RULES ON THE DETERMINATION OF MERGER NOTIFICATION THRESHOLDS AND METHOD OF CALCULATION

It is hereby notified that the Board of Commissioners, having regard to Articles 15 and 39 of the COMESA Competition Regulations of 2004 and with the approval of the Council, makes the following Rules:

Rule 1
Citation

These Rules may be cited as the Rules on the Determination of Merger Notification Thresholds.

Rule 2
Interpretation

1. In these rules, unless the context provides otherwise:

“Board” means the Board of Commissioners as established by Article 12 of the Regulations;

“COM$” means COMESA Dollar;

“Council” means the Council of Ministers of the Common Market established by Article 7 of the Treaty;

“GAAP” means Generally Accepted Accounting Practice~~;~~

“**Generally Accepted Accounting Practice**” means the standard framework of guidelines for financial accounting in any given jurisdiction generally known as accounting standards or standard accounting practice;

“Merger “means merger as defined in Article 23 of the Regulations**; and**

“**Regulations**” means the Competition Regulations of 2004.

Rule 3
Purpose and Scope of Application

The purpose of these Rules is to prescribe the threshold and a method of the calculation of the combined annual turnover or the value of assets of parties to a merger in the Common Market in relation to the notification of mergers with a regional dimension.

Rule 4
Notification Thresholds

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:

(a) the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds COM$ 50 million; and

(b) the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds COM$ 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.

Rule 5
Method of Calculation of Annual Turnover and Assets

1. Valuation of Assets

For the purpose of Part 4 of the Regulations:

(a) the asset value of a firm at any time will be based on the gross value of the firm's assets as recorded on the firm's balance sheet for the end of the immediately previous financial year, in particular :

i. the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;
ii. the assets are to include all assets on the balance sheets of the firm, including any goodwill or intangible assets included in their balance sheets;
iii. no deduction may be taken for liabilities or encumbrances of the firm; and
iv. assets in the Common Market includes all assets arising from activities in the Common Market;

(b) if, between the date of the financial statements being used to calculate the asset value of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements, the following items must be added to the calculation of the firm's asset value if these items should in terms of GAAP be included in the firm's asset value:

i. the value of those recently acquired assets; and
ii. any asset received in exchange for those recently divested assets;

(c) if, between the date of the financial statements being used to calculate the asset value of a firm, and the date on which that calculation is being made, the firm has divested itself of any subsidiary company, associated company or joint venture shown on those financial statements, the firm shall, in accordance with GAAP, exclude in the calculation of its asset value:

i. the value of those recently divested assets at the date of their divestiture; and
ii. any asset that was shown on the balance sheet and was subsequently used to acquire the recently acquired asset**.**

2. Determination of Annual Turnover

For the purpose of Part 4 of the Regulations:

(a) Annual turnover shall comprise the amounts derived by the parties to a merger in the preceding financial year from the sale of products and the provision of services falling within the firms' ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover:

Provided that:

i. the annual turnover of a party to a merger shall not include the sale of products or the provision of services between any of the firms referred to in paragraph 3(a); and
ii. turnover, in the Common Market or in a Member State, shall comprise products sold and services provided to firms or consumers, in the Common Market or in that Member State as the case may be; and

(b) by way of derogation from paragraph (a), where a merger consists of the acquisition of parts, whether or not constituted as legal entities, of one or more firms, only the turnover relating to the parts which are the subject of the merger shall be taken into account with regard to the seller or seller:

Provided that, two or more transactions within the meaning of this paragraph which take place within a two-year period between the same persons or firms shall be treated as one and the same merger arising on the date of the last transaction;

(c) with regard to credit institutions and other financial institutions, turnover shall be the sum of the following income items after deduction of value added tax and other taxes directly related to those items**:**

i. interest income and similar income;
ii. income from securities:
iii. income from shares and other variable yield securities,
iv. income from participating interests,
v. income from shares in affiliated firms;
vi. commissions receivable;
vii. net profit on financial operations; and
viii. other operating income:

Provided that the turnover of a credit or financial institution in the Common Market or in a Member State shall comprise the income items, as defined in paragraph (c), which are received by the branch or division of that institution established in the Common Market or in the Member State in question, as the case may be;

(d) with regard to insurance firms, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance firms, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged, gross premiums received from Common Market residents and from residents of one Member State respectively shall be taken into account.

3. Method of Calculation of Annual Turnover and Value of Assets

For purposes of Part 4 of the Regulations, annual turnover and value of assets of an undertaking shall be calculated as follows:

(a) annual turnover and value of assets of a party to a merger shall be calculated by adding together, respectively, the turnover or value of assets of the following:

i. the party to a merger concerned;
ii. its subsidiaries;
iii. its parent companies; and

iv. other subsidiaries of its parent company not included in (ii);

(b) where a firm concerned has a State Owned Enterprise as its ultimate parent company, the turnover and assets of the Member State shall not be included for the purposes of paragraph (a) ii. To the extent, but only to such extent, that the merging party or any of its parent companies are subject to coordination, and controlled under the same independent center of decision-making, with other subsidiaries of the Member State, the annual turnover or assets of such subsidiaries shall be included for the purposes of paragraph (a)iii;

(c) the turnover and assets of a firm shall be calculated in accordance with the Generally Accepted Accounting Practice ("GAAP."), including:

i. standards that apply to the recognition of revenue, depreciation and amortization of assets; and
ii. material events or transactions that occurred subsequent to the relevant period or date;

(d) where an firms financial statements are prepared and audited under a standard applicable to it that is not GAAP, the annual turnover and the value of assets shall also be presented pursuant to its audited financial statements and the necessary adjustments to GAAP shall be shown subject only to the provisions of this Rule; and

(e) where an undertaking prepares its financial statements in a currency that is not COM$ or United States dollars, its turnover for a financial year and assets at the end of a financial year shall be converted to COM$ or United States dollars according to the average, over the twelve months of that financial year, of the foreign exchange rate reported by the Central Bank where such currency is issued.

Rule 6

Repeal of the Rules on the Determination of Merger Notification Threshold, 2012

The Rules on the Determination of Merger Notification Threshold, 2012 are hereby repealed.

Rule 7
Entry into Force

These Rules shall enter into force upon approval by the Council

Approved by Council at Addis Ababa, Federal Democratic Republic of Ethiopia on the 26th of March.2015.