

Economic
Community of West
African States



Communauté
Economique des Etats
de l'Afrique de l'Ouest

ECOWAS REGIONAL COMPETITION AUTHORITY

MANUAL OF PROCEDURES OF THE COUNCIL OF THE ECOWAS REGIONAL COMPETITION AUTHORITY

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CHAPTER I: DEFINITIONS, POWERS AND FUNCTIONS OF ERCA COUNCIL

Article 1: Definitions and Acronyms

For the purposes of this Manual

- (a) “CCR” is the Supplementary Act A/SA.01/12/08 adopting the Community Competition Rules and its Application Modalities
- (b) “Days” refers to Calendar days including Saturdays and Sundays
- (c) “ED” is the Executive Director of ERCA
- (d) “ERCA Council” is the Council of the ECOWAS Regional Competition Authority

Article 2: Objective

1. This Manual sets out the rules of procedure for appointment of the members of the ERCA Council.
2. It also sets out the modalities for the operation of the ERCA Council.

Article 3: Legal Framework

The ECOWAS Competition Framework was established through the following:

- (a) Supplementary Act A/SA.1/12/08 adopting the Community Competition Rules and the modalities of their application within ECOWAS;
- (b) Supplementary Act A/SA.2/12/08 on the establishment, functions, and operation of the ECOWAS Regional Competition Authority;
- (c) Supplementary Act A/SA.3/12/21 relating to the amendment of Supplementary Act A/SA.2/12/08 on the establishment, functions, and operation of the ECOWAS Regional Competition Authority;
- (d) Regulation C/REG.21/12/21 on the Powers and Composition of the Council of the ECOWAS Regional Competition Authority;
- (e) Regulation C/REG.22/12/21 on the rules on leniency and immunity procedures in competition within ECOWAS;
- (f) Regulation C/REG.23/12/21 on the Rules of Procedures for Mergers and Acquisitions in ECOWAS; and
- (g) Regulation C/REG.24/12/21 of the ERCA's rules of procedure in competition matters.

Article 4: Powers

1. The ERCA Council shall examine and take decisions on the application of the CCR.

2. The ERCA Council shall take decisions in accordance with the following Articles of the CCR:
 - (a) Article 5: Agreements and Concerted Practices in Restraint of Trade;
 - (b) Article 6: Abuse of a Dominant position;
 - (c) Article 7: Mergers and Acquisitions;
 - (d) Article 8: State Aid;
 - (e) Article 9: Public Enterprises;
 - (f) Article 10: Compensation for Victims of anti-competitive practices; and
 - (g) Article 11: Authorisations and Exemptions.

Article 5: Functions of the ERCA Council

1. The ERCA Council shall receive, examine and take appropriate decisions on the investigations carried out by the ED.
2. It shall also consider requests for orders, sanctions and compensation submitted to it by the ED.
3. It may, if it deems it necessary, instruct ERCA to carry out studies or to provide it with additional information.
4. The ERCA Council shall also undertake the following:
 - (a) direct ERCA to conduct Phase 2 Merger Inquiries where necessary;
 - (b) review annually its performance and provide details of such review in its Annual Report;
 - (c) ensure independence and impartiality of ERCA investigations;
 - (d) conduct any other activity required to promote the CCR and visibility of ERCA; and
 - (e) participate in any other relevant activity of ERCA.

CHAPTER II: COMPOSITION, APPOINTMENT, AND CODE OF CONDUCT

Article 6: Membership

1. The ERCA Council shall comprise ten (10) experts on competition, consumer protection, and related matters.
2. The experts shall be appointed on a part-time basis for a maximum of four (4) years renewable only once.
3. The minimum experience required of experts is eight (8) years in competition, consumer protection, and any other related matters.

Article 7: Appointment of Members of the ERCA Council

1. Members must be:
 - (a) ECOWAS citizens
 - (b) recruited in accordance with the Procurement Code of ECOWAS Institutions and appointed by the President of the ECOWAS Commission following a publicly declared open and transparent recruitment process;
 - (c) appointed on merit in accordance with clearly defined criteria ensuring gender balance and equality of opportunity; and
 - (d) appointed on a part time basis and sworn into office by the ECOWAS Court of Justice.
2. Appointments to the ERCA Council must have regard to regional balance.

Article 8: Termination of Appointment

The tenure of appointment of a member may be terminated where the President of the ECOWAS Commission considers that:

- (a) because of a particular interest of a member it is inappropriate for him or her to remain a member of the ERCA Council;
- (b) a member engages in any activity or conduct which undermines the integrity of the ERCA Council and the ECOWAS Commission;
- (c) a member is absent without reasonable excuse or notice from three (3) successive meetings of the ERCA Council; such notice of absence shall be delivered to the Secretariat of the ERCA Council seven (7) days before the date of the relevant meeting;
- (d) a member is convicted of criminal charge in a court of competent jurisdiction;
- (e) the member has become bankrupt; and
- (f) a member ceases to be a citizen of ECOWAS.

Article 9: Resignation

1. A member may at any time resign from the ERCA Council by giving three (3) months written notice to the President of the ECOWAS Commission through the Chairperson of the ERCA Council.
2. The Chairperson of the ERCA Council may at any time resign from the ERCA Council by giving three (3) months written notice to the President of the ECOWAS Commission.
3. A Copy of the written notice of resignation must be sent to the ED.

Article 10: Vacancy

A member's position shall become vacant in the following circumstances:

- (a) upon resignation;

(b) upon termination; and

(c) upon his/her death.

Article 11: Code of conduct

1. In carrying out their responsibilities, Members must:

(a) respect the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership,

(b) comply with the ECOWAS policy on conflict of interest, acceptance of gifts, and corruption rules; and

(c) act at all times in the best interest of ECOWAS.

2. Members must not:

(a) occupy any role in any political party;

(b) make any political speeches or engage in any other political activities;

(c) make any statement in relation to any on-going investigation or application being considered by ERCA in line with the ECOWAS rules on secrecy and confidentiality;

(d) use information obtained in the course of their functions for personal or any other purpose other than what the information was intended for; and

(e) engage directly with the media and must direct all enquiries from the media to the Secretariat of the ERCA Council, who shall liaise with the ED to ensure inquiries are addressed appropriately and expeditiously.

CHAPTER III: CHAIRPERSON, SECRETARY AND SECRETARIAT

Article 12: The Chairperson

1. ERCA Council members shall elect a member as its Chairperson.

2. The Chairperson shall be elected for a term of four (4) years and may be re-elected.

3. The Chairperson shall be responsible for coordinating the functions and activities of the ERCA Council as follows:

(a) in consultation with the ED, select five (5) members to examine cases arising under the CCR in accordance with Article 16 of this Manual;

(b) provide effective and strategic leadership to facilitate high standards of discussion, debate and analysis of investigations, mergers and notifications referred to the ERCA Council;

(c) approve all the administrative acts of the ERCA Council;

(d) delegate the responsibility for chairing the ERCA Council to a member in his/her absence;

- (e) establish a productive and collaborative relationship with the ED to ensure achievement of the aims and objectives of ERCA;
- (f) ensure the ERCA Council has sufficient and relevant information including advisory recommendations and expert opinions from Independent Consultants and the ERCA Consultative Competition Committee to facilitate fair and consistent decisions in relation to investigations and merger referrals;
- (g) collaborate with the ED, and other key stakeholders across the region to promote fair and effective competition within the region;
- (h) ensure that ERCA Council Members comply with ECOWAS conflict of interest, acceptance of gifts, anti-bribery and corruption policies;
- (i) transmit decisions of the ERCA Council in writing to the ED for implementation;
- (j) represent or delegate representation of the ERCA Council to any member; and
- (k) any other task relevant for the fulfilment of the ERCA Council's mission.

Article 13: Election of Chairperson

1. All the ten (10) members must be in attendance during the ERCA Council meeting for the election of the Chairperson.
2. Election of the Chairperson of the ERCA Council shall be by consensus.
3. Where no consensus is reached, the vote of a majority of seven (7) members of the ERCA Council is required.

Article 14: The Secretariat

1. The ERCA Executive Directorate shall act as the Secretariat to the ERCA Council.
2. The Secretariat shall provide administrative support to the ERCA Council.

Article 15: The Secretary

1. The ED or his/her representative shall act as Secretary to the ERCA Council.
2. The Secretary shall:
 - (a) provide secretarial support to the ERCA Council;
 - (b) ensure effective liaison and communication between ERCA and the ERCA Council;
 - (c) act as a custodian of ERCA Council's records and files;
 - (d) keep a record of all referrals from ERCA;
 - (e) ensure timely acknowledgement and notification of all relevant parties of decisions of the ERCA Council through the ERCA Registry;

- (f) arrange for access to ERCA Council's relevant records in relation to specific matters on inquiries and investigations, upon the instructions of the Chairperson;
- (g) ensure that ERCA Council members, applicants, and third parties abide by non-disclosure requirements relating to applications;
- (h) compile a record of ERCA Council's proceedings and meetings;
- (i) keep a separate non-confidential File for the purposes of access for applicants and third parties, disclosure, and publication;
- (j) establish a deadline for determination of referrals from ERCA in conjunction with the Chairperson;
- (k) communicate deadlines and milestones for the ERCA Council's decision-making procedures to the ERCA Registry; and
- (l) exercise such other functions as may be assigned by the Chairperson.

CHAPTER IV: MEETINGS

Article 16: ERCA Council Meetings

1. The ERCA Council shall meet four (4) times in a year and at such other times as determined necessary by the Secretary.
2. The ERCA Council shall meet at a time and place as may be determined by the Secretary in consultation with the Chairperson.
3. The Secretary shall communicate the details of the meeting by Notice in writing, including by email to members. The Notice shall include the agenda for the meeting and must be served two (2) weeks before the date of the said meeting.
4. Failure of a member to receive Notice of a meeting shall not invalidate that meeting or any business conducted at it.
5. Members of the ERCA Council whose presence is required and the Secretary must attend the meeting.
6. If a member is unable to attend he/she shall give notice of absence within seven (7) days of receipt of the Notice of meeting. The Chairperson in consultation with the ED will immediately appoint a replacement.
7. Five (5) members of the ERCA Council shall be constituted by the Chairperson in collaboration with the ED to sit and make decisions for ERCA Council meetings. However, the quorum for the sitting shall be four (4) members.
8. The Chairperson shall appoint Rapporteurs for at least two (2) ECOWAS working languages for meetings of the ERCA Council.

9. Decisions of the ERCA Council shall be by simple majority of three (3) members. In the event of a deadlock the members shall vote a second time. Where the deadlock subsists after the second vote, the Chairperson shall have a casting vote..
10. In choosing the membership for the sitting the Chairperson in consultation with the ED shall be guided by:
 - (a) the nature of the case;
 - (b) the profile of members;
 - (c) the competence, relevant expertise, and availability;
 - (d) conflict of interest;
 - (e) ECOWAS regional balance;
 - (f) Rotation; and
 - (g) any other matter considered relevant.
11. The Chairperson and members are subject to an obligation of confidentiality in relation to the conduct of the affairs of ERCA and information obtained in course of their work.

CHAPTER V: PROCEDURE FOR DECISIONS

Article 17: Transmission of ERCA file

1. At the end of an inquiry or investigation, the ED shall transmit ERCA's File to the ERCA Council for decision.
2. The File shall be conveyed to the ERCA Council for decision-making within twenty-one (21) days of completion of ERCA's inquiry or investigation.
3. ERCA's decision to transmit the File to the ERCA Council must be communicated by the ERCA Registry to the parties involved in the investigation within ten (10) days of the referral.
4. The File shall include ERCA's Investigation Report which shall be in at least two (2) working languages of ECOWAS in a format pre-determined by ERCA and must include the following information to enable the ERCA Council conduct an assessment of the matter:
 - (a) name of the complainant or applicant;
 - (b) the facts of the inquiry or investigation;
 - (c) evidence gathered;
 - (d) the legal and economic assessment of the conduct or behaviour;
 - (e) ERCA's recommendations; and
 - (f) ERCA's justification for the recommendations.

Article 18: Consideration of investigation report

1. The ERCA Council must consider the Investigation Report submitted to it and take its decision within thirty (30) days from the date of receipt of the File from the Secretariat.
2. Where the ERCA Council wishes to extend this period, it shall inform the Secretariat. The extended period shall not exceed an additional forty-five (45) days.
3. The Secretariat through the Registry shall inform the parties of the extended period to enable the ERCA Council arrive at its decision.

Article 19: Additional Information Hearings

1. The ERCA Council may:
 - (a) obtain further information in its deliberations and summon any person to provide information or evidence to it either orally or in writing;
 - (b) request any party, including third parties with a proven interest in the investigation to file written submissions, which shall be considered in its decision-making;
 - (c) grant an oral hearing to relevant parties where it deems it necessary;
 - (d) request advisory opinions and analysis from independent experts and the Competition Consultative Committee to assist it in its deliberations where necessary; and
 - (e) instruct ERCA to obtain further information in the context of an investigation.
2. Any request for further information to assist the consideration of the matter by the ERCA Council must be signed by the Chairperson.

CHAPTER VI: DECISIONS OF THE ERCA COUNCIL AND APPEALS

Article 20: Types of Decisions

1. Case Closure

Where the ERCA Council considers that the CCR has not been infringed it would

- (a) notify the relevant parties;
- (b) publish its reasoned decision; and
- (c) close its file on the investigation.

2. Infringement Decisions

Where the ERCA Council considers that there has been an infringement of the CCR it shall confirm the ED's recommendation and issue its reasoned decision to the parties responsible for the infringement.

3. Compensation

Where the ERCA Council, after considering an application from ERCA determines that a person who has suffered loss as a result of prohibited anti-competitive behaviour merits compensation:

- (a) it may order an enterprise or association of enterprises to pay compensation to the aggrieved person;
- (b) the compensation must as far as possible be proportionate to the loss suffered by the claimant taking into account the economic situation prevailing at the time of the claim.

4. Authorisation of Mergers/Acquisition

Where the ERCA Council considers, that a Merger or Acquisition would result in a substantial reduction of competition in the ECOWAS Common market it may:

- (a) prohibit the Merger or Acquisition; or
- (b) authorise the Merger or Acquisition with or without out conditions;

5. Exemptions

The ERCA Council may declare inapplicable the provisions of the CCR in relation to any of the following;

- (a) an agreement or category of agreements between enterprises;
- (b) a decision or category of decisions by associations of enterprises; or
- (c) a concerted practice or category of concerted practices.

Article 21: Sanctions

1. The ERCA Council shall impose financial penalties on companies that-
 - (a) obstruct the proper conduct of ERCA's investigations.
 - (b) are convicted of violating the CCR.
2. The ERCA Council shall impose civil fines of up to 10% of the annual turnover of the enterprise concerned.
3. These fines may be accompanied by periodic penalty payments as deemed appropriate ranging from UA 300,000 to UA 750,000 for failure to comply with its decisions in a timely manner.

Article 22: Communication of ERCA Council Decision

1. The Council's decision shall be transmitted to the ED through the Secretariat within ten (10) days.
2. The ERCA Council's decision shall be transmitted through the Secretariat to the parties involved in the investigation within ten (10) days.

Article 23: Appeal

1. The Court of Justice of the Community shall have appellate jurisdiction to review decisions of the ERCA Council.
2. The appeal shall be lodged within thirty (30) days from the date of receipt of the decision of the ERCA Council.

Article 24: Publication

The Decisions of the ERCA Council must be published in the:

- (a) Official Gazette of the Community;
- (b) ERCA Website; and
- (c) Websites of National Competition Authorities.

Done at Abuja on the of January 2024



PRESIDENT OF THE ECOWAS COMMISSION