



**OFFICIAL GAZETTE**

of the

**COMMON MARKET FOR EASTERN  
AND SOUTHERN AFRICA (COMESA)**

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**RULES ON COMESA REVENUE SHARING OF  
MERGER FILING FEES**

It is hereby notified that the Board, having regard to Article 39 of the Regulations and with the approval of the Council, makes the following Rules:

### **Rule 1 Citation**

These Rules may be cited as the “Rules on COMESA Revenue Sharing of Merger Filing Fees.”

### **Rule 2 Interpretation**

In these Rules, unless the context otherwise requires:

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

“**Commission**” means the COMESA Competition Commission established by Article 6 of the Regulations;

“**Commissioner**” means a member of the Board of Commissioners;

“**Common Market**” means the Common Market for Eastern and Southern Africa (COMESA) established by Article 1 of the Treaty;

“**Common Market Merger filing fees**” means the filing fees for a merger which involves both the acquiring firm and target firm or either the acquiring firm or target firm operating in two or more Member States; and meets the

threshold of combined annual turnover or assets as prescribed;

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

“**Court**” means the Court of Justice of the Common Market established by Article 7 of the Treaty;

“**Designated Member State**” means a Member State stated in the Merger Application Form as a Member State(s) to be covered by the transaction or the merger;

“**Director**” means the Director appointed under Article 9 of the Regulations;

“**Member State**” means a Member State of the Common Market;

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

“**Non-notifiable merger**” means a merger or proposed merger with a value below the threshold prescribed under Article 23 (4) of the Regulations;

“**Regulations**” means the COMESA Competition Regulations of 2004;

“**Relevant Competition Authority**” means a government institution in a Member State responsible for administering and enforcing the national competition law or policy;

**“Secretary-General”** means the Secretary-General of the Common Market provided for by Article 17 of the Treaty;

**“Treaty”** means the Treaty establishing the Common Market for Eastern and Southern Africa.

### **Rule 3 Purpose of the Rules**

1. The purpose of these Rules is to devise an equitable method of sharing revenue generated by merger filings with a Common Market dimension.

### **Rule 4 Scope of Application**

1. These Rules shall apply to all mergers:
  - (a) whether conducted by private or public persons, or having an effect within, the Common Market; and
  - (b) which fall within the threshold prescribed by the Board under Article 23(4) of the Regulations.

### **Rule 5 Exclusions**

1. These Rules shall not apply to mergers:

- (a) that do not fall within the thresholds prescribed under Article 23(4) of the Regulations;
- (b) where the Commission may require parties to a non-notifiable merger to notify the Commission of that merger where 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 accordance with Article 23 (6) of the Regulations;
- (c) where the Commission has approved a request by a Member State to refer the merger for consideration under the national competition law of the Member State where the Member State is satisfied that the merger, if carried out, is likely to disproportionately reduce competition to a material extent in the Member State or any part of the Member State; or
- (d) which fall within the exclusive jurisdiction of national competition authorities.

### **Rule 6 Management of the Common Market Merger filing fees**

1. The Commission shall manage the Common Market Merger filing fees.

2. The Commission shall specify the accounts:
  - (a) into which all Common Market Merger filing fees shall be paid; and
  - (b) from which all Common Market Merger filing fees payments shall be made.
3. The Director shall:
  - (a) report all transactions into and out of the Common Market Merger filing fees account to the Board; and
  - (b) ensure that the books of accounts relating to all transactions involving the Common Market Merger filing fees are audited by external auditors appointed by the Board.
4. The Commission shall cause to be kept separate books of accounts relating to all transactions involving the Common Market Merger filing fees.

**Rule 7  
Revenue Sharing Mechanism**

1. The share of the total Common Market Merger filing fees, collected in the Common Market during any financial year, accruing to each designated Member State shall be calculated in accordance with Rule 8.

2. The Commission shall deduct an amount determined in accordance with Rule 8 from the gross Common Market Merger filing fees collected for the benefit of the Commission, before distribution of the share of to the designated Member States referred to in sub-rule 1.

**Rule 8  
Revenue Sharing Formula**

1. The Commission shall retain fifty percent of the Common Market merger filing fees and distribute the remaining fifty percent among the relevant Competition Authorities in the designated Member States in accordance with sub-rule (2).
2. The share of the Common Market Merger filing fees for each relevant Competition Authority in the designated Member State shall be proportional to the value of the turnover in each Member State relative to the total value of the turnover in the Common Market.

**Rule 9  
Dispute Resolution**

1. Any dispute arising out of the implementation of these Rules shall first be referred to the Board for resolution.

2. Where the Board fails to resolve the dispute within sixty days, then any Member State to the dispute may refer the matter to the Court.

**Rule 10**  
**Timing of Payments**

The Commission shall transmit the respective share of the Common Market Merger filing fees of the designated Member State on the first day of each quarter of a financial year.

**Rule 11**  
**Amendment of Rules**

The Board may amend these Rules and the amendments shall enter into force upon approval by the Council.

**Rule 12**  
**Entry into Force**

These Rules shall enter into force upon approval by the Council.