

STATUTORY INSTRUMENT NO. 97 OF 2011

The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)

**The Competition and Consumer Protection
(General) Regulations, 2011**

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IN EXERCISE of the powers contained in section *eighty seven* of the Competition and Consumer Protection Act, 2010, the following Regulations are hereby made:

PART I
PRELIMINARY

- | | |
|---|----------------|
| 1. These Regulations may be cited as the Competition and Consumer Protection (General) Regulations, 2011. | Title |
| 2. In these Regulations, unless the context otherwise requires— | Interpretation |
| “agreement” has the meaning assigned to it in the Act; | |
| “Board” means the Board of the Commission constituted in the First Schedule to the Act; | |
| “Commission” means the Competition and Consumer Protection Commission established under section <i>four</i> of the Act; | |
| “committee” means a committee constituted in the First Schedule to the Act; | |
| “conduct” means an agreement, act, a practice or behaviour coordinated, expressly or by implication, under the Act; | |
| “consent agreement” means an agreement entered into between the Commission and an enterprise pursuant to section <i>fifty seven</i> of the Act; | |
| “consumer” has the meaning assigned to it in the Act; | |
| “enterprise” has the meaning assigned to it in the Act; | |
| “Executive Director” means the person appointed as Executive Director under section <i>six</i> of the Act; | |
| “horizontal agreement” has the meaning assigned to it in the Act; | |
| “inspector” means a person appointed as such under section <i>seven</i> of the Act; | |
| “inquiry manager” means a person appointed as such under regulation 5; | |
| “merger” has the meaning assigned to it in the Act; | |
| “negative clearance” has the meaning assigned to it in the Act; | |
| “turnover” has the meaning assigned to it in the Act; | |
| “undertaking” has the meaning assigned to it in the Act; and | |
| “vertical agreement” has the meaning assigned to it in the Act. | |

PART II

RELEVANT PRODUCT MARKET

Determination
of relevant
product
market

3. (1) The Commission shall, in determining the relevant product market, identify—

- (a) the peculiar appearance, use, price range, quality characteristics, uniqueness and any other feature or characteristic of the product that sufficiently distinguishes it from other products;
- (b) whether targeted consumers consider the product to be different in terms of, among others, benefits, taste or usage, to the extent that it affects purchase decisions;
- (c) whether in the event of a shortage, lack of availability, a price increase or any other constraining factor, another product could be used or substituted by consumers for the same use;
- (d) whether competitors have failed or are likely to fail to supply a similar product;
- (e) the geographical location within Zambia in which the bulk of sales or supply of the product take place;
- (f) the historical consumer behaviour, if any, related to the product; and
- (g) the uniqueness of the production process of the product and the ease with which a different production process can be altered to produce the product.

(2) Notwithstanding sub-regulation (1), the Commission, in determining the relevant product market, may use any relevant research findings of third parties, conduct public inquiries, consider or adopt international best practice determinations of market definition, insofar as they are consistent with the Act and these Regulations and are practical to the Zambian situation, as it may determine.

PART III

MARKET INQUIRY

Market
inquiry

4. (1) The Commission may initiate a market inquiry based on—

- (a) complaints made to it by enterprises, consumers or representative bodies;
- (b) studies conducted by any relevant bodies on a particular sector;
- (c) its own research;

- (d) its experience in regulating restrictive business and anti-competitive trade practices; or
- (e) representations made to it by the Government regarding a particular sector or type of agreement.

(2) The Commission shall, where it receives a complaint from a consumer under paragraph (a) of sub-regulation (1), before instituting a market inquiry, have reasonable grounds to believe that consumers are being treated unfairly by enterprises doing business in that sector with them.

(3) The Executive Director, a committee of the Board or the Board itself shall take the decision to institute a market inquiry.

(4) The Commission shall institute a market inquiry by testing any relevant information in its possession with, among others—

- (a) international sources;
- (b) market experts;
- (c) competitors;
- (d) consumers;
- (e) trade associations;
- (f) professional associations; or
- (g) Government ministries and agencies.

5. (1) The Commission shall, where it decides to institute a market inquiry, inform the general public about the market inquiry by placing a notice on its website or in a daily newspaper of general circulation in Zambia.

Market
inquiry
process

(2) The notice referred to in sub-regulation (1) shall indicate the scope of, or the terms of reference for, the market inquiry and request all interested parties to make submissions to the Commission.

(3) The Executive Director may, where the Commission decides to institute a market inquiry, appoint a member of staff of the Commission or an inspector as an inquiry manager who shall be in charge of the market inquiry.

(4) The Executive Director or the inquiry manager shall send a written request for information to all parties that the Commission considers to have an interest in the subject matter of the inquiry.

(5) The Commission may hold meetings with the parties referred to in sub-regulation (4), so as to obtain further information or discuss points raised in any submissions received by it.

(6) The Commission shall, where it receives adverse third party concerns against an enterprise that it considers to be involved in the matters covered by a market inquiry, provide the enterprise with the full details of the adverse concerns, for confirmation.

(7) An enterprise may, at its request or at the request of the Commission, appear before the Commission to make any submissions relevant to a market inquiry, before the Commission makes its final determination on the market inquiry.

PART IV

RESTRICTED BUSINESS PRACTICES

Application
for
authorisation
of horizontal
or vertical
agreement

6. An application for authorisation of a horizontal or vertical agreement shall be made in Form I set out in the First Schedule.

Application
for
exemption

7. (1) An application for exemption from a prohibition under Part III of the Act shall be made in Form I set out in the First Schedule.

(2) An exemption granted pursuant to an application under sub-regulation (1), shall be in Form II set out in the First Schedule.

PART V

MERGERS

Threshold
for
authorisation
of proposed
merger

8. (1) A merger transaction shall require authorisation by the Commission where the combined turnover or assets, whichever is higher, in Zambia of the merging parties, is at least fifty million fcs units in their latest full financial year, for which figures are available.

(2) An application for authorisation under sub-regulation (1), shall be made in Form I set out in the First Schedule.

Application
for negative
clearance

9. (1) An application for negative clearance as to whether a proposed merger requires the authorisation of the Commission shall be made in Form I set out in the First Schedule.

(2) A negative clearance granted pursuant to an application under sub-regulation (1), shall be in Form III set out in the First Schedule.

PART VI

INVESTIGATIONS

Authorisation
of
investigation

10. (1) An officer of the Commission who wishes to undertake an investigation under the Act shall apply to the Executive Director for authorisation of the investigation in Form IV set out in the First Schedule.

(2) For purposes of sub-regulation (1), the Executive Director's written instruction to an officer or inspector of the Commission to undertake an investigation shall be deemed to be an authorisation for investigation.

11. The Commission may issue a person under investigation with a notice of investigation in Form V set out in the First Schedule.

Notice of investigation

12. The Commission may apply to the court for a warrant authorising it to undertake an unannounced raid on the premises of an enterprise that it reasonably believes is contravening or has contravened the provisions of the Act and is likely to hide or destroy information when it knows that it is under investigation.

Unannounced raid on premises

13. A consent agreement shall be in the form as is ordinarily submitted to the court.

Form of consent agreement

14. (1) The Commission shall accept an undertaking—

Undertakings

(a) that addresses the issues of concern raised by the Commission in the most practicable manner in a relevant market in Zambia;

(b) that is self regulatory and does not rely on continuous monitoring by the Commission; and

(c) where any cost of monitoring shall be met by the person giving the undertaking.

(2) Subject to sub-regulation (1), an undertaking shall be in the form of—

(a) a simple official letter that lists the undertaking;

(b) a memorandum in the form of—

(i) a title page;

(ii) preambular statements;

(iii) undertakings provided;

(iv) a monitoring and evaluation mechanism;

(v) a statement of commitment from the person or enterprise to provide regular feedback to the Commission; or

(c) any other international best practice.

15. Where the Commission receives a request to investigate a person or an enterprise that is or is suspected to be carrying on a conduct that is the subject of investigation by a foreign competition authority, the manner of investigation shall be in accordance with the provisions of the Act, these Regulations and any guidelines issued by the Commission.

Investigation at request of foreign competition authority

PART VII
CONSUMER PROTECTION

- Lodging of complaint 16. A consumer who alleges that a person or an enterprise is engaged in any practice prohibited under Part VII of the Act, may lodge a complaint with the Commission—
- (a) verbally;
 - (b) in writing; or
 - (c) through any other means of communication as may reasonably be understood by the Commission.

PART VIII
GENERAL PROVISIONS

- Service of documents on Commission 17. (1) A document may be given to, lodged with, or served on the Commission by delivering it, or causing it to be delivered, whether by post or otherwise, at any registered office of the Commission.
- (2) A document referred to in sub-regulation (1), may include—
- (a) an application to the Commission made under the Act or these Regulations;
 - (b) a notice given to or lodged with the Commission under the Act or these Regulations; or
 - (c) any other document to be given to, lodged with or served on the Commission.
- (3) A person who lodges a document with the Commission which includes an address for service may, at any time, lodge with the Commission a notice, in writing, stating a new address for service.
- (4) A reference in these Regulations to an address for service shall, in relation to a person who has notified two or more addresses for service, be read as a reference to the latter or latest of those addresses.

- Service of documents on person other than Commission 18. Subject to these Regulations, a document or notice that is required or permitted by, or under, the Act or these Regulations to be served on, or given to, a person in connection with any proceeding or matter before the Commission may be served on, or given to, that person—
- (a) where the person has included an address for service in a document or notice lodged with the Commission, by delivering the document to the person personally or by sending the document by registered post addressed to that person, at that address;

- (b) where the person is a body corporate, by delivering the document personally to the manager, director or secretary of the body corporate or by leaving it at its registered office, or by sending it by registered post addressed to the body corporate at the registered office; or
- (c) where the person is not a body corporate, by delivering the document to the person or sending the document by registered post addressed to the person at the last known address of that person.

19. A notice by the Commission shall be sent to a person by pre-paid post---

Service of
notice by
Commission

- (a) where the person has included an address for service in a document or notice lodged with the Commission, at that address;
- (b) where the person is a body corporate which does not have a registered office in Zambia but has a place of business in Zambia, at that place of business; or
- (c) where the person is not a body corporate, at the last known address of that person.

20. The Board shall provide an inspector with a certificate of appointment in Form VI set out in the First Schedule.

Inspectors

21. The fees prescribed in the Second Schedule shall be payable in respect of the matters stated therein.

Fees

FIRST SCHEDULE
(Regulations 6, 7, 8(2), 9, 10, 11 and 20)

PRESCRIBED FORMS



Form I
(Regulations 6, 7, 8(2), and 9(1))
(To be completed in triplicate)

THE COMPETITION AND CONSUMER PROTECTION COMMISSION

The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)

The Competition and Consumer Protection (General) Regulations, 2011

APPLICATION FOR AUTHORISATION OF HORIZONTAL AGREEMENT () VERTICAL AGREEMENT () MERGER () EXEMPTION () NEGATIVE CLEARANCE () (tick as appropriate)																															
	Shaded fields for official use only	Application Number: Date/Time																													
<i>Information Required</i>	<i>Information Provided</i>	✓																													
1. Name of applicant (if more than one, attach list)																															
2. Type of applicant																															
Registration No.																															
TPIN No.																															
3. Business address:	Physical Postal																														
Tel:																															
Fax:																															
Email																															
4. Parties to conduct (if more than two, attach list)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center;">Company 1</th> <th colspan="2" style="text-align: center;">Company 2</th> </tr> <tr> <td>Name:</td> <td></td> <td>Name:</td> <td></td> </tr> <tr> <td>Address:</td> <td></td> <td>Address:</td> <td></td> </tr> <tr> <td>Tel:</td> <td></td> <td>Tel:</td> <td></td> </tr> <tr> <td>Cell:</td> <td></td> <td>Cell:</td> <td></td> </tr> <tr> <td>Fax:</td> <td></td> <td>Fax:</td> <td></td> </tr> <tr> <td>Email:</td> <td></td> <td>Email:</td> <td></td> </tr> </table>			Company 1		Company 2		Name:		Name:		Address:		Address:		Tel:		Tel:		Cell:		Cell:		Fax:		Fax:		Email:		Email:	
Company 1		Company 2																													
Name:		Name:																													
Address:		Address:																													
Tel:		Tel:																													
Cell:		Cell:																													
Fax:		Fax:																													
Email:		Email:																													
5. List products/services offered or supplied in Zambia to which the conduct applies or affects																															
6. Indicate geographical extent of sales of products/services in Zambia covered by the application																															

7.	Indicate key features of conduct in terms of benefits for applicant(s)/ consumer(s)/other members of the public		
8.	Indicate horizontal/ vertical/any overlapping provisions governing conduct		
9.	Indicate the value chain of the industry (Raw material → Manufacturer → Distribution and Retail)		
10.	For each of the main products/ services/products or service groups covered by conduct, indicate any close substitutes or complementary products available on market in Zambia and which ones are supplied by parties to the conduct		
11.	Indicate latest estimated market shares (national or regional) for each of the parties in each of the main products or services or product or service groups supplied in Zambia		
12.	Indicate latest estimated market shares (national or regional) of competing suppliers or manufacturers in Zambia that are not part of conduct		
13.	Indicate estimates of imports into Zambia, if any, in each of the products or services		
14.	Indicate the basis for calculating market shares held by applicant(s) in Zambia (example turnover, asset, production capacity, etc.)		
15.	Indicate whether consumers or target beneficiaries are concentrated in a certain geographical location in Zambia, regionally or globally		
16.	List the five largest consumers of the parties in each affected market in Zambia		
17.	State the name, address, fax, telephone numbers of the contact person for each of the consumers indicated above		
18.	Describe distribution channels that operate in relevant markets (e.g. presence of small independent distributors, use of agent or distributors, direct sales, etc.)		
19.	For mergers and negative clearance only		
	(a) List names and addresses of the current and past (two years) Directors of each party to the application or attach a		

	company's registry print out showing all directors and shareholders of participating parties		
	(b) List names and addresses of current and past (two years) shareholders of each of the parties to conduct		
	(c) List enterprises or persons controlling parties to conduct, directly or indirectly (e.g. holding entities, if applicable)		
	(d) List all enterprises or persons active on any affected market that are controlled, directly or indirectly (e.g. subsidiaries), by any of the participating entities		
	(e) Provide details on post-merger organisation structure, relationships or reporting systems for affected parties		
	(f) Where a foreign party is involved, indicate any future plans for the Zambian business and their relationships		
20.	Provide any further factual analysis or argument to show-		
	(a) how conduct will not prevent, restrict or distort competition		
	(b) why conduct should be authorised or exempted in view of any of the following:		
	(i) extent to which conduct is likely to result in a benefit to the public which would outweigh any detriment attributable to a substantial lessening of competition;		
	(ii) extent to which conduct would, or is likely to, promote technical or economic progress and transfer of skills, or otherwise improve production or distribution of goods or provision of services in Zambia;		
	(iii) saving of a failing firm;		
	(iv) extent to which conduct shall maintain or promote exports from Zambia or employment in Zambia		
	(v) extent to which conduct may enhance the competitiveness, or advance or protect the interests, of micro and		

		<p>small business enterprises in Zambia:</p> <p>(vi) extent to which conduct may affect ability of national industries to compete in international markets:</p> <p>(vii) socio-economic factors as may be appropriate; and</p> <p>(viii) any other factor that bears upon public interest.</p>
21.		<p>Have you been convicted of an offence involving fraud or dishonesty under the Competition and Consumer Protection Act, 2010, or any other law within or outside Zambia?</p> <p>If yes, specify details:</p> <p>Nature of offence:</p> <p>Date of conviction:</p> <p>Sentence:</p>
Application fee receipt number		
<p>Name of applicant (individual or authorised representative):</p> <p>Signature: Date:</p> <p>FOR OFFICIAL USE ONLY</p> <p>Received by:..... Date.....</p> <p style="text-align: center;">(Name)</p> <p>Approved:</p> <p>Not approved for the following reasons:</p> <p>.....</p> <p>Signature.....</p> <div style="text-align: right; margin-top: 10px;"> <div style="border: 1px solid black; padding: 5px; display: inline-block;"> OFFICIAL STAMP </div> </div>		

DECLARATION

I/we the undersigned declare that, to the best best of my/our knowledge and belief, the information given in application 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 best estimates of the underlying facts that all the opinions exposed are sincere.

Dated at..... this..... day of..... 20.....

Names(s):

.....

Signature(s):

I/We attach the following relevant documents:

- ☐ Letter of power of attorney, where applicable
- ☐ 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
- ☐ Strategic plans, minutes of Board on the transaction

Note:

1. The Commission prefers a single application made jointly by all the parties to an agreement, though parties may submit separate notifications if they wish, particularly if they wish to include information which they do not want to be given to the other parties. Either way, it is essential that the application(s) include authorised signatures given on behalf of each of the parties separately.
2. Experience has shown that pre-application meetings are extremely valuable to both the applying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, applying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.
3. If the information required by this Form is not available to you in part or whole, the Commission will accept that the application 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, should be provided.
4. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified agreement.
5. Incorrect or misleading information in the application 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. There are consequences for providing misleading or incorrect information.
6. The notification must be completed in English and type-written or printed. The information requested 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 certified copies of the originals.
7. **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.
8. The notification should be delivered during normal Commission working hours at the Commission's address of service.



Form II
(Regulation 7 (2))
(To be completed in triplicate)

THE COMPETITION AND CONSUMER PROTECTION COMMISSION

**The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)**

The Competition and Consumer Protection (General) Regulations, 2011

CERTIFICATE NO.

CERTIFICATE OF EXEMPTION

Holder's name

Address.....

The holder of this certificate is hereby exempted from the following conduct:

- (a).....
- (b).....
- (c).....
- (d).....

This certificate is granted for a period of months/years, commencing on the
day of 20

The conditions of grant of the certificate are as shown in the Annexure attached hereto.

Issued atthis day of 20.....

Executive Director

Conditions of Grant of Certificate of Exemption

This certificate of exemption is granted on the following conditions:

- (1)
- (2)
- (3)
- (4)



Form III
(Regulation 9 (2))
(To be completed in triplicate)

THE COMPETITION AND CONSUMER PROTECTION COMMISSION

**The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)**

The Competition and Consumer Protection (General) Regulations, 2011

CERTIFICATE NO.

CERTIFICATE OF NEGATIVE CLEARANCE

Holder's name

Address.....

The certificate holder is hereby granted negative clearance in respect of the following conduct:

(a).....

(b).....

(c).....

(d).....

The conditions of grant of the certificate are as shown in the Annexure attached hereto.

Issued atthis day of 20.....

.....
Executive Director

Conditions of Grant of Certificate of Negative Clearance

This certificate of negative clearance is granted on the following conditions:

- (1)
- (2)
- (3)
- (4)



Form IV
(Regulation 10(1))
(To be completed in triplicate)

THE COMPETITION AND CONSUMER PROTECTION COMMISSION

**The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)**

The Competition and Consumer Protection (General) Regulations, 2011

APPLICATION FOR AUTHORISATION OF INVESTIGATION

Case File No:

Complainant's/informer's Details

NRC:
Tel:
Occupation:

Address:
Cell:
Fax:

Complaint method:

Defendant's details

Tel:
Economic sector:

Address:
Cell:
Fax:

PART A

Initiating officer to summarise core allegations and the section of the Act reasonably believed to be contravened. Complainant/informer to attach relevant supporting documents.

.....
.....
.....
.....
.....
.....

Complainant:..... Signature:..... Date:.....

PART B

The alleged offence appears to be a contravention of section of the Act.

Officer:..... *Signature:*..... *Position:*.....

PART C

EXECUTIVE DIRECTOR'S AUTHORITY

In terms of the Competition and Consumer Protection Act, 2010, and facts as summarised in Part A of this authorisation in relation to the identified contravention under section of the Act

*

☐

Investigation authorised and Unit dealing with case is.....

☐

Investigation not authorised and action taken as follows:.....

*(tick as appropriate)

Dated this day of 20

Executive Director

Form V
Regulation 11)
(To be completed in triplicate)



THE COMPETITION AND CONSUMER PROTECTION COMMISSION
The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)
The Competition and Consumer Protection (General) Regulations, 2011
NOTICE OF INVESTIGATION

To: (1)

Address: (2)

(1) Here
state the
name of
person
under
investigation

TAKE NOTICE that the Competition and Consumer Protection Commission
has officially commenced investigations against you on the following allegations
(3):

- (a).....
(b).....
(c).....
(d).....

(2) Here
insert
address of
person under
investigation

(3) Here
state the
allegations,
indicating
the
section of
the Act
allegedly
contravened

You are hereby requested to respond to this Notice within fourteen (14) days
of receipt thereof.

DATED this.....day of.....20.....

Executive Director



Form VI
(Regulation 20)
(To be completed in triplicate)

THE COMPETITION AND CONSUMER PROTECTION COMMISSION

The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)

The Competition and Consumer Protection (General)
Regulations, 2011

CERTIFICATE OF APPOINTMENT AS INSPECTOR

(1) Here
insert full
names of
inspector

(2) Here
insert
address of
inspector

(3) Here
insert period
of
appointment

TAKE NOTICE that (1) of
(2) has been appointed as an
inspector by the Competition and Consumer Protection Commission for
a term of (3) and has authority to perform the
following functions as directed by the Commission:

- (a)
- (b)
- (c)
- (d)

Dated this day of 20

Executive Director

SECOND SCHEDULE

(Regulation 21)

PRESCRIBED FEES

<u>Item</u>	<u>Fee Units</u>	
	<u>Application's turnover/assets upto 100 million fee</u> <u>Applicant's turnover/ assets over 100 million fee</u> <u>units</u>	<u>units</u>
1.Application for authorisation of horizontal/vertical Agreement	70,000	150,000
2.Application for exemption		
(a) in the case of enterprises	70,000	150,000
(b) in the case of professional associations	28,000	28,000
3. Application for negative clearance	70,000	150,000
4. Application for authorisation of proposed merger	0.1% of turnover/assets, whichever is higher, with a cap of maximum fee of 16,666,667 fee units	

LUSAKA
27th July, 2011
[MCTI.102/9/1]

F. MUTATI,
*Minister of Commerce,
Trade and Industry*