



**COMESA Competition Commission**

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Common Market for Eastern  
and Southern Africa

## **PRACTICE NOTE NO. 01 OF 2022**

### **GUIDANCE ON TREATMENT OF CONFIDENTIALITY CLAIMS SUBMITTED TO THE COMESA COMPETITION COMMISSION**

#### **INTRODUCTION**

1. The COMESA Competition Regulations of 2004 (the “**Regulations**”) empowers the COMESA Competition Commission (the “**Commission**”) to request for submission of information in furtherance of assessments or investigations carried under Parts 3, 4, and 5 of the Regulations relating to restrictive business practices, mergers and acquisitions and consumer protection.
2. The concerned parties are required to claim confidentiality in a prescribed manner regarding the information submitted to the Commission as per the guidance provided under the Confidentiality Claim Form-(Form 2). Upon assessment of the confidentiality claim and engagement with the parties and reaching an agreement on confidential information, the Commission grants confidentiality.
3. Upon the conclusion of an assessment or an investigation, pursuant to Rule 28 of the COMESA Competition Rules, the Commission publishes a summarized version of its decision on its website. These decisions often include information provided by concerned parties and also information gathered during the assessment or investigation. Prior to the publication of such decisions, the Commission has in the past engaged the owners of the information to confirm that the decisions do not contain business secrets or other confidential information. The Commission has however noted that the current practice has resulted in delays in the publication of decisions.
4. The Commission therefore wishes to remind all undertakings, associations of undertakings and persons that they must clearly identify all the confidential information in any submissions and/or documents made to the Commission and relevant justifications, through the submission of a duly completed Form 2, which

will then be assessed by the Commission and then form the basis for granting or not granting confidentiality as may be requested by the concerned parties.

5. Parties are advised that henceforth, the Commission, in consideration of information to be disclosed in decisions that it intends to publish, will be guided by the submitted and completed Form 2. The Commission shall not assume liability over disclosure of information over which parties have not claimed confidentiality in the prescribed manner.
6. The Commission also wishes to clarify that the foregoing does not affect the Commission's practice where there is a disagreement between the parties and the Commission on what qualifies as confidential information claimed in the Form 2. In such instances, the parties shall be provided an opportunity to make further submissions, and if the parties remain aggrieved, the matter will be referred to the Committee Responsible for Initial Determinations for its consideration and decision.