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THE FAIR COMPETITION ACT
(CAP. 285)

RULES

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013

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THE FAIR COMPETITION ACT
(CAP. 285)

RULES

(Made under Section 99)

THE FAIR COMPETITION COMMISSION PROCEDURE
RULES, 2013

PART I
PRELIMINARY PROVISIONS

Citation

1. These Rules may be cited as the Fair Competition Commission Procedure Rules, 2013.

Interpretation

Cap. 285

2. In these rules, unless the context otherwise requires-

"Act" means the Fair Competition Act;

"acquiring firm" means a firm-

(a) that, as a result in any transaction done in circumstances set out in a merger as defined under section 2 of the Act, would acquire or establish direct or indirect control over the whole or part of the business of another firm;

(b) that has direct or indirect control over the whole or part of the business of a firm contemplated in paragraph (a);

"Chairman" includes the Deputy Chairman of the Commission;

"Commissioner" means a member of the Commission appointed under section 63 of the Act;

"complaint" means either-

(a) a complaint initiated by the Commission under section 69(1); or

(b) a complaint that has been submitted to the Commission under section 69(2) of the Act;

"confidential information" means trade, business or industrial information that belongs to a person which has a particular economic value and is not generally available to or known by others;

"formal complainant" means any person who requests for formal complainant status, and whose interests are, or are likely to be materially affected by the subject matter of the complaint;

"party to a merger" means an acquiring firm, or target firm;

"private collection agency" means a person, company, partnership or other entity that is appointed by the Commission among those registered by High Court for collecting debts;

"privileged information" means information that contains request for advice to, and advice from, external counsel qualified to practice if made for that purpose, and in the interests, of the firm's rights of defence;

"target firm" means a firm-

(a) the whole or part of whose business would be directly or indirectly controlled by an acquiring firm as a result of a transaction in any circumstances set out in a merger as defined under section 2 of the Act;

(b) that, as a result of a transaction in any circumstances set out in a merger as defined under section 2 of the Act, would directly or indirectly transfer direct or indirect control of the whole or part of, its business to an acquiring firm; or

(c) the whole or part of whose business is directly or indirectly controlled by a firm contemplated in (a) or (b) ;

"turnover" means explicitly to the amounts accrue from the sale of goods and/or services.

PART II
ADMINISTRATION

Address of the Commission

3. All communications to the Commission, or to a member of the staff of the Commission, shall be addressed to:

(a) The Fair Competition Commission,
P.O Box 7883,
Dar es Salaam, Tanzania;

(b) Transmitted by electronic mail to info@competition.or.tz.

Business hours of the Commission

4.- (1) The office of the Commission shall be open to the public every day from Monday to Friday, other than a public holiday.

(2) The office hours shall be 08:00 to 13:00, and 14:00 to 17:00.

PART III
DELIVERY OF DOCUMENTS

Delivery of documents

5.- (1) Delivery or transmission of documents and invitations from the Commission to the addressees may be effected in any of the following ways:

(a) delivery by hand against receipt;

(b) registered letter with acknowledgement of receipt;

(c) fax with a request for acknowledgement of receipt; or

(d) electronic mail with a request for acknowledgement of receipt.

(2) Where the document is delivered or transmitted outside of the office hours of the Commission as prescribed

under sub-rule (2) of Rule 4, the document shall be deemed to have been delivered on the next working day.

(3) Any document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail shall be accompanied by a cover message, in either case setting out:

(a) the name, address, and telephone number of the sender;

(b) the name of the person to whom it is addressed, and the name of that person's representative, if is being sent to the representative of a person;

(c) the date and time of transmission;

(d) the total number of pages sent, including the cover page; and

(e) the name and telephone number of the person to contact if the transmission appears to be incomplete or otherwise unsuccessful.

Issuing of documents

6.- Where the Act or these Rules require the Commission to issue a document, the document shall be deemed to have been issued by the Commission when it has been signed, and served on any person to whom it is addressed.

Filing of documents

7.- (1) The Commission may assign distinctive case numbers to each:

(a) complaint;

(b) application; and

(c) merger notification.

(2) The Commission shall ensure that every document subsequently filed in respect of the same proceeding is marked with the assigned case number.

(3) The Commission may reject a document under sub-rule (2) if it is not properly marked with the assigned case

number.

(4) A person who files any document under the Act or these Rules shall provide to the Commission that person's-

(a) legal name;
(b) address for service;
(c) telephone number;
(d) if available, email address and fax number; and
(e) if the person is not an individual, the name of the individual authorized to deal with the Commission on behalf of the person filing the document.

(5) The language of the Commission shall be English or Kiswahili, but all orders or decisions of the Commission shall be in English language.

Form of applications

8. Every application made under these Rules shall be in prescribed form as set out in the First Schedule to these Rules.

Form of Notices issued by the Commission

9.- (1) Whenever the Commission is required to issue a notice to a party under any provision of the Act, or under these Rules, the document shall be in the form set out in the First Schedule to these Rules.

(2) Where the Commission is required, either under the Act or these Rules, to publish a notice in the Gazette that notice shall contain:

(a) the name of any person directly affected by the notice;

(b) the file number assigned by the Commission to the relevant matter;

(c) the provision of the Act or Rules under which the notice is required;

(d) a brief and concise description of the nature of the relevant matter;

(e) where the notice invites submissions, the last

date on which submissions may be received;

(f) where the notice reports a decision-

(i) a brief and concise description of the nature of relevant decision;

(ii) a statement indicating whether reasons for the decision have been published, and if so, how a copy of those reasons may be obtained;

(iii) a statement of any right of review of, or appeal from that decision, including the period during which a review or appeal may be lodged.; and

(g) the name, address and contact numbers of the person in the Commission responsible for publishing the notice.

PART IV
HANDLING OF COMPLAINTS

(b) Investigation of Complaint

Initiating of a complaint

10.-(1) Subject to the provisions of the Act, a complaint may be initiated by-

(a) any person submitting information concerning an alleged prohibited practice to the Commission, in any manner or form; or

(b) any person submitting a complaint against an alleged prohibited practice to the Commission in the prescribed form FCC.1; or

(c) the Commission on its own initiative.

(2) Complaints initiated under sub rule (1) shall be deemed to be complaints initiated by the Commission.

(3) The Investigation Department shall, investigate the complaint with a view to establishing whether there is a

case to answer.

(4) Notwithstanding sub rules (1) and (3), a complaint shall not be entertained where-

(a) the case does not fall under the Act;

(b) it has no material effect on competition;

(c) it is not worth devoting resources to investigate; or

(d) the same in whole or in part is before any court, tribunal, arbitration, judicial or quasi-judicial body or was previously determined by any court, tribunal, arbitration, judicial or quasi-judicial body.

(5) Without prejudice to sub-rule (3), the Director-General shall decide whether the complaint is to be entertained by the Commission or not.

(6) Where the complaint is not entertained pursuant to a decision made under sub-rule (5), the Director General shall inform the complainant the reasons for the decision not to entertain the complaint.

(7) Where the complainant is aggrieved by the decision made under sub-rule (5), he may refer the matter to the Commission for determination.

(8) Where the complainant fails to make submissions within the time set by the Commission the complaint shall be deemed to have been withdrawn.

(9) The Commission may publish a notice disclosing an alleged prohibited practice as set out in the complaint and invite any person who believes that the alleged practice has affected or is affecting a material interest of that person to file a submission in respect of that matter.

(10) Any person who supplies information; makes submissions, comments or subsequently submits further information to the Commission in the course of the same proceedings shall be required to clearly identify any material

which he considers to be confidential on Form FCC.2.

Conduct of investigation

11.-(1) In conducting investigation, the Investigation Department shall collect relevant facts-

(a) that will enable a preliminary assessment of the relevant markets;

(b) on the nature of competition in those markets; and

(c) on the possible role or behaviour of a person who is the subject of investigation.

(2) For the purpose of collecting and assessing the relevant facts regarding a complaint, the Investigation Department may-

(a) request and obtain economic data in writing from the main parties through a questionnaire or in any other form;

(b) request and obtain economic data in writing from third parties; and

(c) discuss with the main parties and with third parties their written submissions.

(3) Subject to sub-rules (1) and (2), the Investigation Department may discuss with main parties and third parties on whether the behaviour that is complained against is harmful to competition.

Establishment of a case

12.-(1) Where the Investigation Department is of the opinion that there is a case to answer; the Investigation Department shall refer the matter to the Director of Compliance.

(2) Where the Director of Compliance is of the opinion that the behaviour in question harms or is likely to harm competition he shall forward the case for further investigation.

(3) Subject to sub-rule (1), the main parties shall be provided with a statement of the case setting out the facts of the case and the relevant provisions of the law alleged to have been contravened.

(4) Where it appears that the relevant behaviour does not harm or is not likely to harm competition, the parties involved shall be informed with reasons that the Commission shall not be taking any further action.

Request for information

13.- (1) The Commission may, with or without summons, require a person to provide all necessary information.

(2) Where a request under sub-rule (1) is made, the Commission shall in making such request-

(a) state the legal basis and the purpose of the request;

(b) specify the information required;

(c) fix the time within which it is to be provided;

(d) in the case where a request is made without a summons, specify the prescribed penalty for the supply of incorrect or misleading information, and

(e) in the case where a request is made with a summons, specify the prescribed penalty for the supply of incorrect or misleading information and for not complying with the summons.

(3) In the case of legal person or association having no legal personality, their representatives shall supply the information requested on behalf of the legal person or the association concerned.

(4) A person questioned by an officer conducting an investigation shall answer each question to the best of his knowledge.

(5) The Commission may also specify the time and

place at which any document is to be produced.

Search warrant

14.-(1) For the purpose of section 71(5) of the Act, the Chairman of the Tribunal shall issue a search warrant which shall specifically identify the premises that may be entered and searched.

(2) A warrant issued under sub-rule (1) shall remain valid until one of the following events occur:

(a) the warrant is executed;

(b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;

(c) the purpose for issuing it has lapsed; or

(d) the warrant has expired.

(3) Immediately before execution of a warrant, the officer executing the warrant shall produce his identity card and explain to the person named in the warrant the authority by which the warrant is being executed.

Powers to enter and search

15.-(1) A person who is authorised to enter and search premises may-

(a) enter upon or into the premises;
(b) search the premises;
(c) search any person on the premises if he has reasonable grounds for believing that the person has in his personal possession a document that is relevant to the investigation;
(d) examine any document found in the premises that is relevant to the investigation;
(e) request information about any document from the owner of, or person in control of the premises or from any person who has control of the article or document, or from any other person who may have the information and record the information;
(f) take extracts from, or make copies of, any book or document that is on or in the premises

that is relevant to the investigation;

(g) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to-

(i) search any data contained in or available to that computer system;

(ii) reproduce any record from that data; and

(iii) seize any output from that computer for examination and copying;

(h) attach and, if necessary, remove from the premises for examination and safekeeping, anything that is relevant to the investigation; and

(i) seal any business premises and books or records for the period and to extent necessary for the investigation.

Conduct of entry and search Cap. 20

16.- (1) A person who enters and searches any premises shall observe the right to dignity and privacy of the person who is the subject of search.

(2) During the search, only a female officer or police officer shall search a female person, and only a male officer or police officer shall search a male person.

(3) A conduct of entry and search shall be witnessed by justice of the peace, or two adult persons who reside around the area where search is conducted unless the circumstances are such that-

(a) there is no time to secure their services; or

(b) securing their service will defeat the purpose.

(4) A police officer who is authorised to enter and search the premises or who is assisting an officer who is authorised to enter and search the premises may overcome any resistance to the entry and search by using such force as is reasonably required including breaking doors or windows of the premises.

(5) For the purposes of sub-rule (4), a police officer shall audibly demand entry and shall announce the purpose

of the entry.

(6) The Commission shall not use as evidence any document collected during search which contains privileged information.

(b) Procedure for hearing

Commission to adopt inquisitorial hearing procedure

17.-(1) The Commission shall adopt inquisitorial rather than adversarial procedure in conducting the hearings.

(2) Subject to sub-rule (1), the inquisitorial procedure shall be considered as part of the investigation process.

(3) For the purpose of sub-rule (2) the Commission shall provide a forum for presentation of any additional information or analysis with a view to facilitate investigation.

(4) The Commission shall, in conducting a hearing, not be bound by the formal rules of evidence.

Submission of the case to the Commission

18 Where it is decided that the case is to be submitted to the Commission, the Enforcement Department shall present the report of the case setting out-

(a) the economic and legal arguments;

(b) the findings as proposed by the officers;

(c) the options for conditions, if any; and

(d) proposed remedial action that may be implemented through compliance orders or agreements, compensatory orders or fines.

Issuance of provisional findings

19.-(1) The Commission shall, when sitting to review the case presented to it by the Enforcement Department, first consider the report referred under rule 18.

(2) For the purpose of sub-rule (1), the Commission shall be duly constituted when presided by at least three

members.

(3) The Commission shall, where it takes the view that an infringement has been committed or is likely to be committed, make provisional findings and issue such findings with reasons thereof to the respondent requiring the respondent to make written representation within a specified period.

(4) The provisional findings specified under sub-rule (3) shall set out-

(a) the facts, legal and economic assessment that constitutes a finding of an infringement;

(b) any action and reasons which the Commission proposes to take, including imposition of a financial penalties or issuance of directives to refrain from the continuity of an infringement.

(5) The Commission shall, upon the request of the respondent, grant access to the investigation file, and the access shall be granted after the notification of the provisional findings.

(6) The respondents may apply for settlement discussions in the manner prescribed under rule 21.

(7) The Commission shall publish the issuing of provisional findings on the Commission's website and widely circulating Newspapers.

Reply to provisional findings

20.-(1) A recipient of the provisional findings shall have the right to make a response in writing.

(2) The Commission shall not be under any obligation to take into account any written submissions received by it after the expiry of the time-limit set in rule 19(3).

(3) A recipient of the provisional findings may, in the written submissions provide all facts known to them which are relevant to their defence against the findings raised by the Commission

(4) For the purpose of sub-rule (3), the recipient

shall-

(a) provide an original version of the written submissions as well as an electronic copy thereof, or in the absence of an electronic copy, two print out copies of such submission together with attachment if any;

(b) attach a non-confidential version of the representation which shall state why the information should be treated as confidential;

except that:

(i) blanket or unsubstantiated confidentiality claim shall not be admitted;

(ii) the non-confidential version shall be submitted together with the original response, and in any case not later than twenty one days from the date of submission of the original response;

(5) without prejudice to sub-rule 4 (b) (ii), the commission reserves the right to provide the recipient of provisional finding an opportunity to make a confidentiality representation

(6) Formal complainants and third parties who may be able to materially assist the assessment of the case shall have a right to submit written representations in the manner prescribed under the rules.

(7) Disclosure of non-confidential version of the preliminary findings shall be sufficient to enable third parties to provide the Commission with informed comments and this will not include any annexed documents.

(8) Written representation by a formal complainant or third party shall be submitted to the Commission not later than twenty one days from the date on which the provisional findings were received by the formal complainant or the third party.

(9) The non-confidential version of the written representations that have been submitted by a formal Complainant or third party shall be disclosed to the provisional findings recipient to allow them an opportunity

to comment.

Settlement

21.-(1) An applicant under rule 19(6) shall confirm to the commission the requirement for access to the file after the receipt of the provisional findings where such provisional findings do not reflect the contents of the applicant's submissions.

(2) The Commission shall provide the formal complainant with a copy of the non confidential version of the provisional findings;

Provided that, in cases where the settlement procedure applies, the Commission shall inform the complainant in writing of the nature and subject matter of the procedure.

(3) Settlement shall be after provisional findings are issued to the recipients of the provisional findings and before final findings are given by the Commission.

Oral representation

22.-(1) A recipient of provisional findings shall, during oral representation, and upon application not later than 14 days after the prescribed date of submission of written representation, have a right to make oral representations on matters in the provisional findings.

(2) An applicant under sub-rule (1) shall-

(a) confirm to the commission the requirement of having the opportunity to develop arguments at an oral representation if the provisional findings do not reflect the contents of the applicants settlement submissions;

(b) within seven days from submission of written submission, give an indication in advance of the matters the applicant proposes to focus on in the oral representation.

(3) A recipient of provisional findings may be represented by a legal or other advisors to assist in presenting the oral representations.

Provided that the Commission may set limits of the number

of persons that may attend meetings on behalf the respondent.

(4) Oral representations shall be used by the recipient of provisional findings as an opportunity to highlight issues of particular importance to their case, which have been set out in the written submissions.

(5) Formal complainants and other interested third parties shall, for the purpose of protecting the confidentiality of the firm's business, not attend the respondent's oral representations meeting.

(6) As a general rule, any matter raised during oral representation stage shall be limited to matters already submitted to the Commission in accordance with sub-rule (2) (b).

(7) At the end of presentation of oral representations, the Commission may ask general questions or questions for clarification which shall be in writing.

(8) Response to questions in sub-rule (7) shall be obtained in writing after the meeting.

(9) A transcript of the oral representations meeting shall be provided to the respondent for the purpose of confirming its accuracy and identification of any confidential information.

(10) The Commission shall not accept blanket or any unsubstantiated confidentiality claims.

determination of oral and written representation

23.-(1) The Commission shall consider all written and oral representations to appraise the case as set out in the provisional findings and to assess whether the conclusions reached in the provisional findings continue to be supported by the evidence and facts.

(2) Any new evidence obtained during determination shall, where it supports the provisional findings, and which is intended to be relied upon in establishing the commission of an infringement, be communicated to the provisional findings recipient and the Commission shall afford the recipient an opportunity to respond to the new evidence.

(3) The Commission shall, where it makes a finding

that the new evidence indicates new allegation of infringement or materially changes the nature of infringement occasioned in the provisional finding, issue supplementary provisional finding setting out the new set of facts on which it proposes to rely to establish an infringement.

(4) The procedure for representation, settlement and determination of a provisional finding shall apply *mutatis mutandis* to supplementary provisional finding, except that the time frame for responding to the supplementary provisional finding shall be fourteen days.

(5) The Commission shall, after considering the provisional or supplementary provisional findings, make a final finding which will form the basis of Commission's decision.

Decision of the Commission

24.-(1) Decision of the Commission shall be made in a duly constituted meeting of the Commission through a majority of votes of the members present and, in the event of an equality of votes, the presiding member shall have a deliberative and a casting vote.

(2) The Commission shall make a decision whether there has been, or is likely to be, a breach of the Act arising from-

(a) a proposed agreement;

(b) an existing agreement;

(c) a proposed merger;

(d) an existing merger;

(e) an alleged misuse of market power.

(3) where the Commission concludes that a breach or breaches have occurred or are likely to occur, it shall consider whether an exemption is warranted because of the existence of the type of benefits listed under section 12(1)(b) and 13(1)(b) of the Act.

(4) where the Commission concludes that an exemption is not warranted, it shall consider and decide on an enforcement action, namely whether-

(a) a compliance order shall be made against one or more parties;

(b) a compliance agreement shall be negotiated with one or more parties; or

(c) a fine shall be imposed to one or more parties.

(5) For each enforcement decision, the Commission shall be advised by the Compliance Division and shall decide the action to be taken by the respondent.

Contents of decision

25.-(1) Every decision made pursuant to Rule 24 shall be composed of the following-

(a) the introductory part;

(b) the date and the place of the meeting;

(c) facts on which the Commission relied to prove the infringement;

(d) any material representatives that have been made during the course of the investigations;

(e) any other circumstance related to the case;

(f) the legal requirements for the Commission to reach at the decision;

(g) the finding of the Commission including sanctions, remedies or any other directive considered as necessary;

(h) where financial penalty is being imposed, explanation on how the level of penalty has been calculated;

(i) the date of implementing the order.

(2) The Commission shall deliver its decision within forty five working days from the date of closing the oral representation.

(3) Notwithstanding sub-rule, (2) exceptional circumstances may allow extension of the period of delivering the decision to a period not exceeding 15 working days.

(4) Every decision of the Commission shall be signed and dated by members as assigned in rule 19(2)

Amendments to final decision

26.The Commission may, within a reasonable time, amend its final decision for any of the following purposes-

(a) to correct a clerical or typographical error or error of calculation;

(b) to rectify an accidental slip or omission;

(c) to clarify an ambiguity.

Implementation of decision

27.-(1) The Director General shall ensure implementation of the decision of the Commission.

(2) Where the decision involves a compliance agreement, the Commission shall enter into discussions with the relevant parties in order to negotiate a suitable form of agreement.

(3) Where the Commission finds the agreement to be appropriate in the light of earlier decision of the Commission, the agreement shall be formally drawn up and signed.

(4) Where it is not possible to negotiate an appropriate agreement, consideration shall be made to making a compliance order.

Imposition of fines

28. The Commission in imposing the fines stipulated under section 60 or any other provision of the of the Act shall have regard to-

(a) the nature and extent of non compliance or violation;

(b) the wrongly gain or unfair advantage derived as result of the non-compliance or violations;

(c) the less or degree of harassment caused to any person as a result of the non-compliance or violation; and

(d) the repetitive nature of the non-compliance or violation.

Payment of

29. All fines imposed by the Commission for a

fines

violation of the Act, shall be paid by the respondent to the Commission's cash receipt office which shall issue duplicate receipts thereof.

Adjustments to the amount of fine

30. The amount of fine may be increased to an amount not exceeding the maximum statutory amount where the Commission finds that there are aggravating circumstances such as-

(a) where the firm continues or repeats the same or similar infringement after the Commission has made a findings.

(b) refusal to cooperate with or obstruction of the Commission in carrying out its investigations; or

(c) role of leader in, or instigator of the infringement.

Transfer of order

31.- (1) The Commission may apply for execution of its orders directly to High Court with Mainland Tanzania**.**

(2) When sending the order for execution the Commission shall send-

(a) a copy of the order;

(b) a certificate setting forth that satisfaction of the order has not been obtained by the Commission, or, where the order has been executed in part, the extent to which satisfaction has been obtained and what part of the order remains unsatisfied; and

(c) a copy of any order for the execution of the order**;** or, if no such order has been made, a certificate to that effect

(3) The court to which the order was sent shall cause such copies and certificates to be filed without any further proof of the order for execution, or of the copies thereof, unless the court, for any special reasons to be recorded under the hand of the Judge or magistrate, requires such proof.

(4) Where such copies are filed, the order may, if the

court to which it is sent is the court of a resident magistrate, be executed by such court or be transferred for execution to any subordinate court of competent jurisdiction.

(5) The Order shall be executed in the same manner as if it had been passed by such court

Annual turnover

32.-(1) The annual turnover referred to under section 60 of the Act shall be the total sales of goods or services made by the firm in-

(a) the last full business year of its participation in the infringement; or

(b) the year reflected in the last audited accounts of the firm.

(2) Where the figures made available by a firm are incomplete or not reliable, the Commission may determine the value of the sales or services of that firm on the basis of the partial figures it has obtained and any other information which it regards as relevant and appropriate.

(3) The value of sales shall be determined before deduction of VAT and other taxes directly related to the sales.

PART V
MERGER PROCEDURES

Merger notification requirements

33.-(1) A firm which intends to acquire control through a merger shall notify the Commission of that intended merger by filing a notification under section 11(2) of the Act.

(2) The notification under sub-rule (1) shall be-

(a) in Form FCC.8 set out in the First Schedule to these Rules; and

(b) accompanied by application fees prescribed under these Rules.

(3) Any claim of confidentiality on the merger notification shall be supported by a written statement on Form FCC.2 set out in the First Schedule to these rules explaining why the information is confidential.

(4) One original and three copies of the form under

sub-rule (2)(a) and all the supporting documents shall be submitted to the Commission.

(5) The supporting documents shall be either in originals or certified copies of the originals.

(6) Where notifications are signed by representatives of persons or of firms, such representatives shall produce written proof that they are authorised to act.

(7) The parties to a merger shall not implement that merger until it has been approved, with or without conditions, by the Commission under section 11 or 13 of the Act.

Information and documents to be provided

34.-(1) Notification shall contain the information, including all documents requested in the applicable forms set out in the First Schedule to these Rules.

(2) The Director of Compliance may dispense with the obligation to provide any particular information in the notification, including documents, or with any other requirement specified in the prescribed form where it is considered that compliance with those obligations or requirements is not necessary for the examination of the case.

Review of notification

35.- (1) Within five working days after receiving a Merger Notification, the Director of Compliance shall deliver to the filing firm in a prescribed form-

(a) notice of Complete Filing on Form FCC.11; or

(b) notice of Incomplete Filing on Form FCC.12.

(2) The Division dealing with mergers shall issue the notice under sub-rule (1)(a) if-

(a) the merger appears to fall within the jurisdiction of the Act; and all the requirements set out in Rule 33 have been satisfied; and

(b) in the case of a subsequent filing by firm, all the requirements set out in that form have been satisfied

(3) The Division dealing with mergers shall issue the notice under sub-rule (1)(b) if the merger notification filed does not meet the applicable criteria set out in sub-rule (2).

(4) Where the filing firm neglects within the stipulated time to provide such missing information or documents as the Commission may require, the Commission shall consider the merger as abandoned and Rule 45(2) shall apply.

(5) Within five working days after receiving the Notice of Incomplete Filing, the acquiring firm may refer the matter to the Commission for an order setting aside any requirement set out in that notice.

(6) Upon deciding on the matter referred to under sub-rule (5), the Commission may make an order-

(a) setting aside the Notice of Incomplete Filing entirely;

(b) confirming any or all of the requirements set out in the Notice of Incomplete Filing;

(c) substituting other requirements for any of the requirements set out in the Notice of Incomplete Filing; or

(d) combining any or all of the requirements set out in the Notice of Incomplete Filing with additional or substitute requirements.

(7) Sub-rules (1) to (6), shall apply to a subsequent filing by the acquiring firm in response to-

(a) a Notice of Incomplete Filing issued to it; or

(b) an order of the Commission under sub-rule (5).

Merger review period and extensions

3**6**.-(1) Where the Commission determines that the merger shall be examined, or otherwise not prohibited; it shall notify the person within the initial period.

(2) The initial period under sub-rule (1) is the period

of fourteen allowed by section 11(3) of the Act to determine whether the merger shall be examined.

(3) The proposed merger shall be examined for a period of ninety days.

(4) An extension period of thirty days granted by the Commission under section 11(4)(a) of the Act begins-

(a) on a working day following the date on which the ninety days period expires; or

(b) in the case of second or subsequent extension granted under section 11(4)(b) of the Act, on the working day following the date on which previous extension expires.

(5) In extending the period under sub-rule (4), the Commission shall issue a copy of Extension Certificate on Form FCC.14 set out in the First Schedule to these Rules to a party who notified the merger.

(6) The Initial Period and any extension once begun shall continue without any interruption.

Commencement of Initial Period

37.-(1) The initial period for a merger begins on the working day following the date on which a merger notification together with all the supporting documents under Rule 35(2) were filed unless the Division dealing with mergers issues a Notice of Incomplete Filing to the filling firm within the time allowed by Rule 35(1).

(2) Where the Division dealing with mergers issues a Notice of Incomplete Filing, the initial period for the merger shall begin on the business day following the date on which the filing firm subsequently files documents in response to that Notice.

Preliminary investigation *(first stage investigation)*

38.-(1) The Division dealing with mergers shall investigate the merger with a view to establishing whether it has any major economic impact.

(2) The provisions on investigation under Part IV

shall apply *mutatis mutandis* to investigations conducted under this Rule.

Decision as to whether merger is likely to harm competition

3**9**.-(1) Subject to Rule 38, the Division dealing with mergers shall, in consultation with a lawyer and an economist, carry out an assessment to decide whether the relevant merger is likely to harm competition.

(2) The Division dealing with mergers shall submit the report on the assessment in sub-rule (2) to the Director General.

(3) The decision as to whether the merger is likely to harm competition at this preliminary stage shall be made by the Divisional Director.

(4) Where it appears there is a little or no possibility that the relevant merger is likely to harm competition, the parties involved shall be given a "no objection" to the merger.

(5) Where it is decided that the merger in question is likely to harm competition, further investigation shall be conducted by the Division dealing with mergers.

Feedback to parties

40**.-**Where the Divisional Director decides to continue with investigations, the main parties and third parties to the merger shall be informed of that decision.

Further examination of the merger *(second stage investiga-tion*)

4**1.-**(1) A target firm or third parties with sufficient interest in a merger may submit his interest through the prescribed form FCC 10 which shall notify the commission of the interest to participate in the merger.

(2) Any question that may be useful to the examination of the merger shall be put to both main parties and third parties.

(3) Where the main parties to the merger wish to argue that there are benefits arising out of the merger that would justify exemption under section 13 of the Act, the Division dealing with mergers shall have to obtain

information regarding those alleged benefits.

(4) Where all the written material is available, a round of meetings, primarily with parties, shall take place to focus on the key issues.

(5) The scope of investigation shall be limited for the purpose of ensuring that the Division dealing with mergers completes its procedure within timetable set out under section 11(3) to (5) of the Act.

(6) The provisions on investigation under Part VI shall apply *mutatis mutandis* to this Rule.

Assessment of report

4**2.**–(1) Where the second stage investigation is complete, the Enforcement Department shall produce a report setting out the economic and legal arguments as to-

(a) why a breach of the Act is likely to take place; and

(b) if so, whether an exemption under section 13 of the Act may be justified because of the existence of benefits.

(2) The Division dealing with mergers shall consider the report in sub-rule (1) and decide whether to propose that the case be presented to the Commission.

(3) Where it is decided that the case shall be presented to the Commission, the Division dealing with mergers shall present the report of the case setting out-

(a) the economic and legal arguments; and

(b) the findings as proposed.

(4) The Commission shall consider the report under sub-rule (3).

(5) The Commission shall decide whether to hear the main parties alone, or the main parties together with the relevant third parties.

(6) Where the Commission decides to hear the parties it shall identify and formulate the key issues of the case.

(7) The main parties shall argue their case before the Commission.

(8) The Commission shall explore the key arguments presented before them.

(9) The hearing shall cover the prior issues of whether there is likely to be a breach of the Act and whether an exemption is warranted.

(10) The Commission shall make a decision whether there is likely to be, a breach or breaches of the Act arising from the proposed merger.

(11) Where the Commission concludes that a breach or breaches are likely to occur, they shall need to consider whether an exemption is warranted because of the existence of the type of benefits listed in section 13(1)(b) of the Act.

(12) Rules 17 to 31 shall apply *mutatis mutandis* to the hearing conducted by the Commission under this Part.

(13) After completing the investigation and consideration of merger, the Commission shall-

(a) approve the merger; or

(b) approve the merger subject to conditions; or

(c) declare the merger prohibited.

(14) To each decisions under sub-rule (13), the Commission shall-

(a) issue either-

(i) a Clearance Certificate on Form FCC.18 or

(ii) a Notice of Prohibition on Form FCC.15 to the firm that filed the Merger Notice;

(b) make available to each party a copy of its reasons for decision; and

(c) publish a notice of its decision in the *Gazette*.

Request for additional information

43. At any time during a merger investigation, the Commission may-

(a) request additional information from a party to a merger;

(b) require a party to a merger to provide additional information, at any time, by serving on the party a request for additional information on Form FCC.13 as set out in the First Schedule to these Rules setting out the specific information that the Commission requires.

Questions of jurisdiction

44. Where the Division dealing with mergers has indicated on Notice of Incomplete Filing that a merger appears to fall outside the jurisdiction of the Act:

(a) the filing fees shall be forfeited;

(b) the Division dealing with mergers shall return the Merger Notification to the acquiring firm that submitted the notification; and

(c) the acquiring firm to that merger shall not file any further documents concerning that merger.

Abandonment

45.-(1) The acquiring firm may notify the Commission on Form FCC.9 that it has abandoned the intended merger transaction and has no intention to implement it.

(2) Upon the filing under sub-rule (1):

(a) the parties to the merger shall remain in the same position as if the merger had never been notified; and

(b) the filing fee paid in respect of that merger shall be forfeited to the Commission.

Notifying parties on revocation of decision

46.- Where the Commission intends to take a decision to revoke its own decision it shall give:

(a) the notifying parties who have so requested in their written comments the opportunity to submit their arguments in a formal oral hearing; and

(b) other involved parties who have so requested in their written comments the opportunity to submit their arguments in a formal oral hearing.

Breach of merger approval conditions or obligations

47.-(1) Where a firm has breached an obligation that was part of an approval or conditional approval of the merger, the Division dealing with mergers shall deliver to that firm a notice of Apparent Breach on Form FCC.16 before taking any further action under these rules to revoke that approval or conditional approval.

(2) Within ten working days after receiving a notice of Apparent Breach, a firm referred to in sub-rule (1) may-

(a) submit to the Commission a plan to remedy the breach; or

(b) request the Commission to review the notice of apparent breach on the grounds that the firm has substantially complied with its obligations with respect to the approval or conditional approval of the merger.

(3) Where a firm submits a plan to the Commission under sub-rule (2) (a), the Commission may either-

(a) accept the proposed plan; or

(b) reject the proposed plan, and invite the firm to consult with the Commission concerning the apparent breach, with the aim of establishing a plan satisfactory to the Commission for which all obligations of the firm with respect to the approval or

conditional approval may be settled.

(c) where a settlement referred to in sub rule (3)(b) is concluded, it shall be treated as compliance agreement in accordance to Section 58(8) of the Act.

(4) Where the Commission accepts a proposed plan under sub-rule (3)(a) or (b), the Commission shall monitor the compliance of the firm with the plan.

(5) The Commission may revoke the approval or conditional approval of a merger referred to in sub-rule (1), only where-

(a) the firm concerned do not respond to the notice of Apparent Breach within ten working days after receiving it, in the manner provided in sub-rule (2);

(b) the firm concerned does not agree to meet, or fails to meet as agreed, with the Commission, as required by sub-rule (3) (b);

(c) the firm and the Commission are unable to agree to a plan as contemplated in sub-rule (3)(b);

(d) the firm acts in a manner calculated to frustrate the efforts of the Commission to monitor compliance with a plan, as required by sub-rule (4); or

(e) the firm fails to employ its best efforts to substantially comply with a plan established in sub-rule (3).

Revocation of approved merger

48.-(1) The Commission may, subject to sub-rule (2), revoke its own decision to approve or conditionally approve a merger where-

(a) the decision was based on incorrect information for which a party to the merger is responsible;

(b) the approval was obtained by deceit; or

(c) the firm concerned has breached an obligation attached to the decision.

(2) Where the Commission is contemplating to revoke its own decision to approve or conditionally approve a merger, it shall, where the proposed revocation is based on sub-rule (1)(a) or (b), notify Parties in accordance with Rule 46 before taking any further steps under this rule; and in any case-

(a) notify any firm concerned, in writing, of the intention to do so;
(b) advise any firm concerned in writing to consider a settlement on the findings of the Commission based on sub rule 1 (a) or (b).

(3) where a settlement referred to in sub rule (2)(b) is agreed upon, it shall be treated in accordance to Section 58(8) of the Act.

(4) where there is no settlement referred to in sub rule (3) the Commission shall publish a notice of the proposed revocation in the *Gazette*.

(5) The Commission may request further information from any person who submits a representation in response to a notice published pursuant to sub-rule (4).

(6) After considering any submissions or other information received in relation to the proposed revocation, the Commission shall-

(a) either-

(i) confirm the approval or conditional approval, as the case may be, in writing, or
(ii) revoke it by issuing a notice of revocation of merger decision in Form FCC.17 to the firm concerned; and

(b) publish a notice of that decision in the

Gazette.

(7) Where the Commission confirms the notice of revocation of merger decision, the effect of the notice is that-

(a) the Certificate of approval or conditional approval in respect of the relevant merger is deemed to have been rejected as of the date of that Certificate;

(b) each part to the merger is, for all purposes of the Act, in the same position as if they had never notified the Commission of that merger;

(c) the Commission may further consider that merger only if the acquiring firm subsequently files a new merger notification with respect to it; and

(d) where a new merger notification is subsequently filed in respect of that merger, the Commission shall consider that merger on the basis of that new notification without reference to any previous notification filed in respect of it.

Right to be heard

49. For the purposes of the right to be heard, in the case of a notified merger, the following parties shall be distinguished:

(a) a notifying party, that is, a person or firm submitting a notification pursuant to section 11 of the Act;

(b) other parties, that is, parties to the proposed merger other than the notifying party, such as the seller and the firm which is the target of the merger; and

(c) third parties who demonstrate sufficient interest, that is natural or legal persons, including-

(i) customers;
(ii) suppliers;
(iii) competitors;

(iv) members of the administrative or management bodies of the firms concerned or the recognised representatives of their employees; and

(v) consumer associations, where the proposed merger concerns products or services used by final consumer.

PART VI
EXEMPTION OF AGREEMENTS

Procedures relating to exemption applications

50.-(1) A person may apply for exemption of an agreement or all agreements falling within a class of agreements under section 12(1) of the Act in a prescribed form by filing an application in Form FCC.3 set out in the First Schedule to these Rules.

(2) Upon receiving an application in sub-rule (1), the Division dealing with exemption of agreements shall where-

(a) the application is materially incomplete, advise the applicant of any further information required before the application be considered; or

(b) the application does not specify a specific agreement or class of agreements, require the applicant to state more specifically the exemption sought before the application be considered

(3) Subject to sub-rule 2(a), Form FCC.4 shall be issued to the applicant.

(4) Where applicant-

(a) does not respond to the Commission within thirty working days after being served with form under sub-rule (2), the application shall be deemed to have been abandoned by the applicant, and the filing fees paid by the applicant shall be forfeited to the Commission; or

(b) responds to the Commission, but does not, to the satisfaction of the Commission, meet the requirements set out in the form under sub-rule (2) as issued, the Division dealing with exemption of agreements may by issuing a new form to the applicant, stipulate any further information, or clarification required before the application be considered, and the provisions of this sub-rule (4) shall apply to such a new form.

(5) Where application is deemed to have been abandoned under sub-rule (4)(a), the Commission may close its file on that application without making a decision contemplated in section 12(1) of the Act.

(6) Any person who supplies information makes submissions, comments or subsequently submits further information to the Commission in the course of the same proceedings shall be required to clearly identify any material which he considers to be confidential on Form FCC.2 set out in the First Schedule to these Rules.

(7) Before granting or revoking an exemption under section 12 of the Act, the Commission-

(a) shall give a notice in the *Gazette* of the application for an exemption, or of its intention to revoke that exemption;

(b) shall give interested parties thirty working days from the date of that notice to make written representations as to why the exemption should not be granted or revoked;

(c) may request further information from any person who submits a representation in response to a notice published under (a) and

(d) may conduct an investigation into the agreement or class of agreements concerned.

(8) The provisions on investigation under Part IV shall apply *mutatis mutandis* to applications for exemption

under this Rule.

(9) The Commission shall, by notice in the Gazette, give notice of any exemption granted, refused or revoked under these Rules.

(10) Upon publishing the notice under sub-rule (9), the Commission shall provide written reasons for its decision.

(11) The person concerned, or any other person with substantial financial interest affected by a decision of the Commission under section 12 of the Act, may appeal to the Tribunal in the prescribed manner.

(12) Where the Commission grants an exemption certificate under this Rule, the certificate granted shall be on Form FCC. 19 set out in the First Schedule to these Rules.

(13) Where the Commission revokes an exemption under this Rule, the notice of revocation shall be on Form FCC. 6 set out in the First Schedule to these Rules.

Procedures concerning practices that are not prohibited

5**1.-**(1) Where the Commission determines that an application under Rule 50 does not concern a prohibited practice as contemplated by section 12 of the Act, the following rules shall apply:

(a) the Commission shall issue a notice of refusal to grant an exemption on Form FCC.5 set out in the First Schedule to these Rules;

(b) the Commission may later withdraw its notice of refusal to grant an exemption, by-

(i) issuing notice to the applicant at least thirty working days before the withdrawal will take effect; and

(ii) providing the applicant with written reasons for its action.

(2) Where the Commission decides to consider an application it has previously rejected, the provisions of Rule 50 shall apply.

Procedures related to revoking exemption certificates

5**2.-**(1) Where the Commission is contemplating revoking an exemption granted under section 12(6) of the Act, the Commission shall advise, in writing, the person concerned of the intention to do so, as well as publishing the notice required by Rule 49(a).

(2) The Commission may request further information from-

(a) the person concerned; or

(b) any person who submits a representation in response to a notice published in terms of Rule 49(a).

(3) After considering any submissions or other information received in relation to the proposed revocation, the Commission shall-

(a) either revoke the exemption by issuing to the person concerned a notice of revocation on Form FCC.6, or confirm the exemption as previously granted, in writing to that applicant; and

(b) give written reasons for its decision, as well as publishing the notice required by Rule 50(9)

PART VII
PUBLICATIONS

(a) Publication of Decisions

Publication of decision

53.-(1) The Commission shall publish in the Gazette every decision which it makes pursuant to the Act.

(2) A copy of the published decision shall be placed in the Public Register.

(3) Before publication of any report on a case, the Compliance Division shall ensure that the requirements and procedures set out under section 76 of the Act regarding confidentiality of the material have been complied with.

(4) The information declared as confidential in the

decisions shall be separated from the ones to be published and shall be stored at the place of keeping confidential information at the Commission's office.

(5) Where a matter is contentious, it shall be referred to the Chairman who shall decide on behalf of the Commission what shall be excluded from the report.

(6) The report under this rule shall contain-

(a) the names of the parties;

(b) the key facts and arguments of the case;

(c) the particular reasoning behind each of the decision;

(d) the terms of any compliance orders or agreements; and

(e) amount of fine, if any.

(7) In any case where adverse findings have been reached, publication should only take place after the decisions of the Commission have been implemented.

Public Register

54.-(1) There shall be a Public Register which shall be available for inspection by the public at all times during working hours.

(2) The department dealing with information systems and Services of the Commission shall be responsible to maintain the Public Register.

(3) The materials to be maintained in the Public Register shall be obtained from all divisions of the Commission and shall be regularly updated.

(4) The Public Register shall contain copies of-

(a) all formal decisions made in respect of offences committed under sections 8, 9, 10 and 11 of the Act, decisions to grant or refuse to grant exemptions under sections 12 and 13 of the Act and decisions to make or refuse to make orders

under Part X and section 70 of the Act;

(b) the reasons for granting or refusing exemptions or orders referred to under paragraph (a);

(c) such other decisions and information as the Commission may determine from time to time;

(d) significant reports and studies;

(e) subsidiary instruments in the form of orders or rules of procedure made by the Commission;

(f) adopted code of conduct or amendment to a code of conduct;

(g) any other information as the Commission may determine from time to time.

(b) Information Systems

Information department

55.-(1) There shall be a department dealing with information Systems and Services which shall report to the Division of Corporate Affairs.

(2) The department dealing with Information Systems and Services shall be responsible for-

(a) the maintenance of the Core Database;

(b) the maintenance of a reference file covering useful internet websites;

(c) acting as an intermediary in the provision of economic data;

(d) storing and providing access to key hard copy texts;

(e) the maintenance of the Public Register; and

(f) the maintenance of the Commission's internet website.

(3) In respect to sub-rule (2)(a) to (d), access shall be for members and employees of the Commission.

(4) In respect to sub-rules (2)(e) and (f), there shall be public access.

Internet website

56.-(1)The Commission's website shall contain the following minimum data, that is to say-

(a) the contents of the public register under Rule 54 as provided from the respective Divisions;

(b) the annual reports of the Commission;

(c) press releases issued by the Commission;

(d) any guidance that the Commission issues about the way in which it intends to interpret and apply the Act;

(e) a brief account of the main Commission personnel and the organizational structure showing how they relate to each other; and

(f) information on how to get in touch with the Commission, including contact names and telephone numbers.

(2) Apart from the Internet website, radio and television shall be used by the Commission for publicity.

PART VIII
OTHER INVESTIGATIONS, STUDIES AND INQUIRIES

Investigations, studies and inquiries

57.-(1) The Division dealing with Research and Advocacy shall be responsible for investigations and inquiries that relate to competition which do not fall under Part II of the Act.

(2) The types of investigation under this Part may relate to-

(a) impediments to competition which may exist in any economic sector under section 65(2)(e) of

the Act; or

(b) the policies, procedures and programmes of regulatory bodies so as to assess their effect on competition under section 65(2)(h) of the Act.

(3) The investigations under this Part may be initiated by-

(a) the Commission;

(b) the Minister; or

(c) a regulatory body.

(4) In respect to investigations and inquiries, there shall be produced a strategy paper for the Commission which shall include-

(a) a statement of objectives;

(b) criteria by which proposals shall be judged; and

(c) an initial assessment of the optimum way of combining internal and external resources.

(5) The strategy paper in sub-rule (4) shall be produced by the Director General in consultation with the Chairman.

Initiation of the study

58.-(1) There shall be kept by the Division dealing with Research and Advocacy a record of all ideas and proposals for new inquiries.

(2) The ideas and proposals may originate from complaints sent to the Commission, the Commissioners or from any other source.

(3) The Division dealing with Research and Advocacy shall make assessment of all ideas and proposals appearing to have a value, including-

(a) potential benefits of the study;

(b) possible cost of the study; and

(c) possible duration of the study.

(4) The Division dealing with Research and Advocacy shall, in consultation with the Director General, make recommendations to the Commission of the studies that are most valuable having regard to the criteria set out in the strategy paper made under rule 57(4).

(5) The Commission may, decide on what studies to initiate, taking into consideration-

(a) any expectations of the study likely to be proposed by the Minister or a regulatory body;

(a) the existing work load; or

(b) the current resource position.

(6) After the study has been authorised by the Commission, the Division dealing with Research and Advocacy shall draw up detailed Terms of Reference.

(7) The Division dealing with Research and Advocacy shall thereafter appoint a team to carry out the study making use of external specialists where appropriate.

(8) The members of the team referred to in sub-rule (7) shall be able to handle economic and legal issues that are likely to arise including the economic issues outside the competition field.

Initiation by the Minister

59.-(1) Where a study is initiated by the Minister, the Minister may in advance, consult the Commission about the possible subject-matter and scope of the study.

(2) The Director General shall direct the Research and Advocacy Division to prepare submission to solicit the Commission's views on the issue and convey them to the Ministry for directions.

(3) Where the Minister has given directions to the Commission, the Division dealing with Research and Advocacy shall draw up the terms of reference based on the Minister's directions.

(4) The Division of dealing with Research and Advocacy shall where appropriate appoint a team to carry out

the study making use of external specialists.

(5) The members of the team appointed in sub-rule (4) shall be able to handle economic and legal issues that are likely to arise including the economic issues outside the competition field.

Initiation by a regulatory body

60.-(1) Where a regulatory body initiates a study, it may consult the Commission in advance on the subject-matter and scope of the study.

(2) The Director of Research and Advocacy shall consult the Director General to determine the Commission's views on the study and engage in a dialogue with the regulatory body on the same basis.

(3) The terms of the strategy paper shall be taken into account in formulating the Commission's views on the study.

(4) Once the regulatory body has formally communicated the subject-matter of the study to Commission, the Division dealing with Research and Advocacy shall draw up detailed terms of reference reflecting the dialogue with the regulatory body.

(5) The terms of reference in sub-rule (4) shall be approved by the Director General.

(6) Where the Director General and the regulatory body are in agreement, the final text of the terms of reference shall be the document agreed between the two bodies for the purpose of the proposed study.

(7) After establishing the subject of the study, the Division dealing with Research and Advocacy shall appoint the team to carry out the study making use of external specialists where appropriate.

(8) The Division dealing with Research and Advocacy shall ensure that members of the team are collectively able to handle the economic and legal issues that are likely to arise both on competition and regulatory aspects.

(9) The cost of the study shall be met by the relevant regulatory body.

Public inquiry for collection of data views

61.-(1) The Division dealing with Research and Advocacy shall make a public announcement to the effect that an inquiry under section 68 of the Act has been set up.

(2) The inquiry in sub-rule (1) shall be carried out involving investigation using an explicit methodological framework to be prescribed by the Commission.

(3) The terms of reference of the inquiry may require the team to consider certain impediments to competition pursuant to section 65 of the Act and examine their effects on competition and any other economic benefits.

(4) The data and views that have been sought at this point shall therefore need to be sufficient to provide the basis for writing the final report and hence enough to support eventual conclusions.

(5) The methods used at this stage of an investigation shall be a combination of questionnaires and meetings.

(6) An investigatory framework shall be worked out to determine as far as possible what evidence to seek and how each part of that evidence is to be used in the ultimate analysis.

(7) The questionnaires shall cover the whole range of evidence that is needed.

(8) When designing the questionnaires it shall be ensured that all main areas contributing to the planned analysis are included.

(9) A plan of operations shall be drawn up to set out what is to be done on weekly basis and to integrate the work on questionnaires with the arrangement of meetings.

Report from the collected data

62. (1) On completion of the data collection exercise, the team shall produce a report to summarize data and views collected and points towards the range of conclusions that may be drawn in the ultimate analysis.

(2) The Division dealing with Research and Advocacy Division shall consider the report and decide whether any

modifications need to be made on the scope of the study or the resources employed in lieu of what the team has so far discovered.

(3) Where the Division dealing with Research and Advocacy in sub-rule (2) considers that no modification on the study is required it shall send the report to the Commission.

(4) Where the study was initiated within the Commission, the Chairman shall decide after consulting other Commissioners if he sees fit, on the extent and nature of the modification to be made.

(5) Where the Minister initiated the study-

(a) the Chairman shall determine what shall be the view of the Commission to a modification of the study; and

(b) the Division dealing with Research and Advocacy shall make an appropriate proposal for the Ministry to decide on what modifications, if any, shall be made.

(6) Where a regulatory body initiated the study-

(a) the Chairman shall determine what shall be the view of Commission to a modification of the study; and

(b) the Division dealing with Research and Advocacy shall make an appropriate proposal to the regulatory body:

(7) Notwithstanding sub-rule (6), where there is a difference of views between the two sides, there shall be a dialogue to resolve the differences.

(8) Where the Division dealing with Research and Advocacy decides that the scope of study shall be modified, it shall amend the terms of reference and make arrangements for any changes in the resources to be devoted to the study.

Evaluating

63.-(1) The team shall within their division discuss

effects on competition

on-

(a) take into account any modifications decided in the review;

(b) revise the findings; and

(c) draw up a plan of operations for further study.

(2) The Division dealing with Research and Advocacy shall:

(a) identify and evaluate effects on competition together with any other economic or technical effects arising from the behaviour or arrangements under scrutiny;

(b) consider what shall be the effect of changes designed to eliminate or reduce any adverse effects on competition that had been identified; attempt to carry out some analysis of the effects of those changes in addition to collecting a range of views;

(c) seek the views of experts in the relevant field as well as those of the interested parties; and

(d) seek the views of the relevant government departments.

Final Report

64.- (1) The study team referred under Rule 72 shall discuss with the head of Research on the nature and contents of the final report to be produced which shall cover-

(a) the effects on competition arising from the behaviour or arrangements under scrutiny;
(b) any other economic or technical effects of that behaviour or those arrangements;
(c) changes that might be made to eliminate or reduce the adverse effects on competition;
(d) the implications of those changes; and
(e) the views of experts, interested parties and government departments on those changes and their possible implications.

(2) The Director of Research and Advocacy shall consider the report and then send it to the Commission with recommendations about the conclusions to be drawn from the report and any further investigation that the Commissioners might themselves undertake.

(3) The Commission shall then consider-

(a) the conclusions that it wishes to draw about the competition effects;

(b) the conclusions that it wishes to draw about other economic and technical effects;

(c) an assessment of overall impact;

(d) the range of possible changes that it wishes to explore; and

(e) the preliminary thinking on the likely impact of such changes.

(4) Where the Commission wishes to explore a wider range of possible changes than has been covered in the team's report or to go further in any other way, the Commission shall instruct the relevant Division dealing with Research and Advocacy to carry out further investigation that is required.

(5) The Commission shall determine what meetings it wishes to hold with a view to ensure it has the opportunity to explore the key issues and that interested parties have been able to express their views direct to the Commission.

(6) Where any further investigation required by the Commission has been carried out and the round of meetings with interested parties completed, the Commission shall meet to discuss conclusions and recommendations.

(7) Where the study was initiated by a regulatory body, the Commission shall meet representatives of the regulatory body to discuss conclusions and recommendations in order to minimize any areas of disagreement between the two bodies.

(8) The Director of Research and Advocacy and the Commission shall set out a final report providing-

(a) the necessary facts and reasoning;

(b) the conclusions they have reached on the economic study, and if relevant, technical impact of the behaviour or arrangements under scrutiny; and

(c) any recommendations that they may wish to make.

(9) The Director of Research and Advocacy Division shall-

(a) publish the report in the Public Register according to section 77(3)(c) of the Act; and

(b) ensure that the requirements set out under section 76 of the Act regarding confidentiality of material have been complied with:

Provided that where a matter is contentious, it shall be referred to the Chairman who shall decide on behalf of the Commission what to be excluded from the report on these grounds.

(10) Where the study was initiated by the Minister, the report shall be made available to the Minister within the period of time allowed for the study by him pursuant to section 68(3) of the Act.

(11) The handing over of the report by the Commission to the Minister shall also allow a reasonable period of time before the intended date of publication.

(12) Where the study was initiated by a regulatory body, the report shall be made available to that body within a reasonable period of time before publication.

PART IX

GENERAL PROVISIONS

Review of agreements

65.- (1) Subject to the provisions of section 8 of the Act, the Commission may review an agreement upon application by a party.

(2) Notwithstanding sub-rule (1), the Commission may on its own motion review its decision where it is satisfied that there are substantive changes in the agreement.

Appeals to Tribunal

66.-(1) Any person aggrieved by the decision of the Commission under the Act may appeal to the Tribunal.

(2) An appeal under these Rules shall be made as provided under the Act and in the prescribed form provided under the Competition Tribunal Rules.

(3) The appeal shall be made in not more than twenty eight days after notification or publication of the decision.

(4) Where a case is appealed to the Tribunal, the Division of Compliance shall supervise the arrangement for presentation of the Commission interests.

(5) Division of Compliance shall represent the Commission in any appeal before the Tribunal.

(6) The Division of Compliance shall consult the Chairman where necessary during the period of the Tribunal proceedings in order to ensure that the Commission's case is presented in a way that accord with the decision that was made and the reasons for that decision.

Limitation of time

67.-(1) In setting the time-limits under these Rules, the Commission shall-

(a) have regard both to the time required for the preparation of the submission and to the

urgency of the case; and

(b) take into account of the working days as well as public holidays.

(2) Notwithstanding sub-rule (1), the time-limits referred under Rules 10(8), 13, 19(3) and 35(4) shall not be less than twenty one days.

(3) Where appropriate and upon reasoned request made before the expiry of the original time-limit, time-limits may be extended.

Fees

68.-(1) The fee for filing an application for exemption of agreement with the Commission shall be eight million Tanzanian shillings plus annual fee of two million Tanzanian shillings multiplied by number of years requested for exemption.

(2) Fee for filing application for merger shall be calculated from combined total annual turnover of the last audited accounts or assets of the merging firms as follows:

(a) firms with annual turnover of Tanzania shillings eight hundred million to Tanzanian shillings twenty five billion shall be Tanzania shillings twenty five million;

(b) firms with annual turnover exceeding Tanzanian shillings twenty five billion and less than Tanzanian shillings one hundred billion shall be Tanzanian shillings fifty million; and

(c) firms with annual turnover of Tanzanian shillings one hundred billion or above shall be Tanzanian shillings one hundred million.

(3) Fee for reviewing an agreement shall be eight million Tanzanian shillings.

(4) Fee for filing a complaint under Part II of the Act shall be five hundred thousand Tanzanian shillings.

(5) Notwithstanding sub-rule (4), no fee shall be

charged to-

(a) a person submitting information concerning an alleged prohibited practice; or

(b) a consumer submitting a complaint against an alleged prohibited practice.

(6) A cost of three million Tanzanian shillings shall be charged on withdrawal of a complaint.

(3) Where an application is refused, the filing fee paid in respect of that application is non refundable.

(4) A fee payment will be deemed to be received by the Commission on-

(a) the date that a cheque or money order in payment of that fee is delivered to the Commission; or

(b) the date that a direct deposit or an electronic transfer of funds in the amount of that fee is credited to the account of the Commission at the financial institution to which it is transferred.

(5) The Commission may charge a fee of five hundred Tanzania shillings per A4 size page or part thereof to any person wishing to copy a record in the possession of the Commission and one thousand Tanzania shillings each for the Commission's certificate on certified copies of documents.

(6) The amount of each fee set out in this rule, shall be exclusive of VAT.

Accounts and financial audit

69.-(1) After auditing of the Commission accounts by the Controller and Auditor General under section 79 of the Act, the Management letter containing findings shall be submitted to the Division Dealing with Corporate Affairs.

(2) The Division dealing with Corporate Affairs shall respond to the findings in sub-rule (1).

(3) The response in sub-rule (2) shall be submitted to the Commission Management by the Division dealing with Corporate Affairs.

(4) The Management shall go through the responses in sub-rule (3) and agree or make changes.

(5) The Division dealing with Corporate Affairs shall submit the report in sub-rule (4) to the Commission for approval.

(6) The approved report shall be sent to the Controller and Auditor General.

Guidance notes

70.-(1) The Commission shall make Guidelines for purposes of providing guidance for simplified explanations of the Act and the Rules.

(2) The Guidelines made under sub-rule (1) shall be complementary to and in no way override the provisions of the Act and these Rules.

Revocation GN. No. 254 of 2010

71. The Fair Competition Commission Procedure Rules, 2010 is hereby revoked.

FIRST SHEDULE

FORMS

FCC.1

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 10(1)

COMPLAINT FORM

Made under section 69 of the Fair Competition Act, 2003 and Rule 10(1) of the Fair Competition Commission Procedure Rules, 2013.

This form shall be completed to the best of your knowledge, and submitted to the Commission for consideration of your complaints.

If this complaint is lodged by a person other than an individual, please provide contact details of the person authorized to discuss the complaint.

This form is a public record. However, the attached description of conduct and other information relating to this complaint is not part of the public record. You have a right to identify information that you believe is confidential by completing the Confidentiality Claim form (Form FCC. 2) and submitting it with this form

1. Name and address of the person submitting complaint
……..

2. Name and address of person whose conduct is the subject of this complaint
……

3. Description of complaint (provide a concise statement of the conduct that is the subject of the complaint):
……
……
……
……
……..…

4. Please attach to this form any relevant documents, as well as a typed statement describing the conduct that is the subject of this complaint, including-

- the name of each party involved in the conduct;
- the dates on which the conduct occurred;
- a statement indicating when and how you became aware of the conduct and
- any other information you consider relevant

5. Is the conduct continuing?

……

If not, when did the conduct end?

……

6. Name, address and title of the signatory

Signed by the complainant

.....

(Signature)

.....

(Full Name)

……

(Address)

.....

(Title)

……

(Date)

7. For official use only:

Commission file number: ……

Date filed: …….

8. Contact

The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania
E mail:info@competition.or tz

FCC.2

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rules 10(10), 33(3) and 50(6)

CONFIDENTIALITY CLAIM FORM

Made under section 76(2) of the Fair Competition Act, 2003 and Rules 10(10), 33(3) and 50(6) of the Fair Competition Commission Procedure Rules, 2013.

The Commission shall treat confidentially any information identified by you in this Form after satisfying itself that the information is confidential according to the provisions of the Act and Rules made under the Act.

Until the Commission satisfies itself on confidentiality of your information, your information will be treated as confidential by the Commission, subject to any public notice requirements set out in the Act, or Rules made under the Act.

Confidential information means trade, business or industrial information that belongs to a person, and has a particular economic value.

1. Name [Applicant] and file number of the case
……

2. Confidential information
On a separate sheet of paper, list the following information and set out facts and contentions supporting your claim that the identified information is confidential-
Column 1 – Name of the document that contains the confidential information
Column 2 – The page and line number at which the confidential information begins and ends
Column 3 – The name of the person that owns the particular information
Column 4 – The nature of the economic value of the information
Column 5 – The existing restrictions on access to the information

3. Statement of Confidentiality:

I, ……. Compiled, or supervised the persons who compiled the attached list. I believe that the information identified in that list is confidential information as defined under section 76 of the Fair Competition Act, 2003.

4. Name, address and title of signatory:
……

Signature: Date
…….....
……

5. For official use only:

Commission file number: …….
Date filed: …….

6. Contact
The Fair Competition Commission
CRDB Head Office Building,
Dar es Salaam
Tanzania
E mail:info@competition.or tz

FCC.3

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 50(1)

APPLICATION FOR EXEMPTION
Agreements affecting competition

Made under section 12 of the Fair Competition Act, 2003 and Rule 50(1) of the Fair Competition Commission Procedure Rules, 2013.

Application for an exemption to make an agreement of which the object, effect or likely effect of the agreement is to appreciably prevent, restrict or distort competition.
This Application shall be accompanied by filing fees prescribed in Rule 68.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of Applicant:
(Refer to direction 2)
.....
.....
.....
(b) Short description of business carried on by applicant:
(Refer to direction 3)
.....
.....
.....
.....
(c) Address in Tanzania for service of documents on the applicant:
.....
.....
.....
.....

2. Agreement

(a) Description of the agreement, whether proposed or actual, for which exemption is sought:
(Refer to direction 4)
.....
.....
.....
.....
(b) Description of those provisions of the agreement that are, or would or might, substantially lessen competition:
(Refer to direction 4)
.....
.....
.....
.....
(c) Description of the goods or services to which the agreement (whether proposed or actual) relate:
.....
.....
.....
.....
(d) The term for which exemption of the agreement (whether proposed or actual) is being sought and grounds supporting this period of exemption:
.....
.....
.....
.....

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed agreement:
.....
.....
.....
.....

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)
.....
.....
.....
.....

4. Public benefit claims

(a) Arguments in support of exemption:
(Refer to direction 6)
.....
.....
.....
.....
.....
(b) Facts and evidence relied upon in support of these claims:
.....
.....
.....
.....
.....

5. Market definition

Provide a description of the market i.e. the goods or services provided including a range of substitutes available for the relevant goods or services, and any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 7)
(a) Product market.....
.....
(b) Geographical market
…….....
.....
.....

6. Public detriments

Detriments to the public resulting or likely to result from the exemption, in particular the likely effect of the agreement on the prices of the goods or services described at paragraph 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)
.....
.....
.....
.....

7. Further information

Name and address of person authorised by the applicant to provide additional information in relation to this application:
.....

.....
.....
.....
Dated.....

Signed by/on behalf of the applicant
.....
(Signature)

.....
(Full Name)
.....
(Position in Organisation)

8. For official use only:
Commission file number: ……
Date filed: …….

9. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania

E mail:info@competition.or tz

DIRECTIONS
1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for exemption.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application, and the application is to be signed by a person authorised by the corporation to do so.

3. Describe that part of the applicant's business relating to the subject matter of the agreement in respect of which the application is made.

4. Provide details of the agreement (whether proposed or actual) in respect of which the exemption is sought. Provide details of those provisions of the agreement that are, or would or might, substantially lessen competition.

In providing these details:

(a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and

(b) to the extent that of any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.

5. Where exemption is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the exemption, and evidence of the party's consent to exemption being sought on their behalf.

6. Provide details of those public benefits claimed to result or to be likely to result from the proposed agreements including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the agreement, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the exemption.

8. Provide details of the detriments to the public which may result from the proposed agreement including quantification of those detriments where possible.

9. Where the application is made also in respect of other agreements, which are or will be in similar terms to the agreement referred to in item 2, furnish with the application details of the manner in which those agreements vary in their terms from the agreements referred to in item 2.

FCC.4

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rules, 50(2)

REQUEST FOR FURTHER PARTICULARS
Made under section 71 of the Fair Act, 2003 and Rule 50(2), of the Fair Competition Commission Procedure Rules, 2013

To: The Applicant
(Name and address)
……..

The Commission may, at any time during investigation request further particulars from a party setting out the specific information that the Commission requires.

The particulars requested shall be true and complete. Incorrect and misleading information may render a party liable to fines as provided for under sections 71(6) and 60 of the Fair Competition Act, 2003

1. Provide the following additional information: ……..
2. This Request for Further Particulars has been issued this [insert day] day of [insert month] [insert year].

3. Commission file number …….

4. **Name and title of signatory**
.....
(Name)
.....
(Signature)
.....
FAIR COMPETITION COMMISSION
5. Contact
The Fair Competition Commission
P.O. Box 7883

Dar es Salaam
Tanzania
E mail:info@competition.or tz

FCC.5

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 51(1)

NOTICE OF REFUSAL TO GRANT EXEMPTION
Made under Rule 51(1) of the Fair Competition Commission Procedure Rules, 2013

To: The Applicant (Name and address): …….

If the Commission determines that an application does not satisfy circumstances contemplated by section 12 of the Act, the Commission shall issue a Notice of Refusal to Grant Exemption in a prescribed form.

1. Your (the applicant) application for Exemption does not concern a prohibited practice. Consequently you are hereby granted a Notice of Refusal to Grant Exemption by the Commission on that regard.

2. Reasons for Commissions decision
……
……
3. This Notice of Refusal to Grant Exemption has been issued this [insert day] day of [insert month] [insert year].

4. Commission file number …….

5. **Name and title of the person authorized to sign**
.....
(Name)
.....
(Signature)
.....
FAIR COMPETITION COMMISSION
6. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania
E mail:info@competition.or tz

FCC.6

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 50(13)

NOTICE OF REVOCATION OF EXEMPTION
Made under Rule 50(13) of the Fair Competition Commission Procedure Rules, 2013

To: The Applicant (Name and address): ……..

If the Commission is contemplating revoking an exemption granted under section 12(6) of the Act, the Commission may request further information from the person concerned or from any person who submits a representation in response to a notice published under Rule 50(7)(c).

Where after considering any submissions or other information received in relation to the proposed revocation the Commission decides to revoke the exemption, it shall issue to the person concerned a Notice of Revocation in prescribed form.

1. You (the acquiring firm) are hereby granted a Notice of Revocation of Exemption on the following grounds:
   (a) Change of circumstances: …….....
   (b) Exemption granted earlier was based on false, misleading or incomplete information:
   ……
   ……
2. This Notice of Revocation of Exemption has been issued this [insert day] day of [insert month] [insert year].
3. Commission file number …….

4. **Name and title of the person authorized to sign**
(Name) .....
(Signature).....

FAIR COMPETITION COMMISSION
5. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania
E mail:info@competition.or tz

FCC.7

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 13

SUMMONS FOR APPEARANCE BEFORE THE COMMISSION

IN THE MATTER OF COMMISSION CASE NO …OF…….REGARDING COMPLAINT/MERGER /EXEMPTION

PARTIES: ……
……
…….
…….

By virtue of section 71(1) & (2) of the Fair Competition Act 2003 and Rule 13 of the Fair Competition Commission Procedure Rules 2013 you are hereby summoned to appear / to furnish the information in writing/ to give oral evidence/ to produce the specified document; and you should produce on that day all the documents upon which you intend to rely in support of the case before the Fair Competition Commission at the time and place specified below:

Date… Day… Time…
Venue :……..(Specify room number, floor etc)

Details of information to be furnished/documents to be produced
(1) ……
(2) ……
(3) …….

Given under my hand and seal of the Commission this…… day of……20…….
…….
Chairman/Director General

WITNESS: By virtue of section 71 of the Fair Competition Act, 2003 I…….. on this…….day of ……200… have served the abovementioned …….. and has given the summon in hand to……in person/who is ……to the said……or leaving it at……which is the usual place of abode/place of work of the abovementioned.

…… **…….**

Signature of the serving officer/clerk. **Signature of the person summoned/receiver on**

behalf

FCC.8

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 33(2)

MERGER NOTIFICATION
(Application for Merger Clearance)

To: The Fair Competition Commission

Application is hereby made under section 11 (2) of the Fair Competition Act, 2003, Rule 33(2) of the Fair Competition Commission Procedure Rules, 2013 for a clearance to acquire shares, a business or to acquire assets of the person (including a body corporate), named in Item 2 below.

This Application shall be accompanied by filing fees prescribed under Rule 68.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. The Applicant (the Acquiring firm)
(a) Name and registered office of the Applicant including the place of incorporation
.....
(b) Describe the business or businesses carried on by the Applicant including the products and services the Applicant supplies
.....
(See Direction 3 of this Form)
(c) Provide details of all related bodies corporate of the Applicant.
.....
(See Direction 4 of this Form)
(d) Address in Tanzania for service of documents on the Applicant
.....
(e) Name and address of any person for whose benefit or on whose behalf the shares or assets to be acquired will be held
.....

2. The Target firm
(a) In the case of a body corporate whose shares or assets are to be acquired:
(i) Name of the **body corporate**

.....
(ii) Place of incorporation of the body corporate
.....
(iii) Registered office of the body corporate
.....

(iv) Describe the business or businesses carried on by the body corporate including the products and services the Target supplies
.....
(See Direction 5 of this Form)
(v) Number and type of shares or description of assets to be acquired
.....
(b) In the case of a body corporate whose shares are to be acquired, provide details of:
(i) the issued capital of the body corporate;
(ii) the holders of such issued capital.
.....
(c) Provide details of all related bodies corporate of the body corporate whose shares or assets are to be acquired by the Applicant
.....
(See Direction 4 of this Form)
(d) In the case of a person (other than a body corporate) whose assets are to be acquired
(i) Name and address of the person
.....
(ii) Describe the business or businesses carried on by the person including the products and services the person supplies
.....
(iii) Describe the assets to be acquired
.....

3. The acquisition
(a) Outline the nature and details of the contract, arrangement, understanding or proposal for the acquisition and, if applicable, the public offer document, and provide a copy of any relevant contract, document or public offer document
.....
(See Direction 6 of this Form)
(b) Provide details of the commercial rationale for the acquisition and copies of all documents that were prepared specifically for the purpose of evaluating the proposed acquisition with respect to the market(s) affected and the nature of those effects
.....

(c) Indicate whether the acquisition involves proposed ancillary arrangements and describe the proposed arrangements
.....

4. Background information
(a) Describe the industry sector(s) to which the acquisition relates

.....
(See Direction 7 of this Form)
(b) Describe the area(s) of overlap in the operations of the Applicant and Target and any related bodies corporate (the merger parties)
.....
(See Direction 8 of this Form)
(c) Provide details of any acquisitions made by the merging parties and any other acquisitions made in the industry sector(s) during the past five years
.....
(d) Provide details of any existing vertical or horizontal relationships between the merging parties
.....
(e) Describe any other cooperative agreements to which any of the merger parties is a party
.....
(See Direction 9 of this Form)

5. Market definition
Describe the relevant market(s) (product, functional, geographic and time) relevant to the assessment of the acquisition's effect on competition – this includes market(s) for the supply of goods or services and market(s) for the acquisition of goods or services (the relevant market(s))
.....
(See Direction 10 of this Form)

6. Suppliers of inputs
(a) Describe the inputs into the production of goods or services by each of the merger parties in the relevant market(s) and indicate the value of those inputs as a proportion of total production. Where alternative inputs are available, provide a list of substitutes
.....
(b) Provide the names and contact details of a representative selection of suppliers of inputs to each of the merger parties in the relevant market(s)
.....
(See Direction 11 of this Form)
(c) Describe any purchasing arrangements in place with each of the suppliers identified above and outline whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition
.....

7. Competitors
(a) Provide details of alternative suppliers of products now or shortly to be competitive with, or otherwise substitutable for, goods or services produced by each of the merger parties in the relevant market(s)
.....
(See Direction 12 of this Form)
(b) If the competitors identified above do not produce goods or services which are substantially the same as those goods or services produced by the merger parties in the

relevant market(s), explain why it is considered that these goods or services are viable alternatives

.....

8. Customers

(a) Provide the names and contact details of a representative selection of the customers of each of the merger parties in the relevant market(s)

.....

(See Direction 13 of this Form)

(b) Describe the distribution channels available to the merger parties in supplying goods and services to customers and identify the relevant distribution channels in respect of each of the customers identified above

.....

(c) Describe the existing supply arrangements that the merger parties have in place with the customers identified above and whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

.....

(See Direction 14 of this Form)

9. Market concentration

Provide estimates of current and post-acquisition market shares for the merger parties and existing competitors in the relevant market(s) identified above

.....

(See Direction 15 of this Form)

10. Constraints on the exercise of market power

(a) Provide details of the extent to which the merger parties are likely to be constrained post-acquisition from raising prices and profit margins and/or reducing the quality of goods and/or services by:

(i) suppliers in the relevant market(s)

.....

(ii) competitors in the relevant market(s)

.....

(iii) customers in the relevant market(s)

.....

(iv) others

.....

(See Direction 16 of this Form)

11. Imports

(a) Provide details of the actual and potential level of imports in the relevant market(s) and details of the importers and their suppliers

.....

(See Direction 17 of this Form)

(b) Describe any barriers to importation in the relevant market(s) including whether significant investment in facilities or in distribution arrangements is needed to facilitate importation

.....

(c) Describe facilities and distribution arrangements necessary for importation in the relevant market(s), their capacity and who has ownership or control of these facilities and arrangements

.....

(d) Provide details of the price of imports as opposed to domestic production in the relevant market(s) and explain any divergence in these prices

.....

(e) Provide details as to the extent of constraint which would be likely to be provided by imports on domestic suppliers including the merger parties in the relevant market(s) post-acquisition

.....

(See Direction 18 of this Form)

12. Exports

(a) Provide details of the actual and potential level of exports in the relevant market(s)

.....

(See Direction 19 of this Form)

(b) Describe the export barriers faced by suppliers of inputs to the merger parties in the relevant market(s)

.....

(c) Provide details of the sale price of exports as opposed to domestic sales in the relevant market(s) and explain any divergence in these prices

.....

(d) Describe whether the suppliers of inputs to the merger parties are or would be likely to be able to export such inputs post-acquisition and, if so, describe the extent of constraint this would be likely to provide on the merger parties post-acquisition

.....

(See Direction 20 of this Form)

13. Barriers to entry and expansion

(a) Provide details of any barriers to entry and expansion in the relevant market(s)

(i) Natural barriers.....

(ii) Strategic barriers …….

(iii) Regulatory and policy barriers

(See Direction 21 of this Form)

(b) Provide details of any firms not currently producing goods or services in the relevant market(s) but which could enter the relevant market(s) quickly and provide an effective competitive constraint

.....

(c) Provide details of any firms which have recently tried and failed to enter the relevant market(s), including the reasons (if known) for their failure

.....

14. Dynamic characteristics

Provide details of the dynamic characteristics of the relevant market(s)

.....
(See Direction 22 of this Form)

15. Vigorous and effective competitor
Indicate whether the Target or any other participant in the relevant market(s) could be described as a vigorous and effective competitor to the Applicant or other market participants to any and to what extent, and why
.....
(See Direction 23 of this Form)

16. Vertical integration
(a) Describe whether the acquisition would, or would be likely to, result in increased vertical integration between firms involved at different functional levels in the relevant market(s)
.....
(See Direction 24 of this Form)
(b) Describe whether the acquisition would, or would be likely to, increase the risk of limiting the supply of inputs or access to distribution such that downstream or upstream rivals face higher costs post-acquisition or full or partial foreclosure of key inputs or distribution channels
.....

17. Prices and profit margins
(a) Provide details of recent and current levels of pricing in the relevant market(s) including the use of rebates and discounts
.....
(b) Provide details of supply costs of goods and services supplied by the merger parties including manufacturing, marketing and distribution costs in the relevant market(s)
.....
(c) Describe the competitive constraints, if any, which would, or would be likely to, prevent the merger parties from being able to significantly and sustainably increase the prices paid by their customers, or lower the prices paid to their suppliers, post-acquisition in the relevant market(s)
.....
(d) Describe the impact of the acquisition on the potential for coordinated conduct between remaining competitors in the relevant market(s) post-acquisition
.....
(See Direction 25 of this Form)
(e) Describe the likely impact of the acquisition on the profit margins of the merger parties post-acquisition and the expected cause of any change
.....

18. Related markets
(a) Describe the extent of complementarities between products supplied by the merger parties

.....
(See Direction 26 of this Form)
(b) Describe the extent to which the products identified above are, or could be, offered to customers as a product range through bundling or tying
.....
(See Direction 27 of this Form)
(c) Describe the competitive constraints that would, or would be likely to, prevent such bundling or tying from significantly foreclosing the ability of the merged entity's competitors to compete, including foreclosure of access to distribution by the merged entity's competitors
.....

19. Other grounds for grant of clearance
Outline any grounds for the granting by the Commission of a clearance not already addressed above
.....
20. The counterfactual
Describe the likely state of the relevant market(s) in the future if the proposed acquisition does not take place, giving reasons
.....

21. International
(a) Does the acquisition involve:
(i) A company operating in Tanzania that has a foreign parent?
.....
(ii) Tanzanian businesses or consumers affected by conduct occurring overseas?
.....
(iii) Foreign consumers affected by conduct occurring in Tanzania?
.....
(iv) Conduct occurring across international boundaries?
.....
(b) Provide details of competition authorities in jurisdictions other than Tanzania to which the proposed acquisition has been, or is intended to be, notified and the timing of such notifications
.....

22. Attachments:
Attach copies of the following for both acquiring and target firm:
(a) Memorandum and Articles of Association
(b) Copies of audited annual financial statements for the last three years
(c) Strategic business plans
(d) Certificates of incorporation/registration
(e) Annual performance report

23. Undertaking
The Applicant is required, pursuant to Rule 42(7) of the Fair Competition Commission

Rules, 2009 to give an undertaking to the Commission that the acquisition will not be implemented while the application for clearance is being considered by the Commission. An undertaking which is in a prescribed form that must be submitted to the Commission is attached to this Form.

24. Further information

Name, postal address, telephone, facsimile and email contact details of person authorized by the Applicant to provide additional information in relation to this application

.....

25. Information provided in relation to the Target firm

Where the Target firm has been consulted during the preparation of information provided in response to the questions contained in this Form relating to the Target firm, an authorised representative of the Target firm must indicate here that information relating to the Target firm is complete and accurate.

Dated.....

Signed by/on behalf of the Target firm

.....

(Signature)

.....

(Full Name)

Note If the Target is a corporation, state position occupied in the corporation by person signing. If signed by a legal Counsel on behalf of the Target firm, this fact must be stated.

26. Declaration

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of ***section 71 of the Fair Competition Act 2003.***

.....	……
Signature of authorised person	Signature of authorised person
.....	……
Office held	Office held
.....	……
(Print) Name of authorised person	(Print) Name of authorised person

This …….(insert day) day of ……..(insert month) ……...[insert year]

Note If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a legal Counsel on behalf of the Applicant, this fact must be stated.

Undertaking to the Fair Competition Commission given for the purposes of Rule

33(7) of the Fair Competition Commission Procedural Rules, 2013

By
[Insert name of company]

1. This undertaking (the Undertaking) is given to the Fair Competition Commission (the Commission) by [name of the firm] of [firm's address]

2. [Name of the firm] has made an application for a merger clearance pursuant to section 11 of the Act.

3. [Name of the firm] hereby undertakes that it shall not give effect to the merger /acquisition which is the subject of the application referred to in paragraph 2 while the application is being considered by the Commission.

4. This Undertaking comes into effect when:
(a) the Undertaking is executed by [Name of the firm]; and
(b) the Commission accepts the Undertaking so executed.

5. [Name of the firm] acknowledges that the Commission will make this Undertaking available for public inspection.

EXECUTED BY [Name of the firm]

……	…….
Signature of Authorised Person	Signature of Authorised Person
……	…….
Office Held	Office Held
……	…….
(Print) Name of Authorised Person	(Print) Name of Authorised Person

This [insert day] day of [insert month] [insert year].

ACCEPTED BY THE COMMISSION
.....
Commission Chairperson/ ***Director General***

DIRECTIONS
1. Where there is insufficient space on this Form to furnish the required information, the information must be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.

2. In all cases, evidence must be provided to support the contentions made in responding to the questions on this Form.

3. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Applicant. The response must also include a copy of the Applicant's most recent annual report.

4. The following definitions apply in relation to questions 1 (c) and 2 (c):
"related body corporate" means:
(a) a holding company of another body corporate; or
(b) a subsidiary of another body corporate; or
(c) subsidiary of a holding company of another body corporate;
"subsidiary", in relation to a body corporate **(***first body*) means a first body that is controlled by another body (*other body*), because:
(a) the other body-
(i) controls the composition of the first body's board; or
(ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first body corporate; or
(iii) holds more than one half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
(b) the first body is a subsidiary of a subsidiary of the other body.
"*holding company"*, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.

5. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Target. The response must also include a copy of the Target's most recent annual report.

6. The response must include the date on which the contract, arrangement, understanding or proposal was, or is intended to be, concluded, the intended date on which the acquisition will be consummated and the consideration exchanged in relation to the acquisition. Where available, a copy of the contract, arrangement, understanding or proposal between the Applicant and the Target must be provided with this Form.

7. The response must include background information in relation to the industry sector(s), a description of the role of the Applicant and the Target in the industry sector(s) including a description of the goods or services supplied both in Tanzania and internationally.
8. Product and geographic areas of overlap must be specified and the response must include the whereabouts of all major production, supply or distribution facilities of the Applicant and the Target.

9. Such agreements may include but are not limited to arrangements or alliances relating to distribution, supply, purchasing, joint development, or research and development. The response must include the type of agreement(s), the subject matter, the parties to the agreement(s) and the duration of the agreement(s), and whether the agreement(s) will continue following consummation of the acquisition.

10. In order to determine whether a particular acquisition breaches section11 (1) and 10(1) of the Act, an assessment of the relevant market(s) is required. Section 5(4) of the Act provides that:

> "Market" means a market in Tanzania or part of Tanzania and refers to the range of reasonable possibilities for substitution in supply or demand between particular kinds of goods or services and between suppliers or acquirers, or potential suppliers or acquirers, of those goods or services.

The response must address the relevant product, functional, geographic and time dimensions of the market(s). The product dimension of the market must address sources and potential sources of substitutes for the goods or services produced by the merger parties. Both supply and demand side substitutability must be addressed. The functional dimension of the market must address the vertical stages of production and distribution which comprise the relevant arena of competition (for example, wholesale or retail distribution). The geographic dimension of the market must identify the area(s) over which the merger parties and their competitors currently supply, or could supply, the relevant product(s) and to which customers could practically turn. The time dimension of the market must address the period over which substitution possibilities must be considered.

11. The response must provide details of at least five suppliers (or all suppliers if there are less than five), comprised of a cross-section of entities including large, medium and small suppliers. The response must include a description of the goods and services supplied by each of these suppliers and an estimation of the value of the goods or services supplied.

12. The response must include the location of each of the suppliers identified and the areas to which each of the identified entities supplies.

13. The response must provide details of at least five customers (or all customers if there are less than five), comprised of a cross-section of entities including large, medium and small customers. The response must include a description of the goods or services and the value of the goods or services purchased by these customers.

14. The response must describe the duration of contracts, the nature and extent of exclusivity, rebates and discounts and identify any customers with contracts which are due to expire within the next two years and indicate the supply volumes associated with such contracts.

15. The market shares of each of the suppliers or purchasers identified, the Applicant and the Target in the relevant market(s) must be provided. In the case of supply markets, market shares must be given on the basis of productive capacity, sales and revenue and must be provided for each of the past five years. In the case of acquisition markets, market shares must be given on the basis of volume and value of inputs purchased and, again, must be provided for each of the past five years. The total size of the domestic market must be provided. The source(s) of the data relied upon in estimating market shares and total market sizes must be provided.

16. The response must address the ability of suppliers to switch from supplying inputs to

the merger parties to other avenues, the ability of competitors in the relevant market(s) to increase supply, the ease with which customers could change suppliers including any switching costs that they would incur, whether goods and services produced in the relevant market(s) should be considered homogeneous or whether there are variations in price or quality and whether the relevant market(s) are characterised by brand loyalty. The response must also discuss whether the relevant market(s) are characterised by countervailing power, the market participants who are said to have such power and the extent that such power would be likely to constrain the merger parties post-acquisition.

17. The response must cover whether it is viable for customers to import substitutes and the origin of imports, and address issues including but not limited to: options for the transportation of imports (for example, air, sea or rail); transport costs; whether the product is a high or low value product; whether the product is high or low density; and whether the product is durable enough to be transported without damage or deterioration in quality. The response must also give details of historical import levels for the past five years and the source of the information provided. The response must include the outcomes of any anti-dumping investigations concluded in the past five years.

18. The response must provide details of the price of actual or potential imports (including, additional costs such as freight and customs duties), whether existing import suppliers can accommodate a significant expansion in capacity without the need for significant investment and whether import competition would provide a constraint on the merged firm via a downstream market. The response must also include contact details of existing importers and their customers.

19. The response must cover whether it is viable for suppliers to export to alternative purchasers and the likely export markets, and address issues including but not limited to the following:

- options for the transportation of exports (for example, air, sea or rail);
- transport costs;
- whether the product is a high or low value product;
- whether the product is high or low density;
- whether the product is durable enough to be transported without damage or deterioration in quality.

The response must also give details of historical export levels for the past five years and the source of the information provided.

20. The response must include contact details of existing exporters.

21. The response must include reference to the following:

- both the nature and height of barriers to entry and expansion;
- details of exit;
- entry and expansion in the relevant market(s) in the previous five years;
- any incentives or disincentives for new entry;
- how long it would take for a new entrant to establish itself as a vigorous and effective competitor.

Barriers which must be addressed include, but are not limited to, the following:

- sunk costs in production capacity;
- accessing shelf space;
- advertising and promotion;
- regulatory restrictions;
- requirements for scarce inputs;
- brand loyalty;
- minimum efficient scales of operation;
- goodwill;
- access to intellectual property;
- the potential response of incumbents to new entry.

22. The response must include references including, but not limited to, the following:

- growth;
- levels of innovation;
- technological change;
- product and service differentiation in the relevant market(s).

23. The response must refer to current and historical pricing and purchasing behaviour, its record of innovation, its growth relative to the growth of the relevant market(s), and its history of independent behaviour.

24. The response must indicate the extent to which the Applicant buys from or sells to the Target raw materials, supplies, services, capital or finished products for resale.

25. The response must discuss factors conducive to coordination in a market including, but not limited to, the following:

- the number of participants in the relevant market(s);
- transparency;
- homogeneity of product;
- homogeneity of firms;
- the size and frequency of purchases;
- the presence of the same firms in more than one market.

26. The response must address the complementarities that occurs where there is significant commonality of customers' products and whether the strength of demand for one product is positively correlated with the strength of demand for another, either because the products form part of a range that distributors need to carry or because they must be consumed together for technical reasons.

27. The response must address the circumstances where two or more products are, or could be, supplied only as a bundle (pure bundling) or, if supplied individually, are also offered as a bundle at a price that is lower than the price charged if sold individually (mixed bundling). The response must also address circumstances where customers seeking to acquire one product are required also to purchase a second product, or carry amounts of the second product (tying).

FCC.9

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 45

NOTICE OF ABANDONED MERGER
Made under Rule 45 of the Fair Competition Commission Procedural Rules, 2013
To: The Fair Competition Commission

The Acquiring firm may notify the Commission in a prescribed that it has abandoned the intended merger transaction and has no intention to implement it.

When this notice has been filed, the parties to the merger are in the same position as if merger has never been notified.
1. Name of the acquiring firm:
……...
2. Name and file number of the merger application
……..
3. Notice of abandonment:
Take notice that the above named firm-
(a) has abandoned the intended merger previously notified under the file number shown above and;
(b) has no intention of taking any further steps to implement that intended merger
4. Name and title of the person authorized to sign
.....
(Name)
.....
(Signature)
(Title) .....
(Date) ……..

5. For official use only:
Commission file number: ……
Date filed: …….
6. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania
E mail:info@competition.or tz

FCC.10

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013

NOTICE OF INTENTION TO PARTICIPATE
Made under Rule 41(1) of the Fair Competition Commission Procedural Rules, 2013

To: The Fair Competition Commission

A target firm or third persons with sufficient interest may notify the Commission of its desire to participate in the merger proceedings by filing this form.

1. Notice of intention to participate is hereby submitted regarding the proposed merger between ……..... (Acquiring firm) and …….. …... (Target firm)
2. Name of the person to participate (Target firm)
……

3. Name of person to participate (third persons including customers, suppliers and competitors demonstrating a sufficient interests)
……

4. For third persons, give explanation, showing the sufficient interest you are having in this proposed merger
……

5. **Name and title of the person authorized to sign**
.....
(Name)
.....
(Signature)
.....
(Title)
……
(Date)

6**. For official use only:**
Commission file number: ……
Date filed: …….

7. **Contact**
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania

E mail:info@competition.or tz

FCC.11

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 35(1)(a)

NOTICE OF COMPLETE FILING
Made under Rule 35(1) (a) of the Fair Competition Commission Procedure Rules, 2013

To: The Acquiring firm: ……

Within five business days after receiving a **Merger notification (**Merger Clearance Application) the Division dealing with mergers deliver to the filing firm a Notice of Complete Filing if the merger appears to fall within the jurisdiction of the Act and all the requirements set out in the notification form have been satisfied.

1. You (the acquiring firm) are hereby notified that the information, including all documents requested in the application (notification) form is complete.
2. The initial period for the merger (the 14 days) begins on the business day following the date on which you are issued this notice.
3. This notice has been issued [insert day] day of [insert month] [insert year].
4. Commission file number ……..

5. **Name and title of the person authorized to sign**
.....
(Name)
.....
(Signature)
.....
DIRECTOR GENERAL
……
(Date)
6. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania

; E mail:info@competition.or tz

FCC.12

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013

NOTICE OF INCOMPLETE FILING
Made under Rule 35(1)(b) of the Fair Competition Commission Procedure Rules, 2013

To: The Acquiring firm:
……..
Within five business days after receiving a Merger notification (Merger Clearance Application) the Commission shall deliver to the filing firm a Notice of Incomplete Filing if any of the requirements set out in the notification form have not been satisfied.

1. You (the acquiring firm) are hereby notified that the information, including all documents requested in the notification (application) form is incomplete.

2. Please provide the following information:
……
……..
3. The information supplied to the Commission shall be true and complete. Incorrect and misleading information may render a party liable to fines as provided for under section 71(6) and 60 of the Fair Competition Act, 2003

4. This notice has been issued this [insert day] day of [insert month] [insert year].

5. Commission file number …….
6. **Name and title of the person authorized to sign**
.....
(Name)
.....
(Signature)
.....
FAIR COMPETITION COMMISSION
……
(Date)
7. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam

Tanzania
E mail:info@competition.or tz

FCC.13

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 43(b)

REQUEST FOR ADDITIONAL MERGER INFORMATION
Made under rule 43(b) of the Fair Competition Commission Procedure Rules, 2013

To: The Acquiring firm
……..

The Commission may, at any time during merger investigation request additional information from a party setting out the specific information that the Commission requires.

The additional information requested shall be true and complete. Incorrect and misleading information may render a party liable to fines as provided for under sections 71(6) and 60 of the Fair Competition Act, 2003

1. Please provide the following additional information: …….
2. This Request for Additional Information has been issued this [insert day] day of [insert month] [insert year].

3. Commission file number …….

4. **Name and title of the person authorized to sign**
.....
(Name)
.....
(Signature)
.....
FAIR COMPETITION COMMISSION

5. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam

Tanzania
;E mail:info@competition.or tz

FCC.14

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013

EXTENSION CERTIFICATE
Issued under section 11(4) of the Competition and Consumer Protection Act, 2003 and Rule 36(5) of the Competition Procedure rules, 2013

The Acquiring firm
(Name and address) ……

The Commission may extend the period of ninety days of examining the merger for such further period not exceeding thirty days and for such further period where the Commission has been delayed in obtaining information from any of the parties to the proposed merger.
On extending the period, the Commission shall issue a copy of Extension Certificate to a party who notified the merger.

1. You (the acquiring firm) are hereby notified that the period for examining the merger you applied for has been extended to …….[days] further and consequently you are issued Extension Certificate in this regard.
2. An extension period granted by the Commission begins on a business day following the date on which the ninety days period expires or in the case of second or subsequent extension, on the business day following the date on which previous extension expires.
3. This Extension certificate has been issued this [insert day] day of [insert month] [insert year].
4. Commission file number …….

5. **Name and title of the person authorized to sign**
.....
(Name)
.....
(Signature)
.....
FAIR COMPETITION COMMISSION
6. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania

; E mail:info@competition.or tz

FCC.15

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 42(14)(a)(ii)

NOTICE OF PROHIBITION OF MERGER
Made under section 11(5) of the Fair Competition Act, 2003 and Rule 42(14)(a)(ii) of the Fair Competition Commission Procedure Rules, 2013

The Acquiring firm
(Name address) ……

Where after completing its investigation and consideration of merger, the Commission has made a decision that implementation of the merger shall be prohibited, or has declared the merger prohibited, it shall issue a Notice of Prohibition to the firm that filed the Merger Notification.

1. According to investigations/consideration of your merger application, you (the acquiring firm) are hereby notified that your merger notification (application) as between you (the acquiring firm) and (Target firm) has been declared prohibited/its implementation prohibited.
2. This Notice of Prohibition has been issued this [insert day] day of [insert month] [insert year].
3. Commission file number …….

4. **Name and title of the person authorized to sign**

.....
(Name)
.....
(Signature)
.....
FAIR COMPETITION COMMISSION
5. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam

Tanzania
E mail:info@competition.or tz

FCC.16

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013

NOTICE OF APPARENT BREACH OF MERGER
Made under Rule 47(1) of the Fair Competition Commission Procedure Rules, 2013

The Acquiring firm
(Name and address)
……..

Where a firm appears to have breached an obligation that was part of an approval or conditional approval of its merger, the Commission shall deliver to that firm a Notice of Apparent Breach before taking any action to revoke that approval.

1. You (the acquiring firm) are hereby granted a Notice of Apparent Breach after breaching the following conditions which are part of the previously granted approval: …….
2. Within 10 business days after receiving this Notice, you (the acquiring firm) may submit to the Commission a plan to remedy the breach or request the Commissioners to review the Notice on the grounds that you (the acquiring firm) has substantially complied with your obligations with respect to the approval or conditional approval of the merger.
3. This Notice of Apparent Breach has been issued this [insert day] day of [insert month] [insert year].
4. Commission file number …….

5. **Name and title of the person authorized to sign**
.....
(Name)
.....
(Signature)
.....
FAIR COMPETITION COMMISSION

6. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania
E mail:info@competition.or tz

FCC.17

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013

NOTICE OF REVOCATION OF MERGER DECISION
Made under Rule 48(6)(a)(ii) of the Fair Competition Commission Procedure Rules, 2013

To: The Applicant
(Name and address)
……..

If the Commission is contemplating revoking its own decision to approve or conditionally approve the merger, the Commission may request further information from the person concerned or from any person who submits a representation in response to a notice published under Rule 48(4).

Where after considering any submissions or other information received in relation to the proposed revocation and the Commission decides to revoke the merger, it shall issue to the person concerned a Notice of Revocation in prescribed form.

1. You (the acquiring firm) are hereby granted a Notice of Revocation of Merger Decision on the following grounds:
   (a) The decision was based on incorrect information: ……
   (b) The approval was obtained by deceit …….
   (c) You have breached an obligation attached to the decision ……..
2. This Notice of Revocation of Merger Decision has been issued this [insert day] day of [insert month] [insert year].
3. Commission file number …….

4. **Name and title of the person authorized to sign**
(Name) .....
(Signature).....

FAIR COMPETITION COMMISSION
5. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania
E mail:info@competition.or tz

FCC.18

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013
Rule 42(14)(a)(i)

MERGER CLEARANCE CERTIFICATE
Issued under section 11(3) and 13 of the Fair Competition Act, 2003 and Rule 42(14)(a)(i) of the Competition Procedure Rules, 2013

If a firm appears to have breached an obligation that was part of an approval or conditional approval of its merger, the Commission shall deliver to that firm a Notice of Apparent Breach in Form FCC. 16. Please refer to rule 47.

1. Date:

……..

2. To: Name and file number of the merger

…….

3. You applied to the Fair Competition Commission on …… [Date] for merger approval in accordance with section 11 and 13 of the Fair Competition Act.

4. After reviewing the information you provided, the Commission approves the merger in terms section 11 and 13 of the Act; and Rule 42(13) (a)/42(13)(b)for reasons set out in the Reasons for Decision.

5. This approval is subject to **no conditions/the conditions listed on the attached sheet**

6. The Fair Competition Commission has the authority to revoke its own decision to approve or conditionally approve the merger under Rule 48 if –

(a) the decision was based on incorrect information or which a party to the merger is responsible
(b) the approval was obtained by deceit; or
(c) The firm concerned has breached an obligation attached to the decision

7. Name and Title of Person authorized to sign on behalf of the Fair Competition Commission:

……

Authorised signature:

…….....

8. Contact

The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania
E mail:info@competition.or tz

FCC.19

FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PROCEDURE RULES, 2013

EXEMPTION CERTIFICATE
Issued under section 12 of the Fair Competition Act, 2003 and Rule 50(12) of the Fair Competition Commission Procedure Rules, 2013

You, or any other person affected by this decision, may appeal to the Fair Competition Tribunal within 28 days after it has been published in the *Gazette.*
1. To …….
2. Name and file number of the merger
…….

3. You applied to the Fair Competition Commission on …… [Date] for exemption under section 12 of the Fair Competition Act , 2003.
4. Because the subject practice or agreement contributes to the objective set out under section 12(1)(b) of the Act, the Commission grants an exemption under sections 12(1) and (3) of the Act for a period of 5 years ending on …… . for
a single agreement/a category of agreements
5. As described in your application, this exemption is subject to:
no conditions/the conditions listed on the attached sheet
6. The Commission has authority under section 12(6) of the Act to revoke this exemption if –

(a) the circumstances has materially changed and consequently the reasons for granting the exemption no longer exists or
(b) the exemption was granted wholly or partly on the basis of false, misleading or incomplete information.

7. Name and Title of Person authorized to sign on behalf of the Fair Competition Commission:
……
Authorised signature:
…….....
8. Contact
The Fair Competition Commission
P.O. Box 7883
Dar es Salaam
Tanzania
;E mail:info@competition.org tz

SECOND SCHEDULE

Guidance on the Fair Competition Act to competition matters

Introduction

The role of competition and economic regulatory bodies in a given economy is to support market operations in that economy.

For that object to be accomplished, economic regulatory bodies and competition authorities are normally given unique but limited independence and powers to operate in their field of jurisdiction. Such independence and powers is ably explained by the following phrase, "Another fundamental reason for the independence is that regulatory agencies are something of a legal hybrid … they exercise the executive powers of administration and enforcement of the law. They are also quasi-legislative in that they make rules and establish policies which are prospective and universally applicable. Finally, regulators have to adjudicate disputes which arise from activities within the scope of their jurisdiction. In short, regulators are, at one and the same time executives, legislators and judges".

However, such independence and powers are highly circumscribed. The *sine qua non* for competition and economic regulatory bodies is transparency. "The process, reasoning, the mathematics, the logic, the transactions, the administration and the mechanics of regulation must be absolutely transparent to all if the system is to inspire confidence in it. Without that confidence, investors will not risk their capital, consumers will not tolerate adverse rate changes, politicians will not refrain from tampering with the process, and restructuring will be an empty shell".

For that reason, "To be credible to government, consumers and companies alike, the regulatory process must be open and accessible to all who wish to be heard. For that to happen, the regulators need to have rules that assure fairness and openness of the process, and there must be assurances that it is through that process and through that process alone, that jurisdictional decisions will be made … it is the regulator, having been presented with all the evidence and having heard the arguments of all interested parties, who must make the final decision".

Section 99 of the Fair Competition Act empowers the Commission to make Rules on certain aspects of proceedings for application of the Act.

Section 2 of the same Act defines "competition", "market" and "dominant position in a market" as "… economic concepts and, subject to the provisions of the Act, shall be interpreted accordingly".

Section 77(4)(b) of the Act gives the Commission mandate to publish Rules in the *Gazette.*

The Commission therefore wishes to comply with the Fair Competition Act and international best practice by publishing:

(i) The Fair Competition Commission Procedure Rules, 2013
This part is legal guidance on the administrative and implementation of various aspects of the Fair Competition Act.

(ii) Guidance on the Fair Competition Act
This is an oversimplified guidance for the non legal public

Notes:
The above quotes are extracted from a paper presented by the PSRC consultants on the project to establish the competition and economic regulatory frame in Tanzania. The paper was titled, "Analysis of the Energy and Water Utilities Regulatory Authority Act and the Surface and Maritime Transport Regulatory Authority Act" by Ashley Brown, LeBouef, Lamb, Greene and MacRae, Boston Massachussetts, USA.

1. Overall Purpose of the Fair Competition Act

The overall purpose of the Fair Competition Act is to remove obstacles to effective competition in trade and commerce. This is geared towards bringing about the following effects:

- increase economic efficiency;
- lower prices for consumer;
- more innovation; and
- increase the rate of economic growth.

2. The Administration of the Fair Competition Act

The Fair Competition Commission and the Fair Competition Tribunal have been set up to implement the law. Fair Competition Commission will act as a court of first instance and does most of the work.

The Fair Competition Tribunal will hear appeals against the decisions of the Commission and decisions by other multi-sector regulatory authorities namely the Energy and Water Utilities Regulatory Authority (EWURA), the Surface and Marine Transport Regulatory Authority (SUMATRA), Tanzania Communications Regulatory Authority (TCRA), Tanzania Civil Aviation Authority (TCAA) and other similar bodies that may be formed by law. The judgements and orders of the Fair Competition Tribunal are executed and enforced in the same manner as the judgements and orders of the High Court.

Appeals against the decisions of the Fair Competition Tribunal will be heard by the Court of Appeal.

3. The Role of the Commission

The Commission is there to promote competition. It has three main tasks:

- to study markets to identify obstacles to competition;
- to intervene to prevent companies harming competition; and
- to act as an advocate for competition in government circles.

4. How the Commission Decides which Cases to Take up

There are five possible ways in which the object of an investigation may be chosen:

- internal research of the Commission;
- a complaint from a company;
- a proposal from consumer;
- the direction of a Minister; or
- a proposal of an official regulatory body.

5. Scope of the Fair Competition Act

All businesses in Tanzania Mainland, from sole traders through to large companies, are affected by the law.

The competition law focuses on agreements, mergers and other practices that may harm competition

When it comes to agreements, there are a few exceptions. The law does not apply to any agreements that:

- only affect sales abroad;
- relate to employment; or
- require adherence to technical standards.

6. How the Law Works

The law supports the working of the markets. Where there are competition impediments in the market a complaint may be made by another company, by a consumer or the Commission. In these cases the Commission will carry out formal investigations. Where the Commission reaches an adverse finding, it will have the power to take action against a business or group of businesses. It is therefore in the interest of all businesses to understand the implications of the competition law so that they can comply with the law in their undertakings.

Therefore business is supposed to progress smoothly without need to report anything to the Commission. If there are any problems in the market, the Commission intervenes by undertaking an investigation of events and actions that have already taken place and takes a decision.

The exceptions to the two conditions of letting business go smoothly and investigating after the events have taken place, is in the area of large-scale mergers, where the law requires businesses to notify the Commission in advance. In practice it means that you cannot lawfully go ahead with the merger until the Commission has approved it.

7. Approach of the Commission

In the case where there are reports of competition impediments in the market, the Commission seeks to identify where competition is being harmed and then to remedy the situation. It will therefore be looking at issues such as where market power lies and how easy entry is into the market. Its conclusions will be based primarily on economic analysis.

8. Indications of how the Commission will Interpret Harm to Competition

One important point for companies to note is that the test is harm to competition and not harm to competitors. Examples of harm to competition would be a higher price level in the market, prevention of innovation or restricting the growth of the market. Harm suffered by competitors' counts only in terms of any contribution it might make to harm the process of competition itself. In any case one firm piece of guidance is that companies will not generally be seen as capable of harming competition if their market share is less than 35 per cent. Bear in mind, however, that defining the total market size for the purpose of competition analysis can be a complex matter.

9. Exceptions to the test of Harm to Competition

There are four types of agreement that are always unlawful, and hence the Commission does not need to conduct any economic analysis. These are:

- price fixing;
- collective boycott;
- agreed output restrictions; and
- collusive bidding or tendering.

10. Factors that the Commission Takes into Account in Addition to Competition

In the case of agreements and mergers (but not other practices) the Commission is allowed to take into account three other factors:

- economic efficiency;
- technical or economic progress; and
- protection of the environment.

The Commission has to weigh up any harm to competition against any benefits under any of these headings.

11. Procedures of the Commission

The Commission's procedures vary according to the task in hand. When the Commission is carrying out a study of a sector, a market or is operating as an advocate of competition, its procedures are fairly informal. On the other hand, when it is investigating behaviour that may harm competition and hence its conclusions may form the basis for taking action against companies, its procedures are much more formal. One feature of these rules is the way in which the Commission takes care to protect the confidentiality of commercial information it gets from companies.

12. Special Rules for Mergers

There are special rules that apply only to mergers:

- Mergers of a certain size have to be notified in advance and basic information provided.
- There is a timetable for processing notified mergers.
- The Commission can charge fees for this processing.

13. Powers of the Commission

Where the Commission reaches an adverse finding, that is, they conclude that competition has been harmed without sufficient countervailing benefits; they can apply sanctions and penalties. In all cases these are subject to appeal to the Tribunal.

There are two main actions that can be taken as a result of an investigation by the Commission; firstly, the Commission may require companies to take actions that will remedy the competition problem; this could include:

- stopping behaviour that was damaging competition;
- selling assets;
- providing information;
- applying a fine which has to be within the range 5-10 per cent of annual turnover of the firm.

While the Commission would normally take action after its investigation is complete, it can require companies to take the requisite action during the course of the investigation. It would only do this if there was an imminent danger of substantial commercial damage being suffered by other companies.

In addition to the powers just described, the Commission can also require a company that has been found guilty of harming competition to pay compensation to other companies that have suffered from its behaviour.

To bring about the requisite action by companies, the Commission does not necessarily have to take the legal route of making an order which can be enforced through the courts. Where it is likely to be effective, it can alternatively reach an agreement with a company about the changes in its behaviour that are needed.

14. Tribunal

The Tribunal's procedures are similar to those of a court. It can consider an appeal against a conclusion of the Commission on any basis. Its own verdict can take any one of five forms:

- confirm the conclusion of the Commission;
- set it aside;
- amend it;
- send the case as a whole back to the Commission for it to consider again; or
- send one aspect of the case back to the Commission.

The Tribunal can also hear appeals on procedural decisions made by the Commission. This may occur if companies feel they are not being fairly treated during an inquiry. These appeals are judged on the basis of the fairness of the procedures used and their legality.

Disclaimer

This Guide is designed to provide an introduction to the Fair Competition Act 2003 (FCA) and policy on competition and to help business and consumers understand the work of the Fair Competition Commission (FCC) and the Fair Competition Tribunal (FCT). It should not be relied upon for matters of detail. For this readers should refer to the Act itself and the rules made under section 99 and 77(4)(b) of the Act.

Dar es Salaam,
……., 2013

NIKUBUKA P. SHIMWELA
Chairman of the Commission