



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

ECOWAS Regional Competition Authority Guidelines on Mergers and Acquisitions

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INTRODUCTION

1. These guidelines are designed as an analytical framework that sheds light on the procedure and practice that the ECOWAS Regional Competition Authority (ERCA) uses in general to review mergers and acquisitions, in order to determine whether mergers and acquisitions violate the Community Competition Rules (CCRs).
2. ERCA is responsible for enforcing the CCRs to promote, maintain and encourage competition and enhance economic efficiency in production, trade and investment at the regional level; prohibit anti-competitive business conduct that prevents, restricts or distorts competition at the regional level, including mergers and acquisitions contrary to the CCRs; ensure the consumers' welfare and the protection of their interests; and expand opportunities for domestic enterprises in Member States to participate in world markets.
3. The purpose of these guidelines is to provide market participants, i.e., businesses, the necessary information regarding the scope of application of merger and acquisition control within ECOWAS, ERCA procedure, objectives, criteria and methods used for analyses in relation to mergers and acquisitions. It constitutes the first lines of control of mergers and acquisitions by ERCA.
4. As a statement of certain procedures and practices for the application of Community Mergers & Acquisitions control regulations, these guidelines do not constitute legal advice, any independent rights or obligations and do not in any way or manner limit the discretion of ERCA. Although this document identifies the factors that ERCA considers when analysing mergers and acquisitions, its enforcement decisions should not overshadow its discretionary power. The specific standards set out in these guidelines shall be applied considering both factual and legal circumstances. ERCA will apply them rigorously, reasonably and if necessary with flexibility, taking into account the specific facts and circumstances of each merger or acquisition.
5. In order to take into account of developments in its decision-making practice, regulatory or legislative changes or case law, necessary updates of this document may be made in line with the existing laws and regulations.

Legal framework for mergers and acquisitions within ECOWAS

6. The control of mergers and acquisitions within ECOWAS is based on the legal framework defined by Article 7 of the Supplementary Act A/SA.1/12/08 of 19 December 2008. Its implementation is specified by Regulation C/REG.23/12/21 of 10 December 2021 on the rules governing mergers and acquisitions within ECOWAS.
7. In addition, the organisation of ERCA, its powers and its operation are defined by Supplementary Act A/SA.2/12/08 and Supplementary Act A/SA.3/12/21 relating to the amendment of Supplementary Act A/SA.2/12/08 on the creation, powers and operation of ERCA. The general rules of procedure, decision and appeal are defined by Regulation C/REG/21/12/21 on the powers and

composition of ERCA Council and Regulation C/REG. 24/12/21 on the rules of procedure of ERCA in competition matters.

8. Enabling Rule PC/REX.1/01/24 on ERCA's Manual of Procedures provides details on certain practical aspects of the procedure, in particular:
 - procedures of the ERCA Council, the Authority's decision-making body;
 - procedures of the ERCA Executive Directorate, the body responsible for investigations and implementation of the ERCA Council's decisions;
 - investigation and notification procedures;
 - threshold for mergers and acquisitions and for a dominant or monopolistic position;
 - scale of fines and compensation, which establishes the basis and methodology for financial penalties imposed by the ERCA Council.
9. The application of these laws takes into account the provisions of the Cooperation Agreement between the ECOWAS Commission/ERCA and the WAEMU Commission on applying competition rules within the ECOWAS community.

I. SCOPE OF MERGER AND ACQUISITION CONTROL

10. Article 7 of the Supplementary Act A/SA.1/12/08 stipulates that mergers and acquisitions are prohibited and shall be declared null and void and without legal effect in any Member State of the ECOWAS community, where the resultant market share in the ECOWAS Common Market or any significant part thereof, attributable to any good, service, line of commerce, or activity affecting commerce shall result in abuse of dominant market position in a substantial reduction of competition.
11. Consequently, the Supplementary Competition Acts and the Enabling Rules require ERCA to first assess in advance whether mergers and acquisitions could have the effect of preventing, restricting or distorting competition within the Common Market and are likely to affect trade and investment flows within ECOWAS.
12. The scope of the control of mergers and acquisitions in ECOWAS is specified in Article 1 paragraph (3) and (4) of Regulation C/REG.23/12/21 on the rules governing mergers and acquisitions within ECOWAS and Enabling Rule PC/REX.1/01/24.
13. Article 1 of the Manual on the Mergers and Acquisitions Threshold and the Dominant or Monopolistic Position Threshold defines what constitutes a merger or acquisition and Article 5 sets out the turnover thresholds (or any relevant balance sheet item, whichever is higher) for which regional mergers/acquisitions control is applicable.

1.1. Mergers/Acquisitions in the ECOWAS competition Framework

14. A merger/acquisition operation is carried out when there is a takeover of control or other business combinations as provided for in Article 7 of the Supplementary Act A/SA.1/12/08 on CCRs. The Supplementary Act defines a “Merger” broadly as an acquisition of control or other business combination, a takeover, a joint venture or other acquisition or business combination, including interconnected directorships whether of a vertical, horizontal or conglomerate nature between or among enterprises.
15. The definition provided in Article 7 of the Supplementary Act A/SA.1/12/08 considers the notion of merger or acquisition in a broad sense to give ERCA the latitude to apply the rule in a broad and in an extensive manner.
16. In view of the objective pursued through the review of merger or acquisition operations, namely in particular to prohibit any anti-competitive commercial conduct that prevents, restricts or distorts competition and adversely affect the welfare of consumers and their interests (Article 3 of the Supplementary Act A/SA.1/12/08), ERCA considers both legal and factual elements, particularly as when its occurrence constitutes an economic concentration, which risks creating a dominant position resulting in an effective reduction of competition, must be subject to control by ERCA, regardless of the type of acquisitions of control.

17. De jure mergers refer to operations resulting in the disappearance of the legal personality of the target enterprise (the acquiring enterprise X absorbs the target enterprise Y which disappears within X) or the disappearance of the legal personality of all the merging enterprises (enterprise X and enterprise Y become enterprise Z).
18. De facto mergers are subject to merger control in the same way as de jure mergers, when the operation leads to the combination of the activities of previously independent enterprises within a single economic unit. In fact, there may be a merger from an economic point of view without there being a merger in the legal sense. This is particularly the case when the enterprises involved in the operation each retain their legal personality.
19. The existence of a single and sustainable economic management is a necessary and sufficient condition for determining whether such a concentration exists. To this end, ERCA considers all the legal and factual circumstances that make it possible to classify the transaction into such a situation. It may also take into account in its assessment various factors, such as the existence of cross-shareholdings, the consolidation of their accounts, the offsetting of profits and losses between the enterprises brought together by the transaction, the distribution of revenues between the various entities, the existence of common management, the joint and several liability of the various entities, as well as an overall policy, particularly in terms of communication.
20. To clarify the definition of mergers and acquisitions as set out in the Additional Act A/SA.1/12/08, the concepts of “enterprise”, “person”, “economic activity” and “acquisition of control” should be understood as defined below.

1.2. Notion of enterprise / person

21. According to Article 1 of the Supplementary Act A/SA.1/12/08 on CCRs, an enterprise means “any person or group of persons who engaged in business or an economic activity for a gain or profit, in a sustainable manner, regardless of its legal status.
22. However, a merger or acquisition may involve not only more than two enterprises, but also all or part of the assets constituting part of the enterprise(s) concerned, provided that those assets represent an economic activity which generates turnover on the community market.
23. According to the same provisions of the CCRs, a person means: i) “a legal person, whether incorporated or not, governed by private or public law, including the State, where the latter acts through an enterprise; and ii) a natural person, namely an individual or an association of individuals”.
24. However, in accordance with the definition of enterprise, an acquisition of control or any other form of business combination by natural persons may only constitute a merger/acquisition if those persons carry on economic activities for their own account or if they control at least one other enterprise prior to the transaction.

1.3. Economic activity

25. According to the same provisions of the CCRs, an economic activity means “any activity of (i) manufacturing, producing, transporting, acquiring, supplying, storing, distributing or otherwise dealing in goods for profit or reward and (ii) acquiring, providing or otherwise dealing in services for gain or reward”.
26. In this respect, as used in particular in Article 1(3) of Regulation C/REG.23/12/21 on mergers and acquisitions, the expression “enterprises which [operate] in at least two Member States of the Community” refers to all the abovementioned activities, some of which do not require the physical presence of the enterprise in the State(s) concerned. For example, “acquiring” means in the case of: (i) goods: obtaining them by gift/donation, purchase or exchange, lease, rental or hire purchase; (ii) services: “accepting benefit from or to perform the service; (iii) intellectual property rights: “obtaining by licence, assignment or public subsidy. In addition, “provide”, in relation to (i) goods, means to sell, rent, lease or otherwise dispose of or offer to dispose of the good or any interest or right therein; (ii) services, means to sell, rent or otherwise provide a service or offer to do so.
27. In the remainder of this guide, the notion of “enterprise” shall be used generically, whether it refers to all or part of an enterprise as a whole or to an economic activity controlled by a person.

II. ACQUISITION OF CONTROL OF AN ENTERPRISE

2.1. Takeover in general

28. According to Article 1 of the Supplementary Act A/SA.1/12/08, “control”, in relation to an enterprise, means the power of a legal or natural person to secure or guarantee by means of: i) the holding of shares or the possession of voting power in relation to that enterprise; or ii) any other power conferred by the enterprise's constituent instruments or other documents regulating the enterprise iii) the effective exercise of power of decision within the enterprise; so that the enterprise's business is conducted with that individual's wishes or desires.
29. Regulation C/REG. 24/12/21 on the investigation procedures of ERCA emphasises that mergers and acquisitions consist of operations resulting in a direct or indirect change of control of the enterprises concerned which may lead to an effective reduction of competition within the common market.
30. The question of the acquisition of control is an essential point in the analysis of mergers and acquisitions, it being understood that an internal restructuring of a group may not be a merger or acquisition within the meaning of Article 7 of the Supplementary Act A/SA.1/12/08. The principle of control within the meaning of the Supplementary Act implies that an acquiring enterprise exercises direct or indirect control over all or part of the business of another enterprise or acquires or establishes direct or indirect control over all or part of the business of another enterprise. Similarly, all or part of the business of a target enterprise shall be controlled directly or indirectly by an acquiring enterprise, and a target

enterprise transfers direct or indirect control of whole or part of its business to an acquiring enterprise.

31. Furthermore, control does not necessarily mean that the acquiring enterprise has the power to determine the day-to-day management of the target enterprise. What matters most is the acquiring enterprise's power to control the strategic decisions of the target enterprise. The analysis of the nature of the control exercised over an enterprise, or of the absence of control, is assessed based on legal and factual elements.
32. In its assessment, ERCA also considers the economic links between the enterprises.
33. Control may be sole, i.e. exercised by one enterprise acting alone, or joint, where it is exercised by two or more independent enterprises. There may also be no control within the meaning of the regulations on mergers and acquisitions.
34. The nature of the control exercised over an enterprise (or the absence of control) is assessed based on legal and factual factors.

2.2. Joint venture

35. Within the meaning of Article 7 of the Supplementary Act A/SA.1/12/08, the creation of a joint venture may be considered as a merger or acquisition transaction, particularly resulted from : i) the creation of a completely new joint structure; ii) the contribution of assets previously held by the parent enterprises on an individual basis to an existing joint venture, provided that these assets, whether contracts, know-how or other assets, enable the joint venture to expand its activities; iii) the acquisition by one or more new shareholders for a joint control of an existing enterprise.
36. However, ERCA analyses this operation in relation to the objective of addressing the risk of market power and a significant reduction in competition, so that full-function joint ventures, including in the event of an extension of their activities, are subject to merger and acquisition control within the meaning of Regulation C/REG.23/12/21. ERCA considers that a joint venture is deemed to be full-function, and therefore a merger/acquisition, when: i) it is jointly controlled (by at least two independent enterprises), ii) it operates on a lasting basis and iii) it performs all the functions of an autonomous economic entity, i.e. it must operate on a market, performing all the functions normally performed by other enterprises present on that market.
37. A joint venture is fully-fledged if it has sufficient resources to operate independently on a market, and particularly when all the structural elements necessary for the operation of autonomous enterprises (human resources, budget, commercial responsibility) are in place and provided. In the instance also that the resources necessary for its activity may be transferred by its parent enterprises: these may include personnel, intangible assets (brands, etc.), or their expertise in the field of design, manufacturing and marketing, by transferring all their activities in this sector, contracts, employees, as well as all

the rights necessary for carrying out the activity. The joint venture must have an activity that goes beyond a specific function for the parent enterprises, but it must not be totally dependent on its parent enterprises, either for sales or purchases. It is to note that in the event that parent enterprises account for a significant proportion of the joint venture's sales or purchases yet still does not prevent it from being classified as a merger/acquisition within the meaning of the Supplementary Act A/SA.1/12/08 and Regulation C/REG.23/12/21.

2.3. Interconnected Directorships

38. Under Article 7 of the Supplementary Act A/SA.1/12/08, ERCA pays attention to certain direct or indirect links between competitors. Interconnected directorships occur when a director or officer of an enterprise sits on the board of directors of a competing enterprise. The acquisition of interconnected directorships is considered a merger/acquisition under Regulation C/REG.23/12/21 and is subject to prior notification only if the transaction constitutes a business combination. In other words, for prior merger notification to be mandatory for acquisition of interconnected directorships, it should be accompanied by either an acquisition of shares/voting rights or an acquisition of control or assets of an enterprise, including the acquisition of joint control.

39. ERCA considers that nested directorships may enable two competing enterprises to coordinate their business activities or exchange sensitive competition-related information. An interconnected directorship may occur in many circumstances. For example, during a merger or acquisition, when a new shareholder appoints its director to the board of the target enterprise, or when two enterprises with a common director suddenly become competitors after one enterprise launches a new product or business line. In the context of merger control, ERCA may consider an interconnected directorship as a means to exert decisive influence under the ECOWAS merger regulation and may require, as a corrective measure, that it be dissolved. Enterprises should be prepared to provide ERCA with information about the positions of interconnected directors they hold at their competitors and, more generally, about common investors.

2.4. Other types of corporate control

40. Other types of operations such as changes of control are considered by ERCA as mergers/acquisitions within the meaning of Regulation C/REG.23/12/21. For this to be the case, the merger or acquisition must involve a lasting change of control over an enterprise. Thus, operations involving specific agreements, such as multiple interdependent, successive and transitional operations, are analysed considering their legal and economic aspects.

III. MERGER AND ACQUISITION CONTROL THRESHOLDS

41. Pursuant to Article 1 paragraph 3 of Regulation C/REG.23/12/21 and Article 5 of ERCA Merger Manual which defines the merger and acquisition control

threshold, a merger and acquisition is subject to ERCA control if the following two alternative conditions are met:

- a) the combined total sales or any relevant balance sheet item, whichever is higher, of all the enterprises merging within the common market exceeds UA 20 million¹; or
- b) the combined sales or any relevant balance sheet item, whichever is higher, on a community scale, of each of at least two (2) of the entities involved in the merger or acquisition exceeds UA 5 million.

42. The merger or acquisition must be notified to ERCA when one of above conditions is met. However, under condition b) notification does not necessarily imply that the combined sales, or any relevant balance sheet items, of the enterprises involved in the transaction reach the compulsory notification threshold of UA 20 million required under condition a). For example, if an operation involves two enterprises, one with a turnover of UA 6 million and the other with a turnover of UA 8 million, giving a combined total turnover of UA 14 million, the operation must be notified even though the UA 20 million threshold is not reached.

43. By criterion b) as an alternative to criterion a), ERCA intends to consider one of the structural characteristics of community markets, namely the level of concentration, when assessing mergers and acquisitions. The aim of criterion b) is to consider mergers and acquisitions involving several relatively large enterprises whose mergers are likely to affect the market.

IV. TURNOVER CALCULATION

44. Article 6 of the Merger Manual sets out provisions designed to ensure that the turnover figures calculated reflect the real and current economic situation of the enterprises concerned on the community market.

- a) Total turnover, which include the amount earned by the merging enterprises from the sale of goods and services in the fiscal year preceding the merger; amounts which come from the enterprise's ordinary activities.
- b) Financial periods that do not cover a full twelve (12) month year shall be extrapolated to cover a full year based on average enterprise sales during the months recorded.
- c) Information from the enterprise's latest published accounts would be sufficient to determine whether the turnover criterion is met. Where there have been significant changes in circumstances since the closure of the accounts, the most recent accounts examined shall give a better indication of actual sales.

¹ The ECOWAS Unit of Account is the equivalent of the International Monetary Fund's (IMF) Special Drawing Rights (SDR). Conversion into dollars or the currencies of ECOWAS member states is made using the monthly average exchange rate between the UA and other currencies. Daily exchange rates are published on the West African Monetary Agency (WAMA) website: https://amao-wama.org/Reports/Daily_exchange_ratessmry.php.

- d) Where enterprises are unable to provide the relevant details to enable ERCA to determine the relevant turnover figures, or where there is no appropriate geographical breakdown of turnover figures, ERCA then takes into consideration the evidence available to it, the opinion of its experts, and any evidence that may be presented by interested parties in determining the turnover figures.
45. The calculation of total combined turnover depends on the enterprises involved and the type of merger/acquisition under consideration:
- a) in the case of a merger of independent enterprises into a single entity, the enterprises concerned are the merging enterprises;
 - b) in the case of an acquisition of exclusive control, the enterprises concerned are the acquiring enterprise and the target enterprise;
 - c) in the case of a joint acquisition of control over an existing enterprise, the enterprises concerned are the enterprises acquiring control and the pre-existing enterprise acquired; however, when the pre-existing enterprise was under the exclusive control of one enterprise and one or more new shareholders acquire joint control, while the initial parent enterprise remains, the enterprises concerned are each of the enterprises exercising joint control (including the initial shareholder). In this case, the target enterprise is not an enterprise concerned, and its turnover forms part of those of the original parent enterprise;
 - d) in the case of a change from joint to sole control, the enterprises concerned are the acquiring enterprise and the target enterprise, while the transferring enterprises are not considered to be concerned;
 - e) in the case of the acquisition of joint control over a newly created joint venture, the enterprises concerned are the controlling enterprises. The newly created enterprise is not considered “concerned”, as it has no turnover of its own prior to the transaction. If one of the controlling enterprises brings assets to the newly created enterprise, the related turnover is considered in calculating the turnover of this controlling enterprise.
46. In the case of a takeover, the calculation for each of the acquirers must consider all the group's activities, and not just those of the subsidiaries directly involved in the transaction, or those relating to the markets concerned or affected by the transaction. For the seller, only the turnover of the business sold is considered.
47. Public aid granted to enterprises must be included in the calculation of turnover, if it is directly linked to the turnover of the enterprise's products and services, since it reinforces the enterprise's economic weight on the market by enabling it to sell at prices lower than those it would be able to charge in the absence of such public aid.
48. The calculation of the combined total turnover of the enterprises involved in the merger or acquisition excludes intra-group turnover, which must be considered for all group activities.

Credit Unions and other financial Institutions

49. For credit activities and other financial establishments, turnover includes the following products:
- interest and similar products;
 - income from securities (income from shares and other income-producing securities, investment income, income from shares in related companies, etc.);
 - commissions received;
 - other operating income
50. For insurance companies, turnover represents the value of gross premiums issued, the amounts received or receivable under insurance contracts established by insurance companies or on their behalf, including premiums ceded to reinsurers.

V. MERGER AND ACQUISITION CONTROL PROCEDURE

5.1. Notification obligation

51. Pursuant to Article 2 paragraph 1 (a) of Regulation C/REG.23/12/21, a merger or acquisition for which the notification threshold is met must be notified to ERCA. As such, the obligation to notify is incumbent on the acquiring party or on all the parties concerned, who must then notify jointly.
52. On the one hand, the parties must notify the transaction before it is carried out, and on the other hand, they must not carry out the transaction before ERCA has issued a decision. The procedure therefore has a suspensive effect.
53. Enterprises that carry out a merger or acquisition that meets the notification requirements without having previously notified ERCA may be subject to the sanctions provided for in Supplementary Act A/SA.2/12/08 and ERCA Manual on Fines and Indemnities.
54. Under Article 4 of the Additional Act A/SA.2/12/08, if a merger or acquisition has been carried out without notification, ERCA may order the termination of the agreement and require the parties to return to the pre-merger or pre-acquisition state. Under the provisions of the Manual on Fines and Indemnities, ERCA orders the parties to notify the transaction, subject to a minimum penalty of UA 500,000.
55. Under article 14 of Regulation C/REG.24/12/21, ERCA can impose financial penalties of up to 10% of turnover on enterprises that obstruct the merger/acquisition review procedure, including by providing inaccurate information.

5.2. The different phases of the procedure

56. Three main phases are considered in ERCA merger and acquisition control: pre-notification, phase 1, phase 2, ERCA Council decision and Appeal.

a) Pre-notification

57. The pre-notification phase, which is optional, is triggered at the initiative of enterprises wishing to submit their proposed merger or acquisition to ERCA for further clarification, as regards the transaction's eligibility for notification, the relevant market, including its regional dimension, or other issues relevant to the examination of the transaction and its anti-competitive effects.

58. This pre-notification phase enables enterprises to exchange information informally with ERCA to finalize their notification file and be able to present a file that meets the requirements of the control. Exchanges between the parties on the merger/acquisition and ERCA are generally made by e-mail to the following address: info@erca-arcc.org.

b) Submission of notification file

59. Under the provisions of ERCA Manual on Inquiries and Notifications, a merger or acquisition notification is submitted as soon as the parties reach a firm intention to proceed with the merger or acquisition.

60. The notification is submitted to ERCA using the notification form for mergers or acquisitions, to which the relevant information is attached. This form specifies the information to be provided by notifying parties when submitting a notification to the ECOWAS Regional Competition Authority (ERCA) of a proposed merger or acquisition for clearance or exemption. A copy of this form can be downloaded from ERCA website at www.erca-arcc.org.

61. The notification form can be completed electronically, with the option of attaching the required supporting documents. However, the physical version of the notification file can be sent to ERCA at the following address:

<p>ECOWAS Regional Competition Authority Bertil Harding, Bijilo, The Gambia P.O Box 4470 Tel: +220 2330006 / 3486966 Email: info@erca-arcc.org</p>
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62. However, an electronic version of the file is recommended to facilitate processing.

63. The notification file can be sent in any of the community's three working languages: English, French and Portuguese.

64. ERCA ensures that the file submitted to it is complete, and if so, sends an acknowledgement of receipt to the notifying party(ies), stating the date on which the notification was submitted. If the file is incomplete, ERCA informs the

notifying party(ies) in writing, specifying which elements need to be completed or rectified. The time taken to process the application starts to count on the working day following that indicated on the acknowledgement of receipt.

c) Phase 1 assessment

65. Following receipt of the duly completed notification form with the relevant supporting documents, ERCA Phase 1 assessment should be completed within thirty (30) working days of submission of the notification.
66. The assessment consists of an analysis of the form and relevant supporting documents, to determine whether the merger/acquisition raises competition concerns.
67. If during phase 1 ERCA determines that the merger is still likely to substantially prevent or lessen competition and the remedies proposed by the merger parties do not address the competition issues identified, the Authority shall undertake a second detailed review, commencing phase two of the review.

d) Phase 2 assessment

68. In accordance with the instructions of the ERCA Council, the ERCA Executive Directorate may carry out a Phase 2 assessment by setting up a Phase 2 case team to conduct a more in-depth assessment of the notification.
69. The Phase 2 assessment may require the submission of further information from applicants and other participants in the relevant markets likely to be affected. At the end of the Phase 2 assessment, recommendations are submitted to the ERCA Council for decision.

e) ERCA Council decision

70. The ERCA Council makes the following decisions in accordance with the provisions of its Procedural Manual:
 - (a) authorizes the merger or acquisition unconditionnally;
 - (b) authorizes the merger or acquisition with conditions;
 - (c) rejects the merger or acquisition in a reasoned decision.
71. To obtain authorization, the parties may have to propose remedial measures to resolve competition problems (e.g. transfers of shares or even enterprises)

f) Appeals against ERCA decisions

72. Pursuant to article 15 of regulation C/REG.24/12/21 and Article 47 of the Manual on Investigations and Notifications, decisions taken by the ERCA Council may be appealed to the Community Court of Justice.

73. The appeal must be lodged within thirty (30) calendar days from the date of receipt of the ERCA Council's decision.

74. Decisions taken by the Community Court of Justice in relation to ERCA decisions are final and binding on the parties.

5.3. Elements of the notification file

a) Notification Form Details

75. Article 2 of regulation C/REG.23/12/21 and Annex 5 of the Manual on Investigation and Notification specify the elements that make up ERCA notification file. It comprises ten (10) sections corresponding to a set of information to be provided to ERCA. In addition to these elements, there is the payment of the notification fee as provided by Regulation C/REG.23/12/21.

Section 1: description of the merger

76. Provide an analytical summary of the merger, specifying the parties, the nature of the merger (e.g., merger, acquisition or joint venture), the parties' areas of activity, the markets in which the merger shall have an impact, and the strategic and economic rationale for the merger.

- Information on the parties: for each notifying party as well as for each other party to the merger provide:
 - o registered office address,
 - o full name, title, address (if different from office address), direct telephone number and e-mail address of contact person.
- Provide the name of the applicant(s) and contact details, if different from above.
- Provide the full name, designation, address, direct telephone number and e-mail address of the legal representative(s)/authorized representative(s) of the applicant(s), if any, to whom correspondence relating to the notification may be sent.
- Where the declaration on this form is signed by a Council or other representative of the applicant(s), written evidence of the representative's authority to act on behalf of the applicant(s) must be provided. The written proof must contain the name and capacity of the persons granting this authorization.

Section 2: Relevant information on ECOWAS countries concerned by the merger

77. Indicate whether the National Competition Authorities (NCAs) of other jurisdictions (e.g. the WAEMU Commission) have been (or shall be) informed of the merger? If so, please indicate the date and status of each notification. Parties are invited to notify ERCA of any material change in status (e.g. authorization, refusal of authorization, negotiation of commitments and enterprises) in connection with any notification to other competition authorities.
78. ERCA shall be required to work with the NCAs and probably the WAEMU Commission in the context of merger/acquisition control. In this respect, the parties may wish to grant ERCA a waiver allowing it to exchange confidential information with the NCAs or the WAEMU Commission concerning the notified merger/acquisition.

Section 3: Details on the ownership and control structure of the merging enterprises

79. The information requested in this section can be illustrated using organization charts or diagrams showing the ownership and control structure of the companies before and after the merger/acquisition.
- In this case, the parties must provide ERCA with:
 - o an overview of the ownership structure of each of the merging parties prior to the merger;
 - o details of the persons directly or indirectly controlling, either alone or jointly, each of the parties to the merger;
 - o an overview of the merged entity's ownership structure.
 - The parties must identify and explain any links, formal or informal, between the respective parties to the merger (including interconnected organizations and other persons identified in the previous question).
 - For each of the parties to the merger/acquisition, provide:
 - o list of entities registered on the community market;
 - o the trade name or brand names used on the community market;
 - o description of any physical presence (e.g. sales office, factory, etc.) on the community market;
 - o a brief overview of activities, including the sale of goods and services provided on the community market.
 - Describe the notified merger, explaining whether the proposed merger is:
 - o a complete merger,
 - o an acquisition of exclusive or joint control, or
 - o a contract or other means of conferring direct or indirect control of the merged entity.

- Explain how the merger shall be implemented (e.g. by entering into a takeover agreement, launching a public offering, etc.).
- Indicate the expected date of any major event leading to completion of the merger.
- Explain the ownership and control structure of each of the enterprises involved after completion of the merger.
- Describe the economic or strategic rationale for the merger.
- Determining the value of the merger or the value of the assets involved?
- What is the expected completion date of the merger?
- Indicate whether any financial or other assistance has been received from any source (including public authorities) by any of the merging parties, and the nature and amount of such assistance.
- List all goods and/or services sold by the respective merging parties within the Community market

Section 4: Sales and balance sheet

80. For each of the parties to the merger concerned, provide the following data for the last financial year:

- total sales (group) worldwide;
- total sales (group) within the ECOWAS community market;
- total (group) sales in specific member states of operation.

Section 5: Market structure

81. List all the markets in which the merging parties shall sell their products and/or services;

82. For each market listed, provide:

- sales by value and volume, as well as an estimate of market share within the ECOWAS Common Market;
- estimated market shares of the merging parties' competitors;
- an analysis of actual or potential competition from enterprises located outside the ECOWAS Community market;
- a description of existing barriers to market entry (e.g. capital requirements, licensing and regulatory hurdles);
- an estimate of how long it shall take potential competitor(s) to enter the market;
- The name and contact details of each market entrant over the last three (3) years;
- an estimate of the value and volume of the ECOWAS community market as a whole (i.e. production minus exports plus imports);
- 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 that already possesses the necessary technology and expertise;
- an estimate of the scale of annual advertising/promotion expenditure in relation to sales required to enter the market on a scale equivalent to that of the merging parties' main competitor(s);
- an assessment of ease of market exit. Please indicate any trends in market entry and exit over the last five (5) years;
- an assessment of any effects the merger might have at the ECOWAS regional level, including a description of the nature of competition at member state and regional level and details of any localities where competition might be reduced because of the merger; and
- a brief assessment of any other market characteristics that ERCA should consider when considering the effects of the merger.

Section 6: Overlapping products and/or services and other relationships

83. List the goods and/or services sold by both (or all) parties to the concentration in each Member State (overlapping products, for branded products please indicate the brand names used)
84. As regards the Community market, specify each good or service produced, supplied or distributed by each of the parties to the merger, which can be considered identical, similar or largely substitutable for a good or service produced, supplied or distributed by one or more of the other parties to the merger (horizontal overlap).
85. Regarding the Community market, specify each good or service produced, supplied or distributed by each party to the concentration for which one or more other enterprises are active in upstream or downstream activity, whether the merging enterprises are doing business with each other rather than with competitors (vertical overlap).

86. For each area of overlapping relations, specify the geographical regions within the ECOWAS Community where they occur and indicate where all the main production, supply or distribution facilities of each enterprise concerned are located.

87. For each area of overlap/relationship, provide details of the following:

- an estimate of the total size of the market in terms of sales value (in USD) and, where applicable, the volume of the three main competitors.
- Indicate the basis and sources of the characteristics of the industrial sector in which the proposed operation takes place (for example, whether mature or innovative) and the typical distribution and supply systems prevalent in the sector;
- Provide the nature of the products or services concerned. Indicate whether they are homogeneous, characterized by brand loyalty and close substitutes.
- Indicate the distribution methods and the sources and modes of supply of the enterprises concerned;
- Indicate the scale of switching costs for customers moving from one supplier to another;
- Indicate the importance and extent of customer preferences and the types and general location of customers; and,
- Indicate how the enterprises concerned set prices and sell their goods and/or services.

Section 7: Counterfactual

88. If the notified merger has not taken place, describe what is likely to happen:

- the business activities of each of the merging parties in the relevant markets identified; and
- in the relevant sector in which the parties to the merger/acquisition operate.

Section 8: Market context and efficiency

89. Describe how the proposed merger is likely to affect the interests of intermediate and final consumers and the development of technical and economic progress, without constituting an obstacle to competition.

90. If you would like ERCA to specifically examine from the outset whether the efficiencies generated by the merger are likely to benefit consumers and the development of technical and economic progress, provide a description and supporting documentation relating to each efficiency (including cost savings, new product introductions and service or product improvements) that the parties expect to result from the proposed merger.

91. Provide a detailed explanation of the extent to which customers are likely to benefit from efficiency.

92. Indicate the reason why the party or parties were unable to achieve efficiency to a similar extent by means other than the proposed merger.

Section 9: Supporting documents

- Ensure that the following documents (if applicable) are included in the application: all relevant documents supporting the statements and explanations made in this form;
- copies of the final or most recent version of all documents leading to the merger, whether an agreement between the merging parties, a takeover or a public offer;
- in the event of a public offer, a copy of the offer document; if it is not available at the time of notification, it must be provided as soon as possible and at the latest when it is posted to shareholders;
- copies of the most recent annual report and accounts (or equivalent for unincorporated entities) of each of the parties to the merger;
- copies of all analyses, reports, studies, surveys (including consumer surveys) and similar documents prepared for the purpose of evaluating, analysing or giving an opinion on the merger with regard to market shares, competitive conditions, competitors (current and potential), the rationale for the merger, the 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 person who prepared the document;
- copies of the two most recent business plans for each party to the merger and, if applicable, a copy of the (draft) business plan for the merged entity;
- copies of any relevant market research reports made available to either of the merging parties. Where geographic markets are likely to be wider than the EU market, a market survey that focuses on areas outside the EU market.

93. Merger/acquisition analysis requires disaggregated data, sometimes using surveys to obtain:

- quantity information:
 - o quantities purchased in volume and value;
 - o how they are purchased;
 - o quantities sold in volume and value;
 - o how they are sold; and
- all pricing information:
 - o wholesale and retail prices;
 - o ex-works price;
 - o list price;

- prices with discounts;
- prices for different channels/customer groups;
- prices on the national or regional market.
- Inventory information
- Information on supply, production, sales and investment capacity
- Information on total costs
 - Fixed and variable costs;
 - Direct and indirect costs, etc.
- Provide information on the enterprises concerned, including:
 - products: how they are manufactured, how they are sold, and how they are priced and supplied;
 - enterprise organization(s);
 - corporate marketing, e.g. relations with suppliers and customers.
- Competitors' and consumers' perceptions
 - how different enterprises and consumer groups react to the activities of the parties involved in the merger/acquisition.

Section 10: Declaration

94. The notifying party or parties declare that:

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

95. Each applicant and his or her legal representative (if one has been appointed) must sign a separate declaration.

b) Notification fee

96. Under Article 2 (1) (a) (viii) of Regulation C/REG.23/12/21, notification fees are calculated at 0.1% of the combined annual turnover or combined asset value of enterprises in the community, whichever is higher. These costs are paid to ERCA, which determines the terms and conditions. Merger notification fees are non-refundable under any circumstances.

97. ERCA calculates the costs and sends an invoice to the notifying party within five (5) working days of receipt of the notification file.

98. Proof of payment by bank or electronic transfer must be sent to ERCA within five (5) working days of receipt of the invoice for the fees to be paid.

5.4. Publication of merger/acquisition notification

99. ERCA publishes the merger/acquisition notice notification to allow other third parties who have not been approached by ERCA to comment either via its website or directly to ERCA. Information gathering may also include further meetings with the applicant and third parties. The publication is posted on ERCA website (www.erca-ERCA.org).

5.5. Review times

100. Pursuant to Article 1 of Regulation C/REG.24/12/21, the time limits governing the control of mergers and acquisitions are expressed in working days, unless otherwise stated. Working days do not include Saturdays, Sundays or public holidays.

101. Under the provisions of Article 2, (2) of Regulation C/REG.23/12/21, ERCA has a period of sixty (60) working days from the date of receipt of the notification to make recommendation for issuing its decision on authorization or rejection of the merger/acquisition with or without conditions. However, this period may be extended by a maximum of thirty (30) days if additional information is requested by ERCA.

5.6. Withdrawals

102. At any time during the procedure, the notifying party may withdraw its application. If the file has already been notified, the notifying party must submit all documents attesting to the abandonment of the project. In this case, the situation of the enterprises concerned remains unchanged.

103. In the event of withdrawal of the file, the notification fee is non-refundable as indicated in Article 2 of Regulation C/REG.23/12/21.

VI. COOPERATION BETWEEN COMPETITION AUTHORITIES

104. In accordance with Article 13 of the Supplementary Act A/SA.1/12/08, ERCA collaborates with national and other sub-regional (WAEMU) competition authorities in the implementation of the CCRs. This cooperation applies to the control of mergers and acquisitions.

105. Cooperation between ERCA and the States is based on the following principles:

- a) the “single control principle”, to avoid multiple controls on compliance with competition rules in the Community. This control is exercised by a single authority, either ERCA or the competition authority of a Member State;
- b) the “principle of trade allocation” enshrined in Supplementary Act A/SA.1/12/08 adopting the Community Competition Rules and their application within ECOWAS.

106.ERCA and national competition authorities ensure that only one merger or acquisition control is carried out by the competent entity.

107.Under Article 1 paragraph 3 of regulation C/REG.23/12/21, mergers and acquisitions of enterprises operating in at least two ECOWAS member states are the responsibility of ERCA.

108.Mergers and acquisitions of enterprises operating in a member state, which do not affect community trade within ECOWAS, are the responsibility of the national competition authority of the state concerned.

109.When ERCA is notified of a merger or acquisition involving an enterprise or enterprises operating only in a Member State and likely to have effects only in that Member State, it refers the case to the competition authority of the State concerned.

110.When the competition authority of a member state is notified of a merger or acquisition involving one or more enterprises operating in at least two member states, it refers the case to ERCA.

111.Notwithstanding the provisions of the preceding paragraphs, if ERCA considers that it has an interest in dealing with a merger/acquisition case notified to the competition authority of a Member State (likely to affect competition on the Community market), it gives its main reasons in writing and invites the national authority to relinquish jurisdiction. In this case, the national authority suspends the procedure and returns all the elements of the file to ERCA.

112.ERCA and the national competition authorities inform each other, within a reasonable time, of the opening of any proceedings, by the most appropriate means.

113.ERCA and the national competition authorities take the necessary steps to share information for the uniform application of Community rules on the control of mergers and acquisitions.

114.Cooperation on merger and acquisition control, as set out in the above paragraphs, also extends to the WAEMU Commission to avoid multiple merger control within the ECOWAS zone.

VII. ANALYSIS OF THE IMPACT OF THE MERGER/ACQUISITION ON COMPETITION

115. This section looks at the economic justification for merger/acquisition control? The question is whether merger/acquisition is beneficial or detrimental to consumer welfare.

116. The analysis of the effects of the merger/acquisition is in line with the objective set out in Article 7 of the Supplementary Act A/SA.1.12/08, which is to ensure that “the resultant market share in the ECOWAS Common Market or any significant part thereof, does not create a dominant position resulting in a substantial reduction of competition.

7.1. Significant impediment to effective competition

117. ERCA shall attempt to answer the question of whether the transaction shall lead to a substantial lessening of competition in the ECOWAS Community market, and what effect it shall have on consumer welfare. To answer this question, we need to consider the opportunities offered by the transaction, and whether it could lead to:

- more efficient allocation of resources;
- improved competitiveness;
- lower prices;
- greater access to products and services;
- greater innovation;
- etc.

118. To answer this crucial question, a set of parameters is defined based on which the effects of the merger/acquisition operation on competition and consumer welfare are assessed, including the basis of dominance, substantial market power and changes in market concentration. In other words, ERCA uses analytical tools to examine the competitive constraints that an enterprise or enterprises may face, identify competitors and organize the analysis.

7.2. Market definition

119. The definition and analysis of the relevant market is the basis for the control of mergers/acquisitions with a view to assessing their effects. ERCA begins by defining the relevant product and geographic market potentially impacted by the transaction. It bases its analysis on market theory, data analysis and the Hypothetical Monopolist Test (SSNIP Test).

a) The relevant product market

120. The relevant product market includes all products and/or services that are considered interchangeable or substitutable by the consumer due to their characteristics, price and intended use.

121. In defining the market for the products and/or services in question, the ERCA will consider in particular the following factors:

- the degree of physical similarities of the products and/or services;
- the difference in their final use;
- the price difference between the products and/or services concerned;
- established or ingrained consumer preferences for a type or category of products and/or services;
- the classification of products and/or services according to the nomenclatures of professional associations.
- the classification of products and/or services according to the nomenclatures of professional associations.

i. Supply-side and demand-side substitutability

122. The question of substitution is analysed from the demand and supply sides, and involves determining elasticities, i.e., the responsiveness of demand and production to a change in price.

- In the case of demand-side substitutability, consumers of product A would switch to product B following an increase in the price of A. Products A and B are substitutable when they have a positive cross-price elasticity, meaning that an increase (or decrease) in the price of one of the goods leads to an increase (or decrease) in demand for the other good. In addition, it is important to know: (i) to what extent buyers can switch suppliers if the price increases, (ii) what the switching costs are for buyers, (iii) and whether the likely switch is sufficient to limit the price increase.
 - In the case of supply-side substitutability, manufacturers of A would be able and willing to switch their production to product B in response to an increase in the price of B. Furthermore, it is necessary to show that manufacturers of A can quickly and cost-effectively adjust their production/supply using their existing production equipment and facilities: if this is the case, their potential output is included in the market in question.
- ii. SSNIP test: small but significant and non-transitory price increase, seeks to define the smallest relevant market within which a hypothetical monopolist could impose a significant and profitable price increase.

b) The relevant geographic market

123. The relevant geographic market (or the market in question) includes the territory or any part of the ECOWAS region, in which the enterprises concerned are involved in the supply and demand of products or services that presents

sufficiently homogeneous conditions of competition, and which may be distinguished from neighboring territories as the conditions of competition there are significantly different.

124. In defining the geographic market, the ERCA will take into account the following factors in particular:

- the nature and characteristics of the products and/or services concerned;
- the existence of barriers to entry;
- consumer preferences;
- reasonable differences in market shares or substantial price differences;
- transport costs.

c) A horizontal merger, a non-horizontal merger or both

- i. Horizontal mergers: same market (product and geographic)
- ii. Non-horizontal mergers
 - Vertical mergers: upstream or downstream markets
 - Conglomerate mergers: neighbouring markets

125. Emerging theories on the loss of innovation and the elimination of an emerging competitor are gaining ground.

7.3. Theories of harm

126. ERCA shall assess the impact of the transaction on the relevant markets with reference to various theories of harm (e.g., non-coordinated or unilateral effects). Depending on the outcome of its analysis, it may conclude that the transaction is likely or not to reduce competition on the relevant markets.

a) Increased market concentration

127. Market concentration and its increase due to merger/acquisition are often relevant indicators of the risk that a merger shall significantly reduce competition. A merger that creates or consolidates a highly concentrated market and causes the Herfindahl-Hirschman Index (HHI) to rise above a certain threshold is presumed to substantially reduce competition or tend to create a monopoly situation.

128. ERCA also examines the merged enterprise's market share: according to ERCA Manual on Mergers and Dominant/Monopolistic Position, a merger that creates an enterprise with a market share of over 40% is presumed to be dominant. A market share more than 70% is presumed to be a monopoly.

b) Uncoordinated/unilateral effects

- i. May occur when the merged entity would be able to exercise unilateral market power after the merger, due to the elimination of competition between the merging parties by the transaction.
 - domination by a single enterprise
 - proximity to competitors, strong competitive edge
- ii. Manifestations of market power include the ability to raise prices, reduce quality, production, variety and innovation.
- iii. The combined market shares of the merging parties serve as an indication of (lack of) market power.

c) Coordinated effects

- i. There may be cases where the merged entity would be able, or better able, to coordinate its behaviour with its rivals, than if the merging parties were independent.
- ii. For coordinated effects to occur, the following criteria must be met
 - sufficient market transparency to achieve coordinated conditions;
 - the ability to monitor anomalies;
 - credible deterrent mechanism;
 - no other competitive constraints; and
 - causal link between the merger and the coordinated effects.

129. Horizontal and non-horizontal mergers can give rise to coordinated effects.

d) Eliminating potential competition

- i. Does the merger involve the acquisition of a likely entrant, an company with a competing product or service under development, or a new competitor whose potential innovation represents a serious future threat to the incumbent acquirer?
- ii. Is the intention of the transaction to “kill” innovation before it becomes competitively viable?
- iii. Don't mergers lead to market foreclosure?
- iv. The merged entity's ability and incentive to leverage a position of strength across markets through financial consolidation, tied selling or other exclusionary practices.

130. Merger/acquisition analysis requires disaggregated data, sometimes using surveys to obtain:

- responses from enterprises and consumers

- what products/services are sold;
- how they are sold; and
- how different enterprises and consumer groups react to the activities of the parties involved in the merger/acquisition.
- all pricing information :
 - wholesale and retail prices;
 - ex-works price;
 - list price;
 - prices with discounts;
 - prices for different channels/customer groups;
 - prices on the national or regional market.
- Quantity information:
 - quantities bought and sold in volume and value;
 - quantities sold in volume and value.
- Inventory information
- Information on supply, production, sales and investment capacity
- Information on total costs
 - Fixed and variable costs ;
 - Direct and indirect costs, etc.
- Provide information on the enterprises concerned, including:
 - products: how they are manufactured, how they are sold, and how they are priced and supplied;
 - enterprise organization(s);
 - corporate marketing, e.g. relations with suppliers and customers.

ANNEX: 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 enterprises which operate in at least two Member States of the Community.

Any enterprise or business enterprise within the prescribed turnover threshold wishing to merge with or acquire all or part of another enterprise or enterprise 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) working days from the date of transmission to the notifying party(ies) the acknowledgement of receipt of the notification file 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.

Notifying parties who, either intentionally or negligently, supply incorrect or misleading information are liable to penalties. In addition, ERCA may revoke its decision to approve the notified merger where it is based on incorrect information for which one of the enterprises is responsible.

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 0.1% of the combined annual turnover or the combined value of the assets of the enterprises in the Community, whichever is higher in line with article 2(1)(a)(viii) of Regulation C/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 enterprises) 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?

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 enterprises 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 enterprises 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) name and contact details of competitors

(iii) the estimated market shares of the merging parties' competitors;

(iv) an analysis of actual or potential competition from enterprises located outside the ECOWAS Community Market;

(v) A description of existing barriers to market entry (for example capital requirements, licensing and regulatory barriers);

(vi) an estimate of the time it will take for potential competitor(s) to enter the market;

(vii) the name and contact details of each entrant to the market during the last three (3) years;

(viii) an estimate of the value and volume of the ECOWAS Community market as a whole (i.e., production less exports and plus imports);

(ix) 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;

(x) 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;

(xi) 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;

(xii) 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;

(xiii) 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 enterprises 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) provide details of five (5) major customers of each party within the market.

(vii) the importance and extent of customer preferences and the types and general location of customers;

(viii) identify the main substitute products and/or services of each party

(ix) the manner in which the enterprises involved price and sell their goods and/or services.

SECTION 6

6. Counterfactual

6.1 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;

(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

- 8.1 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 last three (3) of the 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

9.1 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).

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:

=====-END=-====