

MERGER AND ACQUISITION NOTIFICATION FORM - 1

Please see notes on filing this Form¹

Particulars of party giving notification or notifying the Authority

(a) Name.....

(b) Principal place of business

.....

.....

(c) Website and contact information

.....

PART I: INFORMATION ABOUT THE MERGING PARTIES

1. Particulars of merging undertakings Acquiring undertaking

(a) Name

.....

(b) Principal place of business.....

.....

(c) Website

Notes

1. *Undertakings to the merger or acquisition are required to complete all parts of this Form.*
2. *All documents required by the Act or Regulations or referred to in this Form should be attached and submitted together with this Form.*
3. *The Form shall be submitted electronically or by hard copy, to the Authority. The undertakings must submit this Form together with all the supporting documents, which shall be originals or certified copies.*
4. *This Form shall be accompanied with the Merger Notification Filing fee required by Regulation 3.*
5. *Undertakings may consult the Authority in case of clarification regarding the completion of this Form.*
6. *Where there is insufficient space on this Form to furnish the required information, the information shall be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the undertakings.*

(d) Contact information for acquiring party (including telephone number, fax number and e-mail address of, and position held by the appropriate contact person).....

(e) Contact information of legal representative and a Power of Attorney establishing proof of authority to so act where applicable. *(If there is more than one acquiring undertaking the information should be provided in respect of each undertaking).*

Target undertaking

(a) Name.....

(b) Principal place of business

(c) Website.....

(d) Contact Information for target party (including telephone number, fax number and e-mail address of, and position held by, the appropriate contact person)

(e) Contact information of legal representative and a Power of Attorney establishing proof of authority to so act where applicable. *(If there is more than one target undertaking the information should be provided in respect of each undertaking).*

2. Specify under which trade name each of the undertakings to the transaction is trading and indicate in which Partner State. If there are more than two parties to the merger or acquisition;

Partner State	Acquiring undertaking	Target undertaking
Burundi		
Democratic Republic of Congo		
Kenya		
Rwanda		
Somalia		
South Sudan		
Uganda		
Tanzania		

3. Specify Partner States affected by the merger or acquisition.

Partner State	Yes	No
Burundi		
Democratic Republic of Congo		
Kenya		
Rwanda		
Somalia		
South Sudan		
Uganda		
Tanzania		

PART II: OWNERSHIP STRUCTURE, ANNUAL TURNOVER AND VALUE OF ASSETS FOR THE MERGING PARTIES

OWNERSHIP STRUCTURE

4. Provide a description of the ownership structure:

Acquiring undertaking

S/N	Name of shareholder	Percentage Shareholding	Nationality of shareholders	Partner State

Target undertaking

S/N	Name of shareholder	Percentage Shareholding	Nationality of shareholders	Partner State

5. Provide a percentage of voting securities or non-corporate interests held directly or indirectly for each of the merging parties:

S/N	Name of shareholder	Percentage of voting securities or non-corporate interests held directly or indirectly	Rights, if any, attached to the shareholding
1.			
2.			
3.			

TURNOVER VALUE

6. Specify the value of annual turnover derived in each Partner State where the acquiring and target undertakings operate for the preceding financial year up to the date of the decision to merge. *(If there are more than two parties to the Merger or acquisition, please attach information for each additional undertaking).*

Partner State	Turnover Value (US\$) Undertaking 1	Turnover Value (US\$) Undertaking 2
Burundi		
Democratic Republic of Congo		
Kenya		
Rwanda		
Somalia		
South Sudan		
Uganda		
Tanzania		

VALUE OF ASSETS

7. Specify the asset value derived in each Partner State where the acquiring and target undertakings operate for the preceding financial year up to the date of the decision to merge. *(If there are more than two parties to the Merger or acquisition, please attach a column for each additional undertaking).*

Partner State	Value of Assets (US\$) Undertaking 1	Value of Assets (US\$) Undertaking 2
Burundi		
Democratic Republic of Congo		
Kenya		
Rwanda		
Somalia		
South Sudan		
Uganda		
Tanzania		

8. State the value / consideration for the transaction using a value scale based on purchase price, value of all assets or interests relevant to the transaction.

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

PART III: DESCRIPTION OF THE MERGER OR ACQUISITION

9. Provide detailed information of any dates or events relevant to the completion of the transaction.

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

10. Nature of the intended merger or acquisition:

No.	Nature of merger or acquisition	Tick appropriate as
1.	Acquiring assets, shares or other interests	
2.	Selling assets, shares or other interests	
3.	A combination of (a) and (b) above	

11. Provide a description of the following:

(a) the type of assets, shares or other interest being acquired or sold, as the case may be

.....

(b) whether other assets, shares or other interests relevant to the merger will be leased, combined, otherwise transferred or subject to other agreement in consideration for the completion of the merger or acquisition

.....

.....

(c) whether other conditions or events will be undertaken in consideration for the completion of the merger or acquisition

.....

.....

12. Provide an explanation of pre-merger or acquisition structure of ownership and control of the undertakings

.....

.....

.....

13. Provide an explanation of the intended structure of ownership and control upon completion of the merger or acquisition.

.....

.....

.....

14. Provide a brief description of the business, product and services offered by the undertakings subject of the merger or acquisition during the ordinary course of business

.....

.....

.....

15. Provide the rationale for the merger or acquisition

.....

.....

PART IV: RELEVANT MARKET INFORMATION

16. In a separate document, please provide the following information to the best of your knowledge:

(a) A list of all markets in which the parties to this transaction sell their products and/or services;

(b) For each market listed in (a) above, provide:

(i) The estimated market share of the acquiring and target undertakings;

(ii) The estimated market shares of the merging parties' competitors;

(iii) A description of existing barriers to market entry (e.g., regulatory requirements, capital requirements, sunk costs, etc.);

(iv) An estimate of the time it will take potential competitor(s) to enter the market;

(v) The name and contact details of each entrant to the market during the last three (3) years;

(vi) An estimate of the value and volume of the EAC market as a whole that is production less exports and plus imports;

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

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

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

(x) An assessment of any competition effects of the merger or acquisition will have at the EAC regional level.

(xi) An assessment of the competition effects at national level and give details of any localities where competition may be reduced as a result of the merger or acquisition; and

(xii) A brief assessment of any other features of the market that the Authority should take into account in considering the effect of the merger or

acquisition. 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).

(xiii) Is the target undertaking a failing firm?

Yes.....

No.....

If yes, provide the following:

(a) Financial information demonstrating that the failing firm will not be able to meet its obligations

.....

(b) Information concerning efforts taken by the failing firm to elicit reasonable alternative offers.....

(c) Information indicating that the failing firm would reasonably be expected to exit the market unless the merger or acquisition is implemented

.....

PART V: PRODUCT INFORMATION

17. Provide information of each product and/or service that you and all other acquiring/target undertakings sell. In addition, provide information on all substitute products and/or services, if any. Use the 5-digit Standard Industrial Classification (SIC) Codes to identify the product(s) and/or service(s):

Product/Service	SIC Code	Substitutes	SIC Code	Partner State	Geographical Area sold

18. For each product and/or service identified in paragraph 17 of this Section, provide contact details for the top five (5) producers and/or providers in each identified geographical area with the largest estimated turnover in value and their estimated market share during the last 12 months:

Product/ service	Company Name and Address	Partner State	Geographical Area	Turnover	Market Share

19. For each product and/or service identified in paragraph 18, provide turnover in each geographical area within the last 12 months:

Company Name	Product/Service	Turnover	Partner State	Geographical Area

20. For each product and/or service identified in paragraph 19, provide contact details for five (5) of customers in each identified geographical area with the largest aggregate purchases in value within the last 12 months:

Product/service	Customer Name & Information	Partner State	Geographical Area	Purchases

21. State whether and how the merger or acquisition involves foreign direct investment

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

PART VI: PUBLIC INTEREST CLAIMS

22. State whether and how the merger or acquisition is likely to –

- (a) affect a particular Partner State, the industrial sector, or region;
- (b) affect employment within the relevant market, Partner State or Community;
- (c) affect the ability of small and medium undertakings to gain access to or to be competitive in any market;

- (d) affect the ability of nascent sectors or other industries to compete in international markets; or
- (e) advance or hinder the ability of Partner States to respond quickly to a sector crisis.

Declaration

I, _____ (Name and Title)

having prepared or supervised the preparation of this Statement of Notification of Merger or Acquisition, hereby declare to the best of my knowledge that –

- (a) the information provided in this document and in its attachments, are true, correct and complete.
- (b) the requested data, including values, estimates, documents and records are true.

I understand it is an offence under the Act to supply false or misleading information and that I shall be liable upon conviction to a fine as provided for under the Act.

Signed this day of 20.....

.....
Declarant

Registrar,
East African Community Competition Authority,

DOCUMENTS TO BE SUBMITTED BY THE MERGING OR ACQUISITION PARTIES

1. Certified copies of the following documents:

- (a) The Merger or Acquisition Agreement/ contract/ arrangement/proposal;
- (b) Audited annual Statements of your undertaking for the last three (3) fiscal years;
- (c) Current list of shareholders (and their market shares) of your undertaking and their nationality
- (d) Current list of Directors of your undertaking and their nationality
- (e) Strategic business Plans and Marketing plans
- (f) Internal memoranda analysing the proposed merger or acquisition;

- (g) Board resolutions appointing company representatives for the purposes of this merger or acquisition and the letter appointing legal representatives for the purposes of this transaction; and,
 - (h) In a public bid, copy of the offer document; if it is unavailable at the time of notification, a copy of the most recent document demonstrating the intention to launch a public bid must be provided and a copy of the offer document must be submitted as soon as possible and no later than when it is posted to shareholders.
 - (i) A shareholders' agreement
-
- 2. All Confidential Documents including Notes, Memoranda, Email Communication prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the undertakings subject of the merger that specifically relate to the sale of the acquired entity(s) or assets.
 - 3. Copies of all documents prepared by, or for, or received by any member(s) of the Board of management, the Board of directors, or the supervisory board, as applicable in the light of the corporate governance structure, or the other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders meeting in particular copies of technical reports relating to:
 - (a) Presentations analysing different options for mergers and acquisitions, including but not limited to the notified merger or acquisition.
 - (b) Annual reports of your undertaking for the last three (3) years;
 - (c) Analyses, Reports, Studies, surveys and any comparable documents for the purposes of assessing or analysing the merger or acquisition with respect to its rationale, market shares, competitive conditions, competitors (actual and potential), potential for sales growth or expansion into other product or geographic markets.
 - (d) Any other document which may assist the the Authority in making a decision on the proposed merger or acquisition

Provide a list of the above documents, indicating for each document the date of preparation and the name titles