



**THE ESWATINI COMPETITION COMMISSION
FORM 3
JOINT MERGER APPLICATION**

This form is issued in terms of Regulation [*] of the Competition Commission Regulations 20[*]. This form must be submitted with a full substantial lessening of competition report in terms of Regulation [*], and a completed and signed Certificate of Completeness attached. Parties to a merger shall not merge until they have received authorization or approval in terms of the Competition Act,

**PART 1
BACKGROUND INFORMATION**

1. Information of the Applicant/s

Give details of:

(a) Name and address of enterprise:

(a) Nature of the enterprise's business:

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

2. Information on the other parties to the arrangement:

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

(a) Name and address of enterprise:

(b) Nature of enterprise's business:

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

3. Address of Service:

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

4. Appointment of Representatives.

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

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

5. 1 if yes, please give details requested below:

(a) Name of representative:

(b) Address of representative:

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

(d) Telephone number and fax number:

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

(a) Name of representative:

(b) Address of representative:

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

(d) Telephone number and fax number

PART 2 OWNERSHIP AND CONTROL

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

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

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

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

7.4 All enterprises active on any affected market that is controlled, directly or indirectly:

(a) By these parties

(b) By any other enterprise identified in 7.3 above

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

PART 3 DETAILS OF THE CONCENTRATION

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

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

- (b) Whether the whole or parts of parties are subject to the concentration:
- (c) A brief explanation of the economic and financial structure of the concentration:
- (d) The proposed or expected date of any major events designed to bring about the completion of the concentration:
- (e) The proposed structure of ownership and control after the completion of the concentration:

PART 4

MARKET STRUCTURE

Structure of Supply in Affected Markets

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

9.1 Distribution systems prevailing on the affected markets and their Importance:

9.2 The service networks performed by third parties prevailing and their Importance:

9.3 Identify other suppliers/manufacturers relative market shares of other suppliers/manufacturers?

9.4 What is the importance of Import Competition?

Structure of Demand in Affected Markets

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

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

10.2 Explain the structure of demand in terms of:

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

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

(c) the degree of concentration or dispersion of customers:

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

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

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

PART 5

MARKET ENTRY

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

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

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

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

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

16. Describe the various factors influencing entry into affected markets that exist in the present case, examining entry from both a geographical and product view point.

In so doing, take account of the following where appropriate:

- (a) the total costs of entry (R & D, establishing distribution systems, promotion, advertising, servicing etc.) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor;
- (b) any legal or regulatory barriers to entry, such as government authorization or standard setting in any form;
- (c) any restrictions created by existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights;
- (d) the extent to which each of the parties to the concentration are licensees or licensors of patents, know-how and other rights in the relevant markets;
- (e) the importance of economies of scale for the production of products in the affected markets;
- (f) access to sources of supply, such as availability of raw materials.

PART 6
FULL DETAILS OF THE ARRANGEMENT

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

- (a) Buying or selling prices, discounts or other trading conditions;
- (b) The quantities of goods to be manufactured or distributed or services to be offered;
- (c) Technical development or investment;
- (d) The choice of markets or services of supply;
- (e) Purchases from or sales to third parties;
- (f) Whether to apply similar terms for the supply of equivalent goods and services;
- (g) Whether to offer different services separately;

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

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

PART 7
 GROUNDS FOR GRANTING THE AUTHORIZATION

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

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

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

PART 8
DECLARATION

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

Dated at this day of
.....year.....

Name(s):
.....

Signature(s):

I/We attach the following relevant documents:

- Form 6 Certificate for Completeness
- Two copies of latest Annual Report and Audited Accounts (including Balance Sheet)
- Copy of Agreement or other documents relating to the transaction
- Press Release or other Shareholders, Board or management statement on the transaction
- Other market or industry study reports that support the transaction
- Letter from Parties appointing Legal Representation for purposes of notification
- Board Resolution appointing named person as representative for the purposes of this notification
- Board minutes relating to the transaction
- Affidavit in relation to documents that are unavailable
- Confidentiality Claims, if any.

Notes

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party/ies and the Commission in determining the precise amount of information on required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.
2. If the information required by this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.
3. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 42(1) (c) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.
4. The Commission can revoke its decision on the compatibility to a notified concentration or business practice where it is based on incorrect information for which one of the enterprises is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.
5. The application must be completed in English and type-written or printed. The information required by this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.

6. **CONFIDENTIALITY:** If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.

7. The notification should be delivered during normal working hours.