

COMPETITION ACT, 2007

(Act No. 8 of 2007)

• Act • Subsidiary Legislation •

ACT

Date of commencement: 1st April, 2008.

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

1. Short title and commencement.
2. Interpretation.
3. Exemptions.
4. Application to State corporations.
5. Certain law not affected.

PART II COMPETITION COMMISSION

6. Establishment of the Commission.
7. Independence of the Commission.
8. Composition of the Commission.
9. Tenure of office and vacancies.
10. Allowances of members.
11. Functions of the Commission.
12. Obtaining information.
13. Power of the Commission.
14. Proceedings of the Commission.
15. Committees of the Commission.
16. Disclosure of interest.
17. Immunity of members.

PART III SECRETARIAT

18. Secretariat of the Commission.
19. Executive Director.
20. Other employees.
21. Disclosure of interest by employees.
22. Oath of secrecy.
23. Prohibition of publication or disclosure of information.
24. Immunity of employees.

PART IV FINANCIAL PROVISIONS

25. Funds of the Commission.
26. Application of funds.
27. Financial year.
28. Accounts.
29. Annual reports.

PART V ANTI-COMPETITIVE TRADE PRACTICES

30. Prohibitions.
31. Anti-competitive trade practices.

32. Other anti-competitive trade practices.
33. Unfair trading.
34. Abuse of dominance.
35. Mergers and acquisitions.
36. Monopolies and concentration of economic power.
37. Authorisation of allowable acts.

PART VI
MISCELLANEOUS

38. Investigating officers.
39. Power of entry and inspection.
40. Appeals.
41. Operation of order.
42. Offences and penalties.
43. Regulations.

An Act to provide for the encouragement of competition in the economy by controlling anti-competitive trade practices, mergers and acquisitions, protecting consumer welfare and providing for an institutional mechanism for implementing the objectives of the Act and other matters incidental thereto.

PART I
PRELIMINARY

1. Short title and commencement.

This Act may be cited as the Competition Act, 2007 and shall come into force on a date to be appointed by the Minister by notice in the Gazette.

2. Interpretation.

In this Act, unless the context otherwise requires —

“agreement” when used in relation to a prohibited practice, includes a contract, arrangement or understanding, whether or not legally enforceable;

“anti-competitive trade practices” means the trade practices enumerated in sections 30, 31, 32 and 34;

“Commission” means the Competition Commission established in terms of section 6;

“consumer” includes any person —

(a) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production and manufacture of any other goods or articles for sale;

(b) to whom a service is rendered;

“Court” means the High Court of Swaziland;

“dominant position” means a position in a market in which an enterprise as a supplier or an acquirer of goods and services either alone or together with any interconnected body corporate, is in a position to act independently of competitors and consumers over the production, acquisition, supply or price of goods or services in that market;

“enterprise” includes firms, associations irrespective of whether they are controlled by a private person or by the Government;

“goods or services” when used with respect to particular goods or services, includes any other goods or services that are reasonably capable of being

substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints;

“horizontal relationship” means a relationship between competitors;

“vertical relationship” means the relationship between a firm and its suppliers, its customers or to both;

“person” includes a local authority, and any association of persons whether incorporated or not;

“merger” means the acquisition of a controlling interest in —

- (i) any trade involved in the production or distribution of any goods or services; or
- (ii) an asset which is or may be utilised for or in connection with the production or distribution of any commodity;

“Minister” means the Minister responsible for Enterprise;

“monopoly” means a situation where a single person exercises, or two or more persons with a substantial economic connection, exercise substantial control of a market for any goods or services;

“premises” includes land, any building, structure, vehicle, ship, boat, vessel, aircraft or container;

“price” includes valuable consideration in any form, whether direct or indirect and includes any consideration that relates to the acquisition or supply of goods or services or the acquisition or disposition of any interest in land, although ostensibly relating to any matter or thing;

“resale price maintenance” means a situation where a supplier or manufacturer specifies the minimum or maximum price at which the product should be re-sold to customers;

“sale” includes an agreement to sell or offer for sale and includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification by which willingness to enter into any transaction for sale is expressed;

“trade practice” means any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders or the production, supply or price in the course of trade of any goods, whether real or personal, or of any service.

3. Exemptions.

(1) This Act applies to all economic activity within the country or having an effect in the country except the following trade practices are exempted from the provisions of this Act —

- (a) trade practices which are directly and necessarily associated with the exercise of exclusive or preferential trading privileges conferred on any person by an Act of Parliament or by an agency of the Government acting in accordance with the authority conferred on it by an Act of Parliament;
- (b) trade practices which are directly and necessarily associated with the licensing of participants in certain trades and professions by agencies of the Government acting in accordance with authority conferred on them by an Act of Parliament.

(2) Nothing in this Act shall apply to —

- (a) activities of employees for their own reasonable protection as employees;

- (b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;
- (c) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;
- (d) those elements of any agreement which relate exclusively to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trademark;
- (e) any act done to give effect to a provision of an agreement referred to in paragraph (d);
- (f) activities expressly approved or required under a treaty or agreement to which Swaziland is party;
- (g) those activities of professional associations which relate exclusively to the development and enforcement of professional standards of competence reasonably necessary for the protection of the public; and
- (h) such business or activity as the Minister may, by notice published in the Gazette, specify.

4. Application to State corporations.

Except in so far as it is exempted from the application of the provisions of this Act by section 3 or any other law, every body corporate in which the Government holds one or more shares, whether as a sole, majority or minority shareholder and which is carrying on any trade is a person to whom this Act applies and who may be investigated by the Commission, who is subject to an order of the Commission, and against whom a prosecution may be brought in respect of an offence against any provision of this Act.

5. Certain law not affected.

(1) Nothing in this Act limits or affects any rule of law relating to restraint of trade not inconsistent with any of the provisions of this Act.

(2) Nothing in this Act limits or affects any rule of law relating to breaches of confidence.

(3) No rule of law referred to in subsections (1) or (2) affects the interpretation of any of the provisions of this Act.

PART II COMPETITION COMMISSION

6. Establishment of the Commission.

There is established a body to be known as the Swaziland Competition Commission which shall be a body corporate with perpetual succession and capable of suing and being sued in its corporate name, and with power, subject to this Act, to do or perform all such acts and things as a body corporate may, by law, do or perform.

7. Independence of the Commission.

Subject to the provisions of this Act the Commission shall be independent of control of any person, including but not limited to any statutory body, Government or any other entity, in the discharge of its functions.

8. Composition of the Commission.

- (1) The Commission shall consist of —
 - (a) a representative of the Ministry responsible for Enterprise;

- (b) a representative of the Ministry responsible for Finance;
- (c) a representative of the Ministry responsible for Economic Planning and Development;
- (d) a member nominated by the Swaziland Chamber of Commerce and Industry;
- (e) a member nominated by the Economics Association of Swaziland;
- (f) a member nominated by the Swaziland Consumers Association;
- (g) a member nominated by the Swaziland Institute of Accountants;
- (h) a member nominated by the Law Society of Swaziland; and
- (i) a member appointed by the Minister by virtue of the person's knowledge of or experience in economics, industry, law, consumer affairs or the conduct of public affairs.

(2) All members shall be nominated by their institutions and appointed by Minister.

(3) The Minister shall designate one of the members as chairperson and the members shall elect, amongst themselves, a vice-chairperson on their first meeting.

(4) A member appointed in terms of subsection (1)(a), (b) and (c) shall not be elected as chairperson or vice-chairperson.

9. Tenure of office and vacancies.

(1) A member of the Commission shall hold office for a period of not more than 3 years and shall be eligible for reappointment for another term.

(2) Members shall not be retired at the same time.

(3) An office of a member shall become vacant where the member —

- (a) resigns by giving one month notice in writing to the Minister;
- (b) dies;
- (c) is absent, without valid excuse, from three consecutive meetings of the Commission;
- (d) becomes of unsound mind;
- (e) becomes insolvent; or
- (f) participates, directly or indirectly, in an activity which is in contravention of this Act.

(4) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 8 (1) under which the former member was appointed.

(5) Where the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

10. Allowances of members.

The members of the Commission shall be paid such allowances as the Minister may, in consultation with the Minister responsible for Finance, determine.

11. Functions of the Commission.

(1) The Commission shall monitor, regulate, control and prevent acts or behaviour which are likely to adversely affect competition in the country.

(2) Without limiting the generality of subsection (1), the Commission shall perform the following functions —

- (a) carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of business, including the abuse of a dominant position, so as to determine whether any enterprise is carrying on anti-competitive trade practices and the extent of such practices and issue such orders or directives it deems necessary to ensure compliance with this Act;
- (b) carry out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger and issue such orders or directives it deems necessary to ensure compliance with this Act;
- (c) take such actions as it considers necessary or expedient to regulate the creation of a merger or to prevent or redress the abuse of a dominant position by any enterprise;
- (d) provide persons, engaged in business, with information regarding their rights and duties under this Act;
- (e) provide information for the guidance of consumers regarding their rights under this Act;
- (f) undertake studies and make available to the public reports regarding the operation of the Act;
- (g) co-operate with and assist any association or body of persons to develop and promote the observance of the standards of conduct for the purpose of ensuring compliance with the provisions of this Act;
- (h) advise the Minister on such matters relating to the operation of this Act as it thinks fit or as may be requested by the Minister, including the determination of penalties to be imposed for the infringement of this Act; and
- (i) review this Act and any other legislation which inhibit fair competition and make proposals to the Minister for the amendment of such legislation;
- (j) co-operate with regional and international bodies engaged in the enforcement of competition law and the promotion of a competition culture;
- (k) enter into discussions on contentious issues with any regulatory authority in order to harmonise and ensure consistent application of the competition principles;
- (l) do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act.

12. Obtaining information.

The Commission shall obtain such information as it considers necessary to assist it in its investigations and, where it considers appropriate, shall examine and obtain verification of documents submitted to it.

13. Power of the Commission.

(1) For the purposes of carrying out its functions under this Act, the Commission shall have power to —

- (a) summon and examine witnesses;
- (b) call for and examine documents;
- (c) administer oaths;

- (d) require that any document submitted to the Commission be verified by affidavit; and
- (e) adjourn any investigation from time to time.

(2) The Commission may hear oral submissions from any person who, in its opinion, will be affected by an investigation under this Act, and shall so hear the person if the person has made a written request for a hearing, showing that the person is an interested party likely to be affected by the result of the investigation or that there are particular reasons why that person should be heard orally.

(3) The Commission may require a person engaged in business or a trade or such other person as the Commission considers appropriate, to state such facts concerning goods manufactured, produced or supplied by the person as the Commission may think necessary to determine whether the conduct of the business in relation to the goods or services constitutes an anti-competitive practice.

(4) If the information specified in subsections (3) is not furnished to the satisfaction of the Commission, it may make a finding on the basis of the information available before it.

14. Proceedings of the Commission.

(1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

(2) The Commission shall meet for the transaction of business at least once every three months at such times as the chairperson may determine.

(3) A special meeting of the Commission may be called by the chairperson upon written notice of not less than seven days received from any member of the commission and shall be called if at least four members so request in writing.

(4) Where the urgency of any particular matter does not permit the giving of a notice, in terms of subsection (3), a special meeting may be called upon giving a shorter notice.

(5) Six members present shall form the quorum of any meeting of the Commission.

(6) The decision of the Commission shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the chairperson or other person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(7) The chairperson shall preside at any meeting of the Commission and in the absence of the chairperson, the vice-chairperson shall preside.

(8) In the absence of both the chairperson and vice-chairperson such member as the chairperson may designate or such member as the members present and forming a quorum may elect from among their number shall preside for the purpose of that meeting.

(9) The Commission may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate an officer in the public service, to attend any meeting of the Commission or of any of the committees established under section 15 and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.

(10) The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and of every meeting of a committee of the Commission.

(11) The validity of the proceedings, act or decision of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

15. Committees of the Commission.

(1) The Commission may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of its functions as it considers necessary.

(2) The Commission may appoint, as members of a committee established in terms of subsection (1), persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.

(3) Subject to any specific or general direction of the Commission, a committee established under subsection (1) may regulate its own procedure.

16. Disclosure of interest.

(1) Where any member is present at meeting of the Commission or of any committee of the Commission at which any matter which is the subject of consideration is a matter in which that person or the person's immediate family member or the person's professional or business partner is directly or indirectly interested in a private or professional capacity, that person shall, as soon as is practicable after the commencement of the meeting, disclose such interests and unless the Commission or the committee otherwise directs, that person shall not take part in any consideration or discussion of or vote on, any question touching on such matter.

(2) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

17. Immunity of members.

An action, suit or other proceedings shall not lie against any member of the Commission in respect of any act done, in good faith, in the course of carrying out the provisions of this Act.

PART III SECRETARIAT

18. Secretariat of the Commission.

The Secretariat of the Commission shall be made up of the Executive Director and other employees of the Commission as may be appointed under this Act and the Secretariat shall be the investigative arm of the Commission.

19. Executive Director.

(1) The Commission shall appoint, on such terms and conditions as it may determine, an Executive Director of the Commission who shall be the chief executive officer of the Commission and shall, in addition, perform such duties as the Commission shall assign to the office and ensure the effective administration and implementation of this Act.

(2) Without derogation from the generality of the responsibilities and duties of the Executive Director conferred under subsection (1), the Executive Director shall be responsible for the day-to-day administration of the Commission.

(3) The Executive Director or such other officer of the Commission as the Executive Director may designate, shall attend meetings of the Commission and of any committee of the Commission and may address such meetings, but shall not vote on any matter.

(4) Section 16 shall apply, *mutatis mutandis*, to the Executive Director and on such other officer as may be designated by the Executive Director.

20. Other employees.

(1) The Commission may appoint, on such terms and conditions as it may determine, such other employees, subordinate to the Executive Director, as it considers necessary for the performance of its functions and to assist the Executive Director in discharging the Executive Director's duties and responsibilities.

(2) The Commission may delegate to the Executive Director the appointment of employees of such junior ranks as the Commission shall specify.

21. Disclosure of interest by employees.

(1) An employee of the Commission who or whose immediate family member is directly or indirectly interested in a private or professional or official capacity in any matter being considered by the Commission, shall disclose such interest.

(2) A disclosure of interest made under this section shall be made to the Executive Director who shall take such decision as the Executive Director considers appropriate in each case and submit a report thereon to the Commission.

22. Oath of secrecy.

Every —

- (a) member of the Commission;
- (b) member of a committee of the Commission; and
- (c) employee of the Commission,

shall, upon assumption of office, take such oath of secrecy as may be approved by the Commission or as may otherwise be prescribed under this Act.

23. Prohibition of publication or disclosure of information.

(1) A person shall not, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of the person's duties, contents of any document, communication or information which relates to, and which has come to his/her knowledge in the course of that person's duties under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand Emalangeni or to imprisonment to a term not exceeding three years.

24. Immunity of employees.

No action, suit or other proceedings shall be brought or instituted personally against any employee in respect of any act done, in good faith, in the course of carrying out of the provisions of this Act.

PART IV FINANCIAL PROVISIONS

25. Funds of the Commission.

- (1) The funds of the Commission shall consist of such monies as may —
- (a) be appropriated by Parliament for the purposes of the Commission;
 - (b) be obtained as a result of the levy that may be imposed in this Act;
 - (c) be paid to the Commission by way of grants or donations;
 - (d) be received by the Commission under subsection (2); or
 - (e) otherwise vest or accrue to the Commission.

(2) The Commission may charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Commission.

(3) The Commission may, subject to approval of Minister, invest in such manner as it thinks fit such funds as it does not immediately require for the performance of its functions.

(4) The Commission may, subject to the approval of the Minister and the Minister responsible for Finance, raise, by way of loans from any source in or outside of Swaziland, such money as it may require for the discharge of its functions.

26. Application of funds.

There shall be paid out of the funds of the Commission —

- (a) the salaries, allowances, loan, gratuities and pensions of the staff of the Commission and other payments for the recruitment and retention of staff;
- (b) such reasonable travelling and subsistence allowances for members of any committee of the Commission when engaged on the business of the Commission and at such rates as the Commission may determine; and
- (c) any other expenses incurred by the Commission in the performance of its functions.

27. Financial year.

The financial year of the Commission shall be the same as the Government financial year.

28. Accounts.

(1) The Commission shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission.

29. Annual reports.

(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Commission shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Commission, and there shall be appended to the report —

- (a) an audited financial statement; and
- (b) such other information as the Commission may consider appropriate or as the Minister may direct.

(3) The Minister shall lay such report before Parliament.

PART V ANTI-COMPETITIVE TRADE PRACTICES

30. Prohibitions.

(1) Any category of agreements, decisions or concerted practices which have, as their object or effect, the prevention, restriction or distortion of competition to an appreciable extent in the country or in any substantial part of it are prohibited.

(2) Enterprises engaged on the market in rival or potential rival activities shall not engage in the practices enumerated in subsection (5) where such practices limit access to markets or otherwise unduly restrain competition.

(3) Subsection (1) shall not apply where enterprises are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.

(4) This section applies to formal, informal, written and unwritten agreements or arrangements.

(5) For the purposes of subsection (1), the following are prohibited —

- (a) agreements to fix prices;
- (b) collusive tendering and bid-rigging;
- (c) market or customer allocation agreements;
- (d) subject to any law to the contrary, allocation by quota as to sales or production; or
- (e) collective action to enforce arrangements.

31. Anti-competitive trade practices.

Enterprises shall refrain from the following acts or behaviour if they limit access to markets or otherwise unduly restrain competition, or have or are likely to have adverse effect on trade or the economy in general —

- (a) predatory behaviour towards competitors including the use of predatory cost pricing to damage, hinder or eliminate competition;
- (b) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods or services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside affiliated enterprises;
- (c) making the supply of goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods or the provision of competing or other services;
- (d) making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier to the consignee;
- (e) imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;
- (f) resale price maintenance;
- (g) trade agreements fixing prices between persons engaged in the business of selling goods or services, which agreements hinder or prevent the sale, supply or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services;
- (h) refusals to supply goods or services to potential purchasers; or
- (i) denials of access to an arrangement or association which is crucial to competition.

32. Other anti-competitive trade practices by associations.

The following practices conducted by or on behalf of a trade association are declared to be anti-competitive trade practices —

- (a) unjustifiable exclusion from a trade association of any person carrying on or intending to carry on, in good faith, the trade in relation to which the association is formed; or
- (b) making of recommendations, directly or indirectly, by a trade association, to its members or to any class of its members which relate to —
 - (i) the prices charged or to be charged by such members or any such class of members or to the margins included or to be included in the prices or to the pricing formula used or to be used in the calculation of those prices; or
 - (ii) the terms of sale (including discount, credit, delivery and product and service guarantee terms) of such member or any class of members and which directly affects prices or profit margins included in the pricing formula.

33. Unfair trading.

- (1) A person shall not, in relation to a consumer —
 - (a) withhold or destroy producer or consumer goods, or render unserviceable or destroy the means of production and distribution of such goods, whether directly or indirectly, with the aim of bringing about a price increase;
 - (b) in connection with the supply of goods or services, make any warranty —
 - (i) limited to a particular geographic area or sales point;
 - (ii) falsely representing that products are of a particular style, model or origin;
 - (iii) falsely representing that the goods are new and or of specified age; or
 - (iv) representing that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have;
 - (c) exclude liability for defective goods;
 - (d) engage in conduct that is likely to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, quality of any products or services;
 - (e) supply any product which is likely to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed under any written law;
 - (f) engage in pyramid selling of goods and services;
 - (g) engage in bait selling;
 - (h) offer gifts or prizes with no intention of supplying them; and
 - (i) put out an advertisement which is misleading or deceptive.

(2) A person shall not do any of the acts that are prohibited under the Fair Trading Act, 2001.

34. Abuse of dominance.

Any person that has a dominant position in the market shall not use that power to carry out any of the practices enumerated under sections 30 and 31.

35. Mergers and acquisitions.

(1) A merger shall not be carried out without the authorisation of the Commission and a person who, in the absence of authority from the Commission, whether as a principal or agent and whether by himself/herself or his/her agent, participates in effecting —

- (a) a merger between two or more independent enterprises engaged in manufacturing or distributing substantially similar goods or providing substantially similar services;
- (b) a takeover of one or more such enterprises by another enterprise, or by a person who controls another such enterprise,

commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand Emalangeni or to imprisonment to a term not exceeding five years or to both.

(2) A merger or takeover made in contravention of subsection (1) shall not have any legal effect and no rights or obligations imposed on the participating parties, by any agreement in respect of the merger or takeover, shall be legally enforceable unless an application for condonation has been made to and granted by the Commission.

(3) The Commission shall, within a reasonable time after the receipt of an application or the date on which the applicants provide the information sought by the Commission if the date is later, make an order concerning an application for authorisation of a merger or takeover.

36. Monopolies and concentration of economic power.

(1) The Commission shall keep the structure of production of goods and services in the country under review to determine where concentrations of economic power or anti-competitive trade practices exist whose detrimental impact on competition and the economy outweigh the efficiency advantages, if any.

(2) For the purposes of subsection (1) but without limiting the generality thereof, the Commission shall consider whether —

- (a) a person controls a chain of distributing units the value of whose sales accounts for a significant portion of the relevant market;
- (b) a person, by virtue of controlling two or more physically distinct enterprises which manufacture substantially similar goods, supplies a significant portion of the domestic market at unreasonably low prices; or
- (c) a person has substantial shares in a manufacturing enterprise and whether the person simultaneously has a beneficial interest, however small, of outstanding shares in one or two wholesale or retail enterprises which distribute products of the manufacturing enterprise.

37. Authorisation of allowable acts.

(1) The Commission may authorise any act, agreement or understanding which is not prohibited by this Act, that is, one which is not necessarily illegal unless abused if that act, agreement or understanding is consistent with the objectives of this Act and the Commission considers that, on balance, the advantages to the country, outweigh the disadvantages.

(2) The Commission shall not authorise acts, agreements or understandings of any kind described in sections 31, 32, 33 and 34.

PART VI MISCELLANEOUS

38. Investigating officers.

(1) The Commission may designate any of its employees to be investigating officers for the purposes of this Act.

(2) Investigating officers shall carry out their functions under this Act subject to such directions as the Commission may give them.

(3) The Commission shall cause every investigating officer to be furnished with a certificate of appointment, which the investigating officer shall exhibit on demand by any interested person before carrying out any function under this Act.

39. Power of entry and inspection.

(1) An investigating officer may at all reasonable times and on the production of a search warrant obtained from a court of law —

(a) enter any premises on or which there is reasonably suspected to be any book, record or document relating to any anti-competitive trade practice or unfair trade practice or any actual or potential merger, takeover or monopoly situation;

(b) require any person upon the premises —

(i) to disclose all information at the person's disposal; and

(ii) to produce any book, record or document or copy thereof or extract therefrom,

that may relate, in any way, to any anti-competitive trade, unfair trade practice, merger, takeover or monopoly situation referred to in paragraph (a); and

(c) make copies of or take extracts from any book, record or documents referred to in paragraph (b).

(2) Any person who, without lawful excuse —

(a) hinders or prevents an investigating officer from exercising any power under subsection (1);

(b) fails or refuses to comply with any requirement of an investigating officer under subsection (1); or

(c) upon being required under subsection (1) to disclose any information, fails or refuses to do so or provides information that is false or which that person does not believe, on reasonable grounds, to be true,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand Emalangeneni or to imprisonment to a term not exceeding two years or to both.

40. Appeals.

The Commission shall have power to issue orders or directives it deems necessary to secure compliance with this Act or its decisions and any person aggrieved by a decision of the Commission made under this Act or under any regulations made hereunder may, within thirty days after the date on which a notice of that decision is served on that person, appeal to the Court.

41. Operation of order.

Where an appeal is brought against any decision of the Commission any final or interim directive or order of the Commission based on such decision shall remain in force pending the determination of the appeal, unless the Court otherwise orders.

42. Offences and penalties.

(1) Any person who —

- (a) contravenes or fails to comply with any provision of this Act, or any directive or order lawfully given, or any requirement lawfully imposed under this Act for which no penalty is provided;
- (b) omits or refuses —
 - (i) to furnish any information when required by the Commission to do so; or
 - (ii) to produce any documents when required to do so by a notice sent by the Commission; or
- (c) knowingly furnishes any false information to the Commission,

commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand Emalangeneni or to imprisonment to a term not exceeding 5 years or to both.

(2) Where the offence is committed by a body corporate, every director and officer of such body corporate, or if the body of persons is a firm, every partner of that firm, shall be guilty of that offence, provided that such director, officer or partner shall not be guilty of the offence if he/she proves, on a balance of probability that such offence was committed without his/her knowledge or consent, or that he/she exercised all due diligence to prevent the commission of the offence.

43. Regulations.

The Minister may, on the advice of the Commission, make regulations for carrying into effect the provisions of this Act, and, in particular and without prejudice to the generality of the foregoing power, such regulations may provide for —

- (a) anything required to be prescribed under, or for the purposes of, this Act including penalties to be imposed for infringements of this Act;
- (b) any forms required for the purposes of this Act;
- (c) fees payable in respect of any service provided by the Commission; and
- (d) the prescription of levies which the Commission may impose in respect of its services.

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. The Competition Commission (CC) Regulations, 2010

The Competition Commission (CC) Regulations, 2010

(Under section 43)

Date of commencement: 10th June, 2010

ARRANGEMENT OF REGULATIONS

1. Short title.
2. Commencement.
3. Interpretation.
4. Office hours and address of the Commission.
5. Forms.
6. Condonation of time limits.
7. Delegation of Executive Director's functions.

8. Delivery of documents.
9. Issuing of documents.
10. Filing documents.
11. Fees and threshold.
12. Initiation of investigations.
13. Settlement agreements.
14. Time periods for the investigation of complaints.
15. Authorization procedures for allowable acts.
16. Time periods of investigations.
17. Adjudication of proposed merger.
18. General merger requirements.
19. Joint merger application.
20. Non-consensual mergers.
21. Review of international transactions.
22. Review of merger application.
23. Request for additional information.
24. Certificate of completeness.
25. Abandonment of a merger.
26. Third party intervention in merger proceedings.
27. Revocation of authorization of proposed merger.
28. Oral hearings.
29. Invitation to participate in the Commission's deliberations.
30. Committees of the Commission.
31. Publication of Commission decision.
32. Interaction with regulatory authorities.
33. Undertakings and compliance programs.

1. Short Title.

These Regulations may be cited as the Competition Commission (CC) Regulations, 2010, (herein after referred to as "the Regulations").

2. Commencement.

The commencement date of these Regulations shall be the date of publication in the Gazette.

3. Interpretation.

(1) In these Regulations unless the context indicates otherwise —

- (a) "Act" means the Competition Act No. 8 of 2007;
- (b) "acquisition" includes the purchase or lease of shares, an interest, or assets of another enterprise, the amalgamation or other combination with another enterprise;
- (c) "Commission" means the Swaziland Competition Commission established under section 6 of the Act;
- (d) "Commission Officer" means an officer of the Commission appointed under section 20 of the Act;
- (e) "complainant" means a person who has submitted a complaint in respect of an alleged anti-competitive trade practice in terms of section 11(2)(a) of the Act;
- (f) "confidential information" means trade, business, industrial or financial information that belongs to an enterprise, has a particular economic value, is commercially sensitive and is not generally available to or known by others;
- (g) "controlling interest" means the holder thereof —
 - (i) beneficially owns more than one half of the voting and/or more than half of the economic interest of the target firm;

- (ii) is entitled to vote a majority of the votes that may be cast at a general meeting of the firm;
 - (iii) is able to appoint or veto the appointment of a majority of the directors of the firm; or
 - (iv) has the ability to exercise a decisive influence over the policies of the firm and its strategic direction;
- (h) "day" means any day of the week excluding Saturday, Sunday, a public holiday and the period during the month of December of the current year and January in the following year during which period all the offices of the Commission will be officially closed as determined by the Commission for the end of the year save for a standby team to attend to emergency issues —
- (i) the first day is excluded and the last day is included, subject to that the last day of any period shall be excluded if it falls on a Saturday, Sunday, public holiday or any day during the month of December in the current year and January in the following year during which period the offices of the Commission will be officially closed as determined by the Commission for the end of year;
- (i) "Dominant position influence" means the market influence associated with the position and market power held by an enterprise or firm;
- (j) "Executive Director" means the chief executive of the Commission appointed under section 19 of the Act;
- (k) "fee" means the fee payable on notification;
- (l) "intervener" means a person who has submitted a complaint against a merger in terms of section 11(2)(b) of the Act and who has been recognized by the Commission as an intervener,
- (m) "irreversible damage" means injury/loss proved in accordance with the common law of Swaziland as permanent;
- (n) "merger" whenever it appears in these Regulations or the Competition Act bears the same meaning as the definition given in section 2 of the Act;
- (o) "merger application" means the notification or request for the authorization or approval of a merger in terms of section 35(3) of the Act;
- (p) "month" means a calendar month or a period made up of 20 working days;
- (q) "national industries" means industries of strategic importance to the economy of Swaziland;
- (r) "Undertaking" means commitment to comply with or control, prevent or avoid future breaches of the provisions of the Act made by a person to the Competition Commission as may be required by the Act; and
- (s) "small enterprises" shall bear the same meaning as the definition set out in national legislation, public policy guidelines or statements issued by the relevant Government ministry from time to time.

4. Office hours and address of the Commission.

(1) The offices of the Commission are open to the public every Monday to Friday, excluding public holidays, from 08h00 to 17h00.

(2) Despite subregulation (1), in exceptional circumstances the Commission may accept documents for filing on any day and at any time.

(3) Any communication to the Commission, or to a member of the staff of the Commission, may be —

- (a) delivered by hand at the Competition Commission Offices;
- (b) addressed by registered post to the Competition Commission;
- (c) transmitted by fax; and/or
- (d) transmitted by electronic mail.

5. Forms.

All the Commission's official forms must be made easily accessible to members of the public in both print and electronic format.

6. Condonation of time limits.

On good cause shown, the Executive Director or a duly authorized representative may condone late performance of an act in respect of which these Regulations prescribe a time limit.

7. Delegation of Executive Director's functions.

The Executive Director may delegate, in writing, any function or power to a member of the staff of the Commission, either generally or in connection with a particular matter.

8. Delivery of documents.

(1) A notice or document may be delivered in any manner contemplated in regulation 4(3)(a)-(d).

(2) A party shall prove to the Commission that a document was delivered in terms of these Regulations, by providing the Commission —

- (a) with a copy of proof of mailing the document by registered post to the other party; a document sent by registered post is presumed to have been received by the person to whom it was sent 10 days after it was posted, unless the contrary is proved;
- (b) with a copy of the delivery report communicating the document to the other party if sent by electronic mail;
- (c) with a copy of the telefax transmission report indicating the successful transmission to the other party of the whole document; or
- (d) if a document was served by hand —
 - (i) with a copy of a receipt, signed by or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
 - (ii) with a statement confirming service made under oath and signed by the person who delivered a copy of the document to the other party or left it at any premises.
- (e) if proof of service is provided in accordance with regulation 8(2)(d), it is presumed that the party on whom it was served has knowledge of the contents of the document.

(3) If, in a particular matter, it proves impossible to deliver a document in any manner provided for in these Regulations, the person concerned may apply to the Commission for an order or substituted service.

(4) Subject to regulation 4(2), if the date and time for the delivery of a document referred to in subregulations (1) and (2) is outside of the office hours of the Commission as set out in regulation 4(1), that document will be deemed to have been delivered on the next business day.

(5) A document that is delivered by fax shall include a cover page, and a document that is transmitted by electronic mail shall be attached to an e-mail message, in either case setting out —

- (a) the name, address, and telephone number of the sender;
- (b) the name of the person to whom it is addressed, and the name of that person's representative, if it is being sent to the representative of a person;
- (c) the date and time of the transmission;
- (d) the total number of pages sent, including the cover page; and
- (e) the name and telephone number of the person to contact if the transmission appears to be incomplete or otherwise unsuccessful.

9. Issuing of documents.

(1) If the Act or these Regulations require the Commission to issue a document —

- (a) the document would have been issued by the Commission when it has been signed, and delivered to a person to whom it is addressed; and
- (b) the document may be signed and delivered at anytime of the day.

(2) Regulation 8(4) does not apply to the service of a document issued by the Commission.

10. Filing documents.

(1) The Commission must assign distinctive case numbers to each —

- (a) complaint;
- (b) merger application; or
- (c) advisory opinion.

(2) The Commission must ensure that every party who subsequently files a document in respect of the same proceedings marks that document with the same case number.

(3) Where a document received does not bear the appropriate case number or at all, the Commission may mark that document with the case number of the proceedings if the document's case number is reasonably and easily ascertainable from the face of the document.

(4) Despite subregulation (3), the Commission may refuse to accept a document subsequently filed in respect of the same proceedings that is not properly marked with the assigned case number, and, if inadvertently accepted, the sender would be deemed to have failed to file the document (whether or not the Commission has returned the document to the sender).

(5) A person who files a document in terms of the Act or these Regulations shall provide to the Commission that person's —

- (a) name;
- (b) telephone number;
- (c) if available, e-mail address and fax number; and
- (d) if the person is a legal entity, the name of the individual authorized to deal with the Commission on behalf of the person filing the document.

11. Fees and threshold.

(1) The Commission shall not charge a fee to any person lodging a complaint on any matter for investigation under the Act.

(2) Fees are payable to the Commission for the notification of a merger or acquisition, for an exemption application and for the provision of an advisory opinion.

(3) The Commission shall charge an advisory opinion fee of E3,500.

(4) The filing fees for a merger shall be charged on the value of the combined annual turnover or assets of the merging enterprises.

(5) Mergers fall into two broad categories viz: small and large.

(6) Small mergers are exempt from payment of notification fees.

(7) A Small Merger is a merger with combined assets or turnover with a total value of E8 million and less.

(8) The fee charged for all other mergers is 0.1% (zero point one percent) of the combined annual turnover or assets whichever is greater.

(9) The amount charged for notification of a merger shall not exceed the amount of E600 000 for any single merger notified.

(10) A fee payment will be deemed to be received by the Commission on —

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

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

(11) The amount of fees set out in this Regulation, or calculated in terms of this Regulation, excludes Sales Tax or VAT, whichever is applicable.

12. Initiation of investigations.

(1) The Commission may, on its own initiative, institute an investigation in respect of alleged anti-competitive trade practice/s in terms of section 11(2)(a) and (b) of the Act by issuing a notice to the enterprise which is the subject of the investigation setting out the following —

(a) the preliminary nature and scope of the alleged anti-competitive trade practices;

(b) the facts on which the complaint is based; and

(c) the provisions of the Competition Act that are applicable to the alleged anti-competitive trade practice/s.

(2) A person may file a complaint with the Commission alleging anti-competitive trade practices in Form 2 setting out in broad terms —

(a) the fact on which the complaint is based; and

(b) the provisions of the Act on which the complaint is based, if known.

(3) The Commission may, after instituting an investigation or receiving a complaint against a person, issue a press statement or a notice in the press —

(a) disclosing any act of an anti-competitive or unfair trading nature; and

(b) inviting any person to submit any information or to make representations in relation to any act of an anti-competitive or unfair trading nature set out in the Notice.

(4) An investigation instituted by the Commission shall be instituted by the Executive Director at his own initiative or shall be authorized by the Executive Director where a staff member proposes to investigate or inquire into a matter under the Act,

of which such staff member shall make a written statement setting out the grounds upon which an investigation shall be based.

(5) Nothing contained in this Regulation shall prevent the Commission from extending the investigation to other areas of alleged anti-competitive trade practices as and when they become apparent during the course of the investigation, save that every new area of investigation shall be notified to the respondent enterprise within a reasonable time after being so added to the original complaint or investigation.

(6) The Commission may consolidate two or more complaints under one investigation if they concern the same firm as potential respondent.

13. Settlement agreements.

(1) The Commission may, in its discretion initiate settlement negotiations with any or all of the respondents in relation to a pending investigation with a view to resolving the competition issues that are the subject of the investigation —

- (a) where the Commission intends to initiate settlement negotiations with any respondent in respect of an investigation initiated by a complainant other than the Commission, the Commission shall —
 - (i) notify the complainant in writing of its intention to initiate settlement negotiations with the respondent;
 - (ii) invite the complainant to submit its views regarding the proposed settlement negotiations including any remedies preferred by the complainant; and
 - (iii) consider the complainant's views and proposed remedies in determining whether to proceed with the initiation of the settlement negotiations;
- (b) settlement negotiations initiated by the Commission shall follow the same format of negotiations set out in subregulation (2) below with the necessary modifications; and
- (c) for the avoidance of doubt, the complainant's views and proposed remedies shall not be binding on the Commission.

(2) If, at any time before the final determination of a complaint or investigation by the Commission, a respondent is desirous of concluding a settlement agreement with the Commission, it may, in writing, inform the Commission of its intention to negotiate a settlement agreement by —

- (a) setting out whether it is prepared to admit to a contravention of specific provisions of the Act;
- (b) proposing any remedies it considers appropriate for addressing the anti-competitive trade practices complained of; and
- (c) specifying the quantum of the penalty it is prepared to pay as part of its settlement agreement with the Commission.

(3) Upon receiving a settlement proposal from a respondent enterprise, the Commission must consider the terms of the proposed agreement and the remedies contained therein.

(4) Where any of the terms of the settlement agreement as proposed are unacceptable to the Commission, the Commission may indicate alternative or additional terms that may be acceptable to the Commission.

(5) Where the Commission and the respondent enterprise reach a preliminary agreement on the terms of the settlement, the Commission shall, thereafter —

- (a) notify the complainant, in writing, that a settlement agreement is being considered by the Commission;

- (b) furnish the complainant with a copy of the proposed settlement agreement; and
- (c) invite the complainant to provide its views including possible remedies in relation to the proposed settlement agreement.

(6) After considering the representations of the complainant, if any, the Commission may advise the respondent enterprise whether it will accept the settlement agreement.

(7) For the avoidance of doubt, the Commission has no obligation to accept the views of the complainant or the terms of the settlement proposal.

(8) Notwithstanding the provisions of this Regulation, the Commission shall not be obliged to initiate or enter into settlement negotiations with any respondent.

14. Time periods for the investigation of complaints.

The Commission must consider and make a determination in relation to any act of an anti-competitive or unfair nature in relation to an investigation of an alleged anti-competitive trade practice which it either initiated or received as a complaint from a third party in terms of section 11(2)(a) and (b) and section 33 of the Act —

- (a) within 90 days from the date on which the Commission gave a press statement or published a notice in respect of the investigation in terms of these Regulations;
- (b) where the Commission is of the opinion that the period referred to in subregulation (a) is not sufficient the Commission may, before the expiry of that period, by notice in writing to the respondent enterprise and the complainant, if any, extend the relevant period for a further single period, not exceeding 60 days, specified in the notice; and
- (c) an extension of time in terms of subparagraph (b) begins on the next day following the date on which the initial ninety days period expires.

15. Authorization procedures for allowable acts.

(1) Upon receiving an application for authorization in terms of section 37(1) of the Act, the Commission may —

- (a) where the application appears to be incomplete, request the outstanding information that would render the application capable of an informed assessment in terms of the provisions of the Act; and
- (b) where the application appears to be materially incomplete, advise the applicant within 7 days of receipt of such an application that the application will not be considered by the Commission pending the submission of the required information to the Commission within the time period set out in the notice in terms of this subregulation.

(2) If information is not received within the time frame set out in the notice in terms of subregulation (1)(b), the applicant shall be deemed to have abandoned the application.

(3) When determining whether or not to grant an authorization application for allowable acts, the Commission may consider any of the following factors, namely —

- (c) the impact of the authorization on —
 - (i) the productive capacity of an industry that is in decline;
 - (ii) the ability of small businesses to be competitive; and
 - (iii) the maintenance and promotion of exports to markets outside the SACU and SADC regions.

(4) An authorization application shall, when granted, be for a specific period of time.

(5) The Commission may revoke an authorization.

(6) In revoking an authorization the Commission shall follow the same procedures set out in regulation 27 of these Regulations.

16. Time periods of investigations.

(1) Subject to subregulation (2), the Commission must consider and make a determination in relation to a proposed merger of which it has received an application in terms of section 35(3) of the Act —

(a) within 90 days from the date on which the Commission receives that application; or

(b) if the Commission requests further information under sections 13 and 14 of the Act, within 30 days from the date of receipt by the Commission of the additional information.

(2) Where the Commission is of the opinion that the period referred to in subregulations (1)(a) and (b) should be extended it may, before the expiry of that period, by notice in writing to the enterprises involved extend the relevant period for a further single period, not exceeding 60 days, specified in the Notice.

(3) An extension of time in terms of subregulation 15(2) begins on the next day following the date on which the initial 60 days period expires.

17. Adjudication of proposed merger.

(1) In adjudicating a proposed merger, the Commission may —

(a) approve the implementation of the merger without any conditions;

(b) approve the implementation of the merger subject to specific conditions; or

(c) prohibit the implementation of the merger.

(2) When determining whether or not a proposed merger is anti-competitive, the Commission shall consider any factor relevant to competition, including but not limited to the following —

(a) the definition of the relevant market;

(b) the post-merger market concentration;

(c) ease of entry into the market, including tariff and regulatory barriers;

(d) availability of substitute products;

(e) levels of import competition;

(f) levels of countervailing power;

(g) effective remaining competition; and

(h) the probability that the enterprises in the market will after the merger behave competitively or cooperatively —

(i) the ability of national industries to compete in international markets;

(ii) the competitiveness of a particular industrial sector or region in Swaziland; and

(iii) the ability of small enterprises to become competitive.

18. General merger requirements.

(1) Where a merger is proposed, any one of the primary enterprises involved in the merger, or their duly appointed representatives shall file a joint application to the Commission for authorization of the merger in terms of regulation 20 of these Regulations.

(2) A party to a non-consensual merger may apply to the Commission for the consideration of that merger.

19. Joint merger application.

A joint application shall be made in a single filing by one of the primary enterprises or their duly appointed representative, and shall include —

- (a) for each of the primary enterprises, Substantive Statement on the merger in Form 3, which in each case —
 - (i) satisfies all the filing instructions set out in that Form;
 - (ii) has attached to it all the documents required by those instructions; or
 - (iii) is accompanied by the requisite filing fee in the appropriate amount; or
 - (iv) if paid separately or earlier, is accompanied by proof of payment which is acceptable to the Commission.

20. Non-consensual mergers.

(1) A transaction is non-consensual if —

- (a) the primary firm filing the joint merger notification first made an offer to purchase the target firm to the management of that firm which was rejected in writing; or
- (b) the management of the target firm has publicly stated that it does not support the offer made by the primary acquiring firm; or
- (c) the management of the target firm has not responded to an offer made by the acquiring firm within a reasonable time, which shall not be less than 10 days from the date of the offer.

(2) A primary enterprise involved in a non-consensual transaction may file a joint merger application on behalf of both primary enterprises at any time after the satisfying of the requirements of a non-consensual transaction set out in this Regulation.

(3) A joint merger notification filed with the Commission must be served on the other primary firm's registered office or principal place of business on the date of filing with the Commission.

(4) Where some of the information contained in the merger notification is confidential to the primary firm or third parties, the notification must be accompanied by a summary of the information classified as confidential, which must set out the reasons why the information is considered confidential and how the other primary firm may gain access to it.

(5) The initial period for a merger filed in terms of this Regulation begins on the business day following the date on which the merger notification was served on the other primary firm, provided that —

- (a) the Commission does not request additional information in terms of Regulation 22 in respect of the information filed on behalf of the primary firm that filed the joint merger notification.

(6) The primary firm filing the joint notification must —

- (a) file a competitiveness report on the date of the filing of the joint merger notification; and
- (b) set out in detail the sources of information it relied on in compiling the Substantive Statement of the merger on behalf of the other primary firm.

(7) Non-consensual transactions are subject to the same time frames set out in Regulation 16 of these Regulations.

- (8) Where the other primary firm intends to oppose the joint merger notification
-

- (a) it must file its corrected Substantive Statement of the merger within 10 business days from the date of filing of the joint merger notification; and
- (b) file all attachments within 10 business days from the date of the filing of the joint merger notification; or
- (c) within 10 business days from the date of filing of the joint merger notification, apply for an extension of time to compile and file its corrected information, which extension shall not exceed 10 business days.

(9) If the other primary firm fails to file any document or information within the time periods set out in this Regulation, it shall be bound by the information filed on its behalf by the primary firm that filed the joint merger notification.

(10) The Commission may extend the investigation period of a non-consensual transaction by 30 days where, in its opinion, having regard to the information filed by the parties and its own independent knowledge of the industry, the transaction is likely to give rise to significant competition concerns.

21. Review of international transactions.

(1) If merging parties submit a merger application in respect of an international transaction where the date of closing is likely to occur before the finalization of the Commission's investigation, the parties shall —

- (a) indicate in the original application the intended date of closing;
- (b) set out how their interests in Swaziland would be insulated from the implementation of the world wide transaction; and
- (c) provide legally enforceable undertakings that will ensure that the parties' interest in Swaziland will be managed and run without any interference from the merged firm following closing of the international transaction.

(2) The international closing of a proposed merger is not allowed before the filing of a merger application before the Commission.

(3) In urgent circumstances, the Commission on good cause shown may shorten the time period.

22. Review of merger application.

(1) For purposes of considering a proposed merger, the Commission may, through the office of the Executive Director or any officer delegated by him, refer the application in respect of the proposed merger in terms of section 38(1) of the Act to an officer for investigation and advise the parties to the merger of the name and contact details of the officer in question.

(2) As soon as practicable after a referral in terms of subregulation (1), the officer concerned shall —

- (a) investigate the merger as expeditiously as possible; and
- (b) furnish the Executive Director or his nominee with a report of the investigation before the expiry of the Commission's investigation period.

(3) A person, including a person not involved as a part in the proposed merger, may voluntarily submit to an officer or the Executive Director any document, affidavit, statement or other relevant information in respect of a proposed merger at any time before the conclusion of the investigation.

(4) For avoidance of doubt, the Executive Director and the investigation team shall consider any material information submitted to them before the end of the investigation period or before the Board makes its determination, which information may be presented as an addendum to a final report.

(5) The officer shall properly consider the information given and provide copies of such information to the merging parties where such information is not subject to confidentiality claims for their information and comment.

(6) Where the information submitted is covered by confidentiality claims, the officer shall require the party that furnished the information to prepare a summary of the confidential information for submission to the merging parties.

(7) The Executive Director or officer responsible for the investigation of the merger may, at any time, convene a meeting with any of the parties to the merger or third parties for purposes of inquiring further into any specific issues that may be of concern to the Commission.

(8) A meeting convened in terms of this Regulation shall be conducted in a manner considered expedient by the Executive Director or officer of the Commission.

23. Request for additional information.

At any time during a merger investigation, the Commission may —

- (a) informally request additional information from a party to a merger but such request shall not have the effect of extending the Commission's investigation period as envisaged by regulation 16; and
- (b) require a party to a merger to provide additional information, at any time, as provided in regulation 22 by serving on the party a request in Form 5, setting out the specific information that the Commission requires.

24. Certificate of completeness.

(1) A merger application must be accompanied by a certificate of completeness in Form 6 in the form of an affidavit attested to by an officer of the company filing the application certifying the accuracy and completeness of the information submitted to the Commission in terms of the Act and the Regulations.

(2) If, at any time, the Commission believes that a document filed in respect of a merger contains false or misleading information, the Commission may require the party that filed the information to submit the correct information, which must be accompanied by an affidavit from the officer who attested to the certificate of completeness setting out —

- (a) why the original information was false or misleading; and
- (b) the extent to which he has satisfied himself that the new information is complete, correct, reliable and free from any errors or deficiencies.

(3) Where the Commission issues a notice in terms of subregulation (2) above, the parties to the merger will not have fulfilled their notification requirements until corrected information has been filed to the satisfaction of the Commission even if the initial investigation period or an extension had already begun.

(4) A party aggrieved by the issuing of Form 6 may appeal the Commission's decision to the Board, of which the Chairperson of the Board shall, within 7 days of receipt of such appeal, refer it to the Technical Committee of the Board who shall advise accordingly, with a subsequent and final appeal to the Board of Commissioners.

25. Abandonment of a merger.

(1) The party that filed the merger application may notify the Commission using Form 7 that it has abandoned the proposed merger and has no intention of implementing it.

(2) The notice of abandonment shall be accompanied by a certificate of consent from the other party to the transaction confirming that the merger has been abandoned.

(3) Where there is disagreement between the parties, the Commission may continue with its investigation and both parties shall be obliged to comply with all the requirements of the Act and the Regulations in respect of the submission of any information that the Commission may require.

(4) None of the parties to the merger may re-file the abandoned merger within a period of 12 months from the date of abandonment.

(5) The Commission may in its discretion refund the filing fee or part thereof to the party that paid the fee.

26. Third party intervention in merger proceedings.

(1) A third party may, at their own initiative or at the request of the Commission, make submissions to the Commission in confidence or not, in relation to a merger application.

(2) Third party comments to a merger application may be done orally or in writing to the Commission.

(3) Where the Commission receives anonymous submissions, such submission may be confirmed with other relevant third parties before it is used in the assessment of the merger application.

(4) All submissions against the merger shall, within 7 days of their receipt, be availed to the parties to the merger for their comments, of which the parties shall respond accordingly within 14 days after receipt of same.

27. Revocation of authorization of proposed merger.

(1) The Commission may within the time period set out in this Regulation and after complying with the other provisions of this Regulation revoke a decision authorizing the implementation of a merger if —

- (a) the decision was based on materially incorrect or misleading information for which a party to the merger is responsible; or
- (b) a condition attached to the authorization of the merger that is material to the implementation is not complied with.

(2) Where the Commission relies on subregulation (1)(a) as a basis for the revocation, it may revoke its decision within 3 years from the date of authorization.

(3) Where the Commission relies on subregulation (1)(b) as a basis for the revocation, it may revoke its decision within 12 months from the last day on which the merging parties should have fully complied with the authorization conditions.

(4) If the Commission intends to revoke the authorization of a merger under subregulation (1)(a) it shall —

- (a) give notice in writing of the proposed revocation to the merging parties and interveners, if any; and
- (b) call upon such persons to submit to the Commission, within 10 days after receipt of the notice, any representations which they wish to make in respect of the proposed revocation.

(5) If the Commission intends to revoke the authorization of a merger under subregulation (1)(b), it must first afford the merging parties the opportunity to submit

a plan to remedy the breach of the conditions within 10 days of receipt of the notice of revocation.

(6) If any of the merging parties submits a plan to the Commission in terms of subregulation (5), the Commission may either —

- (a) accept the proposed plan; or
- (b) reject the proposed plan and present the merging parties with a proposed plan of its own to which the parties shall respond in writing within 10 days of receipt thereof.

(7) If no response is received from the merging parties within the 10 days set out in subregulation (6)(b), or the parties reject the Commission's proposed plan, the Commission's initial authorization of the merger will be revoked from the date when the 10 days expire or the date when the parties reject the Commission's proposed plan, whichever comes first.

28. Oral hearings.

(1) On receipt of the Executive Director's report in respect of any merger, the Commission may, if it considers it appropriate, direct that an oral hearing be held in relation to a proposed merger.

(2) If the Commission determines that an oral hearing shall be held, it shall before the expiry of the investigation period, give reasonable notice to the enterprises involved —

- (a) convening the oral hearing;
- (b) specifying the date, time and place for the holding of the hearing; and
- (c) stipulating the matters to be considered at the hearing.

(3) A party to the merger or a third party interested in the merger by virtue of information supplied to the Commission in relation to the merger may request an oral hearing once the Executive Director has submitted his report to the Commission but before the Commission has taken its decision in relation to the merger. A party requesting an oral hearing shall do so in writing setting out —

- (a) the issues to be dealt with during the oral hearing;
- (b) the reasons why written submissions will be insufficient to deal with the issues in its written request; and
- (c) the reasons why an oral hearing with the investigation team was not requested before the conclusion of the investigation.

(4) The Chairperson, in consultation with the Board, may determine the procedure for the oral hearing, including the number of people who may speak on behalf of the parties and the length of time they may take to address the Commission.

(5) The Commission may in its discretion grant or reject the request for an oral hearing.

(6) The Commission's decision shall be final.

(7) In the case where the Commission agrees to an oral hearing, the Commission may conduct the hearing in public or in camera —

- (a) in an inquisitorial manner;
- (b) as expeditiously as possible; and
- (c) in accordance with the principles of fairness and natural justice.

29. Invitation to participate in the Commission's deliberations.

(1) The Chairperson of the Commission may, in consultation with the Executive Director, in writing issue an invitation to participate in the deliberations of the Commission in terms of section 14(9) of the Act.

(2) The Chairperson's invitation envisaged in subregulation (1) shall be preceded by a Commission resolution adopted in a properly constituted meeting.

(3) The Chairperson's invitation letter shall specify —

- (a) the duration of the invitation;
- (b) the specific issues in respect of which the invitee's expertise and specialist knowledge is sought; and
- (c) that none of the parties to the issues in question object to the invitee's participation in the Commission's deliberations; or
- (d) if objections were initially received, that these have since been resolved or overruled by the Chairperson.

(4) An acceptance of an invitation to participate in the Commission's deliberations must be in writing and shall be delivered prior to the commencement of the deliberations. The acceptance letter shall, among other things, confirm that —

- (a) the invitee accepts the invitation on the terms set out in the Chairperson's invitation letter;
- (b) the invitee has signed a confidentiality undertaking with respect to the Commission and any other party whose confidential information would be made available to him; and
- (c) to the best of his knowledge, there is no conflict of interest that may preclude him from discharging his responsibilities in respect of the invitation.

(5) A person nominated by the Minister to attend the deliberations of the Commission in terms of section 14(9) of the Act shall be invited by the Chairperson in terms of this Regulation and the person shall, for all intents and purposes, be regarded as an invitee of the Commission. All the provisions of this Regulation shall be applicable to the Minister's nominee.

30. Committees of the Commission.

(1) A committee appointed by the Commission in terms of section 15 of the Act may be assigned the responsibility of assisting the Commission with one or more of the following —

- (a) the conduct of sector specific studies;
- (b) the review of the Act and any other legislation;
- (c) the review of any issues concerning any regulations;
- (d) the review of any operational issues, including the performance, recruitment and retention of employees; and
- (e) the review and/or performance of any other function conferred upon the Commission in terms of section 11 of the Act.

(2) A committee appointed in terms of section 15 of the Act shall include at least one member of the Commission who shall be the ex officio chairperson of the committee unless otherwise as directed by the Commission.

(3) All committees established in terms of section 15 of the Act shall be appointed by the Commission in a general meeting convened for that purpose.

(4) In appointing the committees, the Commission shall take into account interests not already adequately represented within the Commission as well as the

specialist knowledge, expertise and experience required to properly deal with the issues to be assigned to the committee.

(5) Each committee shall be appointed for a specific task, which must be conducted and finalized within a reasonable time from the date of appointment, unless otherwise authorized by the Minister.

(6) The appointment of members of the committees shall be by a show of hands on the basis of a simple majority from a list of candidates compiled by the Executive Director in consultation with the Chairperson of the Commission.

(7) The Commission or a sub-committee duly constituted shall draw up the terms of reference of the committee before the commencement of their mandate.

(8) Each committee shall produce a written report, which deals with the issues referred to it at the conclusion of its mandate.

(9) The Chairperson of the Commission may, from time to time, invite the chairperson of any committee to give regular updates to the Commission in respect of the work done. At the conclusion of the committee's mandate, the chairperson of the committee and members of the committee shall present their findings and recommendations to the Commission at a meeting convened for this purpose.

(10) The Commission shall be guided by the findings of the committee in resolving the issue that was handled by the committee, unless compelling reasons such as a serious error in judgment on the part of the committee preclude the Commission from implementing the committee's report without properly motivated modifications.

31. Publication of Commission decisions.

(1) The Commission shall publish on its website, if any, a summary of its decisions on the first day of every quarter, or, if the first day of the quarter falls on a weekend or a holiday, on the next business day, containing the following information —

- (a) the names of the parties;
- (b) the industries in which they are involved;
- (c) the issues that were brought before the Commission for determination;
- (d) the Commission's decision; and
- (e) the reasons, in summary form, for the Commission's decision.

(2) A person interested in any of the matters published by the Commission may approach the Commission to copy any documents from the Commission's files that are not covered by confidentiality claims, subject to the payment of the appropriate fee.

(3) A request submitted to the Commission in respect of this Regulation shall be satisfied within 7 days from the date of filing of the request.

32. Interaction with regulatory authorities.

(1) The Commission may, in terms of section 11(2)(i) of the Act, at any time, invite any regulatory authority to participate in its proceedings if it is of the opinion that such regulatory authority possesses specialist knowledge and enjoys regulatory oversight in respect of an industry that is the subject of an investigation by the Commission.

(2) An invitation to participate in an investigation in terms of this Regulation shall be issued in writing by the Executive Director specifying —

- (a) the names of the parties before the Commission;
- (b) the issues under investigation and/or consideration; and

(c) the specific assistance sought from the regulatory authority.

(3) A submission made by a regulatory authority shall not be binding on the Commission where it concerns the interpretation and/or enforcement of the principles of the Act.

(4) The Commission shall, review any legislation or regulations administered by any regulatory authority with a view to harmonize them with the Competition Act and its regulations —

- (a) when conducting a review in terms of section 11(2)(i) of the Act, the Executive Director shall notify the head of a regulatory authority that may have an interest in the review. The Executive Director's notice shall —
 - (i) identify the provisions of the Act or regulations which are the subject of the Commission's review;
 - (ii) the impact that these provisions are perceived to have on competition in the sector; and
 - (iii) invite the regulatory authority to suggest any possible solutions to the issues under review;
- (b) a regulatory authority notified of a review in terms of this Regulation may submit information or representations to the Commission before the finalization of the review;
- (c) a regulatory authority that initiates a review of its own legislation shall notify the Commission of its intention to do so where —
 - (i) the contemplated review is anticipated to have implications on the enforcement of the Competition Act in that sector; or
 - (ii) the nature of the sector justifies, in the regulatory authority's view, a departure from normal competition principles;
- (d) an invitation in terms of this subregulation shall be directed to the Executive Director of the Commission;
- (e) the Commission shall, through the Executive Director, advise the regulatory authority of its views regarding the proposed review;
- (f) a regulatory authority furnished with the Commission's views in relation to its proposed review of its legislation shall formulate its proposed amendments in a manner consistent with the views of the Commission.

33. Undertakings and compliance programmes.

(1) Where the Commission perceives that the market situation in which a person is involved requires specific market behaviour from such person which may only be effectively monitored through undertakings, the Commission may require such person to provide undertakings under section 11(1), 11(2)(i), 35, 36 and 37(1) of the Act.

(2) When providing undertakings, the person shall ensure that the undertakings are —

- (a) relevant to the competition and unfair trading issues that are of concern to the Commission;
- (b) practical;
- (c) self-regulatory, such as would not require the Commission's constant vigilance; and
- (d) do not impose obligations on the Commission.

(3) The Commission may also require that such undertaking be signed between the Commission and the person/s through a Memorandum of Understanding which shall detail information such as, but not limited to the following —

- (a) the name of the person giving the undertakings as well as that of the Commission;
- (b) the preamble i.e. background information that triggered the request for undertakings;
- (c) the actual undertakings;
- (d) a declaration that the Commission shall make the undertakings public;
- (e) signatories of the person and the corporate seal thereof, if applicable, but which seal shall not have legal consequences if not affixed as long as the corporate representatives at director level have signed; and
- (f) a Commission representative's signature and the seal of the Commission.

(4) Depending on the gravity of the matter to the Commission, a Competition and Fair Trading Compliance Program may also be proposed by the Commission, which compliance program shall contain the information as in the Memorandum of Undertakings but also include information such as but not limited to the following —

- (a) purpose of the compliance program;
- (b) details of how the person shall comply with the provision of the Act; and
- (c) a name and position of a senior officer in the entity who shall be responsible for ensuring compliance issues.



P.O. Box 1976 Mbabane, H101 Swaziland Tel: Fax: Email:

THE SWAZILAND COMPETITION COMMISSION

FORM 1

DEMAND FOR NOTIFICATION OF MERGER AND ACQUISITION

This form is issued in terms of regulation 12 of the Swaziland Competition Commission Regulations, 2009.

To:

.....

.....

The Swaziland Competition Commission (SCC) is a statutory body corporate established in terms of section 6 of the Competition Act No. 8 of 2007 to monitor, regulate, control and prevent acts or behaviour which is likely to adversely affect competition in the country.

In terms of section 35(1) of the Act, a person who, in the absence of authority from the Commission whether as a principal or agent participate in effecting —

- (a) a merger between two or more independent enterprises engaged in manufacturing or distributing substantially similar goods or providing substantially similar services;
- (b) a takeover of one or more such enterprises by another enterprise, or by a person who controls another such enterprise,

commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand (E250,000) emalangeni or to imprisonment to a term not exceeding 5 years or to both.

The Commission has reason to believe that

.....
[state the parties or one of them]

has/have engaged in a transaction or conduct described in section 35.

The Commission hereby calls upon you

.....
[state the parties or the party]

to submit within 30 days to the Commission all and/or any relevant documentation concerning the transaction envisaged by section 35.

If no such transaction has been concluded or entered into, you are required to submit the Commission an affidavit declaring that the parties have not entered into a merger or acquisition.

Issued by:

EXECUTIVE DIRECTOR

The Swaziland Competition Commission

P. O. Box 1976

Mbabane H100

Swaziland



P.O. Box 1976 Mbabane, H101 Swaziland Tel: Fax: Email:

SWAZILAND COMPETITION COMMISSION

FORM 2

(Under regulation 12(2))

COMPLAINT AGAINST MONOPOLIES, ANTI-COMPETITIVE PRACTICES AND CONCENTRATION OF ECONOMIC POWER

A. Details of Complainant Person/Organisation	
Particulars of person making the complaint	
Title: Dr/Mr/Mrs/Miss/Ms Surname:	Given Name:
Address	Contact No.
	Fax No.:
	Email address:
Are you making this complaint on behalf of an organisation (e.g. a company, association, partnership, or society)? <input type="checkbox"/> Yes Please provide the relevant information relating to the organisation below. <input type="checkbox"/> No	
Name of organisation on behalf of which you are making this complaint (if your reply is "Yes" above):	
Address:	Contact No.
	Fax No.:
	Email address:
B. Who are you complaining against?	
Names of the merging parties you are complaining against:	
Addresses:	Contact No.

	Fax No.:
	Email addresses:

C. Relationship

What is your relationship with any of the company you are complaining about?

- Supplier
- Competitor
- Customer
- Employee/Former Employee
- No Relationship
- Others

Name

For "Others", please specify:

D. Detail of complaint

Nature of anti-competitive activity complained against:

- Fixing Prices
- Bid Rigging (Collusive Tendering)
- Sharing Markets
- Limiting or Controlling Production/ Investment
- Conduct by Dominant Company which has the effect of harming competition (e.g. predatory pricing)
- Others

For "Others", please specify:

What are the goods and services to which the anti-competitive activity relates?

Please describe the anti-competitive activity you are complaining about and explain how it affects you or the organisation you are representing:

When did this anti-competitive activity start?

Is this anti-competitive activity still continuing?

- Yes
- No

If not, when did this anti-competitive activity end?

Please list all evidence supporting your complaint and attach all such relevant documents to this complaint form:

(e.g. agreements, minutes of meetings, business documents, circulars, correspondence, notes of telephone conversations etc.)

Please also identify any part of the information that should be treated as confidential.

E. Description of the merger

Please describe the merger and the products/services in which the merging parties are involved.

Has the merger occurred?

- Yes
- No

If your answer is "yes", please state when the merger occurred:

If your answer is "no", please state when the merger is going to occur:

Has knowledge of the merger been made known to the public? Yes/No

How did you come to know about the merger?

Please list the relevant markets which you believe competition has been adversely affected by the merger:

Please explain how you believe competition in those relevant markets has been or will be adversely affected by the merger. For example, is the merger likely to result in:

(i) an increase in prices;	
(ii) a drop in output and/or product choice, quality or innovation;	
(iii) significant weakening of any competitor's ability to compete in the market (e.g. by raising competitor's costs or by preventing competitors or others from gaining access to essential inputs or distribution channels); or	
(iv) increased difficulty for new firms to enter any market.	
How does the merger affect you or the organisation you are representing?	
F. Details of other parties who may be able to provide further information regarding your complaint	
Name of party	Contact Details
Name of party	Contact Details
Name of party	Contact Details
G. Declaration	
I certify that the information is true, correct and made in all good faith. I note that section 42# of the Competition Act makes it an offence to supply false or misleading information to the Swaziland Competition Commission.	
Name:	Date:
Signature:	
#Section 42 of the Competition Commission Act, 2007 states:	
(1) Any person who –	
(a) contravenes or fails to comply with any provisions of this Act, or any directive or order lawfully given, or any requirement lawfully imposed under this Act for which no penalty is provided;	
(b) omits or refuses –	
(i) to furnish any information when required by the Commission to do so; or	
(ii) to produce any documents when required to do so by a notice sent by the Commission; or	
(c) knowingly furnishes any false information to the Commission,	
commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand (E250,000) emalangenani or to imprisonment to a term not exceeding 5 years, or both.	
(2) Where the offence is committed by a body corporate, every director and officer of the body corporate, or if the body of persons is a firm, every partner of that firm shall be guilty of that offence, provided that such director, officer, or partner shall be guilty of the offence if he/she proves on a balance of probability that such an offence was committed without his/her knowledge or consent, or that he/she exercised all due diligence to prevent the commission of the offence.	



P.O. Box 1976 Mbabane, H101 Swaziland Tel: Fax: Email:

FORM 3
(Under regulation 19(a))

JOINT MERGER APPLICATION

This form is issued in terms of regulation 19 of the Competition Commission Regulations. This form must be submitted with a completed statement of Merger, and a completed and signed Certificate of Completeness attached. Parties to a merger shall not merge until they have received authorization or approval in terms of the Competition Act, 2007.

BACKGROUND INFORMATION

1. Information from the Applicant/s

Give details of:

(a) Name and address of undertaking:

.....
.....

(b) Nature of the undertaking's business:

.....
.....

(c) Name address, telephone number, fax number and position held by the appropriate contact person:

.....
.....

2. Information on the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of:

(a) Name and address of undertaking:

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

(b) Nature of undertaking's business:

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

(c) Name, address, telephone number, fax number and position held by the appropriate contact person:

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

3. Address of Service:

Give an address to which all communications may be made and documents delivered.

.....
.....

4. Appointment of Representatives.

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below:

(a) Name of representative

(b) Address of representative

.....

(c) Name of person to be contacted (if different from (b) above)

.....

(d) Telephone number and fax number

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent.

(a) Name of representative:

.....
.....

(b) Address of representative:

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

(c) Name of person to be contacted (and address, if different from (b) above)

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

(d) Telephone number and fax number

.....

PART 2

OWNERSHIP AND CONTROL

7. For each of the parties to the concentration provide a list of all undertakings belonging to the same group. The list must include:

7.1 Names and addresses of the current and past (2 years) Directors of each of the undertaking to the concentration:

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

7.2 Names and addresses of the current and past (for 2 years) shareholders of each of the undertaking to the concentration:

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

7.3 All undertakings or persons controlling these parties, directly or indirectly:

.....
.....

7.4 All undertakings active on any affected market that are controlled, directly or indirectly:

(a) By these parties

.....

(b) By any other undertaking identified in 7.3 above

.....

For each entry listed above, the nature and means of control shall be specified.

8. Briefly describe the nature of the concentration being notified. In doing so state:

(a) Whether the proposed concentration is a full legal merger, an acquisition of sole or joint control, a concentrative joint merger or other means of conferring direct or indirect control

.....
.....

(b) Whether the whole or parts of parties are subject to the concentration

.....
.....

(c) A brief explanation of the economic and financial structure of the concentration

.....
.....

(d) The proposed or expected date of any major events designed to bring about the completion of the concentration

.....
.....

(e) The proposed structure of ownership and control after the completion of the concentration

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

PART 4

MARKET STRUCTURE

Structure of Supply in Affected Markets

9. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate:

9.1 Distribution systems prevailing on the affected markets and their importance

.....
.....

9.2 The service networks performed by third parties prevailing and their importance

.....
.....

9.3 What are relative market shares of other suppliers/manufacturers?

.....
.....

9.4 What is the importance of Import Competition?

.....
.....

Structure of Demand in Affected Markets

10. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer

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

10.1 State the name, address, fax, and telephone numbers of the contact person for each customer mentioned in 10 above

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

10.2 Explain the structure of demand in terms of:

(a) take off /expansion /maturity and decline or forecast of the growth rate of demand:

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

(b) the importance of customer preference in terms of brand loyalty/product differentiation of provision of full range of products

.....
.....

(c) the degree of concentration or dispersion of customers

.....
.....

(d) segmentation of customers into different groups and describe the "typical customer" of each group

.....
.....

(e) the importance of exclusive distribution contracts and other types of long term contracts

.....
.....

(f) The extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand

.....
.....

PART 5

MARKET ENTRY

11. State whether there has been significant entry into any of the affected markets over the past

5 years
.....
.....

12. If there has been significant entry into the market provide names, address, telephone and contact person of market entrants

.....
.....

13. In the opinion of parties making this notification, are there any undertakings likely to enter the market?

.....
.....

14. If there is likely to be new entrants in the market, give names, address and contact telephone numbers of such entrants

.....
.....

15. Give an estimate of the period within which such entry is likely to occur, if possible

.....
.....

16. Describe the various factors influencing entry into affected markets that exist in the present case, examining entry from both a geographical and product view point. In so doing, take account of the following where appropriate:

.....
.....

(a) the total costs of entry (R & D, establishing distribution systems, promotion, advertising, servicing etc) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor;

.....
.....

(b) any legal or regulatory barriers to entry, such as government authorization or standard setting in any form;

.....
.....

(c) any restrictions created by existence of patents, know how and other intellectual property rights in these markets and any restrictions created by licensing such rights;

.....
.....

(d) the extent to which each of the parties to the concentration are licensees or licensors of patents, know how and other rights in the relevant markets;

.....
.....

(e) the importance of economies of scale for the production of products in the affected markets;

.....
.....

(f) access to sources of supply, such as availability of raw materials.

.....
.....

.....
.....

PART 6

FULL DETAILS OF THE ARRANGEMENT

17. Please summarize any provisions contained in the agreements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding:

(a) buying or selling prices, discounts or other trading conditions;

.....
.....

(b) the quantities of goods to be manufactured or distributed or services to be offered;

-
- (c) technical development or investment;
.....
- (d) the choice of markets or services of supply;
.....
- (e) purchases from or sales to third parties;
.....
- (f) whether to apply similar terms for the supply of equivalent goods and services;
.....
- (g) whether to offer different services separately;
.....

18. What is the corresponding share of each market currently held by the acquiring enterprise (the other enterprise involved in the proposed merger) in the relevant market?
.....
.....

19. If the proposed merger or acquisition is authorized, what is the estimated market share of the combined enterprise following the merger or acquisition in the relevant market?
.....
.....

PART 7

GROUNDS FOR GRANTING THE AUTHORIZATION

20. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have any adverse effect on trade or the economy in general
.....
.....

20.1 Facts and contentions relied upon to substantiate this claim (This may include competitive effects, efficiencies, failing firms, public interest issues e.g. employment export development increased tax, consumer welfare, technological transfer, market development, etc).
.....
.....

[Note: the Commission will need to be satisfied that the agreement is consistent with the objectives of the Competition Act, 2007]

PART 8

DECLARATION

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

Dated at this day of year

Name(s):

Signature(s):

I/We attach the following relevant documents:

Two copies of latest Annual Report and Audited Accounts (including Balance Sheet)

Copy of Agreement or other documents relating to the transaction

Press Release or other Shareholders, Board or management statement on the transaction

Other market or industry study reports that support the transaction

Notes

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party/ies and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.
2. If the information required by this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.
3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested by this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.
4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 42(1)(c) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.
5. The Commission can revoke its decision on the compatibility to a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.
6. The application must be completed in English and type-written or printed. The information required by this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.
7. **CONFIDENTIALITY:** If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.
8. The notification should be delivered during normal working hours.

I certify that the information is true, correct and made in all good faith. I note that section 42# of the Competition Act makes it an offence to supply false or misleading information to SCC.

Name: _____

Date: _____

Signature: _____



P.O. Box 1976 Mbabane, H101 Swaziland Tel: Fax: Email:

FORM 4
(Regulation 20(S)(b))

CONSENSUAL MERGERS

This form is issued in terms of section 35 of the Competition Act, 2007 and, Regulation 20(S)(b) of the Competition Regulations, 2010. Please note that your complaint should pertain to an anticompetitive activity that is in force as at 1 April 2008 or later. The form must be completed to the best of your ability, and submitted to the Competition Commission for consideration of your complaint.

A. Person/organisation making the complaint

Title: Dr/Mr/Mrs/Miss/Ms Surname: Given Name:
Address

Postal Code::

Contact No. Fax No.: Email address:

Are you representing an organization (e.g. a company, association, partnership, or society) in making this complaint?

Please provide the relevant information relating to the organization below.

Yes

No

Name of organization on behalf of which you are making this complaint (if different from above):

Address:

Postal Code:

Contact No. Fax No.: Email address:

B. Who is the complaint against?

Name of organization complained against:

Address:

Postal Code:

Contact No. Fax No.: Email address:

Please prescribe the principal activities of this organization:

(e.g. beverages manufacture;/apparel wholesaler, food products;/ construction, agricultural farming etc.)

C. Relationship

What is your relationship with the organization against whom the complaint is made?

- Supplier
- Customer
- Competitor
- Employee
- Former Employee
- No Relationship
- Others

For "Others", please specify:

D. Description of complaint

Please list all the evidence supporting your complaint and attach relevant documents, where possible, to this complaint form:

(e.g. media articles, agreements, minutes of meetings, business documents, circulars correspondence, notes of phone conversations etc.)

Please also identify any part of the information that should be treated as confidential.

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

E. Details of other parties	
Name of party	Contact Details
Name of party	Contact Details
Name of party	Contact Details
F. Declaration	

I certify that the information is true, correct and made in all good faith. I note that section 42# of the Competition Act makes it an offence to supply false or misleading information to SCC.

Name:

Date:

Signature:

#Section 42 of the Swaziland Competition Commission Act, 2007 states:

- (1) Any person who –
 - (a) contravenes or fails to comply with any provisions of this Act, or any directive or order lawfully given, or any requirement lawfully imposed under this Act for which no penalty is provided
 - (b) omits or refuses –
 - (i) to furnish any information when required by the Commission to do so, or
 - (ii) to produce any documents when required to do so by a notice sent by the Commission, or
 - (c) knowingly furnishes any false information to the Commission,

commits an offence and shall, on conviction, be liable to a fine not exceeding E250,000 or to imprisonment to a term not exceeding 5 years, or both.

- (2) Where the offence is committed by a body corporate, every director and officer of the body corporate, or if the body of persons is a firm, every partner of that firm shall be guilty of that offence, provided that such director, officer, officer or partner shall be guilty of the offence if he/ she proves on a balance of probability that such an offence was committed without his/her knowledge or consent, or that he/she exercised all due diligence to prevent the commission of the offence.



P.O. Box 1976
 Mbabane, H101
 Swaziland
 Tel:
 Fax:
 Email:

FORM 5
 (Regulation 23(b))

REQUEST FOR ADDITIONAL INFORMATION

To:

.....

.....

Date:

Please be advised that further to your application for a merger/acquisition, the Swaziland Competition Commission has looked through your submitted information and established that the following information/materials are required to finalise the investigation: -

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

The requested information must be submitted to the Executive Director at the Swaziland Competition Commission on or before (date). Failure to submit this information will be tantamount to withdrawal of the notice and/or abandonment of the transaction.

Signed under my hand

EXECUTIVE DIRECTOR
 Swaziland Competition Commission



P.O. Box 1976
Mbabane, H101
Swaziland
Tel:
Fax:
Email:

FORM 6
(Regulation 24(2))

CERTIFICATE OF COMPLETENESS

Name and File Number of Merger

Certificate of Accuracy

I, have prepared, or supervised those who prepared this statement of Merger information.

To the best of my knowledge, the information contained in this document, and the attachments to it, are true, correct and complete in terms of the Competition Act, 2007 and the Swaziland Competition Commission Regulations, 2009 except to the extent that I have indicated –

- (a) that requested data is not available in blocks 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 the Competition Act, 2007 to provide false information to the Swaziland Competition Commission in any matter, including these documents; and
- (b) that section 42 of the Competition Act provides for a penalty of a fine, or imprisonment, or both if I am found guilty of knowingly providing false information to the Swaziland Competition Commission.

Name and Title of Person authorized to sign

.....
.....

Authorized Signature

Date



P.O. Box 1976
Mbabane, H101
Swaziland
Tel:
Fax:
Email:

FORM 7
(Regulation 25(1))

NOTICE OF MERGER ABANDONMENT

This form is issued in terms of regulation 25 of the Swaziland Competition Commission Regulations, 2009.

To : The Swaziland Competition Commission

From :

A. Particulars of Organization Abandoning the Merger	
Name of Primary acquiring firm	
Physical Address	Telephone No.

	Fax No.	
	Email Address	
Name and File Number of Merger		Date when application was filed:
B. Information		
Take notice that the above named firm —		
<p>(a) has abandoned the intended merger previously notified under the number and date shown above; and</p> <p>(b) has no intention of taking any further steps to implement that intended merger</p>		
C. Name and Title of Person Authorised to sign		
Name:		Date:
Signature and company stamp		