



COMESA COMPETITION RULES

December 2004

Statutory Rules

made under the

COMESA Competition Regulations

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PART I - PRELIMINARY

Rule 1 Name of Rules

These Rules are the *COMESA Competition Rules*.

Rule 2 Interpretation

1. In these Rules:
 - a) "Regulations " means the COMESA Competition Regulations.
 - b) In these Rules, a reference to a Form by a letter, or letters, is a reference to the Form so lettered in Schedule 1.
 - c) A word or expression that is defined in the COMESA Competition Regulations bears the same meaning in these Rules.
2. In these Rules, unless the context indicates otherwise:
 - a) "acquiring firm" means a firm:
 - i) as a result of a merger, which shall directly or indirectly acquire, or establish direct or indirect control over the whole or part of the business of another firm; or
 - ii) that has direct or indirect control over the whole or part of the business of a firm contemplated in (a);
 - b) "file", when used as a verb, means to deposit with the Commission;
 - c) "International Accounting Standards" (or "I.A.S") means the standard set by the International Accounting Standards Association from time to time;
 - d) "Merger Notice" means a notification of a merger or acquisition;
 - e) "serve" means to deliver a document to a person other than the Commission;
 - f) "target firm" means a firm:
 - i) as a result of a merger, the whole or part of whose business shall be directly or indirectly controlled by an acquiring firm;
 - ii) as a result of a merger, shall directly or indirectly transfer direct or indirect control of the whole or part of its business to an acquiring firm.

**Rule 3
Computation of Time**

1. Where a period of time dating from a given day, act or event is prescribed by or allowed under these Rules for doing an act or taking a proceeding, the time shall be reckoned exclusively of the day, or of the day of the act or event, from which the time dates.
2. Where the time prescribed by or allowed under these Rules for doing an act or taking a proceeding expires on a Saturday or Sunday or on a day on which the office of the Registrar is closed, the act may be done or the proceeding may be taken on the first day following that is not a Saturday, Sunday or day on which that office is closed.

**Rule 4
Directions in Forms**

A person completing any document that is required to be in accordance with a Form in Schedule 1 or Schedule 3 shall complete that document in accordance with any directions contained in the Form, including any directions with regard to the furnishing of other documents.

PART 2 - INSTITUTIONS

**Rule 5
The Enforcement Institutions**

1. For the purposes of the implementation of Regulations, the Regulations established two authorities, the COMESA Competition Commission (“the Commission”) and the Board of Commissioners (“Board”).
2. Decisions rendered by the enforcement institutions above shall, pursuant to Article 5 of the Regulations, be binding on undertakings, governments of Member States and State courts.

**Rule 6
The COMESA Competition Commission**

The Commission shall enjoy an independent legal personality. It shall have an official seal. It may acquire, hold and dispose of property and assets. It may sue and be sued in its corporate name.

**Rule 7
Seal of the COMESA Competition Commission**

1. The seal of the Commission shall be of a design approved by the Chairperson and shall include:
 - a) appropriate logo or other insignia; and
 - b) the words “COMESA Competition Commission”;

2. Affixing of the seal shall be authenticated by the Chairperson or any other person authorized in that behalf by a resolution of the Board.

3. The seal of the Commission shall be affixed by or with the authority of the person performing the duties of Secretary to the Board, or by such person as may be authorised by the Board, to such documents as may be required to be sealed with the seal of the Commission.

Rule 8
Offices of the Board and of the Commission

1. The Board shall maintain a head office at a place and in a Member State to be decided by Council.

2. The Board shall publish notices in its official publication stating the address of its office and any change in such an address.

3. The Commission shall maintain a head office at a place and in a Member State to be decided by Council and shall maintain offices at such other places as it determines.

4. The Commission shall publish notices in its official publication the address of each of its offices and any change in such an address.

Rule 9
Languages of the Commission and the Board

The proceeding and publications of the Commission shall be in the official languages of COMESA set forth in the Treaty as English, French and Portuguese. The proceeding and publications of the Board shall be in the official languages of COMESA as set forth in the Treaty as English, French and Portuguese.

Rule 10
Service of Documents on the Commission

1. A document to which this Rule applies may be made or given to, lodged with, or served on, the Commission by delivering it, or causing it to be delivered (whether by post or otherwise), at any office of the Commission.

2. A reference in this Rule to a document to which this regulation applies shall be read as a reference to:

- a) an application under the Regulations or these Rules to be made to the Commission;
- b) a notice under the Regulations or these Rules to be given to, or lodged with, the Commission; or
- c) any other document to be given to, lodged with or served on, the Commission.

Rule 11
Service of Documents on Persons other than the Commission

1. A person who has in a document lodged with the Commission stated an address for service may, at any time, lodge with the Commission a notice in writing stating a new address for service.
2. A reference in these Rules to an address for service shall, in relation to a person who has notified two or more addresses for service, be read as a reference to the later or latest of those addresses.
3. Subject to these Rules, a document or notice that is required or permitted by or under the Regulations or these Rules to be served on, or given to, a person in connection with any proceeding or matter before the Commission may be served on, or given to, that person:
 - a) where the person has, in a document or notice lodged with the Commission, stated an address for service — by delivering the document to the person personally or by delivering the document at, or by sending the document by registered post addressed to the person at, that address; or
 - b) in any other case.
4. Where the person is a body corporate - by delivering the document personally to the manager or secretary of the body corporate or, if the body corporate has a registered office in a COMESA member country, by leaving it at that office or by sending it by registered post addressed to the body corporate at that office, or if the body corporate does not have a registered office in a COMESA member country, by sending it by registered post addressed to the body corporate at its principal place of business in a Member State; or
5. Where the person is not a body corporate - by delivering the document to the person or by sending the document by registered post addressed to the person at the last known address of the person.
6. Notice by the Commission shall be sent to a person by sending the notice by pre-paid post to that person at:
 - (i) where the person has, in a document or notice lodged with the Commission, stated an address for service - that address; and
 - (ii) in any other case:
 - a) where the person is a body corporate which has a registered office in a COMESA member country - that registered office;
 - b) where the person is a body corporate which does not have a registered office in a COMESA member country but which has a place of business in a COMESA member country - its principal, or only, place of business in a COMESA member country;

- c) where the person is a body corporate which does not have a registered office or a place of business in a COMESA member country - the registered office of that body corporate; or
- d) where the person is not a body corporate - the last known address of the person.

Rule 12
Recording of Date of Receipt of Applications or Notices

The Commission shall cause the date on which an application under this Regulations is received in one of its offices to be recorded on the application or notice, as the case may be.

Rule 13
Composition of the Commission

1. The Commission shall be headed by a Director appointed by the Council.
2. The Commission shall be divided into various departments to oversee work in areas including restrictive business practices, mergers and abuse of dominant positions. A Division responsible for competition awareness and cooperation with member states shall also function under the auspices of the Commission.

Rule 14
The Director

1. The Director shall:
 - a) legally represent the Commission vis-à-vis third parties and the courts;
 - b) be responsible for the implementation of Article 7 of the Regulations;
 - c) serve for a term of five years, which can be extended for a further term by a decision of the Board with the approval of the Council;
 - d) be a national of COMESA member states;
 - e) interview staff members and shall ensure that, as far as feasible and based on technical merit, member states are adequately represented.
 - f) employ the staff of the Commission. The staff shall comprise of professionals from different disciplines including lawyers, economists and accountants;
 - g) in the light of the needs of the Commission and the available budget, shall determine the number of staff;
 - h) appoint a head to each department. The duties and responsibilities of each head of department shall be made by the Director; and
 - i) be responsible for assigning staff members to each department.
2. The Director may effect changes in the responsibilities of each member of staff, as the need of the work so requires.
3. The number of staff allocated to each department shall be left to the discretion of the Director.

4. The Director, in consultation with the COMESA Secretariat, shall arrange for suitable premises for the Commission.

**Rule 15
The Staff**

1. If the work of the Commission so requires, the Director may employ staff that are not nationals of Member States subject to the approval of the Board.
2. The staff shall be guided in their work with directions given by the Director.

**Rule 16
Budget of the Commission**

1. The budget of the Commission shall be comprised of:
 - a) annual subventions from the Member States in accordance with the formula of budgetary contributions to the COMESA Secretariat.
 - b) grants and donations from co-operating partners.
2. The Commission may charge and collect fees in respect of programs, publications, seminars, consultancy and other services.
3. The Commission shall cause to be kept proper books and records relating to its accounts.

**Rule 17
Investigations by way of Complaint**

1. Should a complaint be filed with the Commission, as per Article 21 of the Regulations, it should include sufficient information for the Commission to make a preliminary assessment of the matter. Such information includes, a detailed description of the practice believed to be breaching the Regulations, its geographic location and any supporting documents, if any.
2. This complaint shall be referred to the head of the relevant department within the Commission, who shall prepare a report to be presented to the Director setting out the opinion of the department. The Director shall make the final decision on the matter, investigations can only be ordered to commence if the alleged breach falls within the jurisdiction of the Commission and the merits of the complaints justifies an investigation to be conducted.
3. The Commission's decision in respect of a complaint being filed before it should be made within 30 days of the date of receiving the complaint. Should the Commission wish to extend this period it shall notify the complainant. The extended period for making a decision on the complaint shall not exceed a further 45 days.

4. The Commission's decision to commence investigations shall be notified in writing to the complainant and the investigated party upon its issuance. It shall include the subject matter and the purpose of the investigation and the applicable sanctions in the Regulations.

5. The investigation should be completed within 180 calendar days from the date of receipt of the complaint. However, should the Director decide, based on a request from the relevant head of department that additional time is needed, approval for such additional time must be obtained from the Board and the parties so notified.

Rule 18
Investigations upon the Commission's Own Initiative

1. If as a result of monitoring the market, the relevant department of the Commission believes that a person may be acting in breach of Regulations, a report shall be presented to the Director, who in turn after consultations with the relevant head of department makes a decision in respect of commencement of an investigation.

2. The decision to commence investigations shall be promptly notified to the party concerned.

3. The Commission should complete its investigations within 180 days from notifying the party concerned. If, the Commission decides that a longer period is necessary, the Commission shall seek approval from the Board and so notify the parties concerned.

4. The relevant head of department shall head investigations.

5. The competent authority of the Member State in whose territory investigation is to be made shall, at the request of the authority or the Commission, assist in the investigation.

Rule 19
Ordering a person to appear before the Commission

1. In conducting an investigation, and pursuant to Article 8 of the Regulations, the Commission may order any person to appear before it to give evidence. Such an order shall be made in the appropriate language.

2. The order shall be signed by the Director and sealed with the seal of the Commission. It can be sent to the person required to appear before the Commission either by fax, post or e-mail. While the choice of the method of communication is left to the Commission, the burden of proof that such a person was notified lies with the Commission.

3. The Commission shall give an adequate time limit for the person to appear before it, taking into account the time required for travel.

4. The Commission shall permit the attendance of a lawyer duly qualified in any of the member states to be present with the person required to appear before the Commission to give evidence.

5. The Commission in its cooperation with member states may seek assistance for relevant authorities in such member states, especially competition authorities where they exist. Such assistance may take different forms, including the conduct of investigation by the national authority under the guidance of the Commission, or by the conduct of investigation by a Commission staff in the relevant member state.

Rule 20
Discovery of Documents

The order to present documents is subject to the guidelines under Rule 11 above relating to the language of the order, the time limit given and the importance of cooperation with relevant authorities in member states. Should the presentation of documents be incomplete, the Commission shall inform the competent authority of the Member State in whose territory the same is to be made to take necessary action.

Rule 21
Taking any other Reasonable Action

In furtherance of the investigation the Commission may take any other reasonable action necessary for the conclusion of its investigation. The Commission shall be guided by principles of natural justice, for example the respondent party is given a fair and adequate chance to appear before the Commission or to present documents, and always has the chance to present his/her point of view and any relevant clarification.

Rule 22
Third Parties affected by the Investigations

1. A party that reasonably believes that it shall be affected by the investigations may so notify the Commission. This notification shall be presented to the head of the relevant department where a determination shall be made as to whether the party's position is reasonable. The request may be refused if it may delay the investigation, or if the request is unrelated to the investigation in question, or if the request is made when the investigation was being concluded.

2. Should the Commission decide to accept the request, that party shall be afforded the same rights as the respondent party in terms of be given an adequate time to present its views to the Commission and having a right for an attorney present and other rights that ensure due process.

Rule 23
The Findings of an Investigation

1. Should an investigation result in the relevant department finding that there has been no breach, the matter shall be presented to the Director who shall issue an order to the effect that the matter shall be closed. However the Commission shall reserve the right to reopen the case if circumstances so warrant.

2. Should the relevant department find, as a result of the investigation, that a breach has occurred, it shall present the matter to the Director for a decision. Should

the Director agree, the affected party shall be notified and afforded an opportunity to be heard.

**Rule 24
Initial Determination**

The procedure for making an initial determination shall be in accordance with the following:

- a) The Director shall in writing notify the Chairperson of the Board that he/she believes there has been a breach of the Regulations.
- b) The Chairperson shall then convene a Committee to hear the matter and notify the respondent party of the date and time of the hearing.
- c) At the hearing the respondent party may be represented by an Attorney, and the Commission shall be represented at that time.
- d) After hearing the case in full, the relevant Committee of the Board shall make a determination as to whether or not the Regulations has been breached.
- e) If the respondent party is dissatisfied with the initial determination made by the Committee, the respondent party may appeal to the full Board of Commissioners. The full Board hearing the matter will not include the three (3) Commissioners who made the initial determination.
- f) The request for an appeal must be made within 30 days from the date of receipt of notification.
- g) The appeal shall be made in accordance with a prescribed form.

**Rule 25
Proceedings of the Board**

1. The quorum for meetings of the Board shall be a simple majority of the total number of the appointed Commissioners.
2. The Vice Chairperson shall, in the absence of the Chairperson, carry out the functions of the Chairperson.
3. When any member of the Board has any direct or indirect interest in any matter under consideration by the Board, he/she shall, immediately and prior to any deliberations, disclose his/her interest and shall not take part in any discussion relating to that matter. Any disclosure of interest made under this Rule shall be recorded in the minutes of the Board.
4. The Board shall cause minutes to be kept of all its meetings and of every meeting of any Committee established by the Board.
5. The Board shall meet as often as necessary for discharge of business and such meetings shall be held at places, times and dates as the Board may determine.
6. The Chairperson may, at any time, call a meeting of the Board and shall call for a special meeting to be held within 15 days of receipt of a written request for that purpose addressed to him/her by at least one third of the commissioners.

7. If the Board so determines, a commissioner(s) may participate in, and form part of a quorum at, a meeting of the Board by means of any method of communication determined by the Board.
8. The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberation of a meeting of the Board, but such person shall not have a vote.
9. The Board may for the purposes of performing its functions establish committees and delegate to any such committee such of its functions as it considers necessary.
10. The Board may also retain consultants to give advice to, and perform services for it. The terms and conditions of engagement are to be determined by the Board.

**Rule 26
Secretariat**

1. The Board shall be assisted administratively by a secretariat that shall be responsible for liaising with the Commission and for handling all administrative work of the Board.
2. The Board may employ such persons as it deems necessary to carry out its functions.
3. The secretariat shall be entrusted with keeping minutes of every meeting of the Board.

**Rule 27
Budget of the Board**

The budget of the Board shall be funded through annual subventions from Member States in accordance with the formula of contributions of the Member States to the COMESA Secretariat.

**Rule 28
Publication of Decisions**

1. All decisions of the Board shall be published in its official publication.
2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

**Rule 29
Hearings**

1. Both the Commission and the Board in conducting their hearings and making recommendations and/or determinations shall give the undertaking(s), which are the subject of the proceedings the opportunity of being heard. Recommendations and/or

decisions shall be only based on matters on which the parties concerned have been able to comment.

2. The rights of defence of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the file, subject to the legitimate interests of undertakings in the protection of their business secrets. That legitimate interest may not constitute an obstacle to the disclosure and use of information necessary to prove an infringement.

3. The right to access to the file shall not extend to confidential information and internal documents of the Commission and/or the Board.

Rule 30
Confidentiality regarding Information collected from Parties

1. All information collected under the Regulations from parties concerned shall be used only for the purpose for which it was required.

2. Members of staff of the Commission, the Commissioners and the secretariat of the Board shall not disclose any information, documents or data presented to them in the course of investigations and/or hearings, nor shall they disclose any of the findings of investigations, unless the information has become public knowledge or disclosure is requested by a court order or by mutual consent of the parties.

3. Publication of decisions pursuant to Rule 28 shall not be deemed as disclosure of information prohibited under this Rule.

RULES PERTAINING TO PART 3 OF THE REGULATIONS

Rule 31
Basic Provision

Without prejudice to Rules 36, 37 and 53, agreements, decisions and concerted practices of the kind described in Article 16 (1) of the Regulations and the abuse of a dominant position in the market, within the meaning of Article 18 of the Regulations, shall be prohibited, no prior decision to that effect being required.

Rule 32
Negative Clearance

Upon application by the undertakings or associations of undertakings concerned, the Commission may certify that, on the basis of the facts in its possession, there are no grounds under Article 16 (1) or Article 18 of the Regulations for action on its part in respect of an agreement, decision or practice.

Rule 33
Termination of Infringements

1. Where the Commission, upon application or upon its own initiative, finds that there is infringement of Article 16 or Article 18 of the Regulations, it may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end.

2. Those entitled to make application are:
 - a) Member States;
 - b) natural or legal persons who claim a legitimate interest.
3. Without prejudice to the other provisions of this Rule, the Commission may, before taking a decision under paragraph 1 above, address to the undertakings or associations of undertakings concerned recommendations for termination of the infringement.

Rule 34
Notification of New Agreements, Decisions and Practices

1. Agreements, decisions and concerted practices of the kind described in Article 16 (1) of the Regulations which come into existence after the entry into force of the Regulations and in respect of which the parties seek application of Article 16 (4) must be notified to the Commission. Until they have been notified, no decision in application of Article 16 (4) may be taken.
2. Paragraph 1 above shall not apply to agreements, decisions and concerted practices where:
 - a) the only parties thereto are undertakings from one Member State and the agreements, decisions or practices do not relate either to imports or to exports between Member States;
 - b) not more than two undertakings are party thereto, and the agreements only;
 - c) restrict the freedom of one party to the contract in determining the prices or conditions of business upon which the goods which he has obtained from the other party to the contract may be resold; or
 - d) impose restrictions on the exercise of the rights of the assignee or user of industrial property rights – in particular patents, utility models, designs or trade marks – or of the person entitled under a contract to the assignment, or grant, of the right to use a method of manufacture or knowledge relating to the use and to the application of industrial processes;
 - e) they have as their sole object:
 - i) the development of uniform applications of standards or types; or
 - ii) joint research and development;
 - iii) specialization in the manufacture of products, including agreements necessary for achieving this,
 - where the products which are subject of specialization do not, in a substantial part of the common market, represent more than 15% of the volume of business done in identical products or those considered by consumers to be similar by reason of their characteristics, price and use, and

- where the total annual turnover of the participating undertakings does not exceed **xxx** units of account.
3. These agreements, decisions and practices may be notified to the Commission.

Rule 35
Notification of Existing Agreements, Decisions and Practices
pursuant to Article 16 (4) of the Regulations

1. Agreements, decisions and concerted practices of the kind described in Article 16 (1) of the Regulations which are in existence at the date of entry into force of the Regulations and in respect of which the parties seek application of Article 16 (4) shall be notified to the Commission within twelve (12) months of the entry into force of the Regulations. However, notwithstanding the foregoing provisions any agreements, decisions and concerted practices to which not more than two undertakings are party shall be notified within twelve (12) months of the entry into force of the Regulations.
2. Paragraph 1 above shall not apply to agreements, decisions or concerted practices falling within Rule34 (2) above; these may be notified to the Commission.

Rule 36
Decisions pursuant to Article 16 (4) of the Regulations

1. Whenever the Commission takes a decision pursuant to Article 16 (4) of the Regulations, it shall specify therein the date from which the decision shall take effect. Such date shall not be earlier than the date of notification.
2. Paragraph 1 above shall not apply to agreements, decisions or concerted practices falling within Rule34 (2) above and Rule35 (1), nor to those falling within Rule35 (2) which have been notified within the time limit specified in Rule35 (1).

Rule 37
Special Provisions for existing Agreements, Decisions and Practices

1. Where agreements, decisions and concerted practices in existence at the date of entry into force of the Regulations and notified within the time limits specified in Rule 35 (1) do not satisfy the requirements of Article 16 (4) of the Regulations and the undertakings or associations of undertakings concerned cease to give effect to them or modify them in such a manner that they no longer fall within the prohibition contained in Article 16 (1) of the Regulations or that they satisfy the requirements of Article 16 (4) of the Regulations, the prohibition contained in Article 16 (1) of the Regulations shall apply only for a period fixed by the Commission. A decision by the Commission pursuant to the foregoing sentence shall not apply as against undertakings and associations of undertakings which did not expressly consent to the notification.
2. Paragraph 1 above shall apply to agreements, decisions and concerted practices falling within Rule 34 (2) which are in existence at the date of entry into force of the Regulations if they are notified before.

Rule 38
Duration and Revocation of Decisions under
Article 16 (4) of the Regulations

1. A decision in application of Article 16 (4) of the Regulations shall be issued for a specified period and conditions and obligations may be attached hereto.
2. A decision may on application be renewed if the requirements of Article 16 (4) of the Regulations continue to be satisfied.
3. The Commission may revoke or amend its decision or prohibit specified acts by the parties:
 - a) where there has been a change in any of the facts which were basic to the making of the decision;
 - b) where the parties commit a breach of any obligation attached to the decision;
 - c) where the decision is based on incorrect information or was induced by deceit;
 - d) where the parties abuse the exemption from the provisions of Article 16 (1) of the Regulations granted to them by the decision.
4. In cases to which subparagraphs (b), (c) or (d) apply, the decision may be revoked with retroactive effect.

Rule 39 Powers

1. Subject to review of its decision by the Board, the Commission shall have sole power to declare Article 16 (1) inapplicable pursuant to Article 16 (4) of the Regulations.
2. The Commission shall have power to apply Article 16 (1) of the Regulations and Article 18 of the Regulations; this power may be exercised notwithstanding that the time limits specified in Rule 35 (1) and in Rule 37 (2) relating to notification have not expired.
3. As long as the Commission has not initiated any procedure under Rules 32, 33 or 36, the authorities of the Member States shall remain competent to apply Article 16 (1) and Article 18 of the Regulations in accordance with Article 7 of the Regulations; they shall remain competent in this respect notwithstanding that the time limits specified in Rule 35 relating to notification have not expired.

Rule 40 Liaison with the Authorities of the Member States

1. The Commission shall forthwith transmit to the competent authorities of the Member States a copy of the applications and notifications together with copies of the most important documents lodged with the Commission for the purpose of establishing the existence of infringements of Articles 16 or 18 of the Regulations or of obtaining negative clearance or a decision in application of Article 16 (4) of the Regulations.

2. The Commission shall carry out the procedure set out in subparagraph 1 in close and constant liaison with the competent authorities of the Member States; such authorities shall have the right to express their views upon that procedure.

Rule 41 Requests for Information

1. In carrying out the duties assigned to it by Article 7 of the Regulations, the Commission may obtain all necessary information from the Governments and competent authorities of the Member States and from undertakings and associations of undertakings.

2. When sending a request for information to an undertaking or an association of undertakings, the Commission shall, at the same time, send a copy of the request to the competent authority of the member state within the territory of which the residence or the seat of the undertaking or association of undertakings is situated.

3. In its request the Commission shall state the legal basis and the purpose of the request and also the penalties provided for in Rule 45 (1) for supplying incorrect information.

4. The owners of the undertakings or their representatives and, in the case of legal persons, companies or firms, or of associations having no legal personality, the persons authorized to represent them by Regulations or by their constitution, shall supply the information requested.

5. Where an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the Commission, or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Rule 45 (1) and Rule 46 (1) and the right to have the decision reviewed by the Board.

6. The Commission shall at the same time forward a copy of its decision to the competent authority of the Member State in whose territory the seat of the undertaking or association of undertakings is situated.

Rule 42 Inquiry into Sectors of the Economy

1. If in any sector of the economy the trend of trade between Member States, price movements, inflexibility of prices or other circumstances suggest that in the economic sector concerned competition is being restricted or distorted within the Common Market, the Commission may decide to conduct a general inquiry into that economic sector and in the course thereof may request undertakings in the sector concerned to supply the information necessary for giving effect to the principles formulated in Articles 16 and 18 of the Regulations and for carrying out the duties entrusted to the Commission.

2. The Commission may in particular request every undertaking or association of undertakings in the economic sector concerned to communicate to it all agreements, decisions and concerted practices which are exempt from notification by virtue of Rule 34 (2) and Rule 35 (2).

3. When making inquiries pursuant to subparagraph 2 above, the Commission shall also request undertakings or groups of undertakings whose size suggests that they occupy a dominant position within the common market or a substantial part thereof to supply to the Commission such particulars of the structure of the undertakings and of their behaviour as are requisite to an appraisal of their position in the light of Article 18 of the Regulations.
4. Rules 41, 43 and 44 shall apply correspondingly.

Rule 43
Investigations by the Authorities of the Member States

1. At the request of the Commission, the competent authorities of the Member States shall undertake the investigations which the Commission considers to be necessary under Rule 44 (1), or which it has ordered by decision pursuant to Rule 44 (3). The officials of the competent authorities of the Member States responsible for conducting these investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the Member State in whose territory the investigations is to be made. Such Authorization shall specify the subject matter and purpose of the investigation.
2. If so requested by the Commission or by the competent authority of the Member State in whose territory the investigation is to be made, the officials of the Commission may assist the officials of such authority in carrying out their duties.

Rule 44
Investigating Powers of the Commission

1. In carrying out the duties assigned to it by Article 7 of the Regulations and by provisions adopted under Article 8 of the Regulations, the Commission may undertake all necessary investigations into undertakings and associations of undertakings. To this end the officials authorized by the Commission are empowered:
 - a) to examine the books and other business records;
 - b) to take copies of or extracts from the books and business records;
 - c) to ask for oral explanations on the spot;
 - d) to enter any premises, land and means of transport of undertakings.
2. The officials of the Commission authorized for the purpose of these investigations shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Rule 45 (1) (c) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the Commission shall inform the competent authority of the Member State in whose territory the same is to be made of the investigation and of the identity of the authorized officials.
3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the Commission. The decision shall specify the subject matter

and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Rule 45 (1) (c) and Rule 46 (1) (d) and the right to have the decision reviewed by the Board.

4. The Commission shall take decisions referred to in Rule 3 above after consultation with the competent authority of the Member State in whose territory the investigation is to be made.

5. Officials of the competent authority of the Member State in whose territory the investigation is to be made may, at the request of such authority or of the Commission, assist the officials of the Commission in carrying out their duties.

6. Where an undertaking opposes an investigation ordered pursuant to this Article, the Member State concerned shall afford the necessary assistance to the officials authorized by the Commission to enable them to make their investigation. Member States shall, after consultation with the Commission, take the necessary measures to this end.

Rule 45 Fines

1. The Board may by decision impose on undertakings or associations of undertakings fines up to 10% of annual turnover where, intentionally or negligently:

- a) they supply incorrect or misleading information in an application pursuant to Rule 32 or in a notification pursuant to Rule 34 or 35; or
- b) they supply incorrect information in response to a request made pursuant to Rule 41 (3) or (5) or to Rule 42, or do not supply information within the time limit fixed by a decision taken under Rule 41 (5).

2. The Commission may by decision impose on undertakings or associations of undertakings fines up to 10% of annual turnover units of account, in the Common Market in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently:

- (a) they infringe Parts 3 and 5 of the Regulations; or
- (b) they commit a breach of any obligation imposed pursuant to Rule 38 (1).

3. In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

4. Rule 40 (1) and (2) shall apply.

5. Decisions taken pursuant to subparagraphs 1 and 2 shall not be of a criminal Regulations nature.

6. The fines provided for in subparagraph 2 (a) shall not be imposed in respect of acts taking place:

- a) after notification to the Commission and before its decision in application of Article 16 (5) of the Regulations, provided they fall within the limits of the activity described in the notification;
- b) before notification and in the course of agreements, decisions or concerted practices in existence at the date of entry into force of this Regulation, provided that notification was effected within the time limits specified in Rule 35 (1) and Rule 37 (2).

7. Subparagraph 5 shall not have effect where the Commission has informed the undertakings concerned that after preliminary examination it is of the opinion that Article 16 (1) of the Regulations applies and that application of Article 16 (4) is not justified.

Rule 46 Periodic Penalty Payments

1. The Commission may by decision impose on undertakings or associations of undertakings periodic penalty payments of **xxx** from **xxx** to **xxx** COMESA Dollars per day, calculated from the date appointed by the decision, in order to compel them:

- a) to put an end to any infringement under the Regulations, in accordance with a decision taken pursuant to Rule 33 of these Rules;
- b) to refrain from any act prohibited under Rule 38 (3);
- c) to supply complete and correct information which it has requested by decision taken pursuant to Rule 41 (5);
- d) to submit to an investigation which it has ordered by decision taken pursuant to Rule 44 (3).

2. Where the undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the Commission may fix the total amount of the periodic penalty payment at a lower figure than that which would arise under the original decision.

Rule 47 Review by the Board

The Board shall have unlimited jurisdiction within the meaning of Article 15 of the Regulations to review decisions by the Committee established under Article 13 (4) of the Regulations; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

Rule 48 Applicable Currency

For the purposes of applying Rule 45 to 47 the unit of account shall be the COMESA Dollar.

Rule 49 Hearing of the Parties and of Third Persons

1. Before taking decisions as provided for in Rules 32, 33, 36, 37, 38, 45 and 46, the Commission shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the Commission has taken objection.
2. If the Commission or the competent authorities of the Member States consider it necessary, they may also hear other natural or legal persons. Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted.
3. Where the Commission intends to give negative clearance pursuant to Rule 32 or take a decision in application of Article 16 (4) of the Regulations, it shall publish a summary of the relevant application or notification and invite all interested third parties to submit their observations within a time limit which it shall fix being not less than 30 days. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Rule 50
Professional Secrecy

1. Information acquired as a result of the application of Rules 41, 42, 43 and 44 shall be used only for the purpose of the relevant request or investigation.
2. Without prejudice to the provisions of Rules 49 and 51, the Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information acquired by them as a result of the application of this Regulation and of the kind covered by the obligation of professional secrecy.
3. The provisions of subparagraphs 1 and 2 above shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.

Rule 51
Publication of Decisions

1. The Commission shall publish the decisions which it takes pursuant to Rules 32, 33, 36, 37 and 38.
2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Rule 52
Special Provisions

1. The Commission shall submit to the Board proposals for making certain categories of agreement, decision and concerted practice falling within Rule 34 (2) or Rule 35 (2) compulsorily notifiable under Rule 34 or 35.
2. The Commission shall, periodically, submit recommendations to the Council for approval special provisions exempting agreements, decisions and concerted practices falling within Rule 34 (2) or Rule 35 (2).

Rule 53

**Transitional Provisions Applicable to Decisions
of Authorities of the Member States**

1. Agreements, decisions and concerted practices of the kind described in Article 16 (1) of the Regulations to which, before the entry into force of the Regulations, the competent authority of a Member State has declared Article 16 (1) of the Regulations to be inapplicable pursuant to Article 16 (4) of the Regulations shall not be subject to compulsory notification under Rule 35. The decision of the competent authority of the Member State shall be deemed to be a decision within the meaning of Rule 36; it shall cease to be valid upon expiration of the period fixed by such authority but in any event not more than three years after the entry into force of this Regulation. Rule 38 (3) shall apply.
2. Applications for renewal of decisions set out in paragraph 1 above shall be decided upon by the Commission in accordance with Rule 38 (2).

**Rule 54
Implementing Provisions**

The Commission shall have power to adopt implementing provisions concerning the form, content and other details of applications pursuant to Rules 32 and 33, and of notifications pursuant to Rules 34 and 35, and concerning hearings pursuant to Rule 49 (1) and (2).

PART 4

NOTIFICATION OF MERGERS AND ACQUISITIONS

**Rule 55
Filing a Merger Notification**

1. The Commission must assign distinctive case numbers to each Merger Notice and must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.
2. A person who files any document in terms of this Rule must provide to the Commission that person's:
 - a) legal name;
 - b) physical address for service;
 - c) electronic addresses (telephone number(s), e-mail address and facsimile transmission number(s)).
3. If the person is not an individual, the name and addresses of the individual authorised to deal with the Commission on behalf of the person filing the document must be provided to the Commission.
4. Notification of a notifiable merger shall be accompanied by a fee calculated at 0.01% of the combined annual turnover or combined value of assets in the Common Market, whichever is higher.
5. A fee payment will be deemed to be received by the Commission on:

- (i) the date that a cheque or money order in payment of that fee is delivered to the Commission; or
- (ii) the date that a direct deposit or an electronic transfer of funds in the amount of that fee is credited to the account of the Commission.

6. The Commission may however require parties to a non-notifiable merger to notify the merger to the Commission by filing a Merger Notice on a prescribed form in triplicate 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:

Provided that 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 merger to file the Merger Notice:

Provided also that no fee is payable for filing a Merger Notice for a non-notifiable merger.

Rule 56 Abandonment of Merger

1. The acquiring firm may notify the Commission in writing that it has abandoned the intended merger transaction and has no intention to implement it.
2. Upon the filing of the merger abandonment notice:
 - a) the parties to the merger will remain in the same position as if the merger had never been notified; and
 - b) the merger notification fee paid in respect of that merger shall be non-refundable.

AUTHORISATION

Rule 57 Application for Authorisation

1. The Commission may, upon application by or on behalf of an undertaking, grant an authorisation to the applying undertaking:
 - a) to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an anti-competitive provision or would have the purpose, or would have or might have the effect, of substantially lessening of competition within the Common Market.
 - b) to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an anti-competitive provision or has the purpose or has or may have the effect of substantially lessening competition within the Common Market and while the granted authorisation remain in force.

- c) in the case of an authorisation to make a contract or arrangement or to arrive at an understanding – Articles 16 and 18 shall not prevent the undertaking from making the contract or arrangement or arriving at the understanding in accordance with the terms of the authorisation granted by the Commission and giving effect to any provision of the contract or arrangement so made or of the understanding so arrived at;
 - d) in the case of an authorisation to give effect to a provision of a contract:
2. An authorisation granted by the Commission to a person under this Rule has effect as if it were also an authorisation in the same terms to every other person named or referred to in the application for authorisation as a party to the contract, arrangement or understanding or as a proposed party to the proposed contract, arrangement or understanding, or as a person who is or would be bound by, or entitled to the benefit of, the contract or proposed contract as the case may be.
3. the Commission may grant interim authorisation pending full consideration of the matter of an application.

Rule 58
Procedure for Applications and Keeping of a Register

1. An application for authorisation, a minor variation of the variation of an authorisation, a revocation of an authorisation or a revocation of an authorisation and the substitution of another authorisation, shall be made in writing to the Commission.
2. The Commission shall publish, or cause to be published, a notice of receipt of an application .
3. The Commission shall maintain a register of applications for authorisations received by it (including applications that have been withdrawn).
4. The register maintained under paragraph 3 shall include: -
- a) All documents attached to the application;
 - b) Particulars and/or summaries of any oral submission made to the Commission regarding the application.
5. An applicant may request the Commission to treat any document or part of it or particulars of oral submission or part of the submission as confidential and therefore to be excluded from the register and the Commission shall respect such a request unless authorised by a competent court to the contrary on public interest.
6. Applications for authorisation shall be submitted to the Commission in duplicate.

Rule 59
Persons entitled to Apply for Authorisation

1. The following persons may exercise the right of application for authorisation:

- a) any person involved in the production, supply, distribution and purchase of goods and services within Common Market;
- b) consumer and employee organisations operating within the Common Market;
- c) any Member State;
- d) any undertaking, consumer or employee body applying for authorisation must attach a certified copy of its registration to its application.

Rule 60
Scope of Application

The Commission shall be the competent institution of the Common Market to grant authorisations under the Regulations.

Rule 61
Handling of Applications

1. The applicant must lodge an application with the Head of the Commission on the prescribed form.
2. Each application is given a file number and a receipt is issued and sent to the applicant. The file is open to the public and therefore any claim for confidentiality must be made at the time of lodgement of the application.
3. The prescribed fee for application in the currency of the COMESA Budget must be paid at the time of the lodgement of the application.
4. Within seven (7) working days following receipt of application, the Director must publish short particulars of the application, including the applicant's name, address, date of application, file number, brief description of the matter in a manner which ensures the widest reach in Common Market.
5. The file is assigned to a case officer for investigation and the case officer should submit his/her report to the Director within thirty (30) days following the receipt of the application.
6. The Director considers the report of the case officer within seven (7) days, reviews all written submissions made, and prepares a draft decision.
7. The draft decision is sent to the applicant and all other persons who have expressed an interest in the application with an invitation to indicate to the Director whether a public hearing is required before the matter is finalised.
8. If the applicant or any interested party/stakeholder so requests, a public hearing may be held at the Commission's offices or at any place within the Common Market as the Director may decide and the applicant and those interested are entitled

to attend and put further submissions to the Director either in support of or opposition to the draft decision.

9. If no public hearing is requested, the Director will ratify its draft decision and send formal confirmation to the applicant fifteen (15) days following the forwarding of the draft decision to the applicant and other interested parties,

10. If a public hearing is held, the Director makes a final decision seven (7) days following the forum and a copy is sent to the applicant and to all interested parties who participated in the public hearing.

11. Particulars of the decision are published by the Director in a manner that ensures widest circulation in the Common Market.

12. Copies of all submissions and notes on oral presentations (non-confidential) and decisions are all placed on the file and become part of the public register.

Rule 62

Determination of an Application for Authorisation

1. The Director shall make a determination in writing granting such authorisation as it considers appropriate; or

2. The Director may also make a determination in writing dismissing the application.

3. In the determination of any application, the Director shall take into account any submission in relation to the application made to it by the applicant, any member state, by any professional body or any other person.

4. The Director shall state in writing his/her reason for a determination made by it.

5. If the Director considers an application complex due to the issues involved, he/she shall notify the applicant in writing of his intention to seek an extension from the Board.

Rule 63

Fees

1. A fee of COM\$1,000 is payable on application for authorisation.

2. The fees must be paid in full before the Commission can accept the lodgement of an application.

3. The fees cannot be waived, reduced or refunded.

Rule 64

Appeal for Denial of an Application for Authorisation

An applicant may appeal against the Commission's denial of an application for authorisation within 30 days of receipt of that notification on the form prescribed.

Rule 65
Evidence in respect of Receipt of Documents

1. In any proceedings under the Regulations, a certificate under the seal of the Commission certifying that any specified fact in relation to the lodgment or receipt or non-lodgment or non-receipt of a document, or of a document of a kind, described in the certificate appears from the records kept by the Commission is *prima facie* evidence of that fact.
2. In any proceedings under the Regulations, a certificate under the seal of the Commission certifying that it appears from the records kept by the Commission that a document, or a document of a kind, described in the certificate has not been received at any of the offices of the Commission is *prima facie* evidence of that fact.

Rule 66
Business Hours of Registrar's Office

The office of the Registrar shall be open for business on every day, other than a day that is observed as a public holiday by the host country. The working hours shall be from 09:00 -12:00 and 15:00 - 16:00 hours.

Rule 67
Filing or Lodging of Documents with the Registrar

1. The making of an application to the Board under the Regulations and the filing of any other document with the Registrar shall be effected by lodging it at the office of the Registrar at a time when that office is open for business.
2. The Registrar shall cause the date on which a document was lodged at his office to be recorded on the document.
3. Paragraph 2 applies in relation to a document that is lodged with the Registrar or at his office whether or not it is, or is required to be, filed.

Rule 68
File Number of Proceedings

1. The Registrar shall cause a file number to be allotted to each proceeding before the Board.
2. The one file number may be allotted to all proceedings that, in the opinion of the Registrar, are related to each other.

Rule 69
Address for Service in Proceedings before Board

1. Subject to any direction of the Board, a person is not entitled to take any step in, or be heard at the hearing of, proceedings before the Board unless he has filed with the Registrar a notice stating an address in a Member States at which

documents may be served on him/her for the purposes of those proceedings and has served a copy of that notice on any person appearing in the proceedings.

2. A person who has filed a notice of an address for service under this regulation may, at any time, file a notice stating a new address for service.

3. Where a person files a notice stating a new address for service under paragraph 2, he/she shall forthwith serve a copy of the notice on any person appearing in the proceedings.

4. A reference in these Rules to an address for service shall, in relation to a person who has stated two or more addresses for service, be read as a reference to the later or latest of those addresses.

Rule 70 Directions by the Board as to Certain Matters

1. Without limiting the generality of the powers of the Board under the Regulations or these Rules, the Board may, in any proceedings before the Board, give directions:

- a) for securing, by means of preliminary statements of facts and contentions, and by the production of documents, that all material facts and considerations are brought before the Board by all persons participating in any proceedings before the Board; and
- b) with respect to evidence in proceedings before the Board, including the appointment of persons to assist the Board by giving evidence (whether personally or by means of a written report); and
- c) with respect to the representation in any such proceedings of persons having a common interest in the proceedings.

2. The powers of the Board to give directions under paragraph_1 may be exercised by the Chairperson.

Rule 71 Evidence of Persons not attending the Board

1. The Board may permit a person, other than a person appearing as a witness before the Board, to give evidence in proceedings before the Board by tendering a written statement.

2. The Board must not give permission under paragraph 1 in respect of a statement, unless:

- a) the parties to the proceedings consent to the permission being given; and
- b) the statement is accompanied by a statutory declaration by the person, verifying the information contained in the statement.

3. A statement tendered with the permission of the Board must be filed with the Registrar.

Rule 72
Orders and Determinations of the Board

1. Each order and determination of the Board and the date on which it was made shall be recorded by the Registrar in a document signed by him/her.
2. The original of each document referred to in paragraph 1 shall be filed by the Registrar in the records of the Commission.

Rule 73
Confidentiality

1. A request to the Commission that a document, or a part of a document, be excluded from the register kept pursuant to these Rules shall be made:
 - a) where the request is that a document be excluded—by writing in red near the top of each page of the document the words “Restriction of Publication Claimed”; and
 - b) where the request is that part of a document be excluded—by writing in red near the top of the first page of the document the words “Restriction of Publication of Part Claimed” (and, where the document consists of more than 5 pages, a description of where in the document that part of the document is to be found) and by clearly marking in red that part of the document.
2. Where a person proposes to apply, at the hearing of proceedings before the Board, for a direction by the Board prohibiting or restricting, by reason of the confidential nature of any evidence or matter or for any other reason, the publication of matters contained in a document filed or lodged with the Registrar, received in evidence by the Board or placed in the records of the Board, the person may mark in red:
3. A person may claim that a document furnished to the Board contains matter of a confidential nature by writing in red near the top of each page of the document the words “Restriction of Publication Claimed”.

Rule 74
Summons to Witness

1. A summons under Article 8 of the Regulations shall be in accordance with the prescribed form.
2. A summons under Article 8 of the Regulations shall be served on a person by:
 - a) delivering a copy of the summons to the person personally; and
 - b) showing the original of the summons to the person at the time at which the copy is delivered to him/her .

Rule 75
Continuance of Proceedings and Matters
notwithstanding Non-compliance with Rules or Direction

1. Subject to the Regulations and to these Rules, the failure by a person in or in relation to a proceeding or matter before the Commission to comply with a provision of these Rules does not, unless the Commission otherwise directs, prevent the proceeding or matter being dealt with as if the person had complied with the provision.
2. Subject to the Regulations and to these Rules, the failure by a person in relation to a proceeding or matter before the Board to comply with a provision of these Rules or with a direction of the Board under these Rules does not, unless the Board otherwise directs, prevent the proceeding or matter being dealt with as if the person has complied with the provision or direction.

Rule 76
Inspection of and Furnishing of Copies of Documents

1. Subject to this Regulation, an application by a person to inspect a non confidential document shall be made personally:
 - a) at the office of the Commission where the relevant register is kept; and or
 - b) in the case of a document referred to in these Rules at the office of the Registrar.
2. An application by a person to obtain a copy of a non confidential document shall be made:
 - a) personally at any office of the Commission or by post addressed to the Commission at any of its offices; or
 - b) personally at the office of the Registrar or by post addressed to the Registrar.
3. An application in relation to a document on which the words "Restriction of Publication Claimed" have been written in accordance with Rule 73 shall be made to the Board.

Rule 77
Fees

1. For the purposes of obtaining a copy as described in Rule 76, the prescribed fee for obtaining a copy of a document is COM\$1 for each page of the copy.
2. For the purposes of obtaining a certified copy, the prescribed fee shall be COM\$5.
3. The following fees for making a copy of a Register are specified:

- a) if the copy is certified - COM\$5 plus COM\$0.50 for each page of the copy; or
 - b) in any other case - COM\$1 for each page of the copy.
4. The fee for an application for an exemption order is COM\$1,000.
5. A person appearing in a proceeding or matter before the Commission or the Board is entitled, without payment of a fee, to receive one certified copy of a document relating to the proceeding or matter.

Rule 78
Services and Activities for which the Commission may Charge

1. For the purposes of the Regulations, the following activities are prescribed:
 - (a) conducting workshops and seminars;
 - (b) conducting training.
2. For the purposes of the Regulations, the following acts done by the Commission are prescribed:
 - a) providing a speaker or information for a workshop, seminar, training session or other activity not arranged by or on behalf of the Commission; or
 - b) use of training materials, including videotapes, not produced by or on behalf of the Commission;
 - c) providing information relating to the COMESA Competition Regulations for use in material published by a person other than the Commission;
 - d) developing industry codes of conduct to encourage compliance with the Regulations.

Rule 79
Monetary Penalties

1. The maximum monetary penalty for contraventions of this Rule by a corporation are:
 - a) for each contravention of Article 19, 750,000 units ;
 - b) for each contravention of Article 18, 500,000 units;
 - c) for each contravention of Article 16, 300,000 units;
 - d) for each contravention of Part 5 of the Regulations, 300,000 units.
 - e) A penalty unit is equivalent to COM\$1.

2. Monetary penalties may be paid in a COMESA Member State currency or in any convertible currency specified by the Commission or the Board in respect of a particular matter.

Rule 80
Calculation and Payment of Fees, Damages and
other Payments ordered by the Commission or the Board

Fees payable under the Regulations or these Rules and damages and other payments ordered by the Commission or the Board may be paid in COMESA Dollars, or a Member State currency specified by the Commission or the Board in respect of a particular matter.

Rule 81
Duration of Supervisory and Community Service Orders

The maximum duration of a supervisory or community service order shall be 5 years from the date that such an order is made.

The modification of a supervisory or community service order on appeal shall for the purposes of calculating the maximum duration of such an order be taken as the making of a new order.

Rule 82
Commencement of Proceedings before the Commission

Proceedings before the Commission may be commenced within 5 years of a contravention of the Regulations.