal Rules is hereby repealed and replaced with the following as new Rule 55:

“Rule 55
Filing a Merger Notification

1. Notification of a merger shall be made to the Commission by submitting a completed Form 12 as set out in the Schedule to these Rules. The Commission may dispense with some of the information or documents required by Form 12.
2. The Commission shall assign distinctive case numbers to each merger notification made with respect to a merger and shall ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.
3. Parties to a merger may individually or jointly submit a merger notification to the Commission.
4. Where a notifying party is, or includes, one or more firms, each of such firms shall provide to the Commission the name and addresses of a natural person authorised to communicate with the Commission and take actions on its behalf.
5. Notification of a merger shall be accompanied by a fee calculated at 0.1% of the combined annual turnover or combined value of assets in the Common Market of the parties to a merger, whichever is higher:

Provided that the fee shall not exceed COM\$ 200 000.00.

6. For purposes of calculating the merger notification fees, annual turnover and value of assets shall be calculated as provided in the Rules on the Determination of Merger Notification Threshold.
7. A fee payment shall be deemed received by the Commission on the date that a direct deposit or an electronic transfer of funds in the amount of the fee is credited to the account of the Commission.
8. The Commission may however require parties to a non-notifiable merger to notify the merger to the Commission by submitting a completed Form 12 if it appears to

the Commission that the merger is likely to substantially prevent or lessen competition or is likely to be contrary to public interest in the Common Market.

9. In cases where both the acquiring firm and the target firm operate in a single Member State, the Commission shall first consult the relevant Member State before requiring parties to the non-notifiable merger to file the merger notification.
10. No fee shall be payable for filing a merger notification for a non-notifiable merger.”

Rule 4 Replacement of the Rule 9 of the Principal Rules

Rule 9 of the Principal Rules is hereby repealed and replaced with the following as

“Rule 9 Languages of the Commission and the Board

The proceedings and publication of the Commission and the Board shall be in the official languages of the Common Market as set forth in the Treaty as English, French, Portuguese and Arabic.”

Rule 5 Insertion of a Schedule in the Principal Rules

The following Schedule is hereby inserted in the principal Rules:

“SCHEDULE FORMS

Form 12: Notice of Merger [Article 24 of the Regulations and Rule 55]

FORM 12

NOTICE OF MERGER

Article
24((3)
COMESA Competition
Regulations (2004), Rule 55 of
the COMESA Competition Rules,
2004

NOTIFICATION REQUIREMENTS:

Under Part 4 of the COMESA Competition Regulations (2004) hereinafter referred to as the “Regulations”, a party to a notifiable merger shall notify the COMESA Competition Commission (the CCC) of the proposed merger in such form and manner as may be prescribed. This Form 12 has been prescribed for the notification of mergers and specifies the information that shall be provided by the notifying parties when submitting a notification to the CCC of a notifiable merger.

➤ **WHO MUST NOTIFY?**

The notification shall be completed jointly by the parties to the merger or in the case of the acquisition of a controlling interest in one firm by another, the acquiring firm shall complete the notification.

In the case of a public bid to acquire a firm, the bidder shall complete the notification.

Each party completing the notification is responsible for the accuracy of the information it provides.

➤ **PERIOD WITHIN WHICH TO SUBMIT THE NOTIFICATION**

Pursuant to Article 24(1) of the COMESA Competition Regulations, the parties to a merger shall notify the merger to the COMESA Competition **Commission as soon as it is practicable but in no event later than 30 days of the merging parties’ decisions to merge**

➤ **The Requirement for a correct and complete notification**

All the information required by this Form 12 must be correct and complete. The information required must be supplied in the appropriate Section of this Form 12. In particular it should be noted that:

- (a) In accordance with Article 25 of the Regulations, the time limits of the Merger Regulation linked to the notification will not begin to run until all

the information that has to be supplied with the notification has been received by the Commission. This requirement is to ensure that the Commission is able to assess the notified merger within the time-limits provided by the Regulations.

- (b) The notifying party or parties must verify, in the course of preparing their notification, that contact names and numbers, and in particular fax numbers and email addresses, provided to the Commission are accurate, relevant and up-to-date.
- (c) Incorrect or misleading information in the notification, including instances of missing or incomplete contact details, will be considered to be incomplete information.
- (d) If the notification is incomplete, the Commission will inform the notifying parties or their representatives in writing without delay. The notification will only become effective on the date on which the complete and accurate information is received by the Commission.
- (e) Notifying parties who, either intentionally or negligently, supply incorrect or misleading information are liable to penalties specified in the Rules. In addition, the Commission may revoke its decision to approve the notified merger where it is based on incorrect information for which one of the undertakings is responsible.
- (f) The notifying parties may request in writing that the Commission should accept that the notification is complete notwithstanding the failure to provide information required by this Form 12, if such information is not reasonably available to the notifying parties in part or in whole (for example, because of the unavailability of information on a target company during a contested bid). The Commission will consider such a request, provided that the notifying parties give reasons for the unavailability of that information, and provide their best estimates for missing data together with the sources for the estimates. Where possible, indications as to where any of the requested information that is unavailable to the notifying parties could be obtained by the Commission should also be provided.

➤ **Caution:**

- (a) Article 24(2) of the Regulations provides that “Any notifiable merger carried out in contravention of the Regulations shall have no legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger shall be legally enforceable in the Common Market”.
- (b) Article 24(4) of the Regulations provide that the Commission may in

addition to the sanction under paragraph (a) above impose a penalty if the parties to a merger fail to notify the merger to the Commission.

- (c) Article 24(5) of the Regulations provide that a penalty imposed in terms of paragraph (b) above may not exceed ten per centum of either or both of the merging parties' annual turnover in the Common Market as reflected in the accounts of any party concerned for the preceding financial year.

➔ **DECISION OF THE COMESA COMPETITION COMMISSION:**

- (a) The COMESA Competition Commission shall take a decision on the proposed merger **within 120 days** from the date a completed merger notification is received, unless an extension is approved by the Board pursuant to Article 25(2) of the Regulations. If the notification is incomplete, examination period begins on the working day following receipt to complete information; and
- (b) At any time during the merger proceedings, the CCC may request additional information from any party to the merger;

FORM INSTRUCTIONS

1. Please fill out all parts of this Form to the best of your knowledge and attach all required documents.
2. One (1) original and all supporting documents must be provided to the CCC. The supporting documents shall be either in originals or certified copies of the originals.
3. If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information by duly completing Form 2- Request for Confidentiality and submitting it jointly with this Notice. You should also give reasons why this information should not be divulged or published.
4. The submission of this Notice must be accompanied by the payment of a prescribed fee. For payment instructions and interpretation on the calculation of the notification fee, see Fee Payment Instructions and the Notice on the Interpretation of the Merger Notification Fee under Rule 55 of the COMESA Competition Rules on the CCC website (<http://www.comesacompetition.org/>).
5. All references to provisions of law contained in this Form 12 are to the relevant articles of the Regulations, unless otherwise stated.

I. UNDERTAKING REPORTING THE MERGER

Name:	Website:	
Address:		
Phone:	Fax:	Email:

II. NOTICE

We are hereby notifying the COMESA Competition Commission of a proposed merger, as defined in Art. 23 of the COMESA Competition Regulations (2004), involving _____ as the acquiring firm and _____ as the target firm.

III. MERGER COUNTER PARTY INFORMATION

Name:	Website:	
Address:		
Phone:	Fax:	Email:

IV. OTHER PARTY INFORMATION

Please provide the name, address and contact information of all other acquiring and/or target parties and of their legal representatives/advisors:

If you need more space, please attach extra sheets to his document.

V. COMESA COUNTRIES AFFECTED BY THE MERGER

*Please under this Section you are required to complete Annex I to this Form without fail.
Failure to complete Annex I amounts to submitting incomplete information*

VI. OTHER NOTIFICATIONS

Please list all countries outside the Common Market which have been/will be notified of the proposed merger:

VII. EXECUTIVE SUMMARY OF MERGER INFORMATION

Provide an executive summary (up to 500 words) of the transaction specifying the parties to the merger, the nature of the transaction, the areas of activity of the notifying parties, the markets on which the transaction will have an impact and the strategic economic rationale for the transaction.

N.B: This summary will be published on the Commission website at the date of notification. The summary should not contain confidential information or business secrets.

VIII. STATEMENT OF MERGER

The details of the proposed merger should be set forth in the attached Statement of Merger Information, which forms part of this Notice.

IX. SERVICE OF DOCUMENTS

The name, address and contact information of the person to whom documents pertaining to this merger procedure should be served is:

STATEMENT OF MERGER INFORMATION

I. FIRM(S) DIRECTLY AND/OR INDIRECTLY CONTROLLING THE FIRM FILING THIS NOTICE

Provide the following information for all firms directly and/or indirectly controlling the firms filing this Notice:

1. Name of Firm:	Website:	
Address:		
Phone:	Fax:	Email:
Controlling the Applicant: <input type="checkbox"/> Directly <input type="checkbox"/> Indirectly		
2. Name of Firm:	Website:	
Address:		
Phone:	Fax:	Email:
Controlling the Applicant: <input type="checkbox"/> Directly <input type="checkbox"/> Indirectly		

If you need to list additional firms or provide additional information, please attach extra sheet(s) to this Notice.

II. FIRM(S) DIRECTLY AND/OR INDIRECTLY CONTROLLED BY THE FIRM(S) LISTED IN SECTION 1 OF THIS STATEMENT

Provide the following information for all firms directly and/or indirectly controlled by the firm(s) listed in section 1 of this Statement:

1. Name of Firm:		Website:	
Address:			
Phone:		Fax:	Email:
Controlled:	Directly <input type="checkbox"/>	Indirectly <input type="checkbox"/>	
2. Name of Firm:		Website:	
Address:			
Phone:		Fax:	Email:
Controlled :	Directly <input type="checkbox"/>	Indirectly <input type="checkbox"/>	
<i>If you need to list additional firms or provide additional information, please attach extra sheet(s) to this Notice.</i>			

III. UNDERTAKING(S) DIRECTLY AND/OR INDIRECTLY CONTROLLED BY THE FIRM FILING THIS NOTICE

Provide the following information for all firms directly and/or indirectly controlled by the firm filing this Notice:

1. Name of Firm:		Website:	
Address:			
Phone:		Fax:	Email:
Controlled:	Directly <input type="checkbox"/>	Indirectly <input type="checkbox"/>	
2. Name of Firm:		Website:	
Address:			
Phone:		Fax:	Email:
Controlled:	Directly <input type="checkbox"/>	Indirectly <input type="checkbox"/>	
<i>If you need to list additional firms or provide additional information, please attach extra sheet(s) to this Notice.</i>			

IV. INFORMATION ABOUT THE FIRMS FILING THIS NOTICE

Specify the asset value or turnover derived in each Member State where the parties operate. Please under this Part you are required to complete Annex II to this Form without fail. Failure to complete Annex II amounts to submitting incomplete information.

Also specify the trading name of each of the parties to a merger in each Member State where it has operations. Please under this Part you are required to complete Annex III to this Form without fail. Failure to complete Annex III amounts to submitting incomplete information.

In this merger, the firm filing this Notice is:

Acquiring assets Selling assets Acquiring and selling assets Other

The merger involves:

Foreign direct investment Management buy-out Buy-back of shares
Other

In a separate document, entitled "Exhibit A, please describe in detail the proposed merger, including:

1. The parties to the transaction;
2. The assets, shares or other interests being acquired;
3. Whether the shares or other interests are being purchased, leased, combined or otherwise transferred;
4. The consideration;
5. The contemplated timing for any major events required to bring the completion of the transaction;
6. The intended structure of ownership and control after the completion of the merger; and
7. Pre-merger structure of ownership and control of your undertaking.

V. RELEVANT MARKET INFORMATION

In a separate document, entitled "Exhibit B", please provide the following information to the best of your knowledge:

1. A list of all markets in which the parties to this transaction sell their products and/or services;
2. For each market listed in paragraph 1, provide:
 - a. The estimated market share of the merging parties;
 - b. The estimated market shares of the merging parties' competitors;
 - c. A description of existing barriers to market entry (e.g., regulatory requirements, capital requirements, sunk costs, etc.);
 - d. An estimate of the time it will take potential competitor(s) to enter the market;
 - e. The name and contact details of each entrant to the market during the last three (3) years;
 - f. An estimate of the value and volume of the COMESA market as a whole (i.e., production less exports and plus imports);
 - g. An estimate of the capital expenditure required to enter the market on a scale necessary to gain a significant market share (say five(5) percent or more), both as a new entrant and as a Company which already has the necessary technology and expertise;
 - h. An estimate of the scale of annual expenditure on advertising/promotion relative to sales required to enter the market on a scale equivalent to your main competitor(s);
 - i. An assessment of the ease of exit from the market. Please indicate any trends in both market entry and exit over the last five (5) years;
 - j. An assessment of any effects the merger may have at regional level. Describe the nature of national and regional competition and give details of any localities where competition may be reduced as a result of the merger; and
 - k. A brief assessment of any other features of the market that the Commission should take into account in considering the effect of the merger.

VI. FAILING FIRMS

Is the Primary Acquiring Party or the Primary Target Party a failing firm? Yes
No

If no, skip to Section VII; otherwise provide the following:

1. Financial information demonstrating that the failing firm will not be able to meet its obligations;
2. Information concerning efforts taken by the failing firm to elicit reasonable alternative offers; and
3. Information indicating that the failing firm would reasonably be expected to exit the market unless the merger is implemented.

VII. PRODUCT INFORMATION

1. Please identify each product and/or service that you and all other acquiring/target parties sell. In addition, please identify all substitute products and/or services, if any. Use the 5-digit Standard Industrial Classification (SIC) Codes to identify the product(s) and/or service(s):

Product/Service	SIC Code	Substitutes(s)	Geographic Region Sold

If you need more space, please attach extra sheet(s) to this Notice.

2. For each product /or service identified in paragraph 1 of this Section, please provide contact details for the producers and/providers in each and identified geographic area with the largest estimated turnover and their estimated market shared during the last 12 months

Product/Service	Company Name &Full Address	Geographic Region	Turnover	Market Share

If you need more space, please attach extra sheet(s) to this Notice.

3. For each product and/or service identified in paragraph 1 of this Section, please provide your turn over in each geographic area within last 12 months:

Company Name	Product/Service	Turnover	Geographic Area

If you need more space, please attach extra sheet(s) to this Notice.

4. For each product and/or service identified in paragraph 1 of this Section, please provide contact details for five (5) of your customers in each identified geographic areas with the largest aggregate purchases in value within the last 12 months.

Product/Service	Customer Name &Full Address	Geographic Region	Purchases

If you need more space, please attach extra sheet(s) to this Notice.

VIII. BUSINESS RELATIONSHIPS AMONG MERGING PARTIES

State the name of any other acquiring or target party that sells to you and identify each product and/or services sold and the value of that product/service during your preceding fiscal year.

Company Name and Full Address	Product/Service	Value

If you need more space, please attach extra sheet(s) to this Notice.

IX. DOCUMENTS TO BE SUBMITTED BY THE MERGING PARTIES

1. Please attach certified copies of the following documents and submit them with this Notice:
 - a. Annual reports of your firm for the last three (3) years;
 - b. Financial statements of your firm for the last three(3) fiscal years;
 - c. Current list of shareholders of your firm and their nationality;
 - d. Current list of directors of your firm and their nationality;
 - e. The merger agreement;
 - f. Internal memoranda analyzing the proposed merger;
 - g. Board resolutions appointing company representatives for the purposes of this merger and the letter appointing legal representatives for the

purposes of this transaction;

- h. In a public bid, a copy of the offer document; if it is unavailable at the time of the notification, a copy of the most recent document demonstrating the intention to launch a public bid must be provided and a copy of the offer document must be submitted as soon as possible and no later than when it is posted to shareholders;
2. Copies of all the documents prepared by, or for, or received by any member(s) of the board of management, the board of directors, or the supervisory board, as applicable in the light of the corporate governance structure, or the other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting, in particular copies of technical reports relating to:
 - a. Presentations analyzing different options for acquisitions, including but not limited to the notified merger;
 - b. Analyses, reports, studies, surveys and any comparable documents for the purpose of assessing or analyzing the merger with respect to its rationale, market shares, competitive conditions, competitors (actual and potential), potential for sales growth or expansion into other product or geographic markets;
 - c. Any other document which may assist the COMESA Competition Commission in making a decision on the proposed merger.;

Provide a list of the above documents, indicating for each document the date of preparation and the name and title of the addressee(s).

Annex I

For each Member State, specify whether the merger is or is not capable of being reviewed under its national competition law.

You must tick one box ('Yes' or 'No') for each and every Member State. Failure to indicate 'Yes' or 'No' for any Member State shall be deemed to constitute an indication of 'Yes' for that Member State.

Country	Yes	No
Burundi		
Comoros		
Democratic Republic of Congo		
Djibouti		
Egypt		
Eritrea		
Ethiopia		
Kenya		
Libya		
Madagascar		
Malawi		
Mauritius		
Rwanda		
Seychelles		
Sudan		
Swaziland		
Uganda		
Zambia		
Zimbabwe		

Annex II

Specify the Asset Value or Turnover Derived in each Member State where the parties operate. If there are more than two parties to the Merger, please add a column for each additional undertaking.

Country	Turnover Value (US\$) Firm 1	Asset Value (US\$) Firm 1	Turnover Value (US\$) Firm 2	Asset Value (US\$) Firm 2
Burundi				
Comoros				
Democratic Republic of				

Congo				
Djibouti				
Egypt				
Eritrea				
Ethiopia				
Kenya				
Libya				
Madagascar				
Malawi				
Mauritius				
Rwanda				
Seychelles				
Sudan				
Swaziland				
Uganda				
Zambia				
Zimbabwe				
Total				

Annex III

Specify under which trade name each of the parties to the transaction is trading in each Member State. If there are more than two parties to the merger, please add a column for each additional undertaking.

Country	Firm 1	Firm 2
Burundi		
Comoros		
Democratic Republic of Congo		
Djibouti		
Egypt		
Eritrea		
Ethiopia		
Kenya		
Libya		
Madagascar		
Malawi		
Mauritius		
Rwanda		
Seychelles		
Sudan		
Swaziland		
Uganda		

Zambia		
Zimbabwe		
Total		

X. DECLARATION

I _____ being the authorized representative of _____ (*insert the names of the merging parties*) declare that to the best of my knowledge, the information given/supplied by me to the COMESA Competition Commission in this notice is true, correct and complete, that true and complete copies of documents required by Form 12 have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all opinions expressed are sincere.

Signature:

Office Use Only

Received By Registrar

Print Name:

Signature:

Date Received:

Assigned Case Number:

Case Officer

Print Name:

Signature:

Department/Section:

Position:

END OF FORM