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*Federal Competition and Consumer Protection Act 2018*

*Merger Review Regulations 2020*

**Form 4- Application For Negative Clearance**

**This form provides a framework for supplying to the Federal Competition and Consumer Protection Commission, the information required under part XII of the Federal Competition and Consumer Protection Act.**

**This form should be completed jointly by parties to the proposed transaction. The requested information may be provided in this form or in appendices arranged according to corresponding section numbers in the form. All documents should be bound together.**

**This application is pursuant to Regulation 9 of the Merger Review Regulation 2020, in order to assess whether the contemplated transaction constituting the subject of this form (“Transaction”) complies with the Federal Competition and Consumer Protection Act 2018. Where applicable, please consult Form 1- (Notice of Merger & Guidance Notes).**

|  |  |  |
| --- | --- | --- |
| *To supply additional information, please attach appendices where applicable.*  *Indicate the number of pages contained in each appendix in the appropriate column beside each section of this form* |  | ***No. of pages*** |

**1. DESCRIPTION OF PARTIES**

* 1. Provide the following information for the applying undertakings(s):

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Name of Undertaking(s) | Address | Telephone and email, Website | Share Distribution (%) | Members of the Board of Directors | External Representative |
|  |  |  |  |  |  |

* 1. Provide the following information if the Application is being presented by an external representative:

|  |  |  |
| --- | --- | --- |
| Name and surname | Address | Telephone and email |
|  |  |  |

* 1. Provide the following information for each undertaking which is either a party to or within the scope of the Transaction

|  |  |  |
| --- | --- | --- |
| Name of Undertaking | Address | Nature of Business |
|  |  |  |

* 1. Provide the following information of an authorised person of each undertaking which is either a party to or within the scope of the Transaction

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name of Undertaking/ Entity | Name of the authorised person | Position of authorised person | Address | Telephone and email |
|  |  |  |  |  |

* 1. Information regarding the Group

For the purposes of this form, group relation stands for the following circumstances-

* Possession of more than half of the capital or the commercial assets of another undertaking; or
* Being authorised to use more than half of the voting rights of another undertaking; or
* Being authorised to appoint more than half of the members of the board of directors, board of supervisors or legally representing bodies of an undertaking; or
* Having the right to manage/ control the activities of another undertaking.

If the undertaking(s), which is/are party to the Transaction belong to a group, provide the following information in relation to the group:

|  |  |  |
| --- | --- | --- |
| **Name** | **Sector/ Industry** | **Turnover** |
|  |  |  |
|  |  |  |
|  |  |  |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1. **INFORMATION REGARDING THE TRANSACTION** | | | | | | |
| 2.1 | | Provide information on the nature, scope and purpose of the Agreement or Transaction | | |  |  |
| 2.2 | | Does the Transaction include any arrangements or effects prohibiting its parties to take independent commercial decisions concerning matters such as:   1. purchase or sale prices, discounts or other commercial conditions, 2. the amount of goods or services that would be produced or distributed, 3. technical developments or investments, 4. selection of markets or sources of supply, purchases or sales to/from third parties, 5. implementing similar terms to the supply of equivalent goods or services, 6. offering different services together or separately 7. Provide information regarding provisions of any such arrangement and their potential effects | | |  |  |
| 2.3 | | {{{  If undertaking a minority acquisition, provide an assessment of the factors provided under Regulation 6 of the Merger Review Regulations 2020. | | |  |  |
| 1. **INFORMATION REGARDING RELEVANT MARKET**   ***Please consult Form 1- Notice of Merger Guidance Notes in completing this section*** | | | | |  | |
| 3.1 | | Define the relevant product market(s) affected by the Agreement/ Transaction, which, in your opinion, the Commission’s assessment of this Application should be based on. Answers should clarify how the abovementioned factors are considered. In addition to the relevant product market(s), identify goods and services that could be affected directly or indirectly from the Agreement/ Transaction | | |  |  |
| 3.2 | | Define the relevant geographic market(s) affected by the Agreement/ Transaction, on which, in your opinion, the Commission’s assessment of this Application should be based on. Answers should clarify how the abovementioned factors are considered. | | |  |  |
| 3.3 | | For each party, identify every undertaking that belongs to the same group of companies and is active in the abovementioned relevant product market as well as in the downstream and upstream markets. | | |  |  |
| 6. | **4. INFORMATION REGARDING PARTIES, COMPETITORS AND CUSTOMERS IN THE RELEVANT PRODUCT MARKET**  ***When answering the following questions, consider the whole group of companies that the parties belong*** | |  |  | | |
| 4.1 | | For the last three years provide information regarding market shares of the whole group of companies that the parties belong to in the relevant product market and relevant geographic market. (Market shares for the answers provided under this question can be calculated by considering sales value (in terms of Naira) or sales volume.  The sales value (in terms of Naira) or the total size of the market with regard to sales volume and the sales values (in terms of Naira) or sales amount of each of the parties in this extent of the market that are used for the calculation of the market share shall be provided.  The sources of these information (e.g. official statistics, studies of independent research companies, hypothetical estimates etc.) should be also indicated and the copies of the relevant pages of these sources should be also submitted.) | | |  |  |
| 4.2 | | Provide the following information regarding the five largest competitors of the parties in the entire relevant market(s):   |  |  |  |  |  | | --- | --- | --- | --- | --- | | Name-Title | Address | Telephone Number | page6image76489344Name of the Authorised Person | Market Share in the Entire Relevant Markets | |  |  |  |  |  | |  |  |  | page6image76481280 |  | |  |  |  |  |  | |  |  |  |  |  | |  |  |  |  |  | |  |  |  |  |  |   (The sources of the information (e.g. official statistics, studies of independent research companies, hypothetical estimates etc.) should be also indicated and the copies of the relevant pages of these sources should be also submitted, when providing competitors’ market shares.) | | |  |  |
| 4.3 | | Provide information regarding the five largest customers of each party in the entire relevant market(s):   |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | Name-Title | Address | Telephone | | page6image76489344Name of the Authorised Person | | | Share | | | |  |  | |  | |  | | |  | | | |  |  | |  | page6image76481280 | | |  | | |  |  | |  |  | | |  | | |  |  | |  |  | | |  | | |  |  | |  |  | | |  | | |  |  |  | |  | |  | | | | | |  |  |
|  | **5. INFORMATION REGARDING ENTRY BARRIERS AND POTENTIAL COMPETITION** | |  |  | | |
| 5.1 | | Which factors affect entry to relevant product market(s)? In other words, what are the barriers to enter into this/these relevant product market(s)? While responding to this question, the following factors should be considered where appropriate:   1. Legal entry barriers (requirement of authorization, requirement of complying with particular standards, legal or regulatory controls etc.); 2. Raw material supplies; 3. Scope and duration of supply and distribution agreements in the market; 4. Importance of research and development activities and particularly patent, know-how and other rights and relevant licenses in the market; 5. Existence of economies of scale/ scope in the market; 6. Total cost of entry as a significant competitor (investment, research and development, setup of a distribution system, advertisement costs etc.); 7. Installed capacity and capacity usage rates. | | |  |  |
| 5.2 | | Which factors are affecting the entry to the relevant geographic market(s)? While responding this question, the following factors should be considered where appropriate:   1. Transportation costs, 2. Sufficiency of existing distribution and retail options, 3. Legal commercial barriers such as tariff, quota and import ban, 4. Specifications or technical requirements, 5. Procedures for purchase and supply of goods, 6. Consumer preferences regarding existing brands or products | | |  |  |
| 5.3 | | Was there an undertaking that newly entered the relevant market within the last three years? If so, provide name, address, telephone and fax numbers and approximate market shares in relevant market(s), as well as name and surname of an authorized person of this undertaking to be contacted. | | |  |  |
| **6**. | | **INFORMATION REGARDING GROUNDS FOR APPLICATION/ NOTIFICATION** | | |  |  |
| 6.1 | | If you are applying for a negative clearance, explain the reasons for an assessment under Regulation 9(2) of the Merger Review Regulation for negative clearance. Explain by including the reasons why the Agreement/ Transaction does not have a likely impact of preventing or lessening competition directly or indirectly in a particular market for products or services. | | |  |  |
| 6.2.1 | | Specify in which aspects the Transaction provides or will provide new development and improvement or economic or technical development in the production or distribution of goods and offering of services. Parties’ studies regarding such favorable effects need to be explained and annexed to the Application. | | |  |  |
| 6.2.2 | | Specify how the consumers will benefit from the developments and improvements will result from the Transaction. | | |  |  |
| 6.3 | | Provide information regarding any other issues that you would like to state about the Transaction. | | |  |  |
| **7**. | | **INFORMATION REGARDING THE ANNEXURES TO THE APPLICATION**  ***In addition to the information provided above,*** | | |  |  |
| 7.1 | | Enclose a copy of the final version of all documents relating to the Transaction together with its annexes. | | |  |  |
| 7.2 | | Enclose the annual reports showing parties’ activities, balance sheets, income statements and accounts for the last three years. | | |  |  |
| 7.3 | | Provide the plans, market researches and relevant studies conducted by the parties or third parties containing information such as market and competitive conditions, existing and potential competitors. | | |  |  |
| **8**. | | **DECLARATION** | | |  |  |
|  | | This Declaration must be signed by a duly authorised person or on behalf of each of the merger parties:  *I declare that, to the best of my knowledge and belief, the information given in response to the questions in this Notice is true, correct, and complete in all material respects.*  *I understand that:*  *It is a criminal offence under section 112 of the Federal Competition and Consumer Protection Act, 2018 for a person knowingly to supply to the Commission information which is false or misleading in any material respect. This includes supplying such information to another person or any officer of the Commission knowing that the information is to be used for the purpose of supplying information to the Commission;*  *The Commission shall withdraw its clearance if it is discovered that any submission contains information which is false or misleading in any material respect;*  *The Commission may publish to the public some information described in this Notice.*  *Signed:*  *Name: (block letters)*  *Position: (block letters)*  *Date:*  In addition to the above Declaration, the Declaration below should also be signed by a duly authorised person or on behalf of each of the merger parties if the undertakings are appointing legal representatives:  *I confirm that the representative(s) (if any) named in reply to question 1(b) is/are authorised for the purposes of proceedings related to the arrangements described under question 2 to act on behalf of the merger parties respectively specified in response to question 1(b) of this Form/Guidance Note. I hereby specify the address of the representatives named in reply to question 1(b) as an address at which [name of merger party] will accept service or take receipt of documents.*  *Signed:*  *Name: (block letters)*  *Position: (block letters)*  *Date:* | | |  |  |