



ECOWAS REGIONAL COMPETITION AUTHORITY
AUTORITÉ RÉGIONALE DE LA CONCURRENCE DE LA CEDEAO
AUTORIDADE REGIONAL DA COMPETIÇÃO DA CEDEAO

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REQUEST FOR EXPRESSION OF INTEREST (Consulting services – individual consultant selection)

From : 15/03/2022 to 7/04/2022
Client : ECOWAS Commission
Type : Expression of Interest (EOI)

TITLE : Recruitment of a Consultant for the Development of Procedures Manuals, Reference Guides and Implementing Directive for Community Competition Rules

Reference No. N° ECW/ERCA-CTCF/ADM/ (DU (005) /15/03/22) kn

In the framework of the execution of the 2021 Budget, ECOWAS Regional Competition Authority (ERCA) intends to apply a portion its budgeted funds for the **Recruitment of a Consultant for the Development of Procedures Manuals, Reference Guides and Implementing Directive for Community Competition Rules**

I. BACKGROUND AND RATIONALE

The ECOWAS Competition Framework was adopted in 2008 through two (2) Supplementary Acts: the Supplementary Act A/SA.01/12/08 adopting the Community Competition Rules and its application modalities, the Supplementary Act A/SA.02/12/08 on the establishment, powers and functioning of the ECOWAS Regional Competition Authority (ERCA) which was officially inaugurated on 12th June 2018 and whose activities have effectively started in January 2019.

The Community Competition Rules aim to promote and encourage competition within the ECOWAS region by discouraging practices that hamper the proper functioning of the regional market. The ERCA is responsible for monitoring the market in order to prohibit agreements, decisions taken by business associations and cartel practices that may disrupt trade between ECOWAS Member States and that have the object or effect of hindering, restricting or distorting competition in the regional market.

For the operationalisation of the general principles described in the two founding texts mentioned above, the ECOWAS decision-making bodies (the Council of Ministers and the Authority of Heads of State and Government) adopted in December 2021 a set of subsidiary regulations: (i) an Supplementary Act amending the Supplementary Act A/SA.02/12/08 which institutes, in particular, the ERCA Council, (ii) a Regulation on the powers and composition of the ERCA Council, (iii) a Regulation on the ERCA procedures, (iv) a Regulation adopting the rules of procedure on mergers and acquisitions, and (v) a Regulation adopting the rules on

leniency and immunity.

All these legal texts constitute a major step forward in the effective implementation of the ECOWAS Competition Policy. However, some provisions deserve to be completed and further specified through Procedures Manuals, reference guides, information forms and directives, which, where appropriate, are detailed in the above-mentioned regulations.

II. OBJECTIVES OF THE CONSULTATION

The purpose of this consultation is to develop reference guides and/or Procedures Manuals, directives in the form of a Regulation or Implementing Regulation to provide additional clarifications and details on specific elements set out in the Supplementary Acts and Regulations relating to the Community Competition Rules and the ERCA.

The present consultation is launched in order to:

- produce a ERCA Council Procedures Manual describing its composition, organisation, powers and functioning, decision-making procedures, the modalities for appointing and convening its members and their profiles, the renewal conditions of their mandate, as well as the conditions for electing or appointing its Chairperson and rapporteur;
- produce an Executive Directorate Procedures Manual, the duties of the Executive Director and the other Directors, as well as the modalities for the establishment and operation of the Registry Office;
- develop a guide that specifies the ERCA's jurisdictional rate (threshold) for mergers and acquisitions as well as the threshold indicating a dominant and monopolistic position, taking into account international best practice;
- produce a Procedures Manual which sets out the terms and procedures for implementing the leniency and immunity programme;
- develop a guide that specifies the scale of fines and compensation;
- provide a guide to investigations, as well as the appropriate notification and investigation forms;
- Make amendments to the existing draft directive on consumer protection: include rules on consumer protection through competition law;
- provide training on the various manuals, guides and forms to ERCA staff and the various actors involved in the application of the Community Competition Rules.

III. THE DIFFERENT ASSIGNMENTS OF THE CONSULTANT

A) The Consultant's mission is to produce a document comprising the following 7 sections:

- *Section 1*: ERCA Council Procedures Manual;
- *Section 2*: Executive Directorate Procedures Manual, the duties of the Executive Director and the other Directors, as well as the modalities for the establishment and operation of the Registry Office;

- *Section 3:* Reference Guide on the ERCA's jurisdictional rate (threshold) for mergers and acquisitions as well as the threshold indicating a dominant and monopolistic position, taking into account international best practice;
- *Section 4:* Procedures Manual on modalities and procedures for implementing the leniency and immunity programme
- *Section 5:* Guide to the fines and compensation scale;
- *Section 6:* Guide to investigation procedures and notification and investigation forms;
- *Section 7:* Amended Consumer Protection Directive including rules on protection in the event of prejudice caused by an infringement of competition law.

B)The Consultant will ensure the training of ERCA staff and the various regional and national stakeholders on the various instruments produced and adopted.

3.1. "ERCA Council" Procedures Manual

Based on the Supplementary Act A/SA.../ 12/21 adopted on 12 December 2021 relating to the amendment of Supplementary Act A/SA.2/12/08 on the establishment, powers and functioning of the ERCA, the Regulations establishing the responsibilities and composition of the ERCA Council, the consultant will develop a ERCA Council Procedures Manual.

The manual will be developed on the basis of existing international practices in line with the ECOWAS legal provisions mentioned above.

3.2. Executive Directorate Procedures Manual

The draft Executive Directorate Manual should describe its functioning, composition and management responsibilities at the following levels: (a) the Executive Director, (b) the Directors, (c) the Heads of Division. The following points should be detailed in the manual: (d) the Registry Office, (e) the exhaustive investigation process, and (c) the deliberation and decision making.

3.3. Guidance on the ERCA's jurisdictional threshold for mergers and acquisitions

Based on an analysis of market shares and business concentration, the guide should indicate for each relevant sector the threshold above which the merger or acquisition could adversely affect competition. The use of studies on the markets in question or data on more or less similar market structures or company data collected by the national statistical institutes is crucial.

3.4. Procedures manual on the implementation rules of the leniency and immunity programme

The Manual should provide a detailed description of the implementation modalities of the leniency and immunity programme. The purpose is to indicate (a) the potential beneficiaries, (b) the whole procedure, including the formalities related to the application, the admissibility of the application, the examination of the application and (c) the decision, the instalments of reductions granted to an applicant.

3.5. Guide to the fines and compensation scale

This guide should provide a comprehensive schedule of all fines and compensation under the

application of Community Competition Rules and related regulations. The Consultant shall provide details of fines and compensation for: (a) failure to comply with a summons to appear as part of an investigation, (b) breach of confidentiality, (c) hindrance to the smooth conduct of the investigation, concealment of equipment or information, submission of false information, (d) convictions for violation of the Community Competition Rules, (e) administrative penalties proportionate to the annual turnover of the company concerned, (f) the penalties may include the imposition of coercive fines, the date of collection and the implementation modalities, (g) the compensation claimed by a person who has suffered damage as a result of anti-competitive behaviour, (h) the compensation provided for in Articles 7, 8 and 9 of the Act establishing the ERCA and in Article 10 of the Community Competition Rules, (i) the conditions for granting authorisations or exemptions under Article 11 should also be specified.

3.6. Notification and investigation forms

The consultant shall propose standard forms containing a minimum of relevant information to be used for: (a) a notification/application for merger-acquisition, (b) a preliminary investigation to the company concerned, (c) an investigation to a third company and to a third (natural) person.

3.7. Amended Consumer Protection Directive including rules for protection under competition law

Taking the provisions of the Community Competition Rules as a basis, the consultant will propose an amendment to the existing draft directive by setting out certain rules necessary to ensure that any person who has suffered damage as a result of an infringement of competition law by an undertaking or association of undertakings can effectively exercise his right to seek full compensation for that prejudice from the said undertaking or association.

IV. DELIVERABLES/ EXPECTED RESULTS

Upon completion of the service, the consultant will provide a full report with annexes in hard copy and electronic format, in French and English, including the following deliverables:

1. the ERCA Council Procedures Manual;
2. the ERCA Executive Directorate's Procedures Manual;
3. the Guide on the ERCA's jurisdictional threshold for mergers and acquisitions;
4. the Guide to the fines and compensation scale;
5. notification and investigation forms;
6. the procedures manual on the implementation rules of the leniency and immunity programme;
7. the amended Consumer Protection Directive.

The Consultant will be expected to work in close collaboration with the ERCA and national stakeholders, in particular the members of the Consultative Competition Committee (CCC). The regional and national structures concerned will provide the Consultant with the relevant documents and will assist him in making the necessary contacts with the various actors involved in the execution of the assignment.

V. TIMETABLE AND DURATION OF THE MISSION

The Consultant's mission will be carried out according to the following schedule:

- the service will last thirty (30) days from the date of signing the contract;
- the documents produced should be submitted to the ERCA for review and comment before being forwarded to Member State actors for validation;
- the Consultant will then have two (02) weeks to incorporate the comments and suggestions made during the regional validation meeting into the different documents;
- having taken the comments into account, the final version of the documents should be available in electronic format. It is expected that the report clearly presents the elements referring to the objectives of the mission as mentioned above.

VI. CONSULTANT PROFILE

The Consultant must have a higher degree (at least Master's degree) in law or economics or an equivalent/relevant qualification for the assignment. The Consultant should also have at least 10 years of experience in the formulation and implementation of competition rules, especially in Africa. He/she should have references in the field of drafting organisational procedures manuals and guides.

ECOWAS Regional Competition Authority (ERCA) now invites eligible Individual Consultants ("Consultants") to indicate their interest in providing the Services. Interested Consultants should provide information demonstrating that they have the required qualifications and relevant experience to perform the Services. The shortlisting criteria are as follow:

VII Language

The individual consultant shall be fluent in one of the ECOWAS official languages (English, French or Portuguese) and the practical knowledge of another ECOWAS Official language will be an advantage.

NB: The attention of interested Individual consultants is particularly drawn to Article 118 of the ECOWAS Revised Procurement Code ("Infringements by Candidates, Bidders and Awardees"), providing information on corrupt or fraudulent practices in competing for or executing a contract. In addition, please refer to the following specific information on conflict of interest related to this assignment as per "Article 119 of the ECOWAS Revised Procurement Code.

The Consultants will be selected in accordance with the Selection of Individual Consultant set out in the Consultant Guidelines. The shortlisted candidates will be interviewed for the position.

Interested consultants may obtain further information at the email addresses below during office hours: Monday to Friday from 9.00 am GMT to 5.00 pm (GMT), The Gambia Time.

Email: knkuako@ecowas.int avec copie à : kkoffi@ecowas.int

Expressions of Interest (1 original and 3 copies) can be delivered in sealed envelopes and

clearly marked **“Recruitment of an Individual Consultant for the Development of Procedures Manuals, Reference Guides and Implementing Directive for Community Competition Rules”**, Do not open except in the presence of the Evaluation Committee” to the address below latest by April 7, 2022 at 11.00 am (GMT), The Gambia Time.

The Ecowas Regional Competitive Authority (ERCA) whose address is at Bertil Harding, KSMD, Bijilo, The Gambia P.O Box 4470 Tel :+2202330006/3486966.

Please note that electronic submissions are also accepted and shall be addressed to: knkuako@ecowas.int avec copie à : kkoffi@ecowas.int

This EOI is also published on the ERCA and the ECOWAS websites info@arcc-erca.org and <http://www.ecowas.int/doing-business-in-ecowas/ecowasprocurement>

Ag. Executive Director ECOWAS Regional Competition Authority (ERCA)