

FORM III

(r. 15)

COMPETITION AUTHORITY OF KENYA

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Competition Authority of Kenya

Kenya Railways HQs

Block "D" Drop – Point; Ground Floor

P. O. Box 36265-00200

Haile Selassie Avenue

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.

<i>Characteristics of the merger</i>	<i>Schedules to be submitted</i>
<ul style="list-style-type: none"> • Firms applying for exclusion as prescribed by the CAK Merger Threshold Guidelines, 	<i>Schedule I (only questions 1-26) and Schedule IV</i>
<ul style="list-style-type: none"> • Merger at or above the prescribed thresholds • Merging parties do not operate in the same line of business; and/or • No vertical relationships among merging parties 	<i>Schedules I and IV</i>
<ul style="list-style-type: none"> • Merger at or above the prescribed thresholds; and • Merging parties operate in the same line of business or there are vertical relationships among merging parties 	<i>Schedules I, II, IV</i>
<ul style="list-style-type: none"> • Merger at or above the prescribed thresholds • Merging parties operate in the same line of business or there are vertical relationships among merging parties; and/or • 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 	<i>Schedules I, II, III, IV</i>

- a. Schedules I (Question 1-26) 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 I.
 - 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
 - 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

Email: info@cak.go.ke

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

PART I - BASIC INFORMATION

Provide hard copies of the following documents:

A signed copy of Sale and Purchase Agreement,

Audited Financial Statements for the last three years duly signed by the Board of Directors and Certified Public Accountant Member ,

The latest Annual Reports, Board resolutions and related documents regarding the merger.

Copies of Certificates of Incorporation/Registration Certificates or equivalent and similar documents including other shareholder companies where there is chain ownership

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?

PART II - PRODUCTS AND SERVICES SUPPLIED BY EACH OF THE MERGING PARTIES

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

- (a) Documents prepared for the Board of Directors, regulatory bodies in relation to the transaction;
 - (b) Reports, surveys, analysis or other documents assessing the transaction with respect to its impact on competition; and
 - (c) 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 where applicable).
35. Identify your main actual and potential customers, for each product/service grouping (including the other merging party where applicable).
36. Explain the nature of the vertical relationship and how it is likely to affect competition in the upstream and downstream markets.

PART 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) 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?

PART 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: