

# **COMESA COMPETITION AND CONSUMER PROTECTION RULES 2025**

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**APPROVED BY COMESA COUNCIL OF MINISTERS ON 4 DECEMBER 2025**

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## **PREAMBLE**

### **HAVING REGARD TO:**

Article 9(2)(d) of the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA) which empowers Council to make Regulations in accordance with the provisions of the Treaty;

Article 10(2) of the Treaty which empowers the Council to make Regulations that are binding on all Member States in their entirety;

Article 55(1) of the Treaty which prohibits any practice that negates the objective of free and liberalised trade;

Article 55(3) of the Treaty which empowers the Council to make Regulations to regulate competition within the Common Market;

### **RECOGNISING:**

that the COMESA Competition and Consumer Protection Regulations ("the Regulations") establishes the COMESA Competition and Consumer Commission ("the Commission");

that Regulation 83 empowers the Board to make Rules which may provide for the following:

- (a) matters which are required or permitted to be prescribed under these Regulations;
- (b) terms and conditions of service of any staff members;
- (c) any fees payable in respect of any service provided by the Commission; or
- (d) such other matters as are necessary or expedient for the better carrying out of the purposes of the Regulations.

that Regulation 83(1) provides that the rules made by the Board shall become effective upon approval by the Council.

**CONSIDERING**

That it has become necessary to revoke the COMESA Competition Rules of 2004 in line with new developments, and to ensure clarity and maintain consistency.

**NOW, THEREFORE**, the Council hereby approves these Rules, in the official languages of the Common Market, all the languages being equally authentic.

## **CHAPTER ONE** **GENERAL PROVISIONS**

### **Rule 1** **Citation**

These Rules may be cited as the “COMESA Competition and Consumer Protection Rules”.

### **Rule 2** **Interpretation**

In these Rules, unless the context otherwise requires:

- (a) **“Regulations”** means the COMESA Competition and Consumer Protection Regulations;
- (b) **“working day”** means any day other than a day that is observed as a public holiday by the host country or any other day on which the Commission is officially open; and
- (c) a word or expression that is defined in the Regulations bears the same meaning in these Rules.

### **Rule 3** **Computation of Time**

- (1) Where a particular number of days is provided for performing an act or event or taking a proceeding, the number of days shall be computed by:
  - (a) excluding the first day; and
  - (b) including the last day on which the time is due to expire.
- (2) Where the time provided by or allowed under these Rules for doing an act or taking a proceeding expires 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 following working day of the office of the Registrar.
- (3) The office of the Registrar shall be open for business on any working day of the Commission.

**Rule 4**  
**Seal of the Commission**

- (1) The seal of the Commission shall be approved by the Board.
- (2) The seal of the Commission shall be affixed by the person authorised by the Chief Executive Officer to such documents as may be required.

## **CHAPTER TWO**

### **DELIVERY OF DOCUMENTS**

#### **Rule 5**

##### **Service of Documents on the Commission**

- (1) A document to which these Rules apply may be lodged with, or served on the Commission by delivering it, or causing it to be delivered, physically, by post or electronically.
- (2) A reference in these Rules to a document to which the Regulations apply shall be read as a reference to:
  - (a) an application to be made to the Commission under the Regulations or these Rules;
  - (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.
- (3) A person who has, in a document lodged with the Commission, stated an address for service may, at any time, lodge a notice in writing stating a new address for service.

#### **Rule 6**

##### **Service of Documents on Persons other than the Commission**

- (1) A document to which these Rules apply may be served by delivering it or causing it to be delivered, physically, by post or electronically, to:
  - (a) the registered address of the undertaking;
  - (b) the principal place of business of the undertaking;
  - (c) the last known address of the undertaking; or
  - (d) the legal representative of the undertaking.
- (2) A person who has, in a document served on persons other than the Commission, stated an address for service may, at any time, serve a notice in writing stating a new address for service.

(3) 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 latest of those addresses.

**Rule 7**  
**Filing Documents before the Commission**

(1) The Commission shall cause the date on which an application or document is received to be recorded on the application or document.

(2) The Registrar shall cause a file number to be assigned to each application or document to the Commission.

(3) Where in the opinion of the Registrar, the application and document are related to each other, one file number may be assigned to both application and document, following consultation with the relevant division.

**Rule 8**  
**Evidence in respect of Receipt of Documents**

(1) In any proceedings before the Commission, a certificate under the seal of the Commission certifying that any specified fact in relation to the lodging or receipt or non-lodging, 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) Paragraph (1) shall apply to electronic submissions.

**Rule 9**  
**Confidentiality Claim**

A person may make a request to the Commission that material or a document, or a part of material or a document, be kept confidential pursuant to Regulation 79.

**Rule 10**  
**Confidentiality regarding Information collected from Parties**

- (1) Commissioners and staff of the Commission shall not disclose any information, documents or data presented to them in the course of application of the Regulations.
- (2) Notwithstanding the generality of paragraph (1), the Commission may disclose such information, documents or data where:
  - (a) it has become public knowledge;
  - (b) is requested by a court order; or
  - (c) by a decision of the Commission; or
  - (d) by consent of the owner of the information.
- (3) 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 the Regulations and is of the kind covered by the obligation of professional secrecy unless the information has become public knowledge or disclosure is requested by a court order or by a decision of the Commission.
- (4) The provisions in the preceding paragraphs shall not prevent the publication of general information, market inquiries or research findings which do not contain confidential information relating to particular undertaking(s).
- (5) Publication of decisions of the Commission shall not be deemed as disclosure of information prohibited under the Regulations and Rules.

## **CHAPTER THREE**

## **INVESTIGATIONS**

### **Rule 11**

#### **Procedure for Entry, Search and Seizure**

- (1) In order to carry out the duties assigned to it by the Regulations, the Commission may conduct all necessary inspections and investigations into undertakings.
- (2) The officials authorised by the Commission for the purpose of this Rule shall exercise their powers upon production of an authorisation in writing specifying the purpose of the investigation, subject matter and the penalties provided for in the Regulations in cases where production of the required books or other business records is incomplete.
- (3) For the purpose of paragraph (2), the Commission shall inform the competent authority of the Member State in whose territory the same is to be made of the investigation and the identity of the authorised officials.
- (4) Undertakings shall submit to inspections and investigations ordered by the Commission.
- (5) Where an undertaking opposes an investigation ordered by the Commission, the Member State concerned shall afford the necessary assistance to the officials authorised by the Commission to enable them to conduct their investigation.

### **Rule 12**

#### **Ordering a Person to Appear before the Commission**

- (1) In conducting an investigation pursuant to the Regulations, the Commission may, by an order require any person to appear before it to give evidence.
- (2) The order shall be signed by the Chief Executive Officer or any other person authorised by the Chief Executive Officer and affixed with the seal of the Commission which shall be served on the person.
- (3) The Commission shall choose the appropriate mode of communication of such order.
- (4) The Commission shall set a time limit within which the person shall appear before it.

## **Rule 13**

### **Discovery or Production of Documents**

Where the Commission requires the discovery or production of documents pursuant to the Regulations, the following shall apply:

- (a) the order to present documents shall be signed by the Chief Executive Officer or any other person authorised by the Chief Executive Officer and shall be sent to the person required to present documents to the Commission;
- (b) the Commission shall choose the appropriate mode of communication of such order and shall bear the burden of proving that such person was notified; and
- (c) the Commission shall set a time limit within which the person shall submit the documents.

## **Rule 14**

### **Investigations by the Authorities of the Member States**

- (1) The Commission, in its cooperation with Member States, may seek assistance from relevant authorities in such Member States, including competition and consumer protection authorities where they exist. Such assistance may take different forms, including the conduct of investigation by the competent authority under the guidance of the Commission, or by a Commission staff in the relevant Member State.
- (2) Where the Commission is undertaking investigations in a Member State, the competent authorities of the Member States shall assist the Commission to undertake the investigations.
- (3) 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 these Rules, or which it has ordered by decision pursuant to the Regulations, as guided by their relevant national laws.
- (4) The officials of the competent authorities of the Member States responsible for conducting these investigations shall exercise their powers upon production of an authorisation in writing issued by the competent authority of the Member State in whose territory the investigations are to be made. Such authorisation shall specify the subject matter and purpose of the investigation.
- (5) If so requested by the competent authority of the Member State, the Commission may assist the officials of such authority in carrying out their duties.

**Rule 15**  
**Liaison with the Competent Authorities of the Member States**

- (1) The Commission shall share with the competent authorities a copy of the applications and notifications together with copies of the relevant documents lodged with the Commission for the purpose of an investigation under the Regulations.
- (2) The Commission shall carry out the process set out in paragraph (1) in liaison with the competent authorities.

**Rule 16**  
**Requests for Information**

- (1) In carrying out the duties assigned to it under the Regulations, the Commission may obtain all necessary information from:
  - (a) competent authorities as guided by their relevant national laws; or
  - (b) undertakings.
- (2) When sending a request for information to an undertaking, the Commission shall, at the same time, send a copy of the request to the competent authority of the Member State within the territory in which the undertaking has been registered or has its principal place of business.
- (3) In its request, the Commission shall state the legal basis, the purpose of the request and any applicable penalties provided under the Regulations.
- (4) For the purpose of this Rule, the person authorised to represent the undertaking shall supply the information requested by the Commission.
- (5) Where an undertaking 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.
- (6) The decision made in paragraph (5) shall specify:
  - (a) the information required;
  - (b) an appropriate time limit within which it is to be supplied; and
  - (c) the penalties provided for in the Regulations and these Rules.

**Rule 17**  
**Third Parties Affected by Investigations**

- (1) A party that reasonably believes that it is affected by investigations may apply to the Commission to be joined as a party in the proceedings.
- (2) Such application shall be made within the time period stipulated in the Commission's publication of the investigation.
- (3) The application made pursuant to paragraph (1) may be rejected if it:
  - (a) may unduly protract the investigation;
  - (b) is unrelated to the investigation in question; or
  - (c) is made when the investigation is being concluded.
- (4) Where the Commission grants the application, the third party shall be afforded the same rights as the respondent party.

**Rule 18**  
**Termination of Infringements**

- (1) Where the Commission, upon completion of its investigation, finds that there is an infringement of the Regulations, it shall direct the undertakings concerned to bring such infringement to an end.
- (2) The Commission may, before taking a decision under paragraph (1), address recommendations for termination of the infringement to the undertakings concerned.

**Rule 19**  
**Application for Authorisation**

- (1) Pursuant to Regulation 39, parties to an agreement shall submit an application for authorisation to the Commission by submitting a completed form.
- (2) In completing the form, parties to the agreement shall provide to the Commission the name and addresses of a natural person authorised to communicate with the Commission and take actions on its behalf.
- (3) The parties shall provide, amongst others:

- (a) the agreements for which they are seeking authorisation;
- (b) a description of their activities in the Common Market;
- (c) a description, and evidence, of the benefits arising from the agreement; and
- (d) a list of the Member States affected by the agreement.

- (4) An application for authorisation shall be accompanied by a fee of COMESA Dollars Fifteen Thousand (COM\$15,000).
- (5) Any fee payable in accordance with paragraph (4) shall not be waived, reduced or refunded.
- (6) A fee payment shall be deemed to have been received by the Commission on the date that a direct deposit or an electronic transfer of funds in the full amount of the fee is credited to the account of the Commission.
- (7) Upon embarking on an assessment of an application for authorisation, the Commission shall take all reasonable steps to notify the competent authorities in the relevant Member States.
- (8) The notice referred to in paragraph (7) shall include:
  - (a) the nature of the application;
  - (b) all information pertaining to the activities of the parties in the relevant Member States.
- (9) For avoidance of doubt, information referred to in sub-paragraph 8 (b) shall include information submitted as confidential by the parties.
- (10) The Commission shall only share with competent authorities information submitted as confidential where such competent authorities have provisions safeguarding confidentiality under their respective laws.
- (11) The information provided to the competent authorities of the Member States shall be used solely for the purpose of assessment of the application.

## **CHAPTER FOUR**

## **MARKET INQUIRIES**

### **Rule 20**

#### **Process of Market Inquiry**

- (1) Where the Commission is concerned about the state of competition or issues affecting consumers in any economic sector, the Commission may decide to conduct a general inquiry into that sector, and may request undertakings in the sector concerned to supply the information necessary for carrying out the duties entrusted to the Commission.
- (2) Where the Commission deems it necessary, it may publish a notice of an intended market inquiry:
  - (a) specifying the subject matter of the intended inquiry; and
  - (b) inviting submissions on the subject from stakeholders and members of the public within a specified period.
- (3) The Commission may send written notices requesting for information in paragraph (1) to:
  - (a) undertakings whose interests the Commission considers are likely to be affected by the outcome;
  - (b) industry and consumer organisations which the Commission considers may have an interest in the matter; or
  - (c) competent authorities of Member States.
- (4) In conducting a market inquiry, the provisions of Chapter Three of these Rules, pertaining to requests for information, and investigations by authorities of Member States shall apply correspondingly.

## **CHAPTER FIVE**

## **MERGERS**

### **Rule 21**

#### **Notification of Mergers**

- (1) Parties to a merger shall make a notification of the merger to the Commission by submitting a completed Notice of Merger Form 1 as set out in the Schedule.
- (2) The Commission may dispense with some of the information or documents required by Notice of Merger Form 1. The notifying parties may request in writing that the Commission should accept that the notification is complete notwithstanding that the parties have not provided the required information, if such information is not reasonably available to the notifying parties in part or in whole.
- (3) The Commission may consider the request in paragraph (2), provided that the notifying parties give reasons for the unavailability of that information and provide the appropriate estimates for missing data together with the sources for the estimates. Where possible, indications as to where any of the requested information that is unavailable to the notifying parties could be obtained by the Commission should also be provided.
- (4) The notification shall be completed jointly by the parties to the merger or in the case of the acquisition of a controlling interest in one undertaking by another, the acquiring undertaking shall complete the notification.
- (5) In the case of a public bid, the bidder shall complete the notification.
- (6) Each party completing the notification is responsible for the accuracy of the information it provides.
- (7) Where a notifying party is, or includes, one or more undertakings, each of such undertakings shall provide to the Commission the name and address of a natural person authorised to communicate with the Commission and take actions on its behalf.
- (8) Pursuant to Chapter Four of the Regulations, the parties shall provide, amongst others:
  - (a) the parties' annual turnover in the Common Market;
  - (b) activities in the Common Market including, where applicable, number of active users, subscribers, type of data and, collection methods and processing;
  - (c) a summary of the merger, including its nature and rationale, and

(d) a list of the Member States concerned by the merger.

## **Rule 22** **Merger Notification Fees**

(1) Notification of a merger shall be accompanied by a fee calculated at zero-point one percent (0.1%) of the combined annual turnover or combined value of assets in the Common Market of the parties to a merger, whichever is higher,

provided that the fee does not exceed COMESA Dollars Three Hundred Thousand (COM\$ 300,000).

(2) Notification of a merger in the digital market shall be accompanied by a fee calculated at zero-point zero five percent (0.05%) of the transaction value provided that the fee does not exceed COMESA Dollars Three Hundred Thousand (COM\$ 300,000).

(3) Any fee payable in accordance with this provision shall not be waived, reduced or refunded.

(4) A fee payment shall be deemed to have been received by the Commission on the date that a direct deposit or an electronic transfer of funds in the full amount of the fee is credited to the account of the Commission.

## **Rule 23** **Notification Thresholds**

(1) Pursuant to Chapter Four of the Regulations, a merger 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 COMESA Dollars Sixty Million (COM\$ 60 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 COMESA Dollars Ten Million (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.

(2) A merger in the digital market shall be notifiable if it meets the transaction value of COMESA Dollars Two Hundred and Fifty Million (COM\$ 250 million).

## Rule 24

### Method of Calculation of Assets and Turnover for purposes of Merger Notification Thresholds and Fees

- (1) The asset value of an undertaking at any time shall be based on the gross value of the undertaking's assets as recorded on the undertaking's audited balance sheet for the end of the financial year immediately preceding the date of the notification, in particular:
  - (a) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;
  - (b) the assets are to include all assets on the balance sheet of the undertaking, including any goodwill or intangible assets included in their balance sheet;
  - (c) no deduction shall be taken for liabilities or encumbrances of the undertaking; and
  - (d) assets in the Common Market include all assets arising from activities in the Common Market.
- (2) If, between the date of the audited financial statements being used to calculate the asset value of an undertaking, and the date on which that calculation is being made, the undertaking has acquired any subsidiary undertaking, associated undertaking or joint venture not shown on those financial statements, the following items shall be added to the calculation of the undertaking asset value if these items shall, in terms of internationally accepted accounting standards, be included in the undertaking asset value:
  - (a) the value of those recently acquired assets; and
  - (b) any asset received in exchange for those recently divested assets.
- (3) If, between the date of the audited financial statements being used to calculate the asset value of an undertaking, and the date on which that calculation is being made, the undertaking has divested itself of any subsidiary undertaking, associated undertaking or joint venture shown on those financial statements, the undertaking shall, in accordance with internationally accepted accounting standards, exclude in the calculation of its asset value:
  - (a) the value of those recently divested assets at the date of their divestiture; and
  - (b) any asset that was shown on the balance sheet and was subsequently used to acquire the recently acquired asset.

(4) The annual turnover of undertakings shall comprise of the amounts derived from the sale of products and the provision of services falling within the ordinary activities of the undertakings after deduction of sales rebates and of value added tax and other taxes directly related to turnover by the parties recorded in the audited financial statements for the financial year immediately preceding the date of the notification of the merger.

(5) Where a merger consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the subject of the merger shall be taken into account with regard to the 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 the undertakings shall be treated as one and the same merger arising on the date of the last transaction.

(6) With regard to credit institutions and other financial institutions, turnover shall be the sum of, among others, the following income items after deduction of the applicable taxes directly related to those items:

- (a) interest income and similar income;
- (b) income from securities;
- (c) income from shares and other variable yield securities;
- (d) income from participating interests;
- (e) income from shares in affiliated undertakings;
- (f) commissions receivable;
- (g) net profit on financial operations; and
- (h) other operating income.

(7) With regard to insurance undertakings, 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 undertakings, including 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.

(8) Where audited financial statements are not available as required in these Rules, the turnover and asset values will be based on the financial statements for the immediately preceding financial year prepared by a person who has the required professional qualifications and/or certifications to practice accounting and the cost shall be borne by the merging parties.

(9) For purposes of this Rule, annual turnover and value of assets of an undertaking shall be calculated by adding the turnover or value of assets of the following:

(a) the party to a merger concerned;

(b) its subsidiaries;

(c) its parent undertakings; and

(d) other subsidiaries of its parent undertaking not included in sub-paragraph (b).

(10) Annual turnover and value of assets of a target undertaking shall not, for the purposes of these Rules, include the annual turnover or value of assets of its parent undertaking and its parents' other subsidiary undertakings where, after the merger is implemented, such parents are not parents of the target undertaking.

(11) Where an undertaking concerned has a state-owned enterprise as its ultimate parent undertaking, the turnover and assets of the State shall not be included.

(12) To the extent, but only to such extent, that the merging party or any of its parent undertakings are subject to coordination, and controlled under the same independent center of decision-making, with other subsidiaries of the State, the annual turnover or assets of such subsidiaries shall be included.

(13) The turnover and assets of an undertaking shall be calculated in accordance with internationally accepted accounting standards including:

(a) standards that apply to the recognition of revenue, depreciation and amortization of assets; and

(b) material events or transactions that occurred subsequent to the relevant period or date.

(14) Where an undertaking prepares its financial statements in a currency that is not COMESA Dollars or United States Dollars, its turnover for a financial year shall be converted to COMESA Dollars or United States Dollars according to the average over the

twelve months of that financial year, at the foreign exchange rate reported by the Central Bank where such currency is issued.

(15) Where an undertaking prepares its financial statements in a currency that is not COMESA Dollar or United States Dollar, its assets at the end of a financial year shall be converted to COMESA Dollars or United States Dollars as at the end of that financial year, at the foreign exchange rate reported by the Central Bank where such currency is issued.

### **Rule 25**

#### **Method of Calculation of Turnover for Purposes of Fines and Penalties**

(1) Annual turnover shall comprise of the amounts derived from the sale of products and the provision of services falling within the undertaking's ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover by the parties recorded in the audited financial statements.

(2) With regard to credit institutions and other financial institutions, turnover shall be the sum of, among others, the following income items after deduction of applicable taxes directly related to those items:

- (a) interest income and similar income;
- (b) income from securities;
- (c) income from shares and other variable yield securities;
- (d) income from participating interests;
- (e) income from shares in affiliated undertakings;
- (f) commissions receivable;
- (g) net profit on financial operations; and
- (h) other operating income.

(3) With regard to insurance undertakings, 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 undertakings including 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.

(4) Where audited financial statements are not available, the turnover and asset values shall be based on the financial statements for the immediately preceding financial year prepared by a person who has the required professional qualifications or certifications to practice accounting and the cost shall be borne by the parties concerned.

### **Rule 26** **Management of Fees and Penalties**

(1) The Commission shall specify the accounts into which fees and penalties shall be paid and from which payments shall be made.

(2) The Chief Executive Officer shall:

- (a) report to the Board all transactions into and out of the fees and penalties account;
- (b) ensure that the books of accounts relating to all transactions involving the fees and penalties are audited by internal and external auditors; and
- (c) ensure that the audit reports are submitted to the Council, through the COMESA Subcommittee responsible for Audit and Budgetary Matters.

(3) The Commission shall cause to be kept separate books of accounts relating to all transactions involving fees and penalties.

### **Rule 27** **Sharing Mechanism for Fees and Penalties**

(1) The Commission shall share the funds collected from:

- (a) merger filing fees;
- (b) penalties for anti-competitive conduct; and
- (c) penalties for consumer welfare violations.

(2) The Commission shall retain fifty percent (50%) of the merger filing fees and fines, and distribute the remaining fifty percent (50%) among the relevant competent authorities in the affected Member States.

- (3) The share of the merger filing fees and fines for the affected Member State shall be proportional to the value of the turnover of the undertaking generated in each Member State relative to the total value of the turnover in the Common Market.
- (4) To ensure prudent utilisation of the merger fees and fines, the Commission shall share these funds only with Member States that have internal accounting and audit procedures in place.
- (5) The Member States shall submit a biennial activity report on the utilisation of the shared funds to the Commission.
- (6) The biennial activity report shall be submitted in a manner and form to be determined by the Commission.
- (7) Where a Member State fails to submit the biennial activity report on the utilisation of the shared funds to the Commission, or the funds are diverted to non-related activities, the Commission may withhold subsequent disbursements, until compliance is restored.

## **CHAPTER SIX** **UNFAIR TRADE PRACTICES**

### **Rule 28** **Issuing of Notices on Unsafe Products**

(1) The Commission shall, before issuing any notice under Chapter Five of the Regulations on unsafe products take into account such circumstances, including:

- (a) the likelihood of a person being injured;
- (b) where the unsafe products have resulted in any injury, the seriousness of that injury;
- (c) any mitigating measures taken by an undertaking; or
- (d) whether making the declaration is in the public interest.

(2) A notice issued under this Rule shall remain valid until the Commission determines that the manufacturer or supplier of the products which are the subject of the notice have undertaken the necessary steps to ensure the safety of the products and to prevent future infringements under the Regulations.

(3) Upon conclusion of investigations under the Regulations, the Commission may by notice in writing, require the undertaking concerned to take remedial measures.

(4) The Commission may require the undertaking to submit progressive reports on the remedial measures indicated in paragraph (3).

### **Rule 29** **Interim Ban**

(1) Pursuant to Chapter Five of the Regulations, the Commission may impose an interim ban on products after taking into account the following considerations:

- (a) whether the product is likely to injure a person;
- (b) whether it is reasonably foreseeable that the use or misuse of a product, may injure a person; or
- (c) where two or more Member States have imposed an interim ban on the product and which is still in force.

(2) The Commission shall notify the supplier of the product of an intention to impose an interim ban unless the Commission determines that circumstances surrounding the impending danger to the public require immediate intervention.

**Rule 30**  
**Permanent Ban**

(1) Pursuant to Chapter Five of the Regulations, the Commission may in consultation with the Member States, declare a permanent ban on a product, subject to paragraph (4).

(2) Where the Commission proposes to impose a permanent ban, it shall invite any concerned person to make written or oral representations or both.

(3) If there is an imminent risk of death or injury from the unsafe good or service, an interim ban may be imposed immediately, and the supplier will be given an opportunity to be heard before the ban is made permanent.

(4) The Commission may impose a permanent ban where:

- (a) it considers that it is uneconomical or impractical to modify the product concerned to remove the hazard; or
- (b) reliance on voluntary withdrawal of the product from the market is unlikely to be a viable long-term solution.

**Rule 31**  
**Procedure for Voluntary Product Recall**

(1) Where a person voluntarily recalls or intends to recall a product from two or more Member States, the person shall:

- (a) notify the Commission in writing of the recall within two (2) days after making a decision to recall the products and provide details of other undertakings within the supply chain that have been notified and submit a strategy for recall for verification by the Commission;
- (b) publish a written notice of recall on their website, in a newspaper of wide circulation in the Member States affected and by any other effective means of communication;
- (c) retrieve the affected product from consumers and from the supply chain; and

(d) submit regular progress reports on the recall to the Commission.

(2) A notice of recall shall include the following:

(a) a clear description of the product, including the name, make and model, batch or serial numbers and dates on which the product was available for sale and any distinguishing feature;

(b) a coloured photograph or drawing of the product to provide the consumer with convenient and effective means of identification;

(c) a description of the defect describing the defect in simple terms for the benefit of the average consumer to understand;

(d) a statement of the hazard describing the maximum potential hazard and any associated risk;

(e) where a reasonably foreseeable use of the consumer product is dangerous, the supplier shall set out the circumstances of that use;

(f) a section explaining the immediate action the consumer should take;

(g) contact details to inform the consumer who they should contact in order to receive a refund or have the product repaired or replaced; and

(h) procedures for returning the products and receiving a refund or restitution.

(3) A person shall make arrangements for the retrieval of the product by:

(a) establishing collection points across its distribution network;

(b) notifying the relevant parties, including other entities within the supply chain and consumers, of the intended method of retrieval of the recalled product; and

(c) arranging for the returned product to be quarantined until it can be rectified or safely destroyed.

**Rule 32**  
**Disclosure of Information**

(1) The supplier, in any transaction with a consumer, shall disclose the following information:

- (a) the name of the supplier and, if different, the name under which the supplier carries on business;
- (b) prices of products;
- (c) an itemised list of all the charges and prices at which the products are proposed to be supplied to the consumer;
- (d) terms and conditions applicable to the purchase of the products;
- (e) the telephone number, e-mail address, physical address and other information if any, through which the supplier can be contacted by the consumer;
- (f) a fair and accurate description of the products proposed to be supplied to the consumer, including the technical requirements, if any, related to the use of the products;
- (g) the total amount that the supplier knows would be payable by the consumer under the agreement, or, if the products are proposed to be supplied during an indefinite period, the amount and frequency of periodic payments;
- (h) whether the product is used, new or refurbished;
- (i) the terms and methods of payment;
- (j) as applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance would occur;
- (k) for products that would be delivered:
  - (i) the place to which they would be delivered, and
  - (ii) if the supplier holds out a specific manner of delivery and intends to charge the consumer for delivery, the manner in which the products would be delivered, including the name of the carrier, if any, and including the method of transportation that would be used.

- (l) for services that would be performed, the place where they would be performed, the person for whom they would be performed, the supplier's method of performing them and, if the supplier holds out that a specific person other than the supplier would perform any of the services on the supplier's behalf, the name of that person;
- (m) the rights, if any, that the supplier agrees the consumer will have in addition to the rights under the Regulations and the obligations, if any, by which the supplier agrees to be bound in addition to the obligations under the Regulations, in relation to cancellations, returns, exchanges and refunds;
- (n) if the agreement is to include a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance;
- (o) the currency in which amounts are expressed; and
- (p) any other restrictions, limitations and conditions that would be imposed by the supplier.

(2) The information disclosed shall be delivered to a consumer:

- (a) in a form that can be understood and allow the consumer to save, print, keep, retain or store the information; and
- (b) at the address provided by the consumer or at such premises agreed to with the consumer.

(3) For digital markets, the supplier shall publish the information required under this Rule in a clear, conspicuous and comprehensible manner on their platforms.

## **CHAPTER SEVEN**

### **PROCEDURES FOR DETERMINATIONS**

#### **Rule 33**

##### **Access to File**

- (1) Parties to any matter shall be entitled to have access to file, subject to the legitimate interests of undertakings in the protection of their business secrets.
- (2) Legitimate interests shall not hinder the disclosure and use of information necessary to prove an infringement.
- (3) Notwithstanding paragraph (1), the right of access to file shall not extend to confidential information, internal documents of the Commission, including communications between the Commission and competent authorities and privileged information.

#### **Rule 34**

##### **Evidence of Persons not Attending the Panel's Proceedings**

- (1) The Panel shall permit a person, other than a person appearing as a witness before it, to give evidence in proceedings before the Panel by submitting a written statement.
- (2) The statement referred in paragraph (1) shall be:
  - (a) on oath or affirmation, verifying that the information contained in the statement is true and correct; and
  - (b) filed with the Registrar.

#### **Rule 35**

##### **Decisions of the Commission**

- (1) Each decision of the Commission and the date on which it was made shall be recorded by the Registrar in a document signed by him or 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 36**  
**Non-compliance with any Procedural Matters**

Nothing in these Rules shall limit or otherwise affect the Commission's ability to consider any matter without undue regard to technicalities, and to prevent abuse of the Commission's processes.

## **CHAPTER EIGHT**

### **MISCELLANEOUS**

#### **Rule 37**

##### **Publication of Decisions**

- (1) All decisions of the Commission shall be published on its website or any media it considers appropriate.
- (2) The publication shall state, among other things, the names of the parties and the main content of the decision, and it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

#### **Rule 38**

##### **Entry into Force**

These Rules shall take effect upon approval of the Council.

#### **Rule 39**

##### **Revocation**

The COMESA Competition Rules of 2004 are hereby revoked.

## **SCHEDULE**

### **NOTICE OF MERGER FORM 1**

#### **RULE 21 (1)**

#### **PART ONE**

#### **NOTIFICATION REQUIREMENTS:**

Under Chapter Four of the COMESA Competition and Consumer Protection Regulations hereinafter referred to as the “Regulations”, merging parties shall notify the COMESA Competition and Consumer Commission, hereinafter referred to as the “Commission”, of the proposed merger in such form and manner as may be prescribed. This Form has been prescribed for the notification of mergers and specifies the information that must be provided by the notifying parties when submitting a notification to the Commission.

#### **WHO MUST NOTIFY?**

1. The notification shall be completed jointly by the parties to the merger.
2. In the case of a public bid to acquire an undertaking, the bidder shall complete the notification.
3. Each party completing the notification is responsible for the accuracy of the information it provides.
4. In the case of hostile mergers, the party acquiring a controlling interest in another undertaking shall complete the notification.

#### **The Requirement for Correct and Complete Notification**

1. All the information required by this Form shall be correct and complete. The information required shall be completed in the appropriate section of this Form. In particular it should be noted that:
  - (a) in accordance with Regulation 44, the time limits of the notification shall not begin to run until all the information that has to be supplied with the notification has been received by the Commission. This requirement is to ensure that the Commission is able to assess the notified merger within the time-limits provided by the Regulations;
  - (b) the notifying parties shall ensure that particulars including names, telephone numbers and email addresses, submitted to the Commission are accurate, and up-to-date;
  - (c) incorrect or misleading information in the notification, including missing or incomplete contact details, shall render the notification incomplete;
  - (d) where the notification is incomplete, the Commission shall inform the notifying parties or their representatives in writing without delay. The notification shall only become effective on the date on which the complete and accurate information is received by the Commission; and
  - (e) notifying parties who, supply incorrect or misleading information shall be liable to fines specified

in the Regulations.

2. The Commission may revoke its decision to approve the notified merger where it is based on incorrect information for which one of the undertakings is responsible.

**Caution:**

1. Regulation 42 (2) provides that “A person shall not implement a merger to which these Regulations apply, except where:
  - (a) the merger is approved by the Commission
  - (b) any derogations are granted by the Commission.”
2. Regulation 41 (12) provides that “Any undertaking which contravenes the provisions of Chapter Four of the Regulations shall be liable to a fine not exceeding ten (10%) percent of either or both of the merging parties’ annual turnover in the Common Market as reflected in the audited accounts of any party concerned.”

**DECISIONS OF THE COMESA COMPETITION AND CONSUMER COMMISSION**

1. The Commission shall take a decision on the proposed merger **within one hundred and twenty (120) days** from the date a completed merger notification is received, unless an extension is approved by the Commission pursuant to Regulation 44(4). If the notification is incomplete, the examination period begins on the day following receipt of complete information.
2. At any time during the merger proceedings, the Commission may request additional information from any party to the merger.

**PART TWO**

**FORM INSTRUCTIONS**

1. Please fill out all parts of this Form to the best of your knowledge and attach all required documents.
2. One (1) original and all supporting documents must be provided to the Commission. The supporting documents shall be either in originals or certified copies of the originals.
3. If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information by duly completing a request for confidentiality form and submitting it jointly with this Form. You should also give reasons why this information should not be divulged or published.

**PART THREE**  
**DETAILS OF THE TRANSACTION**

**I. UNDERTAKING REPORTING THE MERGER**

Name:	Website:
Address:	
Phone:	Fax: Email:

**II. NOTICE**

We are hereby notifying the Commission of a proposed merger involving \_\_\_\_\_ and \_\_\_\_\_.

**III. MERGER COUNTER PARTY INFORMATION**

Name:	Website:
Address:	
Phone:	Fax: Email:

**IV. OTHER PARTY INFORMATION**

*Please provide the name, address and contact information of all other acquiring and/or target parties and of their legal representatives/ advisors:*

*If you need more space, please attach extra sheets to this document.*

**V. OTHER NOTIFICATIONS**

*Please list all countries outside the Common Market which have been/will be notified of the proposed merger:*

**VI. EXECUTIVE SUMMARY OF MERGER INFORMATION**

Provide an executive summary of the transaction specifying the parties to the merger, the nature of the transaction, the areas of activity of the notifying parties, including the Member States in which they operate in the Common Market, the markets on which the transaction is likely to have an impact and the strategic economic rationale for the transaction.

N.B: This summary (up to 1000 words) will be published on the Commission website. The summary should not contain confidential information or business secrets.

**VII. SERVICE OF DOCUMENTS**

*The name, address and contact information of the person to whom documents pertaining to this merger procedure should be served is:*

## **PART FOUR**

### **INFORMATION ABOUT THE UNDERTAKINGS FILING THIS NOTICE**

Describe in detail the undertakings filing this Notice and the proposed merger, namely:

1. The parties to the transaction, including;

- (a) name and contact details of the undertaking(s) (directly or indirectly) controlling the undertaking(s) filing this Notice;
- (b) name and contact details of the undertaking(s) (directly or indirectly) controlled by the Undertaking(s) in 1(a) above; and
- (c) name and contact details of the undertaking(s) (directly or indirectly) controlled by the undertaking(s) filing this Notice.

2. The assets, shares or other interests being acquired;

3. Whether the shares or other interests are being purchased, leased, combined or otherwise transferred;

4. The consideration or transaction value;

5. The contemplated timing for any major events required to bring the completion of the transaction;

6. Pre-merger structure of ownership and control of the notifying undertaking(s);

7. The intended structure of ownership and control after the completion of the merger;

8. The asset value or turnover derived in each Member State where the parties operate. **Under this paragraph you are required to complete Part Seven (Asset value and turnover derived in each Member State) of this Form without fail;** and

9. The trading name of the parties in each Member State where they operate, including the contact details of the entity. Where the parties do not have a physical presence in a Member State, specify the trading entity through which your products are supplied into the Member State, including its contact details. **Under this paragraph you are required to complete Part Six (Member States where the merger is capable of being reviewed) and Part Eight (Trade Names and Contact details of the parties) of this Form without fail.**

## I. RELEVANT MARKET INFORMATION

Provide the following information to the best of your knowledge:

1. Please identify each product and/or service that you and all other acquiring/target parties sell. In addition, please identify all substitute products and/or services, if any. Use the 5-digit Standard Industrial Classification (SIC) Codes, where applicable, to identify the product(s) and/or service(s):

Product/Service	SIC Code	Substitute (s)	Geographic Region Sold

2. A list of all relevant markets in which the parties to this transaction operate;
3. For each market listed in paragraph (2), provide:
  - (a) The estimated annual market share of the merging parties for the last three (3) years. Please specify the unit of measure used to calculate the market share (e.g. volume of sales, value of sales, no. of active users, no. of subscriptions or value of assets);
  - (b) The contact details and estimated annual market shares of the merging parties' top five (5) competitors in each identified geographic area for the last three (3) years;
  - (c) The contact details for your top five (5) customers in each identified geographic areas within the last 12 months:

Product/Service	Customer Name & Info	Geographic Region	Share of Sales to Customer Out of Total Sales

- (d) A description of existing barriers to market entry (e.g., regulatory requirements, capital requirements, sunk costs, etc.);
- (e) An estimate of the time it will take potential competitor(s) to enter the market;
- (f) The name and contact details of each entrant to the market during the last three (3) years;
- (g) An estimate of the value and volume of the COMESA market as a whole (i.e., production less exports and plus imports);

(h) An estimate of the capital expenditure required to enter the market on a scale necessary to gain a significant market share (say five (5) percent or more), both as a new entrant and as a Undertaking which already has the necessary technology and expertise;

(i) An estimate of the scale of annual expenditure on advertising/promotion relative to sales required to enter the market on a scale equivalent to your main competitor(s);

(j) An assessment of the ease of exit from the market. Please indicate any trends in both market entry and exit over the last five (5) years;

(k) An assessment of any effects the merger may have on competition. Describe the nature of national and regional competition and give details of any localities where competition may be reduced as a result of the merger; and

(l) An assessment of any effects the merger may have on public interest; and

(m) A brief assessment of any other features of the market that the Commission should take into account in considering the effect of the merger.

## II. FAILING UNDERTAKINGS

Is the Primary Acquiring Party or the Primary Target Party a failing undertaking  Yes  No

*If no, skip to Section III; otherwise provide the following:*

1. Financial information demonstrating that the failing undertaking will not be able to meet its obligations;
2. Information concerning efforts taken by the failing undertaking to elicit reasonable alternative offers; and
3. Information indicating that the failing undertaking would reasonably be expected to exit the market unless the merger is implemented.

### III. BUSINESS RELATIONSHIPS AMONG MERGING PARTIES

State the name of any other acquiring or target party that sells to you; identify each product and/or service sold and the value of that product/service during your preceding financial year.

Undertaking Name	Product/Service	Value

*If you need more space, please attach extra sheet(s) to this Notice.*

## PART FIVE

### SUPPORTING DOCUMENTS

#### DOCUMENTS TO BE SUBMITTED BY THE MERGING PARTIES

Please attach certified copies of the following documents and submit them with this Notice:

1. Annual reports of your undertaking for the last three (3) years;
2. Financial statements of your undertaking for the last three (3) financial years;
3. Current list of shareholders of the parties to the merger and their nationality;
4. Current list of directors of the parties to the merger;
5. Signed copy of the merger agreement;
6. Internal memoranda analysing the proposed merger;
7. Board resolutions appointing undertaking representatives for the purposes of this merger and the letter appointing legal representatives for the purposes of this transaction;
8. In a public bid, a copy of the offer document; if it is unavailable at the time of the notification, a copy of the most recent document demonstrating the intention to launch a public bid must be provided and a copy of the offer document must be submitted as soon as possible and no later than when it is posted to shareholders;
9. Copies of all the documents prepared by or for or received by any member(s) of the

board of management, the board of directors, or the supervisory board, as applicable in the light of the corporate governance structure, or the other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting, in particular:

- (a) Presentations analysing different options for acquisitions, including but not limited to the notified merger;
- (b) Analyses, reports, studies, surveys and any comparable documents for the purpose of assessing or analysing the merger with respect to its rationale, market shares, competitive conditions, competitors (actual and potential), potential for sales growth or expansion into other product or geographic markets; and
- (c) Any other document which may assist the Commission in making a decision on the proposed merger.

**Note:** *Provide a list of the above documents, indicating for each document the date of preparation and the name and title of the addressee(s).*

## PART SIX

### **MEMBER STATES WHERE THE MERGER IS CAPABLE OF BEING REVIEWED**

For each Member State, specify whether the merger is or is not capable of being reviewed under its national competition law.

You must tick one box ('Yes' or 'No') for each and every Member State. Failure to indicate 'Yes' or 'No' for any Member State shall be deemed to constitute an indication of 'Yes' for that Member State.

Country	Yes	No
Burundi		
Comoros		
Democratic Republic of Congo		
Djibouti		
Egypt		
Eritrea		
Eswatini		
Ethiopia		
Kenya		
Libya		
Madagascar		
Malawi		
Mauritius		
Rwanda		
Seychelles		
Sudan		
Tunisia		
Uganda		
Zambia		
Zimbabwe		

**Note:** The list of Member States in this Form shall be subject to change on accession or withdrawal of a State from the Treaty.

**PART SEVEN**  
**ASSET VALUE AND TURNOVER DERIVED IN EACH MEMBER STATE**

Specify the Asset Value and Turnover Derived in each Member State where the parties operate. If there are more than two parties to the Merger, please add a column for each additional undertaking.

Country	Turnover Value (US\$) Undertaking 1	Asset Value (US\$) Undertaking 1	Turnover Value (US\$) Undertaking 2	Asset Value (US\$) Undertaking 2
Burundi				
Comoros				
Democratic Republic of Congo				
Djibouti				
Egypt				
Eritrea				
Eswatini				
Ethiopia				
Kenya				
Libya				
Madagascar				
Malawi				
Mauritius				
Rwanda				
Seychelles				
Sudan				
Tunisia				
Uganda				
Zambia				
Zimbabwe				
<b>Total</b>				

**Note:** The list of Member States in this Form shall be subject to change on accession or withdrawal of a State from the Treaty.

## PART EIGHT

### TRADE NAMES AND CONTACT DETAILS OF THE PARTIES

Specify the trade name and contact details for each of the parties to the transaction in each Member State. If there are more than two parties to the Merger, please add a column for each additional undertaking.

Country	Undertaking 1	Undertaking 2
Burundi		
Comoros		
Democratic Republic of Congo		
Djibouti		
Egypt		
Eritrea		
Eswatini		
Ethiopia		
Kenya		
Libya		
Madagascar		
Malawi		
Mauritius		
Rwanda		
Seychelles		
Sudan		
Tunisia		
Uganda		
Zambia		
Zimbabwe		
<b>Total</b>		

**Note:** The list of Member States in this Form shall be subject to change on accession or withdrawal of a State from the Treaty.

## PART NINE DECLARATION

I \_\_\_\_\_ being the authorised legal representative of \_\_\_\_\_ (*insert the names of the merging parties*) declare that to the best of my knowledge, the information given/supplied by me to the COMESA Competition and Consumer Commission in this notice is true, correct and complete, that true and complete copies of documents required by Notice of Merger Form 1 have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all opinions expressed are sincere.

### Official Use Only

#### Received By

Print Name:	Signature:
Date Received:	Assigned Case Number: