



EAST AFRICAN COMMUNITY

**THE EAST AFRICAN COMMUNITY COMPETITION REGULATIONS,  
2010**

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2010**

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*Regulation*

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# **THE EAST AFRICAN COMMUNITY COMPETITION REGULATIONS, 2010**

IN EXERCISE of the powers conferred by section 49 of the East African Community Competition Act, 2006, the Council of Ministers makes these Regulations this .....day of .....2010.

## **PART I**

### **PRELIMINARY**

#### **1. Citation and commencement**

These Regulations may be cited as the East African Community Competition Regulations, 2010 and shall come into force on such date as the Council may, by notice in the *Gazette*, appoint.

#### **2. Interpretation**

In these Regulations unless the context otherwise requires-

“Act” means the East African Community Competition Act, 2006;

“Authority” means the East African Community Competition Authority established under section 37 of the Act;

“competent authority” means any authority of a Partner State that is empowered to enforce competition matters;

“Court” means the East African Court of Justice;

“merger or acquisition notice” means a notice of intention to execute a merger or acquisition as provided for under regulation 4;

“person” means a natural or legal person.

## **PART II-**

### **MERGERS AND ACQUISITIONS**

#### **3. Merger and acquisition notice**

- (1) A person who intends to execute a merger or an acquisition shall submit a notification of the intended merger or acquisition to the Authority.
- (2) The notification under this regulation may be submitted by a representative of a person intending to execute the merger or acquisition, and in that case, that representative shall produce written proof, that the representative is authorised to act for that person.
- (3) The notification referred to under sub-regulation (1) shall be submitted in Form EACCA 1 in the Schedule and shall be accompanied by a prescribed fee to be determined by the Authority.

#### **4. Documents to accompany a merger or acquisition notice**

A merger or acquisition notice shall be accompanied by original or certified copies of relevant documents to support the intended merger or acquisition.

#### **5. Review of intended merger or acquisition**

- (1) The Authority shall review the intended merger or acquisition to determine if all the relevant information and documents have been submitted by the person.
- (2) Where the Authority finds that the merger or acquisition notice contains all the relevant information and documents required, an acknowledgement shall be given to the person.
- (3) The Authority shall make a decision on the intended merger or acquisition within forty five days after notification requirements have been satisfied.
- (4) Where the Authority finds that the merger or acquisition notice lacks certain information or documents, the Authority shall request the person making the notification to provide such information or documents in Form EACCA 2 in the Schedule. .
- (5) In case a person neglects to provide the information or documents requested under sub regulation (4), the Authority shall not consider the merger or acquisition and shall notify the parties to the merger or acquisition.

## **6. False or misleading information**

Where, at any time before a decision is made, the Authority believes that the information or document provided by the applicant in a merger or acquisition notice is false or misleading; the Authority shall require the person to provide the correct information or document.

## **7. Publication of notification of intended merger or acquisition**

- 1) The Authority shall, within fourteen days of issuing an acknowledgement of receipt of a notification of an intended merger or acquisition, publish a notice of the intended merger in at least two newspapers of national circulation in each Partner State and on the Community website.
- 2) The notice under sub-regulation (1) shall invite interested persons to express their views on the proposed merger or acquisition within fourteen days of publication of the notice.

## **8. Expression of views on a proposed merger or acquisition**

- (1) Any interested person shall express views on the merger or acquisition by submitting to the Authority any document, affidavit, statement or any relevant document in respect of the merger or acquisition.



(2) Where the Authority determines that there is merit in the information provided, the Authority may utilize the information provided when considering the merger or acquisition.

## **9. Abandonment of merger or acquisition**

(1) A person who has filed a merger or acquisition notice may at any time before a decision is made abandon the intended merger or acquisition by notifying the Authority in Form EACCA 3 in the Schedule.

(2) Where a person abandons an intended merger or acquisition under this regulation, that person shall forfeit the merger and acquisition notification fee to the Authority.

## **10. Decision of the Authority on intended merger or acquisition**

(1) The Authority shall, after considering the intended merger or acquisition -

- (a) approve the merger or acquisition, with or without conditions;
- (b) decide that the intended merger or acquisition falls outside the jurisdiction of the Act; or
- (c) reject the intended merger or acquisition.

(2) Where the Authority decides that the merger or acquisition is outside the jurisdiction of the Act, the Authority shall refund seventy five percent of the fee for filing a merger or acquisition notice, to the person that paid it.

(3) The decision of the Authority on the intended merger or acquisition shall be in the prescribed Form EACCA 4a or Form EACCA 4b in the Schedule, as the case may be, and shall be published in the Gazette.

#### **11. Implementation of merger or acquisition in contravention of the Act**

Any person who implements a merger or an acquisition in contravention of the Act and these Regulations commits an offence and is liable on conviction to the fine specified in section of the Act.

#### **12. Appeal of the decision of the Authority**

(1) A person aggrieved by the decision of the Authority on an intended merger or acquisition may, through the Secretary General, appeal to the Council within thirty days from the date of the communication of the decision of the Authority.

(2) The Council may after considering the appeal-

(a) reject the merger or acquisition; or

(b)approve the merger or acquisition, with or without conditions, but only where the intended merger or acquisition fulfils an overriding public interest.

(3)Where the Council approves the merger or acquisition the Council shall direct the Authority to issue a merger or acquisition clearance certificate.

### **PART III**

### **SUBSIDIES**

#### **13. Notification of intention to grant subsidy**

(1)A Partner State which intends to grant a subsidy to an undertaking shall notify the Authority of the intention to grant the subsidy.

(2)The notification under sub regulation (1) shall contain detailed reasons for granting the subsidy.

#### **14. Decision of the Authority on intention of Partner State to grant a subsidy**

(1)The Authority shall, in accordance with the provisions of the Act, within forty five days after the receipt of a notice of an intention of a Partner State, notify the Partner State of its decision.

(2) Where the Authority fails or neglects to communicate a decision of an intended grant of a subsidy, the subsidy may be implemented.

(3) A Partner State aggrieved by the decision of the Authority may within thirty days after receipt of the decision appeal to the court.

## **15. Recovery of subsidy**

(1) The Authority shall, where it determines that a Partner State granted a subsidy in contravention of the Act, refer the matter to the court.

(2) Where the court determines that the subsidy granted is illegal, the court shall order the Partner State to recover the subsidy from the recipient.

(3) For purposes of recovery of the subsidy, where it is not possible to determine the monetary value of a subsidy, the court may assign a monetary value to the subsidy.

## **PART IV**

### **PERMISSION TO ENGAGE IN CONCERTED PRACTICE**

#### **16. Application for permission to engage in concerted practice**

- (1) A person who intends to engage in a concerted practice shall apply to the Authority in Form EACCA 5 in the Schedule.
- (2) The application referred to in sub regulation (1) shall be accompanied by-
  - (a) a fee to be prescribed by the Authority; and
  - (b) a detailed statement setting out the reasons why the concerted practice should be permitted.
- (3) The Authority shall consider the application to engage in a concerted practice, and within forty five days from the receipt of the application communicate its decision to the applicant.
- (4) Where the Authority does not communicate a decision on an application to permit a concerted practice within the stipulated time, the concerted practice shall be deemed to have been granted.

**PART V**  
**COMPLAINTS**

**17. Filing complaints**

(1) A Partner State or any person may in accordance with section 24 of the Act, file a complaint to the Authority for breach of the provisions of the Act.

(2) A Partner State or a person making a complaint shall submit information concerning an alleged breach of the provisions of the Act to the Authority in Form EACCA 6 in the Schedule.

**18. Consideration of complaints**

(1) The Authority shall, where a complaint has been filed in accordance with section 24 of the Act and regulation 17 -

(a) record and evaluate the complaint to satisfy itself that the complaint is not vexatious or frivolous; and

(b) consider on the basis of the information in its possession the merits of the complaint and where the information is insufficient to act on the complaint, request the complainant to provide additional information.

(2) Where there are more than one complaint relating the same matter, the Authority may, after evaluating the complaints, consolidate the complaints.

(3) Where the Authority consolidates the complaints under sub-regulation (2)-

(a) each of the complaints shall continue to be separately identified by the complaint number; and

(b) the Partner State or the person who submitted a complaint to the Authority remains the complainant with respect to that complaint.

(4) Where the Authority determines that a complaint is valid, the Authority shall investigate the complaint and make an appropriate decision.

(5) Where there are no grounds to sustain the complaint, the Authority shall reject the complaint.

## **19. Withdrawal of complaint**

(1) A complainant may at any time, in writing, withdraw the complaint filed with the Authority.

(2) Where the Authority considers that the complaint withdrawn under sub regulation (1) has merits, the Authority may proceed to carry out the investigation in relation to that complaint.

(3) A person who withdraws a complaint under this regulation may be required to assist the Authority in the investigation.

## **20. Consent**

(1) The Authority, the respondent and, where the Authority considers necessary, the complainant, may, during or after completion of the investigation of a complaint, agree on terms of an appropriate agreement.

(2) The Authority may without hearing any evidence confirm the terms of the agreement in sub-regulation (1) as a consent order.

(3) A consent order may, with the consent of a complainant, include an award for damages.

(4) The consent order is in Form EACCA 6 in the Schedule.



**PART VI-**  
**INVESTIGATIONS**

**21. Investigations by the Authority**

- (1)The Authority shall undertake any investigation which the Authority considers necessary for the purpose of giving effect to the Act.
- (2)The Authority may, during the conduct of an investigation and where the Authority considers it necessary request the competent authority of a Partner State to conduct the investigation and make a report to the Authority.
- (3)An investigation conducted by a competent authority of a Partner State under sub regulation (2) shall be conducted in accordance with the national laws of the Partner State.
- (4)Where the Authority or the competent authority of a Partner State within whose territory the investigation is to be conducted deems necessary, officials of the Authority and other persons authorised by the Authority may assist the officials of the competent authority concerned in carrying out the investigations.

(5)The officials and the other persons referred to in sub-regulations (4) shall be issued with authorisations by the competent authority of a Partner State, which shall be produced whenever demanded in the course of an investigation.

(6)The officials and other persons authorised by the Authority to conduct investigations shall have power to-

(a)enter upon and search any premises of a person;

(b)search any person on the premises if there are reasonable grounds for believing that the person has personal possession of a document that has a bearing on the investigation;

(c)examine any document that is on or in the premises that has a bearing on the investigation;

(d)request any representative or staff of a person for explanations on facts or documents relating to the subject matter and purpose of the investigation and to record the answers;

(e)take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;

(f) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to search any data contained in or available to that computer

- system, reproduce any record from that data; and seize any output from that computer for examination and copying;
- (g) attach and if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the investigation; and
- (h) seal any business premises or books or records for the period and to the extent necessary for the investigation.

## **22. Duty to inform Partner State of investigation**

- (1) The Authority shall, before carrying out an investigation concerning a Partner State, give notice of the investigation to the competent authority of the Partner State in whose territory the investigation is to be conducted.
- (2) A notice of an investigation under this regulation shall state the purpose of the investigation and specify the date on which the investigation is to begin.

## **23. Assistance of Partner State competent authorities in investigations**

Where the officials and other persons authorised by the Authority determine that a person opposes an investigation ordered pursuant to the Act, the Partner State concerned shall afford the officials and

other persons authorised by the Authority the necessary assistance so as to enable the officials and other persons to conduct the investigation.

#### **24. Report of Partner State competent authority**

The competent authority of Partner State shall, after conducting an investigation submit a report of its investigation to the Authority and the report shall be considered to be a report of the Authority.

#### **25. Power to summon witnesses**

(1) Where the Authority believes that a person has information that is relevant to the investigation, the Authority shall summon that person and require that person to-

- (a) make a statement;
- (b) furnish information in writing signed by the person;
- (c) produce any relevant document to the Authority; or
- (d) appear before the Authority to give oral evidence.

(2) The summon is in Form EACCA 8 in the Schedule.

## **26. Interview of person**

Where the Authority intends to interview a person the Authority shall conduct the interview in accordance with the rules of procedure of the Authority.

## **27. Hearing**

- (1) Any person who is a party to a matter shall have a right to be heard by the Authority.
- (2) Where a person who is not a party to the matter under investigation has sufficient interest in the matter, that person may apply to the Authority to be heard.
- (3) Where the Authority determines that the person under sub-regulation (2) has sufficient interest in the matter, the Authority shall give that person an opportunity to be heard.
- (4) The Authority may on its own initiative conduct a hearing.
- (5) The Authority may invite any other person to make submissions in writing or to attend the hearing of the matter, where in the opinion of

the Authority, the person has relevant information concerning the matter in dispute.

(6)The Authority may invite a competent authority of a Partner State to participate in a hearing.

## **28. Procedure for hearing**

The Authority shall conduct a hearing in accordance with the rules of procedure of the Authority..

## **29. Decisions of the Authority on complaints**

(1)The Authority shall, after hearing a complaint, make a decision and communicate the decision to the parties.

(2)The decision referred to in sub regulation (1) shall contain the following-

(a)the date of the decision and the place where the decision was made;

(b)the issues considered by the Authority;

(c) the opinions, arguments and prayers of the parties;

(d)the circumstances related to the case;

(e)the findings and the legal basis of the decision of the Authority;

(f) the sanctions, the remedies or any other directives given; and

(g) dissenting opinion, if any.

**30. Access to records of Authority**

(1) The parties to a complaint may apply to the Authority to peruse the records of the Authority relating to that complaint.

(2) The right of access under sub regulation (1) shall not extend to-

(a) confidential correspondence between the Authority and the competent authorities of the Partner States;

(b) business secrets and other privileged information from a person; and

(c) any other information the Authority considers confidential.

**PART VII-**

**FILING OF FORMS AND SERVICE OF DOCUMENTS**

**31. Filing of forms and documents with the Authority**

(1) Any form or document which is required by the Act or these Regulations to be filed with the Authority shall be filed at the Registry of the Authority.

(2) The Authority shall assign a number to each-

(a) complaint;

(b) merger or acquisition notification; and

(c) any other application.

(3) A person who files a document under sub- regulation (1) shall provide the name, address for service, telephone number, and email address and fax number, if available.

(4) A person who files any document under sub-regulation (1) may authorize another person to deal with the Authority on behalf of the person filing the document.

### **32. Service of documents by the Authority**

(1) Service of documents by the Authority may be effected by delivery by hand, registered mail, fax facsimile or electronic mail.

(2).Where the person is a legal person the document or notice required to be served on the legal person shall where-

- (a) the legal person has a registered office in a Partner State, be sent to that registered office;
- (b) the legal person does not have a registered office in a Partner State, be sent to the principal or known place of business of the legal person in the Partner State; or
- (c) the legal person does not have a registered office or a principal place of business or known place of business in the Partner State, be sent to the last registered office or place of business of that legal person known to the Authority.



### **33. Change of address for service**

A person who files any document with the Authority, may, in writing, inform the Authority of a change of address for service.

## **PART VIII-**

### **GENERAL PROVISIONS**

### **34. Request for information**

Where the Authority requires any additional information under these regulations, the Authority may make a request in Form EACCA 2 in the Schedule.

### **35. Inquiry into economic sectors of the Community**

(1) Where circumstances suggest that competition may be restricted or distorted within an economic sector in the Community, the Authority may conduct inquiries into that economic sector in accordance with Section 42 of the Act.

(2) The Authority may for the purposes of sub-regulation (1), request any person to communicate to the Authority all the agreements, decisions, concerted practices and any other information relevant for that purpose.

(3)The Authority may publish a report on the result of the inquiry into an economic sector of the Community and invite comments from any person with an interest in the findings of the Authority.

(4)The Authority may after an inquiry is conducted initiate an investigation and take appropriate measures to remedy the situation.

### **36. Form of notices issued by the Authority**

Where the Authority is required under these regulations to publish a notice in the Gazette, that notice shall contain-

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

(b) the number assigned by the Authority to the subject matter;

(c) the provision of the Regulations under which the notice is given;

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

(e) where the notice invites submissions, the last date on which submissions are to be received.

**SCHEDULE**

**Regulation 3**

**Form EACCA 1**

**MERGER AND ACQUISITION NOTIFICATION FORM**

**(Application for Merger/Acquisition Clearance)**

**1. The Applicant (the person intending to merge or acquire)**

(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 undertakings of the Applicant.

.....  
.....  
.....

*(See Direction 4 of this Form)*

(d) Address 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 (the person to be acquired or merged)**

(a) In the case of a legal person:

(i) Name of the legal person

.....  
.....  
.....

(ii) Place of incorporation of the legal person

.....  
.....  
.....

(iii) Registered office of the legal person

.....  
.....  
.....

(iv) Describe the business or businesses carried on by the legal person including the products and services of the person to be acquired

.....  
.....  
.....

*(See Direction 5 of this Form)*

(v) Number and type of shares or description of assets to be acquired

.....  
.....  
.....

(vi) The issued capital of the legal person;

.....

(viii) the holders of such issued capital.

.....  
.....  
.....

(c) Provide details of all related bodies corporate of the legal person 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 legal person) whose assets are to be acquired provide:

(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 firm

and any related bodies corporate (the merger parties)

.....  
.....

*(See Direction 8 of this Form)*

(c) Provide details of any acquisitions made by the merger 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 merger parties

.....  
.....

(e) Describe any other cooperative agreements to which any of the merger parties is a party

.....  
.....

*(See Direction 9 of this Form)*

**5. Relevant Market**

Describe the market(s) (product, functional, geographic and time) relevant to the assessment of the acquisition’s effect on competition – this includes markets for the supply of goods or services and markets for the acquisition of goods or services (the relevant market(s))

.....  
.....

*(See Direction 10 of this Form)*

**6. Suppliers**

(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.

.....  
.....

**7. Competitors**

- (a) Provide details of
  - i) current and potential competitors; and
  - ii) list of goods and services produced by each competitor

.....  
.....

*(See Direction 12 of this Form)*

(b) If the suppliers 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 not 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 alternative suppliers 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 prices 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**

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

.....  
(See Direction 19 of this Form)

.....  
.....

**13. Barriers to entry and expansion**

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

.....  
.....

(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 levels of pricing in the relevant market(s) including the use of rebates and discounts in the last 24 months

.....  
.....

(b) Provide details of cost of supply of goods and services by the merger parties including manufacturing, marketing and distribution costs in the relevant market(s)

.....  
.....

(c) Describe the likely 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)*

(d) 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 complementarity 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 other grounds for the granting by the Authority 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. 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) Merger agreement; and
- (f)** Any other relevant documents.

**22. 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

.....  
.....

**23. 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.



**24. Declaration of the Applicant**

The undersigned declares, to the best of their knowledge and belief, that 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.

Signature of authorized person .....

Designation  
.....

(Print) Name of authorized person                      (Print) Name of authorized 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.

**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 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):

“holding company”, in relation to a legal person, means a legal person of which the first legal person is a subsidiary;

“related legal person” means-

(a) a holding company of another legal person;

(b) a subsidiary of another legal person;

(c) subsidiary of a holding company of another legal person;

“subsidiary”, in relation to a legal person (*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 legal person; 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.

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

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 section 13 of the Act, the applicant is required to provide an assessment of the relevant market.

11. The response must provide details of major suppliers 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 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 identified, the Applicant and the Target firm 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. 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 characterized by brand loyalty. The response must also discuss whether the relevant market(s) are characterized 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:

- (a) options for the transportation of exports (for example, air, sea or rail);
- (b) transport costs;
- (c) whether the product is a high or low value product;
- (d) whether the product is high or low density;
- (e) 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 reference to the following:

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

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

- (a) sunk costs in production capacity;
- (b) accessing shelf space;

- (c) advertising and promotion;
- (d) regulatory restrictions;
- (e) requirements for scarce inputs;
- (f) brand loyalty;
- (g) minimum efficient scales of operation;
- (h) goodwill;
- (i) access to intellectual property;
- (j) the potential response of incumbents to new entry.

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

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

23. The response must refer to current and historical pricing and purchasing behavior, 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:

- (a) the number of participants in the relevant market(s);
- (b) transparency;
- (c) homogeneity of product;
- (d) homogeneity of firms;
- (e) the size and frequency of purchases;
- (f) 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).

**Form EACCA2**

**REQUEST FOR ADDITIONAL INFORMATION**

1. Purpose of the request

.....  
.....  
.....  
.....

2. Provide the following additional information:

.....  
.....  
.....  
.....

3. This Request for Additional Information has been issued this .....[insert day] day of .....[insert month]..... [insert year].

4. The information requested shall be submitted to the Authority within..... days from the date of receipt of this form.

5. Authority file number .....

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

.....

(Name)

.....

(Signature)

.....



**Form EACCA3**

**NOTICE OF ABANDONMENT OF MERGER OR ACQUISITION NOTICE**

**1. Name of acquiring firm**

.....  
...

**2. File name and number of the merger or acquisition application**

.....  
...

**3. Notice of Abandonment**

Take notice that the above named firm-

(a) has abandoned the notice of a merger or acquisition; and

(b) has no intention of taking any further steps to implement that intended merger or acquisition.

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

.....

(Name)

.....

(Signature)

.....

(Title)

.....

(Date)

**5. For official use only:**

Authority file number: .....

Date filed: .....

*Regulation 10*

**Form EACCA 4a**

**MERGER CLEARANCE CERTIFICATE –**

TO:.....

1. You applied to Authority on ..... [Date] for merger approval in accordance with Regulation....., after reviewing the information you provided, the Authority approves the merger.

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

**3. Name and Title of Person authorized to sign on behalf of the Authority**

.....  
...

**Authorized signature:**

.....

**Form EACCA 4b**

**NOTICE FOR REJECTION OF PROPOSED MERGER-**

To: .....

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 rejected.

2. This Notice of rejection is issued this .....day of ...../20...../.

3. Authority file number .....

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

(Signature)

.....

(Name)

.....

(Authority)

.....

**Form EACCA 5**

**APPLICATION FOR PERMISSION TO ENGAGE IN CONCERTED PRACTICES**

**1. Applicant**

(a) Name of Applicant:

*(Refer to direction 2)*

.....  
.....  
.....  
.....  
.....

(b) Description of business carried on by applicant:

*(Refer to direction 3)*

.....  
.....  
.....  
.....  
.....  
.....

(c) Address 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 proposed or actual agreement relate:

.....  
.....  
.....  
.....  
.....  
.....

(d) The period 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 agreement**

(a) Names, addresses and description of business carried on by parties to the proposed agreement:

.....  
.....  
.....  
.....  
.....  
.....

(b) Names, addresses and description of business carried on by other persons on whose behalf this application is made:

*(Refer to direction 5)*

.....  
.....  
.....  
.....  
.....  
.....

**4. Public benefit claims**

Arguments in support of application for permission to engage in concerted practices:

*(Refer to direction 6)*

.....  
.....  
.....  
.....  
.....  
.....  
.....

**5. Market definition**

Provide a description of the market(s) in which the goods or services described in item 2(c) are supplied or acquired and other affected markets including: significant suppliers and purchasers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

.....  
.....  
.....  
.....  
.....  
.....  
.....

**6. Public detriment**

Detriment to the public resulting or likely to result from the permission to engage in concerted practices, in particular the likely effect of the agreement on the prices of the goods or services described at 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 authorized by the applicant to provide additional information:

.....  
.....  
.....  
.....  
.....

Dated.....

Signed by/on behalf of the applicant

.....

(Signature)

.....

(Full Name)

.....

(Position in Organization)

**8. For official use only:**

Authority file number: .....

Date filed:.....

Contact.....



## **DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Authority 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 authorized 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 proposed 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 certified 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 affected 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.

Form EACCA 6  
CONSENT ORDER FORM

1. Name of the respondent

.....  
...

2. Name of the complainant

*(The person to be awarded damages if applicable)*

.....  
...

3. **Attach affidavit** (from each party in support of the order requesting that the order be made)

4. A brief summary of the case

.....

5. A brief summary of agreed facts/terms agreed between the Authority, the complainant and the respondent or the Authority and the respondent including, if applicable, the amount of damages agreed between the respondent and the complainant.

.....

6. Consent order Undertaking:

I, .....the complainant, agree to the terms of the proposed order.

.....

Signature

Date

I .....the respondent, agree to the terms of the consent order

.....

Signed by/on behalf of the respondent

Date

.....

Position in the Organization

I..... the complainant, agree to the amount of damages to be awarded by the respondent

.....

Signed by/on behalf of the complainant

Date

.....

Position in the Organization

Signed by the Authority

.....

Date

**8. For official use only:**

Authority file number: .....

Date filed: .....

**Form EACCA 7  
COMPLAINT FORM**

**1. Name of person making complaint**

.....  
.....

**2. Name 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 including the dates on which the conduct occurred, and a statement indicating when and how you became aware of the conduct)

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

**4. Please attach to this form any other relevant information.**

**5. Is the conduct continuing?**

.....  
...

If not, when did the conduct end?

.....  
...

**6. Name, address and title of the signatory**

.....

(Full Name)

.....

(Address)

.....

(Signature)

.....

(Title)

.....

(Date)

**7. For official use only:**

Authority file number: .....

Date filed: .....

**8. Contact**

East African Community

AICC Building

P.O Box 1096

Kilimanjaro Wing 5<sup>th</sup> Floor

**Form EACCA 8**

**SUMMONS FOR APPEARANCE BEFORE THE AUTHORITY**

**IN THE MATTER OF AUTHORITY CASE NO .....OF.....REGARDING  
COMPLAINT/MERGER /EXEMPTION**

**PARTIES:** .....  
.....  
.....  
.....

You are hereby summoned; to appear / to furnish the information in writing/ to produce the specified document; and you should produce on that day all the relevant documents and information:

Date... Day... Time...

Venue :.....( Specify room no, floor etc)

Details of information to be furnished/documents to be produced

- (1).....
- (2).....
- (3).....

Given under my hand and seal of the Authority this..... day of.....20

.....

**Registrar**

WITNESS: I..... on this.....day of .....20... 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**

.....

**Signature of the person  
summoned/receiver on behalf**



**Form EACCA 9**

**PERMISSION TO ENGAGE IN CONCERTED PRACTICE**

1. To .....

**2. Name and file number**

.....  
...

3. You applied to the Authority on ..... [Date] for exemption under regulation 16 of these Regulations.

4. The subject practice or agreement contributes to the objective set out under the Act, and therefore the Authority grants an exemption for the period of ..... years ending on ..... years. For:

a single agreement/a category of agreements

a single practice/a category of practice

5. As described in your application, this exemption is subject to:

**no conditions/the conditions listed on the attached sheet**

6. The Authority has powers under section 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 Designation of Person authorized to sign on behalf of the Authority:**

.....  
...

**Authorised signature:**

.....