

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.

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).

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				
Total				

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		
Total		

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: