

DRAFT AMENDMENTS TO COMESA COMPETITION RULES, 2004

In exercise of the powers conferred by Article 39 of the COMESA Competition Regulations, the Board of Commissioners, with approval of Council, makes the amendments to the COMESA Competition Rules, 2004 as follows:

Rule 1 Citation

These Rules may be cited as the COMESA Competition (Amendment) Rules, 2014.

Rule 2 Amendment of Rule 2 of the COMESA Competition Rules, 2004

1. The COMESA Competition Rules 2004 (hereinafter referred to as the “principal” Rules) are hereby amended in Rule 2(2) by:
 2. deleting paragraph (a) and substituting the paragraph with the following:

“(a) “acquiring firm” means a firm:

 1. that as a result of a merger within the meaning of Article 23 of the Regulations, would directly or indirectly acquire, or establish direct or indirect control over, the whole or part of the business of another firm;
 2. that has direct or indirect control over the whole or part of the business of a firm contemplated in paragraph (i); or
 3. the whole or part of whose business is directly or indirectly controlled by a firm contemplated in paragraph (i) or (ii);
2. inserting, immediately after paragraph (a) the following paragraph as new paragraph (aa):

“(aa) “**Ministers**” means the Ministers responsible for initial determinations established in accordance with Article 13(4) of the Regulations;”
3. inserting, immediately after paragraph (b) the following paragraph as new paragraph (bb):

(bb) “**firm**” includes a person, partnership or a trust;”;

4.inserting immediately after paragraph (d), a new paragraph (da) as follows:

“(da) **“party to a merger”** means any acquiring firm or target firm”;

Rule 3
Replacement of Rule 55 of the Principal Rules

Rule 55 of the principal Rules is hereby repealed and replaced with the following as new Rule 55:

“Rule 55
Filing a Merger Notification

1. Notification of a merger shall be made to the Commission by submitting a completed Form 12 as set out in the Schedule to these Rules. The Commission may dispense with some of the information or documents required by Form 12.
2. The Commission shall assign distinctive case numbers to each merger notification made with respect to a merger and shall ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.
3. Parties to a merger may individually or jointly submit a merger notification to the Commission.
4. Where a notifying party is, or includes, one or more firms, each of such firms 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.
5. Notification of a merger shall be accompanied by a fee calculated at 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 shall not exceed COM\$ 200 000.00.

6. For purposes of calculating the merger notification fees, annual turnover and value of assets shall be calculated as provided in the Rules on the Determination of Merger Notification Threshold.
7. A fee payment shall be deemed received by the Commission on the date that a direct deposit or an electronic transfer of funds in the amount of the fee is credited to the account of the Commission.
8. The Commission may however require parties to a non-notifiable merger to notify the merger to the Commission by

submitting a completed Form 12 if 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 the Common Market.

9. In cases where both the acquiring firm and the target firm operate in a single Member State, the Commission shall first consult the relevant Member State before requiring parties to the non-notifiable merger to file the merger notification.
10. No fee shall be payable for filing a merger notification for a non-notifiable merger".

Rule 4

Replacement of Rule 9 of the Principal Rules

Rule 9 of the Principal Rules is hereby repealed and replaced with the following as new Rule 9.

Rule 9

Languages of the Commission and the Board

The proceedings and publications of the Commission and the Board shall be in the official languages of the Common Market as set forth in the Treaty as English, French, Portuguese and Arabic".

Rule 5

Insertion of a Schedule in the Principal Rules

The following Schedule is hereby inserted in the principal Rules:

"SCHEDULE FORMS

Form 12: Notice of Merger [*Article 24 of the Regulations and Rule 55*]