INTERPRETIVE MEANING OF THE NOTIFICATION FEE PURSUANT TO RULE 55(4) OF THE AMENDED COMESA COMPETITION RULES

Rule 55(4) of the amended COMESA Competition Rules reads as follows:

“Notification of a notifiable merger shall be accompanied by a fee calculated at 0.5% or COM$ 500,000, or whichever is lower of the combined annual turnover or combined value of assets in the Common Market, whichever is higher”.

The interpretation of the above provision is that the COM$500,000 is the maximum fee payable for merger notification.

1. When a merger is received, the COMESA Competition Commission (‘the Commission’) will first calculate 0.5% of the combined turnover of the merging parties.

2. The Commission will then calculate 0.5% of the combined value of assets of the merging parties.

3. The Commission will then compare results in 1 and 2 above and get the higher value.

4. The Commission will then compare this higher value to the COM$500,000. If the higher value is lower than the COM$500,000, the Commission will consider the higher of either the combined assets or turnover as a notification fee. If either the combined assets or turnover is higher than COM$500,000, then the latter shall be the notification fee.

The example below illustrates this:

- Company A proposes to acquire 100% of the assets of Company B. Both operate and have sales in at least two COMESA member states. Company A has turnover (within COMESA) of $15 million; Company B has turnover of $10 million. One-half of one percent of their combined turnover is equal to $125,000 (i.e., $25 million X 0.5%).
• Company A has assets (within COMESA) of $7 million; Company B has assets of $3 million. One-half of one percent of their combined assets is equal to $50,000 (i.e., $10 million X 0.5%). $125,000 (turnover) is the higher of the two figures in steps 1 and 2.

• Since the higher value of the assets vs. turnover (i.e., $125,000) is lower than $500,000, the filing fee is $125,000.