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COMMUNAUTE ECONOMIQUE
DES ETATS DE L'AFRIQUE
DE L'OUEST

ECOWAS REGIONAL COMPETITION AUTHORITY

**MANUAL ON INVESTIGATION PROCEDURES AND
NOTIFICATION FOR ECOWAS REGIONAL COMPETITION
AUTHORITY**

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CHAPTER I: PRELIMINARY PROVISIONS

Article 1: Acronyms and Definitions

1. Acronyms

- (a) CCR: Community Competition Rules
- (b) CM: Case Manager
- (c) CT: Case Team
- (d) DAF: Director Administration and Finance
- (e) DILE: Director Investigation and Law Enforcement
- (f) ED: Executive Director
- (g) NCA: National Competition Authority
- (h) RFI: Request for Information

2. Definitions

For the Objectives of this Manual:

- (a) "CCR" means the Supplementary Act A/SA.01/12/08 adopting the Community Competition Rules and its Application Modalities
- (b) "Day" refers to Calendar day including Saturdays and Sundays;
- (c) "ERCA Council" is the Council of the ECOWAS Regional Competition Authority;
- (d) "Merger" is the acquisition of control or other business combinations, takeover, joint venture or other acquisition or business combination, including interconnected directorships whether of a vertical, horizontal or conglomerate nature between or among enterprises; and
- (e) "The Merger Regulation" means Regulation C/REG. 23/12/21 on the Rules of Procedure for Mergers and Acquisitions in ECOWAS.

Article 2: Objective

This Manual sets out the procedures by which ERCA shall conduct investigations into infringements of the CCR, consider notifications for authorization and exemptions from the CCR, and mergers and acquisitions.

Article 3: Legal Framework

1. The Community Competition Framework is based on:

- (a) the 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.
2. ERCA has the power to investigate the following matters under the CCR:
- (a) Articles 5: agreements, decision by association of enterprises 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; and
 - (g) Article 11: authorizations and exemptions.

Article 4: Scope

1. ERCA shall have regard to this Manual when dealing with suspected infringements of the CCR, Notification for authorisation and exemptions from the CCR.
2. ERCA may carry out necessary investigations into the conduct of enterprises and associations of enterprises in accordance with this Manual.
3. Where the circumstances of a specific case merits a different approach, ERCA shall notify all relevant parties of the changes in its approach and the resulting impact on its investigative procedures.

Article 5: Revision

1. This Manual may be revised from time to time in line with changes in the CCR, international best practices in the conduct of competition investigations, and ERCA's developing experiences in conducting investigations.
2. Changes to the Manual shall be published in keeping with the principles of equality, equity, transparency, and fairness.

CHAPTER II: TYPES OF INVESTIGATION

Article 6: Agreements, Decisions by Association of Enterprises and Concerted Practices in Restraint of Trade

1. ERCA shall investigate all agreements between enterprises, decisions by associations of enterprises, and concerted practices which are incompatible with the ECOWAS Common Market, may affect trade between ECOWAS Member States, and whose object or effect are or may be the prevention, restriction, distortion or elimination of competition within the Common Market.
2. Such agreements, decisions, or concerted practices include:
 - (a) direct or indirect fixing of purchase or selling prices, terms of sale, or any other, trading conditions;
 - (b) limiting or controlling production, markets, technical development, or investment;
 - (c) sharing of markets, customers, or sources of supply;
 - (d) application of dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
 - (e) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 7: Abuse of Dominant Position

1. Abuse of a dominant position occurs if one or more enterprises hold a dominant position in a relevant market and if singularly or collectively, it/they possess a substantial share of the market that enables it/them to control prices or to exclude competition.
2. ERCA shall investigate any abuse of a dominant position, by one or more enterprises within the ECOWAS Common Market or in a substantial part thereof.
3. Such abuse may consist of:
 - (a) limiting access to a relevant market or otherwise unduly restrains competition;
 - (b) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
 - (c) limiting production, markets, or technical development to the prejudice of consumers.
 - (d) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
 - (e) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 8: Merger and Acquisition Control

1. ERCA shall investigate mergers and acquisitions where:
 - (a) either the combined turnover, or value of any relevant balance sheet item of the enterprises is above a specified threshold; and
 - (b) the merger and acquisition operates in at least two Member States of the Community.
2. ERCA shall prohibit such mergers and acquisitions where the resulting market share in the ECOWAS Common Market or any significant part thereof, attributable to any good, service, line of commerce, or activity affecting commerce results in a dominant position leading to a substantial reduction in competition.

Article 9: Control of State Aid

1. ERCA shall investigate any aid granted by a Member State or through State resources in any form whatsoever which-:
 - (a) distorts or threatens to distort competition by favoring certain enterprises or the production of certain goods;
 - (b) affects trade between Member States; and
 - (c) is incompatible with the ECOWAS common market.
2. ERCA shall declare such aid as incompatible with the ECOWAS Common Market and take necessary corrective measures to address the distortion of competition.

CHAPTER III: INFORMATION GATHERING POWERS

Article 10: Access to Information

1. ERCA and its authorized officials shall access any place, equipment, electronic devices and documents of any kind for the purpose of its investigations.
2. ERCA may;
 - (a) summon and examine witnesses orally;
 - (b) demand any document, wherever it may be found, to be communicated for examination;
 - (c) require that any document submitted to it be supported by an affidavit; and
 - (d) require that information is submitted to it within such period as may be specified by notice.
3. ERCA's information gathering powers is exercised on presentation of a written authorization specifying the following:
 - (a) the date for the access;
 - (b) the object of the investigation;
 - (c) the purpose for the search;

- (d) an indication of the potential penalties or sanctions which would be imposed for failure to comply with the authorization; and
 - (e) permission for ERCA to inspect and remove temporarily for the purpose of making copies any documents or extracts under the control of any person within the premises.
4. Enterprises and associations of enterprises must submit to investigations ordered by decisions of ERCA.
 5. ERCA may take any other reasonable measures necessary to gather information to conclude an investigation.

Article 11: Rights of an Occupier

1. The Occupier of premises entered by ERCA has the right to request for its legal adviser to be present.
2. Where there is no legal adviser on the premises, the ERCA officials conducting the inspection or search may wait for a reasonable period to ensure the arrival of the legal adviser.

Article 12: Written Information Request

1. ERCA shall issue a Request for Information (RFI) requiring the parties to provide the necessary information within fifteen (15) working days.
2. The RFI shall include;
 - (a) the legal basis;
 - (b) the purpose for the request; and
 - (c) penalties for failure to produce the information requested, supply of incorrect or false information.
3. The RFI may require an enterprise, or any other person considered appropriate, to provide information including:
 - (a) products manufactured, produced or supplied by that person;
 - (b) agreements, decisions, concerted practices; and
 - (c) the structure of enterprises as ERCA may deem necessary to determine whether the conduct of the business in relation to the products constitutes an anti-competitive practice.
4. ERCA may forward a copy of the RFI to the competent authority of the Member State in whose territory the head-office of the enterprise or association of enterprises being investigated is situated.
5. The RFI may be transmitted to other persons involved in the investigation.
6. If the information submitted by the enterprise in response to the RFI to the competent authority of the Member State is incomplete or incorrect, ERCA shall inform the competent authority of the Member State in whose territory the information was obtained to take the necessary measures.

7. ERCA shall draw appropriate conclusions based on the information available to it where information requested in the RFI is not supplied to its satisfaction.
8. It is an offence for a person to:
 - (a) fail or refuse to produce a document required by an RFI without sufficient cause; and/or
 - (b) destroy any record likely to be required for an investigation that has commenced with intent to either mislead ERCA, prevent, or impede an investigation.

Article 13: Entry and Search/Dawn Raid

ERCA may, where necessary and for the purpose of gathering evidence for an investigation, request authorization from the competent national institutions which are obliged to respond in accordance with legal procedures to:

- (a) carry out a search; or
- (b) inspect and remove temporarily, for the purpose of making copies, any document or extract under the control of any person.

Article 14: Summons for Meetings/Interviews

1. ERCA may summon any person whose evidence is necessary for the determination of the truth to appear before it to give evidence.
2. The summons shall set out the date for the appearance of the person and the right to legal representation at the meeting.
3. The summons must be signed by the ED or his representative and sent by appropriate channels and shall bear ERCA's seal.
4. Failure to comply with a validly served summons issued by ERCA without sufficient cause shall attract financial penalties ranging from UA 500 to UA 10,000, for each working day the enterprise refuses to appear before ERCA.
5. It is an offence for witnesses summoned by ERCA to:
 - (a) leave a meeting or interview without ERCA's permission;
 - (b) insult an official of ERCA;
 - (c) obstruct or disrupt ERCA's proceedings.

Article 15: Collaborations with National Competition Authorities in the Community.

1. ERCA may request assistance from relevant NCAs and other competent national institutions who shall, jointly with ERCA, undertake investigations where necessary.
2. ERCA shall give the NCA in whose territory a search is to be conducted prior notice of the identities of its authorized officials in good time before the search is conducted.
3. Where officials of the competent authorities of the Member States conduct investigations and searches on behalf of ERCA, they shall exercise their powers on presentation of an

authorization issued by the relevant authority of the Member State in whose territory the investigations are to be conducted.

4. The authorization must clearly state the object of the investigation and the purpose of the search.

Article 16: Confidentiality

1. The staff and members of ERCA, consultants and staff of the NCA are bound by professional secrecy.
2. The parties involved in the investigation must not disclose confidential information received.
3. The ERCA Council shall, upon recommendation by the ED, impose appropriate sanctions for breach of confidentiality.

CHAPTER IV: THE CASE INVESTIGATION TEAM

Article 17: Director of Investigation and Law Enforcement

1. In relation to investigations conducted by ERCA, the Director of Investigation and Law Enforcement (DILE) is responsible for the following:
 - (a) supervision of investigations;
 - (b) recommendation to the ED for the appointment of the Case Manager (CM);
 - (c) supervision of the CM; and
 - (d) recommendation to the ED for selection of members of the Case Team (CT).
2. The DILE shall:
 - (a) provide operational assistance to investigative staff including tactical guidance on investigations and enquiries;
 - (b) develop and implement training programs for investigative staff;
 - (c) ensure the conduct of thorough investigations which involves engaging all relevant stakeholders to obtain necessary information;
 - (d) analyze the details of cases and produce accurate and detailed reports for the ED;
 - (e) review complaints, concerns, or questions relative to compliance issues and provide consultative leadership and support to the ED;
 - (f) identify, prioritize, and document Compliance training needs for ERCA staff, including the need for specialized Compliance training based on risk areas;
 - (g) monitor and audit all investigations undertaken by ERCA;
 - (h) provide timely, relevant analysis, and recommendations to the ED on all aspects of enquiries and investigations;

- (i) monitor regulatory changes and emerging trends to revise, enhance, or further develop ERCA's investigation procedures;
- (j) assist in the development of ERCA's investigation policies, standards, and guidelines; and
- (k) develop intelligence gathering methodologies and market surveillance strategies for effective monitoring of CCR.

Article 18: Case Manager

1. The CM has primary responsibility for managing the investigation including collection, analysis and review of all the evidence gathered during the information gathering phase of the investigation.
2. The CM shall supervise the progress of the work of the Case-Team and ensure frequent feedback is provided through the DILE to the ED.
3. The CM must also provide frequent updates to the Registrar in accordance with the Case Management Plan.

Article 19: Case Team

1. The CT shall;
 - (a) examine the information gathered in relation to the investigation; and
 - (b) analyse the evidence received using the appropriate techniques and methodologies.
2. Based on an analysis of the evidence, the CT is responsible for preparation of the initial Investigation Report which must deal with the following:
 - (a) the grounds for ERCA to proceed with its investigation;
 - (b) the grounds to close the investigation;
 - (c) the grounds to support a recommendation that the CCR has been infringed;
 - (d) the grounds for the ERCA Council to issue an injunction; and
 - (e) whether a penalty is appropriate.

Article 20: The Registry

1. The Registry is the records unit of ERCA and shall hold data electronically to be accessed by stakeholders across all levels.
2. The Registry shall serve as the point of contact for all Complaints and Notifications through online forms and templates designed to capture the right data.
3. The Registrar shall coordinate activities of the Registry and is the first point of call for receiving Complaints or Notifications
4. The Registry must capture all Complaints and Notifications using the appropriate software.

5. The Registry in collaboration with the CM shall keep the parties under investigation informed of the anticipated timelines for the investigation and any changes.

CHAPTER V: INVESTIGATION PROCEDURES

Article 21: Initiation/Commencement of investigation

1. ERCA shall, among other sources, rely on information from its own research and market intelligence to identify suspected infringements of the CCR.
2. An investigation on infringements of the CCR may be initiated by ERCA either:
 - (a) on its own initiative, if the DILE presents a report to the ED on suspected anti-competitive behavior, or
 - (b) on submission of a complaint by a person who is aggrieved by the conduct or action of an enterprise, government, or authorities of Member States which amounts to an infringement of the CCR.

Article 22: Preliminary discussions

1. A Complainant who is uncertain about either ERCA's procedure or the scope of the CCR may, through an email, telephone call or any other appropriate means, approach ERCA in the first instance for an informal discussion.
2. The informal discussion would enable the Complainant to determine whether to proceed with the complaint and whether the complaint falls within ERCA's priorities and jurisdiction.
3. The Complainant must provide the following basic information about the complaint to enable ERCA determine whether there is suspicion of anti-competitive activity which merits further enquiry:
 - (a) identity of the Complainant;
 - (b) reason for making the complaint including a brief description of the goods and services involved;
 - (c) the nature of the conduct, agreement, decision or practice complained of;
 - (d) geographic scale of the potential infringement, whether national or Community-wide; and
 - (e) identity of the party/parties to the suspected infringement.

Article 23: Complaint Procedures

1. Where, upon completion of preliminary discussions, ERCA determines that the Complainant's claims potentially fall within its competence, the Complainant shall formally lodge a complaint with the Registry by filling out the Complaints Form electronically available at ERCA's website.
2. The Complaint must contain sufficient and necessary information for a preliminary assessment of the case by ERCA.

3. The information must include a detailed description of the suspected infringement, the geographical location, and any supporting documentation, such as agreements.
4. The Registrar shall:
 - (a) engage with the Complainant to clarify any aspects of the complaint or information provided, if necessary;
 - (b) ascertain the completeness of the complaint and whether there is sufficient information to support it; and
 - (c) issue an acknowledgement letter to the Complainant within five (5) days from the date the complaint was lodged at the Registry where there is sufficient information to support the complaint.

Article 24: Preliminary Assessment and Case Allocation

1. Where the requirements for a valid complaint are met, the Registrar shall through the Director of Administration and Finance (DAF) refer the complaint to the ED.
2. The ED shall refer the complaint to the DILE within 5 days of the date of the referral of the complaint from the Registrar.
3. The DILE shall conduct a preliminary assessment of the complaint and determine whether it falls within ERCA's competence.
4. The DILE shall inform the ED of the outcome of the preliminary assessment within 21 days of the referral from the ED.
5. Where the complaint does not fall within ERCA's competence, the ED shall refer the complaint back to the Registrar through the DAF.
6. The Registrar shall notify the Complainant of the outcome of the preliminary assessment.
7. Where a complaint falls within the remit of any NCA, the ED shall transfer the complaint to the relevant NCA.
8. ERCA may however re-open the same complaint if new information is received.
9. Where the complaint falls within ERCA's competence, the ED shall direct the DILE to commence an investigation of the complaint.
10. For the conduct of the investigation, the ED on the recommendation of the DILE, shall appoint a CM and constitute a CT.
11. The DILE shall hold an inception meeting to set the agenda, introduce the CM and members of the CT, clarify their roles, discuss the scope and timelines for the investigation and address any confidentiality concerns.

Article 25: Formal Investigation Process and Timelines

1. Following the decision to open a formal investigation into the complaint, the Registrar shall issue a letter to inform the Complainant.

2. The letter shall inform the Complainant of the commencement of the investigation, ERCA's investigation procedures, timelines for the investigation and details of the CM as the focal point within ERCA for enquiries about the progress of the investigation.
3. The party/parties under investigation shall also be notified in writing of ERCA's decision to commence an investigation and the details of the suspected infringement.
4. ERCA shall exercise its powers in collecting and assessing evidence, including market data.
5. ERCA shall comply with investigative best practices of fair and transparent processes, procedural fairness, protection of the rights of parties under investigation, and the use of evidence-based assessments to determine whether a violation of the CCR has occurred.
6. The investigation shall be completed within one hundred and eighty (180) days from the date of the letter informing the complainant of the commencement of an investigation. This period may be extended for a maximum of ninety (90) days by the ED and the parties would be informed of any such extension to the timeline for the investigation.

Article 26: Outcomes of Investigation

1. At the end of the investigation, the DILE shall review and forward the recommendations of the CM and the CT to the ED.
2. The ED may take the decision to close the investigation for want of grounds for further action or make Recommendations to the ERCA Council.

Article 27: Decision to close the investigation- No Grounds for further action.

1. The ED shall close the investigation within thirty (30) days and notify the parties involved, where:
 - (a) the investigation no longer merits continuation and further allocation of ERCA resources;
or
 - (b) there is a lack of sufficient evidence or grounds to determine whether the CCR has been infringed.
2. The Notification shall set out the ED's reasoned opinion for the file closure.
3. The ED shall, within thirty (30) days, submit a report in writing stating the reasons for discontinuance of the case to the ERCA Council.
4. Notwithstanding paragraph 1 of this article, a closed investigation may be re-opened if new evidence is uncovered which justifies its reopening.
5. Where ERCA determines that it has sufficient evidence and grounds for action against some of the parties in the investigation it shall continue its proceedings in relation to those parties only and notify the other parties of the case closure in relation to them.
6. Where an investigation originated by virtue of a complaint filed, ERCA may give the Complainant the opportunity to make his/her observations before closing its file on the case.

Article 28: Executive Director's Recommendation to the ERCA Council

1. Where, based on the recommendations from the DILE and the evidence from the investigation, the ED considers that there has been an infringement of the CCR, the ED shall notify each party it considers engaged in the anti-competitive conduct.
2. The Notification shall safeguard the rights of defense available to the parties to the investigation and provide all the information they need to defend themselves effectively and to comment on the allegations and evidence against them.
3. The Notification shall set out:
 - (a) the facts, evidence, legal and economic assessment of the conduct or behaviour in support of ERCA's infringement decision; and
 - (b) the actions ED proposes to recommend to the ERCA Council to stop the infringement, such as issuing directions or an injunction where the infringement is continuing.
4. ERCA shall give parties an opportunity to inspect its file on the investigation.
5. ERCA's investigation file shall consist of all documents which have been obtained, produced and/or assembled by ERCA during the investigation, excluding confidential information.
6. The modalities for access to ERCA's file, including the date, time, and data room access where necessary shall be communicated to the parties as a part of the Notification.
7. ERCA shall also invite the parties involved in the investigation to contact ERCA if they are prepared to admit the infringement and accept a fast-track procedure or enter into early settlement discussions in exchange for a reduced penalty to be determined by the ERCA Council on a case-by-case basis.

Article 29: Right of Reply

1. ERCA shall also give the addressee of the Notification the right to make a written reply on the proposed infringement and penalty.
2. The deadline for receiving written representations by ERCA shall be determined on a case-by-case basis taking into account the particular circumstances of each investigation.
3. Following the deadline for receipt of the written reply, ERCA shall also provide an opportunity for the addressee to attend an oral hearing to enable the addressee to clarify the details set out in its written reply.
4. Any point raised orally at this stage shall be limited to those already submitted to ERCA as a part of the addressee's written reply.
5. ERCA recommends that the addressee may be accompanied by its legal advisers to the oral hearing. However, ERCA may not permit either third parties, or complainants to attend an addressee's oral hearing.
6. All the information presented by the addressee following receipt of the written reply and the oral hearing, shall be re-appraised by the DILE in consultation with the ED to assess whether the ED's Notification is supported by the evidence.

Article 30: Conclusion of Investigation

1. Where the ED considers that the Notification is not supported by the facts and evidence, he shall close the file and notify the parties accordingly within fourteen (14) days after the oral hearing.
2. Where the ED considers that the Notification is supported by the facts and evidence, and that there has been an infringement of the CCR, he shall forward the file and his recommendations on sanctions where appropriate through the Registrar to the ERCA Council within fourteen (14) days after the oral hearing for further examination and final decision.

Article 31: Advisory Opinions

Any relevant stakeholder may provide independent information and their opinion relating to on-going investigations to ERCA.

CHAPTER VI: ERCA COUNCIL PROCEDURE

Article 32: ERCA Council consideration

The details of the ERCA Council's power to consider referrals from the ED are set out in the Manual of Procedures of the ERCA Council.

CHAPTER VII: INJUNCTIONS

Article 33: Application for Injunctions

1. The ERCA Council may issue injunctions to:
 - (a) order the termination of a contract;
 - (b) prohibit the conclusion or implementation of a contract;
 - (c) prohibit the imposition of terms external to any transaction, the effect of which is to reduce competition;
 - (d) prohibit discrimination or preferences in price matters and other related aspects; and
 - (e) require the transparent publication of commercial information such as prices, scale of rates, general terms of sale, product composition and expiry dates.
2. A person who considers that the alleged anti-competitive conduct of an enterprise is causing significant damage may apply to the ERCA Council for an injunction, through ERCA.
3. Persons who wish to apply for an injunction shall contact the Registry to discuss the information requirements and the application procedure.
4. In case of an emergency, where the situation can cause significant damage to the economy, the ED shall consult with ERCA Council members to issue an injunction.

CHAPTER VIII: ENFORCEMENT PROCEDURES

Article 34: Binding Nature of ERCA's Decisions

1. Decisions of the ERCA Council shall be binding on enterprises, individuals, governments and authorities of Member States notwithstanding the domestic laws of Member States.
2. Decisions issued by the ERCA Council shall be implemented by the receiving party through a competent national authority appointed by the Member State.

CHAPTER IX: EXEMPTIONS

Article 35: Cases Exempted from the CCR.

1. The ERCA Council may grant an exemption from the CCR either on application or on its own initiative to any agreement or category of agreements between enterprises, decision or category of decisions by associations of enterprises, and any concerted practice or category of concerted practices which:
 - (a) contribute to improving production or distribution of goods; and
 - (b) promote technical or economic progress, while allowing consumers a fair share of the resulting benefit.
2. To benefit from an exemption, the agreement must:
 - (a) not impose restrictions which are not indispensable to the attainment of these objectives on enterprises; and
 - (b) afford such enterprises the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 36: Application Procedure for Exemption

1. An application may be made to ERCA for exemption from the CCR.
2. The following information must be provided in support of the application:
 - (a) details of the applicant;
 - (b) details of the agreement or concerted practice;
 - (c) parties to the agreement or the concerted practice;
 - (d) relevant product and geographic markets;
 - (e) impact on the ECOWAS Regional Market;
 - (f) the purpose of the application; and
 - (g) justification for Exemption from the CCR.

3. On receipt of the application with supporting information, the Registrar shall notify the applicant and specify the timeframe within which the ERCA Council shall issue its decision.
4. The applicant must notify all other parties to the agreement or practice about the application for Exemption.
5. ERCA shall widely publish a notice on all applications received for Exemption.
6. The fees payable to ERCA for Exemptions are published on ERCA's website.

Article 37: Allocation and Assessment

The Registrar shall follow ERCA's investigative procedure set out above and refer the application to the ED through the DAF who shall in turn refer it to the DILE for allocation to a CM and CT for assessment.

Article 38: Examination of application

1. The CT shall examine the factual, legal and economic justification for the grant of an Exemption and transmit the results of its examination to the DILE.
2. The DILE shall review the results of the examination by the CM and transmit his/her observations on the application to the ED.

Article 39: ERCA Recommendations

The ED shall review the DILE's observations and make any of the following recommendations to the ERCA Council:

- (a) approve the application and grant the Exemption;
- (b) approve the application for grant of an Exemption subject to specified conditions; or
- (c) reject the application for an Exemption.

Article 40: ERCA Council Decision

1. The ED shall transmit his recommendations on the application to the ERCA Council for final decision.
2. The ERCA Council shall review the said recommendations and take any of the following decisions:
 - (a) approve the application and grant the Exemption;
 - (b) approve the application for grant of an Exemption subject to specified conditions; or
 - (c) reject the application for an Exemption.
3. The Registry shall keep a register of the Exemptions granted. The Register shall be accessible electronically by the public on ERCA's website.

Article 41: Withdrawal or Modification of Exemption

1. The ERCA Council may withdraw or modify an exemption if it observes that:
 - (a) the conditions for the grant of the Exemption have changed;
 - (b) the information provided in support of the application was false or misleading; or
 - (c) the conditions and obligations governing the grant of the exemption have been violated.
2. Before any such withdrawal or modification, ERCA shall notify the applicant and other relevant persons about the reasons for the withdrawal and the rights of reply in relation to the Notification. The Notification shall specify the deadline within which a hearing may be requested and the modalities for any such hearing.

CHAPTER X; MERGERS AND ACQUISITIONS

Article 42: Notification of Mergers and Acquisitions

1. Any enterprise or group of enterprises wishing to merge with or acquire all or part of another enterprise shall submit a Notification for prior authorisation to ERCA.
2. The concerned enterprises must notify ERCA prior to completion of the merger or acquisition to forestall any concerns and potential infringement of the CCR.

Article 43: Notification Procedure

1. A Notification must be submitted as soon as the parties come to a firm intention to proceed with the merger or acquisition.
2. The Notification must be submitted to the Registry using the prescribed Merger Notification Form supported with the relevant information.

Article 44: Assessment of Notification

1. The completed Notification Form and supporting information shall be referred by the Registry through the DAF to the ED who will allocate it to the DILE in line with ERCA's investigation procedure.
2. ERCA shall conduct the assessment of the Notification in two stages as follows:
 - (a) Phase 1
 - i. Following receipt of a duly completed Notification Form with the relevant supporting documents, ERCA's Phase 1 assessment is expected to be completed within thirty (30) days of submission of the Notification.
 - ii. The assessment shall entail an analysis of the information in the Notification Form with the relevant supporting documents to determine whether the merger or acquisition raises any competition concerns.

- iii. In addition to the information provided by the applicant in support of the Notification, ERCA shall use its information gathering powers to obtain information from third parties who may be affected by the merger or acquisition such as consumers, competitors, and other competent authorities within the ECOWAS Community.
- iv. The Registry shall also publish the Notification to enable third parties who may not have been directly approached by ERCA to comment either via ERCA's website or by submitting comments directly to ERCA. Information gathering may also include further meetings with the applicant and third parties.
- v. ERCA shall communicate the results of the Phase 1 analysis to the applicant setting out the specific competition concerns, if any, and give the applicant an opportunity to respond to these concerns.
- vi. Where competition concerns are identified, the ED shall refer the matter to the ERCA Council which may instruct ERCA to conduct a more in-depth Phase 2 assessment.
- vii. Pending the conclusion of an investigation the ERCA Council may also impose an injunction on the transaction where it considers that the parties may take action which would result in serious and irreparable damage to its ability to impose remedies after conclusion of its investigation.

(b) Phase 2

- i. Following the ERCA Council's instructions for a Phase 2 assessment to be conducted, the ED shall instruct the DILE to constitute a Phase 2 Case Team which shall conduct further assessment of the Notification.
- ii. The Phase 2 CT shall be required to conduct a more extensive and detailed review of the merger or acquisition, which may require submission of more information from the applicant and other participants in the relevant markets likely to be affected.
- iii. The ED shall appoint a CM for the Phase 2 Case Team who should not have been involved in the Phase 1 investigations.
- iv. Upon completion of the Phase 2 assessment, the DILE shall make recommendations based on the CM's conclusions to the ED who shall review, finalize, and submit his recommendations to the ERCA Council.

Article 45: ERCA Council Decision

- 1. The ERCA Council shall take decisions in line with its procedures set out in ERCA council Manual.
- 2. The ERCA Council may take any of the following decisions:
 - (a) authorise the merger or acquisition with or without conditions;
 - (b) reject the merger or acquisition by a reasoned decision.

Article 46: Public Interest Exemption

1. Where the Merger or Acquisition is anti-competitive or substantially lessens competition in the Community, the parties may apply to the ERCA Council for an Exemption of the Merger in the public interest, or the ERCA Council may also exempt the Merger on public interest basis.
2. The ERCA Council shall take into account the following issues in determining whether to authorise the merger or acquisition on Public Interest grounds:
 - (a) the proven public interest; or
 - (b) whether the Merger or Acquisition is beneficial to the ECOWAS Community.
3. The ERCA Council may also have regard to any special representation by competent authorities in the Community.

CHAPTER XI: APPEALS AGAINST ERCA DECISIONS

Article 47: Parties' Right of Appeal.

1. Decisions taken by the ERCA Council including infringement decisions, injunctions, imposition of a penalty, and refusal to grant an Exemption or Authorization are appealable to the ECOWAS Court of Justice.
2. Decisions taken by the Court of Justice in relation to ERCA decisions shall be final and binding on the parties.
3. The Appeal shall be lodged within thirty (30) calendar days from the date of receipt of the decision of the Council of ERCA.

Done at Abuja on the of January 2024



PRESIDENT OF THE ECOWAS COMMISSION

ANNEX 1: COMPLAINT FORM

INSTRUCTIONS

This Form must be completed to the best of your ability and submitted to the ERCA Registry. Please attach any documents or relevant information to support your complaint. The information provided in this Form is confidential to the extent possible to enable ERCA investigate your complaint. However, ERCA may disclose this information where necessary to assist its investigation. ERCA will contact you if it considers that it is necessary to disclose such information. However, for the avoidance of doubt, you have the right to identify which information you consider confidential by submitting a request for confidentiality together with this complaint.

1. DETAILS OF COMPLAINANT

Full Name(s) of Complainant:		Website:
Full Name(s) of Enterprise:		Website:
Address and name of contact person:		
Phone:		Email:
Description of Industry/sector		
If this Complaint is being filed jointly with other natural and/or legal person(s), please provide their name(s), contact details and other relevant information.		

2. DETAILS OF THE RESPONDENT

Identify the enterprise or association of enterprises whose conduct the complaint relates to (the Respondent), including, where applicable, all available information on the corporate group to which the enterprise or association of enterprises belong and the nature and scope of the business activities pursued by them.

Full Name of Respondent(s):		
Address/Location:		
Phone:		Email:

Other Contact Details of the Respondent:

Website:

Nature and scope of business:

3. DETAILS OF THE ALLEGED INFRINGEMENT

Provide details of the alleged infringement, in particular the conduct which in your view appears to be an infringement of the Community Competition Rules. Indicate the goods or services affected by the alleged infringement and explain, where necessary, the commercial relationships concerning these products. Please indicate whether the conduct complained about is continuing or not.

4. EVIDENCE OF THE ALLEGED INFRINGEMENT AND SUPPORTING DOCUMENTS

Provide any available details on any agreements or practices of the undertakings or associations of undertakings to which this complaint relates.

5. GEOGRAPHICAL SCOPE

Set out your view about the geographical scope of the alleged infringement and explain, where that is not obvious, to what extent trade between Member States, or within the Common Market may be affected by the conduct complained of.

6. PROCEEDINGS BEFORE NATIONAL COMPETITION AUTHORITIES OR NATIONAL COURTS

Please indicate whether you have approached any other National Competition Authority in relation to the same or closely related alleged infringement and/or whether you have brought legal before a national court. If so, provide full details about the authority contacted and your submissions to such authority.

OFFICIAL USE ONLY	
ERCA REGISTRY	
Received By	
Print Name:	Signature:
Date Received:	Case Reference Number:
Acknowledgement letter issued:	Date Issued:
ERCA REGISTRAR	
Print Name:	Signature:

(a) A description of the alleged aid, and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

--

(b) How the Aid was granted

--

(c) The purpose of the Aid

--

(d) The amount of the Aid (Please provide an estimate if the exact figure is not known)

--

(e) Details of the beneficiary of the Aid. Please give as much information as possible, including a description of the main activities of the beneficiary/enterprise(s) concerned.

--

(f) When was the Aid granted and for how long?

- (g) To the best of your knowledge, was the Aid notified to ERCA. If notified, please indicate the notification reference number or indicate when the aid was notified and approved.

19. IMPACT OF STATE AID ON COMPETITION

Please explain in your opinion why and to what extent the Aid threatens to distort competition by-

- (a) favouring certain enterprises

- (b) favouring the production of certain goods and services.

- c) providing an economic advantage to the beneficiary or beneficiaries.

- d) other reasons

20. GEOGRAPHICAL SCOPE

Please explain why, in your view, the alleged aid affects trade between Member States and is incompatible with the ECOWAS Community Market.

21. PROCEEDINGS BEFORE NATIONAL COMPETITION AUTHORITIES OR NATIONAL COURTS

Please indicate whether you have approached any other National Competition Authority in relation to the same or closely related Aid and/or whether you have brought legal proceedings before a national court. If so, provide full details about the Authority contacted and your submissions to such Authority.

22. SWORN DECLARATION

I declare that the information in this Complaint Form and all supporting documents I have attached are accurate and provided to ERCA in good faith. I am aware that it is an offence to provide false or misleading information to ERCA.

Print Name:

Position:

Signature:

Date:

ANNEX 4: REQUEST FOR INFORMATION (RFI)

INSTRUCTIONS

Please provide the information requested and attach all relevant documents to this Form. The information provided in this Form is confidential to the extent possible to enable ERCA conduct its investigation. However, ERCA may disclose this information where necessary to assist its investigation. For the avoidance of doubt, you have the right to identify which information you consider confidential by submitting a request for confidentiality together with this Form

1. Addressee Details:

Name	ERCA Registry File Reference:
------	-------------------------------

2. LEGAL BASIS & PURPOSE OF REQUEST

3. INFORMATION REQUIRED

You are hereby requested to provide the following to ERCA:

4. DEADLINES:

The information requested must be submitted by [Date]

5. ADDRESS FOR SUBMISSION

The information must be submitted to the ERCA Registry at

NB. Failure to provide the requested information is subject to sanctions stated in Article 10 of the Regulation C/REG.21/12/21 on ERCA's Rules of Procedure in Competition matters

6. SWORN DECLARATION

I declare that the information in this Form and all supporting documents I have attached are accurate and provided to ERCA in good faith.

Print Name:

Position:

Signature:

Date:

OFFICIAL USE ONLY	
ERCA REGISTRY	
Received By	
Print Name:	Signature:
Date Received:	Case Reference Number:
ERCA REGISTRAR	
Print Name:	Signature:

ANNEX 5: MERGER NOTIFICATION FORM

PART 1

INTRODUCTION

This Form specifies the information that must be provided by notifying parties when submitting a notification to the ECOWAS Regional Competition Authority (ERCA) of a proposed merger or acquisition for authorisation or exemption. A copy of this form is available to download on the ERCA website at www.erca-arrc.org

Regulation C/Reg. 23/12/21 on the Rules of Procedure for Mergers and Acquisitions in ECOWAS sets out the conditions, rules and procedures for mergers and acquisitions. The Rules serve as a guide to ERCA in application of its powers in relation to mergers and acquisitions of undertakings which operate in at least two Member States of the Community.

Any company or business enterprise within the prescribed turnover threshold wishing to merge with or acquire all or part of another company or undertaking is required to submit a notification/application for prior authorisation to ERCA. Please note that Mergers and acquisitions which do not fall within the prescribed turnover thresholds may fall within the competence of other Community Members States.

Under the Rules, ERCA has a period of sixty (60) days from the date of receipt of the notification to make a decision on whether to authorise the merger with or without conditions or reject the application. However, this period may be extended by a maximum of thirty (30) days if additional information is requested by ERCA.

In view of the statutory deadlines and to expedite the process, this Form sets out the information required to enable ERCA conduct the necessary analysis of the application, and its impact on the Community Market.

PART 2

REQUIREMENT FOR A VALID NOTIFICATION

Applicants must ensure that all the information provided on this form is correct and complete. Supporting documents may be originals or copies of the originals, however parties must confirm that they are true and complete.

ERCA's assessment of the notification will not commence until all the relevant information has been received. Where the notification is incomplete, ERCA will inform the parties in writing and request further information. ERCA will notify the parties in writing of the effective date of the notification for purposes of ERCA's decision-making deadline. The notifying party or parties must therefore ensure that the information provided, including contact names, telephone numbers and e-mail addresses, of the key personnel provided to ERCA are accurate, relevant and up-to-date.

CONFIDENTIALITY

The staff and members of the ERCA Council, consultants and staff of national authorities involved in the assessment of the notification are bound by the oath of secrecy. This principle also applies

to protection of confidentiality between the notifying parties. However, applicants who believe that their commercial interests may be harmed if specific information is disclosed, may submit this information separately in an annex to the notification with each page clearly marked 'Business Secrets' with reasons why that information may not be disclosed.

HOW TO NOTIFY

The notification may be submitted electronically at www.erca-arrc.org. All supporting documents must be provided in a useable and searchable electronic format as specified on the ERCA website. The Notification and supporting information may also be delivered physically to the ERCA Registry at www.erca-arrc.org.

APPLICABLE FEE

The notification must be accompanied by a non-refundable fee payable to ERCA calculated at 0.01% of the combined annual turnover or the combined value of the assets of the companies in the Community, whichever is higher in line with article 2(1)(a)(viii) of the Reg 23/12/21.

PART 3

SECTION 1

1. Description of the merger

Provide an executive summary of the merger, specifying the parties, the nature of the merger (for example, merger, acquisition, or joint venture), the areas of activity of the parties, the markets on which the merger will have an impact and the strategic and economic rationale for the merger.

1.1. Information about the parties

1.2 For each notifying party as well as for each other party to the merger provide:

(i) address of registered office;

(ii) full name, designation, address (if different from that set out in (i)), direct telephone number, and email address of contact person.

1.3 Please provide the name of the applicant(s) and contact details, if different from above.

1.4 Please provide the full name, designation, address, direct telephone and email address of the applicant's (or applicants') legal representative(s)/authorized representative, if any, to whom correspondence in relation to the notification may be sent.

1.5 Where the declaration on this Form is signed by a legal practitioner or other representative of the applicant(s), please provide written proof of that representative's authority to act on the applicant(s) behalf. The written proof must contain the name and designation of the persons granting such authority.

SECTION 2

2. ECOWAS Countries Affected by the Merger

2.1 Which National Competition Authorities (NCA) in other jurisdictions have been (or will be) notified of the merger? Please indicate the date and status of each notification. Parties are requested to notify ERCA of any material change in status (for example, authorisation, refusal to authorise, negotiation of commitments and undertakings) in relation to any of the notifications to the other Competition Authorities.

2.2 Would you be willing to provide ERCA with a waiver allowing it to exchange confidential information with NCAs in respect of the notified merger?

v AK

Details of the merger, ownership and control

The information sought in this section may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the undertakings before and after completion of the merger.

2.3 Please provide:

- (i) an overview of the ownership structure of each of the merger parties before the merger;
- (ii) details of the persons solely or jointly controlling each of the merger parties, either directly or indirectly
- (iii) an overview of the ownership structure of the merged entity

2.4 Please identify and explain any links, formal or informal, between the respective merger parties (including interconnected bodies and other persons identified in the preceding question).

2.5 For each of the merger parties provide:

- (i) list of registered entities within the Community Market;
- (ii) the trading name, business name or brand names used in the Community Market;
- (iii) description of any physical presence (for example sales office, factory etc.) within the Community Market
- (iv) a brief overview of activities including sale of goods and services provided within the Community Market

SECTION 3

3. The Merger

3.1 Describe the notified merger by explaining whether the proposed merger is:

- (i) a full merger,
- (ii) an acquisition of sole or joint control, or
- (iii) a contract or other means of conferring direct or indirect control of the merged entity

3.2 Explain how the merger will be implemented (for example by conclusion of an agreement for acquisition of a controlling interest, by the launch of a public bid, etc.).

3.3 Indicate the expected date of any major events designed to bring about the completion of the merger.

3.4 Explain the structure of ownership and control of each of the undertakings concerned after the completion of the merger.

3.5 Describe the economic or strategic rationale of the merger.

3.6 What is the value of the merger or the value of assets involved?

3.7 What is the expected completion date of the merger?

3.8 State whether any financial or other support has been received from any source (including public authorities) by any of the merger parties and the nature and amount of this support.

3.9 List all the goods and/or services sold by the respective merger parties within the Community Market

SECTION 4

4. Turnover and balance sheet

4.1 For each of the merger parties concerned provide the following data for the last financial year:

- (i) total (group) turnover worldwide
- (ii) total (group) turnover within the ECOWAS Community Market
- (iii) total (group) turnover within specific Members States of operation

Structure of the Markets concerned

4.2 List of all markets in which the parties to the merger will sell their products and/or services;

4.3 For each market listed provide:

- (i) the sales in value and volume, as well as an estimate of the market shares within the ECOWAS Common Market;
- (ii) the estimated market shares of the merging parties' competitors;
- (iii) an analysis of actual or potential competition from enterprises located outside the ECOWAS Community Market;
- (iv) A description of existing barriers to market entry (for example capital requirements, licensing and regulatory barriers);
- (v) an estimate of the time it will take for potential competitor(s) to enter the market;
- (vi) the name and contact details of each entrant to the market during the last three (3) years;
- (vii) an estimate of the value and volume of the ECOWAS Community market as a whole (i.e., production less exports and plus imports);
- (viii) an estimate of the capital expenditure required to enter the market on a scale necessary to gain a significant market share (say five (5%) percent or more), both as a new entrant and as an entity which already has the necessary technology and expertise;
- (ix) an estimate of the scale of annual expenditure on advertising/promotion relative to sales required to enter the market on a scale equivalent to the main competitor(s) of the merging parties;

... *AK*

- (x) an assessment of the ease of exit from the market. Please indicate any trends in both market entry and exit over the last five (5) years;
- (xi) an assessment of any effects the merger may have at the ECOWAS regional level including a description of the nature of the competition at the Member State and regional level and details of any localities where competition may be reduced as a result of the merger; and
- (xii) a brief assessment of any other features of the market that ERCA should take into account in considering the effects of the merger.

SECTION 5

5. Overlapping Products and/or Services and Other Relationships

- 5.1 List the goods and/or services sold by both (or all) of the merger parties in each Member State (overlapping goods, for branded goods please indicate the brand names used)
- 5.2 In relation to the Community Market, specify each good or service produced, supplied or distributed by each of the parties to the merger, which may be considered as the same, similar to or broadly substitutable with a good or service produced, supplied or distributed by one or more of the other merging parties (Horizontal Overlap).
- 5.3 In relation to the Community Market, specify each good or service produced, supplied or distributed by each party to the merger in relation to which one or more other enterprises involved carries on a business upstream or downstream, whether or not the two undertakings involved happen to do business with each other as opposed to competitors (Vertical Overlap)
- 5.4 For each area of the overlapping relationships, specify the geographic regions within the ECOWAS Community where they occur and state the whereabouts of all major production, supply or distribution facilities of each enterprise involved.
- 5.5 For each area of overlap/relationship, provide details of the following:
 - (i) an estimate of the total size of the market in terms of sales value (in USD) and where appropriate, volume of the three largest competitors.
 - (ii) Indicate the basis and sources for the characteristics of the industry sector in which the proposed transaction occurs (e.g. whether mature or innovative) and the typical distribution and supply systems prevailing in the sector;
 - (iii) the nature of the products or services concerned. Indicate whether they are homogenous, characterised by brand loyalty and close substitutes for each other.
 - (iv) Indicate the distribution methods and sources and methods of supply of the enterprises involved;
 - (v) the extent of switching costs for customers changing from one supplier to another;
 - (vi) the importance and extent of customer preferences and the types and general location of customers; and,
 - (vii) the manner in which the enterprises involved price and sell their goods and/or services.

ANNEX 3: COMPLAINT ABOUT ALLEGED UNLAWFUL STATE AID

INSTRUCTIONS

This Form must be completed to the best of your ability and submitted to the ERCA Registry. Please attach any documents or relevant information to support your complaint. The information provided in this Form is confidential to the extent possible to enable ERCA investigate your complaint. However, ERCA may disclose this information where necessary to assist its investigation. ERCA will contact the Complainant where it considers that it is necessary to disclose such information. However, for the avoidance of doubt, you have the right to identify which information you consider confidential by submitting a request for confidentiality together with this complaint.

16. DETAILS OF COMPLAINANT

Full Name(s) of Complainant or Authorised Representative:		Website:
Full Name of Complainant Enterprise:		
Address and name of contact person:		
Phone:		Email:
Description of Industry:		
If this Complaint is being filed jointly with other natural and/or legal person(s), please provide details of the other complainants:		
Where this Form is completed by an Authorised Representative, please state the nature of your relationship with the beneficiary and whether you have the legal mandate to represent the beneficiary.		

17. DETAILS OF THE RESPONDENT MEMBER STATE(S)

Identify the Member State whose conduct the complaint relates to (the Respondent), including, all available information on the institution or body which granted the Aid complained about (for example whether the Aid was granted by Central Government, Regional Authority, International Organisation etc.)

--

18. DETAILS OF THE STATE AID

Provide details of the nature and form of the State Aid, including-

7. SWORN DECLARATION

I declare that the information in this Complaint Form and all supporting documents I have attached are accurate and provided to ERCA in good faith. I am aware that it is an offence to provide false or misleading information to ERCA.

Print Name:

Position:

Signature:

Date:

OFFICIAL USE ONLY	
ERCA REGISTRY	
Received By	
Print Name:	Signature:
Date Received:	Case Reference Number:
Acknowledgement letter issued:	Date Issued:
ERCA REGISTRAR	
Print Name:	Signature:

ANNEX 2: APPLICATION FOR AUTHORISATION/EXEMPTION

INSTRUCTIONS

This Form must be completed to the best of your ability and submitted to the ERCA Registry. Please attach any documents or relevant information to support your application. The information provided in this Form is confidential to the extent possible to enable ERCA consider your application. However, ERCA may disclose this information where necessary to assist in the discharge of its functions. ERCA will contact the applicant where it considers that it is necessary to disclose such information. However, for the avoidance of doubt, you have the right to identify which information you consider confidential by submitting a request for confidentiality together with this application.

8. DETAILS OF APPLICANT

Full Name(s):		Website:
Full Name (s) of Enterprise		
Address and name of contact person:		
Phone:	Fax:	Email:
Description of Industry		
If this application is being submitted jointly with other natural and/or legal person(s), please indicate and provide full details of other applicants.		
Has an Authorisation or Exemption been granted in respect the same agreement by ERCA? If so, please indicate the ERCA Reference Number.		

9. DETAILS OF THE AGREEMENT, DECISION OR CONCERTED PRACTICE

Provide details of the agreement, decision or practice for which the authorisation or exemption is being sought. Also indicate the goods or services affected by the agreement or practice.

10. GEOGRAPHICAL SCOPE

Set out your view about the geographical scope of the agreement, decision or practice for which the Authorisation or Exemption is being sought, in particular the Member States within the Common Market affected or likely to be affected.

11. INFRINGEMENT OF COMMUNITY COMPETITION RULES (CCR)

Please explain the section of the CCR which you believe have been/or likely to be infringed by the agreement, decision or conduct.

12. REASONS FOR AUTHORISATION OR EXEMPTION AND DURATION

- (a) Please explain why you are applying for an Authorisation or Exemption and the duration for which the Authorisation or Exemption. In particular, explain how the agreement, decision or conduct contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit.

- (b) Explain how the agreement, decision or practice benefits consumers without imposing on parties involved restrictions which are not indispensable to the attainment of consumer welfare, and how the agreement, decision or practice will not result in elimination of competition in respect of a substantial part of the products or services in question.

13. PROCEEDINGS BEFORE NATIONAL COMPETITION AUTHORITIES

Please indicate whether you have approached any other National Competition Authority in relation to the same or closely related agreement or practice. If so, provide full details about the authority contacted and your submissions to such authority.

--

14. SUPPORTING INFORMATION

Please list all supporting documents that are attached to this Application:

--

15. SWORN DECLARATION

I declare that the information in this Application Form and all supporting documents I have attached are accurate and provided to ERCA in good faith.

Print Name:

Position:

Signature:

Date:

SECTION 6

6. Counterfactual

If the notified merger did not take place, describe what is likely to happen:

- (i) to the business operations of each of the merger parties in the relevant markets identified; and
- (ii) in the relevant industry in which the merger parties operate.

SECTION 7

7. Market Context and efficiencies

- 7.1 Describe how the proposed merger is likely to affect the interests of intermediate and ultimate consumers and the development of technical and economic progress while not constituting a hindrance to competition.
- 7.2 Should you wish ERCA to specifically consider from the outset whether any efficiency gains generated by the merger are likely to benefit consumers and the development of technical and economic progress, please provide a description of, and supporting documents relating to each efficiency (including cost savings, new product introductions, and service or product improvements) that the parties anticipate will result from the proposed merger.
- 7.3 Provide a detailed explanation of extent to which customers are likely to benefit from the efficiency.
- 7.4 Provide the reason why the party or parties could not achieve the efficiency to a similar extent by means other than through the proposed merger proposed.

SECTION 8

8. Supporting Documents

Please ensure that the following documents (where relevant) are included in the application:

- (i) all relevant documents to support statements and explanations made in this Form;
- (ii) copies of the final or most recent version of all documents bringing about the merger, whether by agreement between the merger parties, acquisition of a controlling interest or a public bid;
- (iii) in the case of a public bid, a copy of the offer document; if it is unavailable at the time of notification, it should be submitted as soon as possible and not later than when it is posted to shareholders;

- (iv) copies of the most recent annual report and accounts (or equivalent for unincorporated bodies) for each of the merger parties;
- (v) copies of all analyses, reports, studies, surveys (including consumer surveys), and similar documents prepared for the purpose of assessing, analysing or giving a view on the merger with respect to market shares, competitive conditions, competitors (actual and potential), the rationale for the merger, potential for sales growth or expansion into other product or geographic markets, and/or general market conditions. For each of these documents, indicate (if not contained in the document itself) the date of preparation and the designation of each individual who prepared the document;
- (vi) copies of the two most recent business plans for each merger party and, where available, a copy of the (draft) business plan for the merged entity; and
- (vii) copies of any relevant market research reports that are available to either of the merger parties. Where geographic markets are arguably wider than the Community Market, market research that focuses on areas outside of the Community Market.

SECTION 9

9. Declaration

The notifying party or parties declare that,

- (i) to the best of their knowledge and belief, the information given in this notification is true, correct, and complete and it is an offence to provide false and misleading information to ERCA;
- (ii) true and complete copies of documents required by this Form have been supplied; and
- (iii) all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

Signature (s)

Name(s) of authorised signatory (in block capitals):

Designation(s):

Name of

Entity:

Date:

Note: There should be a separate signed declaration by each applicant and its legal representative (where one has been appointed).

x AIC

OFFICIAL USE ONLY	
ERCA REGISTRY	
Received By	
Print Name:	Signature:
Date Received:	Case Reference Number:
Acknowledgement letter issued:	Date Issued:
ERCA REGISTRAR	
Print Name:	Signature:

PART 4

PAYMENT DETAILS FOR FEES PAYABLE

All payments are to be made by electronic bank transfer to the ECOWAS Regional Competition Authority

Recipient Name	ECOWAS Regional Competition Authority
Account Number	xxxxxxx
Name of Bank	xxxxxxx
Bank Address	xxxxxxx
SWIFT/IBAN Code	xxxxxxx
Currency	xxxxxxx

The details of the electronic bank transfer, including a copy of the record of transfer with the transaction reference number, transaction date and time need to be provided to ERCA after the payment has been effected.

If you are unable to make payment by electronic bank transfer, and would like to pay via other payment modes, please contact ERCA.

Please also explain the basis for arriving at the amount of filing fee submitted above

PART 5

OFFICIAL USE ONLY	
ERCA REGISTRY	
Received By	
Print Name:	Signature:
Date Received:	Case Reference Number:
Acknowledgement letter issued:	Date Issued:
ERCA REGISTRAR	
Print Name:	Signature: