



## THE COMPETITION (GENERAL) RULES, 2018



ISO 9001:2015 CERTIFIED

**The Competition Act  
(No. 12 of 2010)**

**The Competition (General) Rules, 2018**

*Arrangement of Rules*

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CONFIDENTIAL

**THE COMPETITION ACT  
(No. 12 of 2010)**

In exercise of the powers conferred under section 93 of the Competition Act, No. 12 of 2010, the Cabinet Secretary makes the following Rules.

**THE COMPETITION (GENERAL) RULES, 2018**

**PART I: PRELIMINARY**

- Citation.           1.    These Rules may be cited as the Competition (General) Rules, 2018.
- Interpretation.    2.    In these Rules, unless the context otherwise requires-
- “**Act**” means the Competition Act, No. 12 of 2010;
- “**abuse of buyer power**” includes but is not limited to;
- a.   **Late payment;** where buyers fail to honour the agreed terms of payment;
  - b.   **De-listing;** unilateral termination of a commercial relationship without notice, or subject to an unreasonably short notice period and without an objectively justified reason;
  - c.   **Threat of de-listing;** use of delisting threats to obtain undue advantage and suppress suppliers from raising genuine complains against the buyers;
  - d.   **Unjust return of goods;** return of goods which the buyer purchased from a supplier;
  - e.   **Transfer of costs;** buyers transfer of costs or risks to suppliers by imposing a requirement for the suppliers to fund the cost of a promotion;
  - f.   **Transfer of risks;** transferring commercial risks meant to be on buyer to the suppliers;

- g. **Refusal to receive ordered goods;** a buyer's refusal to accept delivery of goods for reasons not attributable to the supplier after having entered into a contract;
- h. **Unfavorable treatment;** demanding lower buying prices than all other suppliers or demanding limitations on supplies to other buyers.

**"acquiring undertaking"** means an undertaking that-

- a. would directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another under taking; or
- b. has direct or indirect over the whole or part of the business of the under taking contemplated in (a).

**"Authority"** means the Competition Authority of Kenya established by Section 7 of the Act;

**"Cabinet Secretary"** means the Cabinet Secretary for the time being responsible for matters relating to Finance;

**"complainant"** means a person who has submitted a complaint pursuant to the provisions of the Act;

**"confidential information"** includes trade, business or industrial information or material that belongs to an undertaking, has a particular economic value and is not generally available to or known by others, whose disclosure might adversely harm the competitive position of a person, or as may be determined by the Authority from time to time;

**"document"** includes-

- a) publication, or any matter written, expressed or inscribed on any substance by means of letters, figures, or marks or by more than one of those means intended to be used or may be used for the purposes of recording that matter; and
- b) electronic files;

**"full-function joint venture"** means the joint venture that must perform for a long duration (typically 10 years or more) all the functions of an autonomous economic entity;

**"joint control"** means where the shareholders of an undertaking have equal voting rights with respect to taking strategic commercial decisions and appointment of directors to the board;

**“immunity”** means the benefit of complete immunity from any sanctions;

**“leniency”** means benefits in the form of any reduction in sanctions that would otherwise be imposed on applicants that do not qualify for immunity;

**“leniency programme”** refers to both an amnesty or a leniency programme;

**“Order”** means a decision of the Authority made pursuant to the provisions of the Act;

**“premises”** includes a building where an undertaking ordinarily carries out its business or any other place which is subject to the search pursuant to section 32 of the Act;

**“target undertaking”** means an undertaking-

- a. whose whole or part of business would be directly or indirectly controlled by an acquiring undertaking; or
- b. that would directly or indirectly transfer control of the whole or part of its business to an acquiring undertaking.

**“writing”** includes printing, photography, lithography, typewriting, braille and any other means of representing or reproducing words in a visible form;

Scope of Rules.

3. These Rules shall govern the actions of the Authority in the exercise of the functions conferred under the Act, in particular, procedures for-
  - a) conducting of investigations into restrictive trade practices, consumer infringements;
  - b) determination of exemptions;
  - c) handling of mergers;
  - d) settlement of restrictive trade practices and consumer infringements; and
  - e) determination of penalties and remedies.

Procedures not provided for.

4. If at any time the Authority encounters a situation which is not provided for in these Rules, it shall determine the procedure to be adopted.

## PART II: DELIVERY AND TRANSMISSION OF DOCUMENTS

- Delivery of documents.
- 5.
- 1) A person may deliver or transmit a document to the Authority through-
    - a) delivery by hand;
    - b) registered letter; or
    - c) electronic means.
  - 2) The Authority shall acknowledge receipt thereof.
  - 3) Where a document is delivered or transmitted outside of the office hours of the Authority, the document shall be deemed to have been delivered on the next working day.

## PART III: COMPLAINTS AND INVESTIGATIONS

- Procedure for handling complaints and investigations.
- 6.
- 1) The Authority may conduct an investigation if there are reasonable grounds of suspecting that-
    - a) Part III of the Act has been infringed; or
    - b) Part VI of the Act has been infringed.
  - 2) Notwithstanding sub-rule 6 (1), the Authority may commence investigations based on information received pursuant to a Leniency application as per section 89A of the Act.
  - 3) Leniency applicants will benefit from partial or full reduction in fines or penalties if they fulfil the requirements set out in the Leniency Programme Guidelines issued by the Authority.

- Initiation of an investigation
- 7.
- 1) Subject to sections 31(1) and 70A of the Act, and notwithstanding the power of the Authority to initiate an investigation on its own initiative, any person may lodge a complaint by-
    - a) submitting information concerning alleged prohibited trade practices or consumer infringements to the Authority;
    - b) filling the prescribed **Forms I or II** in the Schedule; or



- c) submitting an anonymous complaint to the Authority.
- 2) Pursuant to sections 31(2) and 70A of the Act, the Authority shall make a preliminary assessment of the facts available to it to decide whether a complaint is to be subject to a full investigation.
- 3) Where the complaint does not disclose sufficient information to make a preliminary assessment, the Authority may issue to a person:
  - a) a notice requesting for information on any specific matter, case, event or business agreement or transaction; or
  - b) a notice to appear before the Authority for an interview.
- 4) Notwithstanding sub-rule (1) of this Rule, a complaint may not be considered by the Authority where-
  - a) the complaint lodged, in whole or in part, is before any court or the Competition Tribunal;
  - b) the complainant fails to cooperate and provide information sought by the Authority as provided in Rule 7(3).

Initiation of a full investigation.

- 8. The Authority shall inform the complainant when it decides not to initiate a full investigation.

Interim measures

- 9.
  - 1) In exercise of its discretion, under sections 37 and 70A of the Act, the Authority may issue an interim relief where there is a likelihood of serious and irreparable damage that may be caused to any person or category of persons, or in the protection of public interest.
  - 2) Notwithstanding sub-rule (1), the Authority may accord the parties an opportunity to be heard before issuing an interim relief.
  - 3) The Authority may set aside an interim order where a party to the proceedings has shown sufficient cause.

- Information request. 10.
- 1) Pursuant to sections 31 (4) and 70A, the Authority may issue summons to a person during investigations to supply information, document or evidence.
  - 2) The summons shall state the legal basis, the purpose of the request and indicate the consequences for not complying with the summons in accordance with section 88 of the Act.
- Procedure for conducting a search 11.
- 1) The following procedure will apply when the Authority visits the premises of an undertaking for purposes of conducting a search:
    - a. Upon entering premises in pursuance of the powers conferred by the Act, the person authorized in writing by the Authority shall, before proceeding to conduct an inspection of the premises, goods, documents and records situated thereon, inform the person present for the time being in charge of the premises of the intention to exercise the powers under this Act; and
    - b. The Authority shall conduct the search in accordance with the Act and the Criminal Procedure Code.
  - 2) An authorised person who removes anything from the premises being searched shall prepare an inventory of the inspection duly signed by the authorized persons and the representative of the undertaking or their authorized agent.
  - 3) Where the representative of the undertaking or their authorised agent refuses to sign, the reasons for the refusal shall be indicated in the inventory of the inspection.
  - 4) The Authority shall in its discretion detain, retain or return all or any material seized at any time, during or after the investigation.
  - 5) The Authority may conduct the search on any day between the hours of sunrise and sunset.
- Procedure for Determining 12. In accordance with sections 34 and 70A of the Act, the Authority shall, upon the completion of its investigation but before a final decision has been rendered-

- an  
Investigation
- a) Serve a notice to each undertaking party to the proceedings as provided for in the Act;
  - b) afford due process to undertakings that are likely to be affected by the decision including the right to access evidence relied on by the Authority.
- Pre-hearing  
conference
13. Pursuant to section 34(2)(c) of the Act, where requested by an undertaking party to the proceedings, or at its own initiative, the Authority shall convene a pre-hearing conference and give directions on how the hearing will be conducted.
- Consequences  
for non-  
appearance
14. Where a party fails to appear on the date set for hearing, the Authority may proceed to make any orders it deems necessary their absence notwithstanding.
- Abuse of  
buyer power.
- 15.
- 1) Pursuant to section 24 (2A) of the Act, the Authority will determine whether an undertaking has abused their buyer power.
  - 2) In assessing cases of alleged abuse of buyer power, the Authority shall among others consider whether the undertaking is able to objectively justify its conduct and its impact on efficiency and consumer welfare.

**PART V: APPLICATION FOR AN EXEMPTION UNDER PART III OF THE ACT**

- Procedures  
for  
applying for  
an  
exemption
- 16.
- 1) An application for exemption under sections 25, 28, and 29 of the Act shall be in the prescribed **Form III** as set out in the Schedule to these Rules upon payment of a non-refundable prescribed fee.
  - 2) Where an undertaking applies for an exemption on behalf of another undertaking, written consent will be required.
  - 3) An undertaking may not apply for exemption if the decision, practice or agreement has been excluded by the Authority pursuant to Section 30 (2) of the Act.
- Exemption  
certificate
17. Where the Authority grants an exemption certificate under this Rule, the certificate granted shall be in the prescribed **Form IV** set out in the Schedule to these Rules.

Notice of Revocation 18. Where the Authority revokes an exemption under this Rule, the notice of revocation shall be in the prescribed **Form V** set out in the Schedule to these Rules.

**PART VI: BLOCK EXEMPTIONS**

Eligibility for Block Exemptions 19. Section 30(2) of the Act shall be applicable to vertical restraints included in practices, decisions or agreements by or between undertakings and agreements entered into for purposes of exports.

Determination of block exemptions 20.

- 1) In determining categories of practices, decisions, or agreements that warrant grant of block exemptions referred to in Rule 20, the Authority shall consider the following-
  - a) The market share of each of the undertakings of the agreement on any of the relevant market affected by the agreement;
  - b) Whether or not the agreements have any hard core restrictions;
  - c) Nature of the markets; and
  - d) Any other relevant consideration.
- 2) Notwithstanding sub-rule (1), any other agreement for purposes of export, will be eligible for exemption under this Part.

**PART VII: PROCEDURE FOR SETTLEMENT OF AN INFRINGEMENT UNDER THE ACT**

Commencement of Settlement proceedings 21.

- 1) An undertaking intending to enter into settlement negotiations pursuant to sections 38 and 70A of the Act shall notify the Authority in writing.
- 2) Where the Authority consents to the request for settlement, the parties shall conclude the settlement negotiations and execute a settlement agreement within ninety days.
- 3) An undertaking which applies to the Authority to commence settlement of the matter, may be deemed to be in contravention of the alleged infringement which the undertaking is accused of, in order to qualify for settlement:

Provided that, if the settlement negotiations collapse, the Authority shall not rely on the information adduced by the parties during the negotiations.

22.

- Mitigating factors to be considered
- 1) An undertaking which has agreed to settle will be entitled to a reduced penalty. In determining the penalty, the Authority shall consider mitigating factors, including-
    - i. Nature of contravention;
    - ii. Cooperation by the undertaking with the Authority from the time of service of Notice of investigation on the undertaking concerned;
    - iii. Where the undertaking is a first time offender;
    - iv. The conduct has since ceased;
    - v. Effect and duration of the conduct;
    - vi. Amount of commerce;
    - vii. Degree of pre-meditation.
  - 2) In addition to sub-rule (1), the Authority shall consider the following mitigating factors in relation to consumer infringements-
    - i. Immediate termination of the infringing conduct;
    - ii. Remedial measures put in place by the undertaking; and
    - iii. Degree of harm to health and livelihood.
- Assessment of turnover.
23. Where the audited financial statements made available by an undertaking are incomplete or unreliable, the Authority may determine the value of the sales or services of that undertaking by applying the internationally accepted accounting standards.
- Collapse of settlement negotiations
24.
    - 1) The settlement negotiations will be deemed to have collapsed where:
      - a) the parties to the settlement fail to reach an agreement;
      - b) there has been a material change of circumstances during the course of the negotiations;
      - c) there are reasonable grounds for suspecting that information which led to the acceptance of the binding commitments was materially incomplete, false or misleading; or
      - d) any other sufficient reason.
    - 2) If the settlement negotiations collapse, the Authority will revert to the investigation process and remedies provided for under the Act.

## **PART VIII: ASSESSMENT AND DETERMINATION OF MERGERS UNDER PART IV OF THE ACT**

### ***A. Definition of Mergers***

Definition of  
Mergers.

- 25.
- 1) Notwithstanding the provisions of section 41 of the Act, the following transactions shall not qualify as mergers-
    - a) a joint venture that is not full-function;
    - b) appointment of a receiver or administrator or entry into an arrangement with creditors that does not result into change of control;
    - c) the purchase or lease of shares, acquisition of an interest, or purchase of assets of the other undertaking in question, referred to in section 41(2)(a) where the acquisition is:
      - i. of shares or voting rights by a person acting as a securities underwriter or a registered stock broker of a stock exchange on behalf of its clients, in the ordinary course of its business and in the process of underwriting or stock broking, as the case may be;
      - ii. of current assets in the ordinary course of business;
      - iii. solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquiring undertaking directly or indirectly, does not entitle the acquiring undertaking to hold twenty per cent (20%) or more of the total shares or voting rights of the company, not leading to acquisition of control of the undertaking whose shares or voting rights are being acquired;
      - iv. is in the circumstance of the acquiring undertaking, prior to acquisition, already controlling fifty percent plus one (50%+ 1) or more shares or voting rights in the undertaking whose shares or voting rights are being acquired, except in the cases where the transaction results in transfer from joint control to sole control;
      - v. not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business, not leading to control of the undertaking whose assets are being acquired; except where the assets being acquired represent substantial business operations in a particular location or for a particular product or service of the undertaking, of which assets are being acquired and do not comprise a business with a market

presence to which a market turnover can be clearly attributed, irrespective of whether such assets are organized as a separate legal entity or not;

- vi. pursuant to a bonus issue, stock splits or consolidation of face value of shares, buy back of shares, subscription to, or renunciation of rights in a rights issue of shares, not leading to acquisition of control; or
- vii. of stock-in-trade, raw materials, stores and spares in the ordinary course of business.

Restructuring and reorganisation within the same group

- 2) For the purpose of Rule 25, a merger as defined under section 41(2)(f) of the Act involving a holding company and its subsidiary wholly owned by undertakings belonging to the same group or mergers or amalgamations involving subsidiaries wholly owned by undertakings belonging to the same group is not subject to notification

### **B. Mergers Generally**

Extra-territorial mergers

- 26.
  - 1) For the purpose of Rule 25, and for the purpose of clarifying Section 6 of the Act, a merger as defined under Section 41(1) of the Act is not subject to notification if it is taking place wholly or entirely outside of Kenya and has no local nexus.
  - 2) For Mergers with a COMESA dimension, meeting the prescribed thresholds under the COMESA Competition Regulations and Rules, the parties shall notify the COMESA Competition Commission in the prescribed form and manner, and inform the Authority in writing regarding this notification.

Mergers excluded from Notification requirements

- 27.
  - 1) A merger excluded in accordance with section 42 (1) of the Act shall not require an authorizing order from the Authority.
  - 2) The Authority in determining a merger to be excluded from notification, shall be guided by the turnover or assets of the undertakings or, whichever is higher.
  - 3) The Authority shall publish a Notice in the Gazette setting out the terms and conditions to be applied in determining the thresholds for a merger excluded in accordance with section 42 (1) of the Act.

Implementation of a merger without prior approval

28. The Authority may consider the following in determining whether a merger has been implemented without an authorizing order-
- a) there has been an actual integration of any aspect of the merging businesses, including, but not limited to, the integration of infrastructure, information systems, employees, corporate identity or marketing efforts;
  - b) there has been placement of employees from target undertaking to the acquiring undertaking;
  - c) there has been an effort by the acquiring undertaking to influence or control any competitive aspect of the target undertaking's business, such as setting prices, limiting discounts or restricting sales to certain customers or of certain products; or
  - d) there has been an exchange of information between the merging parties for purposes other than valuation or on a need-to-know basis during due diligence.

Private Equity Funds

29. In analysing transactions relating to Private Equity Funds, control shall always be deemed to rest with the general partner.

Calculation of turnover or assets for merger review

- 30.
- 1) The gross annual turnover or value of assets (Whichever is higher) of an acquiring undertaking shall be calculated by adding, either the annual turnover or value of assets in Kenya of the following:
    - a) the undertaking concerned;
    - b) its parents;
    - c) its subsidiaries;
    - d) other subsidiaries of its parents not included in (c).
  - 2) The gross annual turnover or value of assets of a target undertaking shall be calculated by adding, either the annual turnover or value of assets in Kenya of the undertaking concerned, its subsidiaries or segment of business being acquired.



3) Pursuant to section 29, the parties shall furnish the Authority with details of all their investments in the country indicating the particulars of the investments which they control for purposes of enabling the Authority to calculate the relevant turnover or assets of the merging parties.

Exclusions likely to raise competition concerns.

31. The Authority reserves the right to require any transaction that has been excluded pursuant to section 42 (1) of the Act to seek approval even if it falls beneath the exclusion thresholds when it is highly likely that it will substantially prevent or lessen competition or restrict trade or raise public interest concerns.

Pre-merger consultation.

32. An undertaking may seek an advisory opinion of the Authority on whether or not it needs to notify the transaction to the Authority in accordance with section 43(1) of the Act.

*C. Procedures for Merger Determination*

Application for Approval of a Merger.

33. The merger application pursuant to section 46(1) of the Act shall be in the prescribed **Form VI** of the Schedule to these rules.

Merger filing fee.

34. The parties shall be required to pay the prescribed merger filing fee on or before the date of filing of the application.

Notification and investigation of Mergers implemented without authorisation

35.

- 1) Where a person has information that a merger has been implemented without the approval of the Authority, a notification shall be made to the Authority by submitting any information concerning the merger being implemented to the Authority.
- 2) Where the Authority receives a notification of a merger implemented without approval, pursuant to sub-rule (1) or has reason to believe a merger is being implemented without approval, it shall commence an investigation.
- 3) An enquiry made by the Authority under this Rule may include-

- a. a specific request for information from any undertaking or groups of undertakings;
- b. an invitation to provide information on any specific matter, event or business agreement or transaction;
- c. an invitation to attend an interview before the Authority;
- d. a request for written explanations or otherwise as required for the purposes of the issue at hand; or
- e. an inspection of a locus or site.

4) After establishing there is a contravention of section 42(2) of the Act, the Authority shall invoke sections 42(5) or 42(6) of the Act and subsequently the parties shall be required to regularize the merger in accordance with the provisions of the Act.

Assessment  
of mergers

36.

- 1) In evaluating mergers, the Authority may;
  - a) request for any information relevant to the subject matter of the case including economic data in writing from the main undertakings or third party undertakings;
  - b) conduct interviews of undertakings party to the merger;
  - c) convene a hearing conference;
  - d) receive oral or written proposals or submissions from the merging undertakings when the Authority intends to decline an application or grant conditional approval before the final decision is made;
  - e) consult with other Government agencies; and
  - f) discuss with the main undertakings and with third party undertakings their written submissions;

Proposals  
and  
measures for  
remedying a

37.

- 1) Where a merger raises competition or public interest concerns, the Authority may-

merger that raises competition concerns.

- a) prescribe structural or behavioural remedies to address any detriment posed by a merger that is likely to substantially lessen competition in the post-merger market in Kenya; or
  - b) engage in discussions with an undertaking party to the merger or any other relevant party or experts with a view to identifying structural or behavioural measures which would ameliorate any effects of the merger on the public interest or competition in Kenya or any substantial part of Kenya.
- 2) Where a merger is approved with conditions, the merged entity may be required to submit compliance report on the implementation of the conditions at intervals to be determined by the Authority.

#### **PART VIII: REMEDIES UNDER THE ACT**

Remedies under Part III and VI of the Act

38. The Authority shall take into account the factors as set out in rule 22(4) when imposing a financial penalty under section 36(d) of the Act.

Penalty under section 42 (6) of the Act.

- 39.
- 1) In determining a penalty pursuant under section 42 (6) of the Act, the Authority shall take into account factors-
    - a) whether the infringement has resulted in anti-competitive effects on any part or substantial part of Kenya;
    - b) whether the undertaking was in significant financial distress at the time of the implementation of the merger;
    - c) whether the undertakings have brought the infringement to the attention of the Authority in a timely manner and cooperated with the Authority during the investigation; and
    - d) any other relevant considerations.
  - 2) Upon imposition of the penalty, the undertaking shall be required to comply with section 42 (2) of the Act.
  - 3) Where the undertaking fails to pay the penalty, the Authority will refer the matter to the Office of the Director of Prosecutions in compliance with section 42 (5) of the Act.

Notice of  
unsafe goods

- 40.
- 1) As stipulated under section 59 (1) (b) of the Act, the Authority may by a Notice declare goods to be unsafe goods. However, before making such a declaration, on the grounds of reasonably foreseeable use, the Authority shall take all circumstances into account including:
    - a) how likely it will be that a person is injured
    - b) how serious any resulting injury is likely to be
    - c) how often injury is likely to happen
    - d) what steps a manufacturer or supplier has taken to minimize the risk of injury
    - e) whether making a declaration is in the public interest
  - 2) Unsafe Goods Notices may last for the period stipulated by the Authority in the Notice until it is determined that the supplier has undertaken the necessary steps to rectify the situation and to prevent future misconduct on the same.
  - 3) An Unsafe Goods Notice may become permanent depending on the circumstances of the case and taking into account the feedback of persons likely to be substantially affected by the suspension of the Notice.
  - 4) Upon conclusion of investigations on unsafe goods the Authority by a Notice, may require the supplier to take remedial measures in accordance with section 61(2)(b) of the Act and may include recall of the goods with a view to repair, replace, or refund of the purchase price of the goods.
  - 5) The supplier may be ordered by the Authority to inform the public or a class of consumers identified in the Notice of the following:
    - (i) The nature of the defect in, or dangerous characteristic of, the goods;
    - (ii) The circumstances in which the use of the goods is dangerous and;
    - (iii) Procedures for disposing the said goods.
  - 6) In addition to sub-section (4), and in accordance to section 61 (2) (c) of the Act, the supplier shall be required to inform the public or a class of consumers identified in the Notice that the supplier undertakes to:
    - i. Repair the goods
    - ii. Replace the goods; or
    - iii. Refund the consumer to whom the goods were supplied the price of the goods.

Interim  
Bans

- 41.
- 1) The Authority may impose an interim ban on products or product-related services upon the following considerations:
    - a) That the product will or may injure someone;
    - b) As a result of the service being supplied, the product will or may injure someone
    - c) Use or misuse of a product, or the product to which the service related, in a 'reasonably foreseeable' way will or may injure someone; and
    - d) where another government agency or sector regulators has imposed an interim ban on the product or service, which is still in force.
  - 2) Interim bans imposed by the Authority apply nationally.
  - 3) A supplier shall be notified by the Authority and be given an opportunity to be heard in accordance with section 61(3) of the Act before the ban is imposed, unless the Authority determines that there is impending danger to the public.
  - 4) An interim ban may last for 90 days unless extended and may be extended for up to another 90 days in order to allow for conclusion of investigations.
  - 5) The interim ban may be declared a permanent ban upon conclusion of investigations, depending on the circumstances of the case.

Permanent Ban

- 42.
- 1) Pursuant to section 59 of the Act, the Authority may declare a permanent ban on a product or product-related service.
  - 2) If the Authority proposes to impose a permanent ban, it shall invite affected suppliers to make written or oral representations or both.
  - 3) If there is an imminent risk of death or injury from the unsafe product, a ban can be imposed immediately and suppliers given a fair opportunity to be heard.
  - 4) A permanent ban is most likely to be considered when:
    - a) It is uneconomical or impractical to modify the product to remove the hazard; and
    - b) Reliance on voluntary withdrawal of the product from the market is unlikely to be a viable long term solution.

Voluntary recall

- 43.
- 1) A supplier is at liberty to recall upon detection of a safety related hazard in relation to his/her goods or upon receipt of complaints by consumers, consumer bodies or other persons regarding any dangerous characteristic of the good or injury result from the use of the said goods.
  - 2) Where a supplier voluntarily recalls goods, they shall be required to meet the following conditions:
    - a) notify the Authority of the recall, which includes providing details of other entities within the supply chain that have been notified;
    - b) prepare a recall strategy for submission to the Authority;
    - c) retrieve the affected product from consumers and from within the supply chain;
    - d) submit regular progress reports to the Authority.
  - 3) A written Recall Notice should include the following:
    - (a) Product description: a clear description of the product, including the name, make and model and any distinguishing numbers, such as batch or serial numbers. Dates the product was available for sale should also be included.
    - (b) Picture of the product: a photograph or drawing of the product will provide the consumer with a convenient and effective means of identification.
    - (c) Description of the defect: the defect should be described in simple terms so that the average consumer can understand what the problem is.
    - (d) A statement of the hazard: a description of the maximum potential hazard and associated risk.
    - (e) A section titled which explains the immediate action the consumer should take.
    - (f) Contact details: which explains who consumers should contact in order to receive a refund or have the product repaired or replaced.
  - 4) A supplier shall be under an obligation to make arrangements for the retrieval of the product in the following manner, including but not limited to:
    - a) establishing collection points across the distribution network.

b) notifying the relevant parties, including other entities within the supply chain and consumers, of the intended method of retrieval of the recalled product.

c) arrangements for disposing of the returned product: this may involve arranging for the returned product to be quarantined until it can be rectified or safely destroyed.

5) A supplier will be under an obligation to submit progress reports to the authority until a final report is approved by the Authority.

International recalls

44. Any product and/or products that has been recalled internationally shall be deemed recalled in Kenya.

#### **PART IX: CONSUMER BODIES**

Recognition of Consumer Bodies

45.

- 1) Pursuant to section 9 (e) of the Act, the Authority may recognize organizations formed for the purposes of protecting consumers or furthering of consumer welfare.
- 2) An organization may apply to the Authority for the purposes of being recognised as a consumer body.
- 3) Notwithstanding sub-section (2), the Authority may on its own motion carry out a market survey and identify organisations involved in consumer protection and invite them to apply t be recognised as consumer bodies.
- 4) The Authority shall assess and profile organizations which have applied for recognition.
- 5) The following considerations may apply in order to be recognized by the Authority as a consumer body:
  - i. Be duly registered by the relevant government agencies;
  - ii. Have a postal, email, and physical address
  - iii. Have an established office premises;
  - iv. Have an organisation structure;
  - v. Have evidence of adherence to Corporate Governance principles; and
  - vi. Have proof of engagement in consumer protection activities.

- 6) After consideration of an application by an organization to be recognized as a consumer body, the Authority shall make a determination in respect of the application, and may-
  - a) Recognize the organization as a consumer body by issuing a certificate of recognition;
  - b) Recognize a consumer body with conditions; or
  - c) Refuse to recognize the organization as a consumer body.
- 7) The Authority having been satisfied that a consumer body fulfils the above conditions, shall give a notice in the Gazette of the recognized consumer body.
- 8) Where the Authority has issued a certificate of recognition, it may revoke this certificate at any time after the recognition if it finds that:
  - a) The recognition was issued on materially incorrect or misleading information;
  - b) There has been material change of circumstances since the recognition was granted;
  - c) A condition upon which the recognition was granted has not been complied with.
- 9) Where the Authority proposes to revoke or amend a certificate of recognition, it shall-
  - a) Give notice in writing of the proposed action to the person to whom the recognition certificate was issued; and
  - b) Give such persons, within twenty one (21) days of receipt of the Notice, an opportunity to make any representations which they may wish to make in regard to proposed action.

#### PART X: MISCELLANEOUS

Claim of  
Confidentiality

46. A person who supplies any information or makes submissions may claim confidentiality on any material submitted to the Authority and shall clearly identify the material that is considered to be confidential and state the reasons for the claim in the prescribed **Form VII**. The Authority shall then consider the request pursuant to section 20 of the Act.



**SCHEDULE 1: FORMS**

**FORM I**

**COMPETITION AUTHORITY OF KENYA**

Telephone: 254-20-2628233  
Direct Line : 254-20-2779000  
Website: [www.cak.go.ke](http://www.cak.go.ke)  
Email: [info@cak.go.ke](mailto:info@cak.go.ke)

Competition Authority of Kenya  
Kenya Railways HQs  
Block "D" Drop – Point; Ground Floor  
P. O. Box 36265-00200  
Haile Selassie Avenue

CONFIDENTIAL

**COMPLAINT FORM (GENERAL)<sup>1</sup>**

*Rule 7(1)(b)*

**1. Complainant**

Title:	
First Name (optional):	
Surname:	
Organization (if applicable):	
Physical address:	
Postal address:	
Telephone Number:	
Email address:	

**2. Undertaking (person or enterprise) whose conduct is the subject of this complaint**

Name:	
Sector/market of operation:	

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 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? \_\_\_\_\_

If the conduct continues, is there any interim measure you consider urgent?

\_\_\_\_\_

6. Names of any other government bodies and organizations contacted about this issue:

I understand:

- a) that it is an offence in terms of section 90(d) of the Competition Act for a person to provide false information to the Authority; and
- b) that section 91 of the Competition Act provides for a penalty of a fine, imprisonment, or both if I am found guilty of knowingly providing false information to the Authority.

7.

Signed by the complainant

..... (Signature)

..... (Full Name)

..... (official seal or stamp if applicable)

Date (dd/mm/yyyy):

7. For official use only:

Authority file reference number:

.....

Date filed: .....

## Notes:

1. This form is issued under the Competition Act, No 12 of 2010.
2. This form shall be completed to the best of your knowledge, and submitted to the Authority for consideration of a complaint.
3. If this complaint is lodged by a person other than an individual, the contact details of the person authorized to discuss the complaint should be provided.
4. The submitted form is a public record. However, the attached description of conduct and other information relating to the complaint is not part of the public record. The complainant has the right to identify information believed to be confidential by completing the Confidentiality Claim form (Form II) and submitting it with this form.

**COMPETITION AUTHORITY OF KENYA**

Rule 7(1)(b)

**CONSUMER COMPLAINT FORM**

The Competition Authority of Kenya (the Authority) is mandated to protect consumers against false and misleading representations amongst others. The Authority takes consumer complaints seriously and has developed an internal procedure to handle them. Kindly use this form to inform us about your complaint so that we can be able to address it. If you're having any difficulties filling in this form, please get in touch with us by phone or email. This form can also be downloaded from our website [www.cak.go.ke](http://www.cak.go.ke).

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

Type of Complaint	
<b>Tick as appropriate</b>	
<input type="checkbox"/> False or Misleading Representations	<input type="checkbox"/> Unsafe Goods/Expired Goods
<input type="checkbox"/> Unfair Conduct	<input type="checkbox"/> Unsuitable Goods
<input type="checkbox"/> No expiry date	<input type="checkbox"/> Defective Goods
<input type="checkbox"/> No ingredients listed	
<input type="checkbox"/> Other _____	
Prior Action taken to redress the complaint	
1. Have you raised the complaint with the accused? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Date complaint was raised _____	
If yes, what was the response? _____	
_____	
_____	





Attach copies of the following documents as applicable:

Please tick appropriately

- Contracts
                      Warranty
                      Invoices
                      Receipts  
 Others (Specify) \_\_\_\_\_

- This form is issued for the purpose of lodging a consumer complaint relating to Part VI of the Competition Act, No 12 of 2010 (the Act).
- You may claim confidentiality for the information you provide by filling the Confidentiality Claim Form downloadable from the Authority's Website: [www.cak.go.ke](http://www.cak.go.ke)

I confirm that the information given above is true and accurate to the best of my knowledge.

**Name of Complainant:**

**Date:**

**Signature :**

*NB: Upon completion of filling this form, you may submit complain and documents using the following contact information:*

Kenya Railways HQs  
 Block "D" Drop- Point; Ground Floor  
 P.O. Box 36265-00200  
 Haile Selassie Avenue  
 Email: [complain@cak.go.ke](mailto:complain@cak.go.ke); [info@cak.go.ke](mailto:info@cak.go.ke)

**FORM III**  
**COMPETITION AUTHORITY OF KENYA**

Telephone: 254-20-2628233  
Direct Line : 254-20-2779000  
Website: [www.cak.go.ke](http://www.cak.go.ke)  
Email: [info@cak.go.ke](mailto:info@cak.go.ke)

Competition Authority of Kenya  
Kenya Railways HQs  
Block "D" Drop – Point; Ground Floor  
P. O. Box 36265-00200  
Haile Selassie Avenue

CONFIDENTIAL

**APPLICATION FOR EXEMPTION**

Rule 16(1)

**To: The Competition Authority of Kenya**

**From:**

Title:	
First Name:	
Surname:	
Organization:	
Postal address:	
Email address:	

2. We apply in terms of section ..... [25, 28 or 29] of the Competition Act for an exemption from the application of Part III A and B of the Act for the following decision, agreement or practice:

\_\_\_\_\_

3. We seek an exemption for a period of \_\_\_\_\_ (duration).

4. In respect of this matter, has previous exemption been:

Granted?            |     Yes            |                            |     No

Refused?            |     Yes            |                            |     No

If you answered "yes" to either question above, please provide the case number for the previous exemption application \_\_\_\_\_

5. The following information must be included in your description of the agreement or practice for which you seek an exemption

1. A short description of your business, including the economic sector of operation
2. A brief description of the decision(s), practice(s) or agreement(s) which you seek to have



exempted and its intended date of commencement. In the case of exemptions under Section 28, a brief description of the intellectual property right exercised.

2. ThesectionsoftheActthatyoubelievemaybecontravenedbythedecision(s), practice(s) or agreement(s) you have described

3. The names and addresses of other parties to that practice

4. The factors in terms of sections 26(3) or 29(2) of the Act which are relied on.

5. Justifications/rationale.

6. Description of the goods or services to which the proposed restrictive decision(s),practice(s) or agreement(s) relate.

7. Description of the market(s)in which the goods or services described in item 7 are;

a) Supplied

Or

b) Acquired

c) 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.

8. Potential detriment to the public resulting or likely to result from the exemption, in particular the likely effect of the decision(s), practice(s) or agreement(s)on the prices of the goods or services, quality and variety of products.

I understand<sup>2</sup>:

a) that it is an offence in terms of section 90(d) of the Competition Act for a person to provide false information to the Authority;

b) That section 91 of the Competition Act provides for a penalty of a fine, imprisonment, or both if I am found guilty of knowingly providing false information to the Authority; and

c) That the Authority has power as prescribed in Section 27(1)(a) to revoke an exemption if the it was issued based on materially incorrect or misleading information.

**6. Name and title of Person authorized to sign and provide additional information:**

..... Authorized

signature and seal or stamp:

Date (dd/mm/yyyy)

.....

.....

<sup>2</sup>This section is only applicable where the complainant has indicated their name/identity. It is not applicable to anonymous complaints

**7. For official use only:**

Authority file reference number: .....

Date filed: .....

CONFIDENTIAL

**FORM IV**

Rule 17

**COMPETITION AUTHORITY OF KENYA**

Telephone: 254-20-2628233  
Direct Line : 254-20-2779000  
Website: [www.cak.go.ke](http://www.cak.go.ke)  
Email: [info@cak.go.ke](mailto:info@cak.go.ke)

Competition Authority of Kenya  
Kenya Railways HQs  
Block "D" Drop – Point; Ground Floor  
P. O. Box 36265-00200  
Haile Selassie Avenue

CONFIDENTIAL

**EXEMPTION CERTIFICATE**

**(PURSUANT TO SECTIONS 25, 28 OR 29 OF THE COMPETITION ACT 2010)**

Exemption certificate code

File Reference Number

1. Date and number of the notice on the exemption application
2. Name of the undertaking that obtained the exemption
3. Description of the decision(s), practice(s) or agreement(s), including parties involved
4. Specific factors considered to grant the exemption according to provisions in Part III D of the Act
5. Duration of the granted exemption, start and end date
6. Conditions for the exemption
7. Justification for the exemption
8. Acknowledgement of submissions received by stakeholders
9. Name and contact information for queries

*Notice is given in terms of the Competition Rule 12 (10) that any person with a substantial financial interest affected by the abovementioned decision may appeal the decision to the Competition Tribunal.*

**FORM V**

Rule 18

**COMPETITION AUTHORITY OF KENYA**

Telephone: 254-20-2628233  
Direct Line : 254-20-2779000  
Website: [www.cak.go.ke](http://www.cak.go.ke)  
Email: [info@cak.go.ke](mailto:info@cak.go.ke)

Competition Authority of Kenya  
Kenya Railways HQs  
Block "D" Drop – Point; Ground Floor  
P. O. Box 36265-00200  
Haile Selassie Avenue

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**NOTICE OF REVOCATION OF EXEMPTION**

Exemption notice code .....

File Reference Number .....

1. Date and number of the notice on the exemption granted
2. Name of the undertaking that obtained the exemption
3. Description of the decision(s), practice(s) or agreement(s), including parties involved, for which exemption was revoked
4. Specific factors considered to revoke the exemption according to provisions in Part III D of the Act
5. Date for the implementation of the revocation decision
6. Acknowledgement of submissions received by stakeholders
7. Name and contact information for queries

## FORM VI

Rule 33

### COMPETITION AUTHORITY OF KENYA

Telephone: 254-20-2628233  
Direct Line : 254-20-2779000  
Website: [www.cak.go.ke](http://www.cak.go.ke)  
Email: [info@cak.go.ke](mailto:info@cak.go.ke)

Competition Authority of Kenya  
Kenya Railways HQs  
Block "D" Drop – Point; Ground Floor  
P. O. Box 36265-00200  
Haile Selassie Avenue

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### MERGER NOTIFICATION FORM

#### *Instructions*

1. *This form is issued Pursuant to Section 43 (1) of the Competition Act which stipulates that each of the undertakings to the merger shall notify the Authority of the proposal in writing or in the prescribed manner.*
2. *The objective of this merger notification form is to improve the efficiency, transparency and predictability of the merger notification process.*
3. *Please note that the Competition Act empowers the Competition Authority of Kenya to obtain information relevant to evaluate mergers and acquisitions. This form facilitates the process by identifying relevant information depending on the activities of the merging parties and whether they are operating in the same markets and/or are actual or potential customers or suppliers to each other. By anticipating the likely information required by CAK and collating it in advance the time taken for the evaluation of the merger will be reduced. However, omitting relevant information may lead to the merger evaluation being delayed.*

*This table below summarizes the schedules which should be normally submitted, depending on the characteristics of the merger. The thresholds referred to therein are according to the CAK merger threshold guidelines.*

<b>Characteristics of the merger</b>	<b>Schedules to be submitted</b>
<ul style="list-style-type: none"><li>• Firms applying for exclusion as prescribed by the CAK Merger Threshold Guidelines,</li></ul>	<i>Schedule I (only questions 1-18) and Schedule IV</i>
<ul style="list-style-type: none"><li>• Merger at or above the prescribed thresholds</li><li>• Merging parties do not operate in the same line of business; and/or</li></ul>	<i>Schedules I and IV</i>

<ul style="list-style-type: none"> <li>No vertical relationships among merging parties</li> </ul>	
<ul style="list-style-type: none"> <li>Merger at or above the prescribed thresholds; and</li> <li>Merging parties operate in the same line of business or there are vertical relationships among merging parties</li> </ul>	Schedules I, II, IV
<ul style="list-style-type: none"> <li>Merger at or above the prescribed thresholds</li> <li>Merging parties operate in the same line of business or there are vertical relationships among merging parties; and/or</li> <li>High likelihood that combined market share of merging parties falls above 35% in one or more markets and/or one or more of the parties are dominant in at least one market</li> </ul>	Schedules I, II, III, IV

a. Schedules I (Question 1-18) must be completed by **all** undertaking applying for exclusion. For firms that qualify for exclusion, refer to the CAK Merger Threshold Guidelines. Please note that all firms applying for exclusion must provide all documentation requested in schedule 1.

b. Schedules I and IV must be completed by **all** undertakings in mergers which are at or above the prescribed merger thresholds. Also, where there are public interest issues, such as whether the merger will be accompanied by some employment losses as the merging firms rationalise their operations and/or whether the merger is claimed to generate employment, information should be provided on such. Note that claims about the benefits of the merger for the economy must be backed up by evidence that demonstrates the likely effects and why the merger is necessary for them to be realised. These can be taken into account and weighed against possible lessening of competition as a result of a merger. For reference to CAK Public Interest Guidelines, download the Guidelines by clicking the following link:-

[http://cak.go.ke/index.php/status-regulations/the-competition-act-no-12-of-2010/cat\\_view/6-mergers/22-balancing-public-interest-guidelines.html](http://cak.go.ke/index.php/status-regulations/the-competition-act-no-12-of-2010/cat_view/6-mergers/22-balancing-public-interest-guidelines.html)

c. Schedule II identifies the products and services of the merging parties and is part of assessing the competition analysis that is required to review the merger. For example, if the merging parties operate in the same line of business there is a possible horizontal overlap and more detail is required on the specific products and services they supply, by geographic area, and on the other competitors which exist. If the merging parties are in a vertical relationship to each other information will be required on the extent and nature of competition in both the upstream and downstream markets.

*Typically a more detailed assessment is required if the merging parties have a combined market share of greater than 35% in one or more markets.*

- d. Schedule III sets out detailed information that will be required for a more detailed competition assessment. This includes information at different market levels and on barriers to entry. By anticipating the need for such information and collating it in advance merging parties can substantially reduce the time required for the merger to be assessed.*
  - e. Schedule IV is a declaration.*
4. *Answer questions on separate sheets marked Schedules I to IV, as appropriate.*

*It is important that relevant documents are attached pertaining to the issues addressed in the different schedules. Note that parties are obliged to provide all relevant documents including those that may not be consistent with what is being claimed in the merger filing. Note that the provision of documents/information that may not be consistent with information in the merger filing will not necessarily result in the application being denied.*

- 5. *Where supporting documents are not available an affidavit must testify to the accuracy of the information provided and the non-existence of supporting documents.*
- 6. *You may identify material you consider as commercially sensitive and apply for confidentiality as provided in Section 20 of the Competition Act.*
- 7. The completed Merger notification form together with the most recent documents should be submitted to:

Director General  
Kenya Railways Headquarters,  
Block D Ground Floor, Workshop Road off Haile Selassie Avenue  
P.O. Box 36265-00200  
NAIROBI

Tel: +254-20-2779000, 2628233

Website: [www.cak.go.ke](http://www.cak.go.ke)

Email: [info@cak.go.ke](mailto:info@cak.go.ke)

- 8. Parties are free to consult the Authority in case of clarification regarding the completion of this Form.

## SCHEDULE I. BASIC INFORMATION

Provide hard copies of the following documents:

- i) **A signed copy of Sale and Purchase Agreement,**
- ii) **Audited Financial Statements for the last three years duly signed by the Board of Directors and Certified Public Accountant Member ,**
- iii) **The latest Annual Reports, Board resolutions and related documents regarding the merger.**
- iv) **Copies of Certificates of Incorporation/Registration Certificates or equivalent and similar documents including other shareholder companies where there is chain ownership**
- v) **A breakdown of employees, and plans to realise cost savings, efficiencies and plans documenting investment evaluations.**

1. State the name and principal business address of the undertaking filing this notification.
2. Provide the following details of the contact person for the undertaking filing this notice
  - Name:
  - Position:
  - Address
  - Telephone:
  - Fax number:
  - Email:
3. Please take notice of a merger as defined in section 43(1) of the Competition Act and state whether you are the acquiring or target undertaking.
4. Have you authorized any representative to act on your behalf?
  - Name:
  - Position:
  - Company/firm:
5. State the names and principal business address of all the undertakings directly or indirectly controlling you.
6. State the names and business address of the shareholders directly or indirectly controlling you
7. List the names and principal business address of each undertakings directly or indirectly controlled by each undertaking referred to in 5 above.



8. Do you directly and indirectly control other undertakings? If yes, list them and describe their main operations.
9. Provide a detailed organizational structure for both the acquiring and target undertaking.
10. Give a brief history of your firm including the date of incorporation.
11. Provide the Names of the directors of the acquiring undertaking and their nationalities (attach a copy of current CR/12) or equivalent issued within the last 2 months)
12. Provide the Names of the directors of the target undertaking and their nationalities (attach a copy of current CR/12) or equivalent issued within the last 2 months)
13. List all the undertakings where the directors of the acquiring and target undertaking serve as directors and or shareholders.
14. Indicate previous merger applications involving the acquiring and target undertaking, or their affiliates, if any.
15. Indicate the nature of transaction of the previous transaction and the sector or market affected.
16. Indicate the industry sector or sectors involved(s) (e.g. Manufacturing, Construction, Mining, Retail, Telecommunications). Applicants should indicate the standard industrial classifications (SIC) code that are most applicable to the industry/sub-sector in which they operate (SIC codes should have a minimum of 3 digits).
17. What are main activities of the target and acquiring undertaking?
18. Indicate the areas where you sell your products or provide services, in terms of:
  - a. National
  - b. County(ies)
  - c. Regional markets
  - d. Others (specify)
19. State your annual turnover in Kenya for the preceding year. (Refer to merger threshold guidelines link-[www.cak.go.ke/Statutes\\_and\\_Regulations/Guidelines/mergers/Merger\\_Thresholds/Guidelines\\_for\\_Section\\_42](http://www.cak.go.ke/Statutes_and_Regulations/Guidelines/mergers/Merger_Thresholds/Guidelines_for_Section_42)).
20. If the parties have no operations in Kenya, kindly provide the global turnover or assets and countries of operation.

21. State the value of your assets for the preceding year.
22. What is the monetary value of the consideration being offered? If other, specify.
23. Type of transaction (e.g. whether it is an acquisition or sale of assets, acquisition or sale of shares, acquisition of minority shareholding giving material control, amalgamation, etc.) ( Refer to section 41(2) for more details).
24. Has the transaction been notified to other regulatory authorities (Insurance Regulatory Authority, Capital Markets Authority, Central Bank of Kenya, etc. and to other jurisdictions (countries or regional economic blocks)?
25. The ownership structure and control before and after the transaction.
26. The business rationale for the transaction including strategic, commercial and economic reasons.
27. Provide information on the market participants in this market and the number of entrants and exits in this market over the last five years
28. Provide an assessment of the likely impact of the merger on
  - a. Employment (if the transaction is likely to result in employment loss, indicate the number, type (skilled or unskilled) of jobs to be lost and the justification for the loss),
  - b. Ability of merging parties to compete in international markets; and
  - c. Ability of SMEs directly affected by the merger to gain access to or to be competitive in any market.
29. Is the transaction likely to generate efficiencies? If yes, identify the efficiencies and how they will be achieved and passed on to consumers.
30. If one of the parties is a failing firm, include:
  - a. Financial information showing that the firm is unable to meet its obligations now and in the future.
  - b. Information to prove that the failing firm would reasonably be expected to exit of the market absent the merger.
  - c. What will happen to the productive assets if the firm exits the market?

## SCHEDULE II. PRODUCTS AND SERVICES SUPPLIED BY EACH OF THE MERGING PARTIES

In addition to documents specified in Schedule I, please attach the following:

- i. Documents prepared for the Board of Directors, regulatory bodies in relation to the transaction;
  - j. Reports, surveys, analysis or other documents assessing the transaction with respect to its impact on competition; and
  - k. Latest business plans, marketing plans, sales report and strategic plan.
31. List the products that you sell and/or services that you provide.
  32. For each of the main products and services specify the amounts supplied (in volume and/or Kshs) into each geographic area where you sell your products or provide services (e.g. national, county(ies), international. If international, specify the countries.
  33. Provide estimates of your market shares and those of your competitors (including the other merging party) in each of the markets you operate for the last three years.
  34. Identify your main actual and potential suppliers, for each product/service grouping (including the other merging party(ies) where applicable).
  35. Identify your main actual and potential customers, for each product/service grouping (including the other merging party(ies) where applicable).
  36. Explain the nature of the vertical relationship and how it is likely to affect competition in the upstream and downstream markets.

## SCHEDULE III. EVALUATION OF HORIZONTAL OVERLAPS AND VERTICAL RELATIONSHIPS OF MERGING PARTIES

Please provide hard copies of the following documents:

- i) Business plans; marketing plans, including for relevant subsidiaries and divisions and current Strategic Plan;
- ii) Periodic (such as monthly and quarterly) review of sales and market trends including by customer category and by different geographic areas for the last three (3) years; and
- iii) Pricing schedules including terms of discounts and rebates offered.

37. For each of the products you produce or services you provide; a) give monthly data over previous three years on prices charged, and sales by region, b) state whether you charge a national price and the rationale, and c) provide details of your pricing strategy (including discounts and rebates).
38. Sales volumes, monthly over previous three years for main products, by area
39. Are there products or services you consider to be reasonably substitutable with your products or services? Taking into account these products or services, provide an estimate of your market shares and those of your competitors and indicate the sources of your information.
40. Explain the basis on which you compete (such as on price, quality, service, distribution) in each of the markets possibly affected by the merger.
41. Provide a list of your top five customers and their contact details in each of the markets you operate and the percentage sales shares accounted for by each of them, nationally and by region.
42. Provide a list of your top five suppliers and their contact details in each of the markets you operate and the percentage sales shares accounted for by each of them, nationally and by region.
43. Are imports an important source of competition? If yes, give details.
44. Do you have contractual agreements with suppliers of your key inputs? If yes, attach examples.
45. Do you have contractual agreements with customers? If yes, attach examples.
46. Identify entry and exit barriers into the markets likely to be affected by the transaction i.e. market where merging parties have product overlaps or vertical links.
  - a) Identify what is required for a new entrant, including the costs that have to be incurred to establish the necessary scale of operation to be an effective competitor. What are the key inputs and facilities a new entrant should access to operate in the market?
  - b) What is the time taken from taking the decision to enter the market to being fully operational?
  - c) i) What regulatory requirements have to be met to establish operations, including patents, trademarks, copyrights, licenses, tariffs, quotas, marketing board rules, zoning restrictions and environmental studies? ii) State if there are regulations likely to constrain pricing, quality and other competition parameters.
  - d) What is required in terms of establishing a brand awareness, establishing distribution operations, and the challenges of competing with established firms?

**SCHEDULE IV.DECLARATION**

**"To the best of my knowledge, the information contained in this merger notification and the attachment to it, is true, correct, and complete, except to the extent that I have indicated-**

- a) The requested data is not available in books or records, and reasonable estimates have been used instead; or**
- b) Complete information has not been provided because it is unavailable in which case I have attached an affidavit sworn by me explaining why the information is unavailable.**

**I understand-:**

- a) that it is an offence in terms of section 90 (d) of the Competition Act for a person to provide false information to the Authority;**
- b) That section 91 of the Competition Act provides for a penalty of a fine, imprisonment, or both if I am found guilty of knowingly providing false information to the Authority; and**
- c) That the Authority has power as prescribed in Section 47 (1) to revoke a decision approving a proposed merger if the decision was based on materially incorrect or misleading information.**

Signature and official seal or stamp:

Name: (block letters)

Position: (block letters)

Date:

I confirm that the person named in reply to question 4 (if any) is authorized to act on my behalf for the purposes of this Notice.

Signed:

**FORM VII**

Rule 46

**COMPETITION AUTHORITY OF KENYA**

Telephone: 254-20-2628233  
Direct Line : 254-20-2779000  
Website: [www.cak.go.ke](http://www.cak.go.ke)  
Email: [info@cak.go.ke](mailto:info@cak.go.ke)

Competition Authority of Kenya  
Kenya Railways HQs  
Block "D" Drop – Point; Ground Floor  
P. O. Box 36265-00200  
Haile Selassie Avenue

CONFIDENTIAL

**CONFIDENTIALITY CLAIM FORM<sup>1</sup>**

**1. File reference number**

.....

**2. Name of the matter**

.....

**3. 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 commercial value of the information

Column 5 – The existing restrictions on access to the information

Column 6 – The type of injury to competition the disclosure of the information may cause and the extent to which the information is commercially sensitive.

**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.

I understand:

a) that it is an offence in terms of section 90(d) of the Competition Act for a person to provide false information to the Authority; and

b) That section 91 of the Competition Act provides for a penalty of a fine, imprisonment, or both if I am found guilty of knowingly providing false information to the Authority.

