

S.I. 64 of 2013**FAIR COMPETITION ACT, 2009***(Act 18 of 2009)***Fair Competition (Application for Merger)
Regulations, 2013**

In exercise of powers conferred by section 54 read with section 22 (2) of the Fair Competition Act, 2009, the Minister of Finance, Trade and Investment hereby makes the following Regulations—

1. These Regulations may be cited as the Fair Competition (Application for Merger) Regulations, 2013.

Citation

2. An application for merger shall be in the form and in the manner set out in the Schedule.

Application
for merger**SCHEDULE**

Block B, 3rd Floor
Room 301-306
Unity House
Victoria
Mahe, Seychelles



Tel (+248 432 52 50)
Fax (+248 432 52 40)
PO Box 1207
Victoria
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APPLICATION FORM FOR PROPOSED MERGER

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.

Please fill out all parts of this form to the best of your knowledge and attached all required information as directed.

PART 1

GENERAL INFORMATION AND CONTACT DETAILS

1. Information from the Applicant(s) and other parties subject to the merger application.

Give details of the enterprises:

Name of enterprise:		Website:	
Address:			
Phone:	Fax:	Email:	
Category of enterprise			
Sole trader <input type="checkbox"/>	Partnership <input type="checkbox"/>	Company <input type="checkbox"/>	
Nature of the enterprise's business:			

(a) Please state if the notifying party is:

An acquiring person¹ ☐ An acquired person² ☐ Both ☐

(b) Other than with the FTC, please state if you are aware of any other merger filing requirements and/ or notification necessary to be fulfilled outside the Republic of Seychelles.

If yes, please state the country and authority to which the filing is made/t. be made, and all decisions and/or directions issued by the local or foreign authorities in respect of the notified merger.

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¹Any person, who, as a result of an acquisition, will hold voting securities or assets, either directly or indirectly, or through fiduciaries, agents, or other entities acting on behalf of such person, is an acquiring person.

²Any person party to a merger or consolidation is an acquired person if, as a result of the transaction, the assets or voting securities of any entity included within such person will be held by any other person.

2. Appointment of Representatives.

- (a) Please give names, address etc... of the contact person(s) to which all communications may be made and documents delivered and any representatives or joint representatives (if a joint notification) who have been authorised to act for each of the parties to the application.

Details

3. Other General information regarding the application. (On a separate document entitled "Annex 1" please provide the information sought in Questions 3 to 6)

- (a) Please state if the notified merger has or has not been completed.
- (b) Please state if the notified merger is a tender offer and, if not, the mode of payment for the merger transaction.
- (c) (i) Please state if the notified merger is a result of:
- the bankruptcy or insolvency of one of the merging parties (failing firm(s) involved)
 - a joint venture
 - other

If so —

- (ii) *Provide justification as to why the merger should be allowed on such basis?*
- (iii) *Specify whether any alternative purchaser/ solution been sought prior to the parties' decision to merge?*

³Where an enterprise acquires control of the whole or a part of another undertaking, or of several undertakings or parts thereof.

PART 2**OWNERSHIP AND CONTROL**

- 4. For each of the parties to the merger provide a list of all equitable interest belonging to the same group. The list must include:**
- (a) Names and addresses of the current and past (two years) directors and shareholders of each of the enterprises to the merger
 - (b) Names and addresses of all enterprises or persons controlling the parties, directly or indirectly
 - (c) Names and addresses of all enterprises active on any affected markets that are controlled, directly or indirectly by these parties.

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

PART 3**DETAILS OF THE MERGER**

- 5. State the nature of the MERGER for which notification is sought including:**
- (a) Whether all or specific parties are subject to the merger
 - (b) A brief explanation of the economic and financial structure of the merger
 - (c) The proposed or expected or past dates of any major events designed to bring about the completion of the merger
 - (d) The proposed structure of ownership and control after the completion of the merger
 - (e) The value of the transaction (the purchase price or the value of all the assets involved, as the case may be)
 - (f) Any financial or other support received from any source by any of the parties and the nature and amount of this support. (Including public authorities, Foreign Direct Investment (FDI), buy-out, etc).

PART 4**MARKET INFORMATION****1. Explain the distribution channels⁴ and service networks, if any, that exist in affected markets taking into account the following where appropriate:**

- (a) Distribution systems⁵ prevailing on the related markets and their importance
- (b) Provide an estimate of the market shares in terms of value and volume for each of the merging party for the past 5 years.
**Indicate the basis and source for the calculations and provide relevant documents to confirm these calculations*
- (c) Provide a rough estimate on the relative market shares of other suppliers/manufacturers (in terms of volume (units² and value (SR)) for the past 5 years.
**Indicate the basis and source for the calculations and provide relevant documents to confirm these calculations*
- (d) What are the relative market shares of the proposed merger in the related market (in terms of volume (units² and value (SR)) both *pre* and *post* merger status?
**Indicate the basis and source for the calculations and provide relevant documents to confirm these calculations*
- (e) What is the importance of Import Competition⁶ in the relevant market?
- (f) Provide an estimate of the total value, volume and sources of imports that has had an impact in the relevant market for the past 5 years

⁴ A path through which goods and services flow in one direction (from vendor to the consumer), and the payments generated by them that flow in the opposite direction (from consumer to the vendor). A distribution channel can be as short as being direct from the vendor to the consumer or may include several interconnected intermediaries such as wholesalers, distributors, agents, retailers. Each intermediary receives the item at one pricing point and moves it to the next higher pricing point until it reaches the final buyer.

⁵ All the channels making up the system

⁶ Refers to an industry that competes with imports

7. Identify all relevant product/service sold by any of the notifying parties. In addition, please identify all substitute products and/or services, if any. Use the 5-digit Standard Industrial Classification (SIC) Codes to identify the product(s) and/or service(s):

<u>Product/Service</u>	<u>SIC Code (if applicable)</u>	<u>Substitute(s)</u>	<u>Geographic Region Sold</u>

8. For each product/service identified in Question 7. Please provide contact details for the top five (5) producers and/or providers in each identified geographic area with the largest estimated turnover in value and their estimated market share during the last 12 months.

<u>Product/Service</u>	<u>Producer/Provider Name & Information</u>	<u>Geographic Region</u>	<u>Turnover (if known)</u>

9. For each product and/or service identified in Question 7, please provide your turnover in each geographic area within the last 12 months:

<u>Product/Service</u>	<u>Geographic Region</u>	<u>Turnover (if known)</u>

10. Identify the five largest customers of the products/ services listed in Question 7 in their respective geographic area, providing all their contact details stating their individual share of the total sales of the goods and services attributed to each customer in the past 12 months.

<u>Product/Service</u>	<u>Customer Name & Information</u>	<u>Geographic Region</u>	<u>Purchases</u>

- a. Explain the structure of demand in terms of 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

On a separate document entitled "Annex 2" please provide the information for Questions 11 to 19.

11. **State whether there has been significant entry into any of the related markets over the past five years**
12. **In the opinion of parties making this notification, are there any enterprises likely to enter the market?**
13. **If there is likely to be new entrants in the market, give names, address and contact telephone numbers of such entrants**
14. **Provide an estimate of the period within which such entry is likely to occur, if possible**
15. **Describe the various factors influencing entry into related markets that exist in the present case, examining entry from both a geographical and product/services view point. In so doing, take account of the following where appropriate:**

(a) The total costs of entry including —

- (i) Research and Development (R & D)
- (ii) Establishment of distribution systems
- (iii) Promotion & Advertising
- (iv) Servicing
- (v) Other costs

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 relevant regulations and/ or requirements pertaining to standards.
- (c) any restrictions created by existence of patents, knowhow 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 mergers are licensees or licensors of patents, knowhow and other rights in the relevant markets;
- (e) the importance of economies of scale for the production of products in the related markets;
- (f) Access to sources of supply, such as availability of raw materials and necessary infrastructure.

PART 6**GROUND FOR CLAIMING THE AUTHORIZATION**

- 16. Please state the grounds for claiming that the proposed merger does not and will not unduly restrain competition nor will it have any adverse effect on trade or the economy in general.**
- 17. Please summarize any provisions contained in the agreements which may restrict the parties in their freedom to take independent commercial decisions, hence reduce the occurrence of competition both nationally and regionally. (*Anti-competitive practices*)**
- 18. Provide a detailed explanation of how the merger will allow the merged parties to achieve efficiency gains? Include risks and cost involved to achieve such efficiencies.**
- 19. Provide the facts and contentions relied upon to substantiate the aim of the proposed merger (This may include competitive effects, efficiencies, failing firms, public interest issues e.g. employment, export development, increased tax, consumer welfare, technological transfer, market development, etc).**

[Note: The Commission will need to be satisfied that the agreement is consistent with the objectives of the Fair Competition Act, 2009]

PART 7**DECLARATION**

I/We 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. I recognize that providing information which is false or misleading is punishable by law in accordance with section (52) of the Fair Trading Commission Act 2009.

Date at.....this.....day of.....year

Name(s).....

Signature(s):

I/We attach the following relevant documents:

- ☐ Two copies of latest Annual Report and Audited Accounts (including Balance Sheet)
- ☐ Copy of Agreement or other documents relating to the merger transaction
- ☐ Press Release or other Shareholders, Board or management statement on the merger transaction
- ☐ Other market or industry study reports that support the transaction
- ☐ Copies of Business plans for each party to the merger for the current year and medium term (that is preceding 3 years)
- ☐ Copies of all relevant documents pertaining to the failing firm/department claims: the documents should clearly indicate that failure is unavoidable under current ownership, trading conditions prevailing will result in poorer performances, all possible re-financing avenues have been explored and exhausted to no avail and finally all other plausible effort to redeem the firm/department has been explored.

Office Use only

Received By:	
Name:	Signature:
Date Received:	Reference Number:

Please quote this reference number in all correspondence from the FTC.

NOTIFICATION REQUIREMENTS

Fees

Please be advised that a non-refundable fee of SCR1500 is payable on submission of the completed application.

Should the Commission approve the proposed merger the parties concerned will be subjected to a fee as described in the table below of their combined most recent turnover for their preceding financial year. Conditions where the parties applying for the merger are either individual or both failing firms the Commission will use its discretion to set the most appropriate fee possible.

Thresholds	Combined Turnover/Asset Value
Lower	0.1% of 0 - SCR500,000,
Higher	0.5% of SCR501,000 and above

Notes

- 1. 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.*
- 2. The information sought or requested for submission by the Commission is considered relevant and necessary to the assessment of the application.*
- 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 52 of the Fair Trading Commission Act 2009 provides that misleading or incorrect information where supplied intentionally can make the notifying party or parties liable to a fine or imprisonment or to both.*
- 4. The application must be completed in English/ French or Creole 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 true copies*

5. *Abandonment of merger. The filing firm must inform the Commission in writing if it has decided to abandon the merger. The merger notification fee paid in respect of that merger shall be non-refundable.*
6. *The notification should be delivered during normal working hours that is between 8.00 am to 4.00pm from Monday to Friday at the following address:*

The Chief Executive Officer Fair Trading Commission Block B, 3rd Floor Unity House Victoria Mahe Seychelles	Tel: +248 432 52 50 Fax: +248 432 52 40 or +248 432 52 49 Email: info@ftc.sc
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PART 8

ACKNOWLEDGEMENT OF RECEIPT

This acknowledgement of receipt will be returned to the name and address inserted below

To be completed by the Applicant(s)

To: (name and address of Applicant(s))

Name(s):

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Address of Applicant (s):

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OFFICIAL USE ONLY**To be completed by FTC**

Action Officer	
Name:	Signature:
Date:	Reference Number:

Please quote this reference number in all correspondence from the FTC.

MADE this 2nd day of September, 2013.

**PIERRE LAPORTE
MINISTER OF FINANCE, TRADE
AND INVESTMENT**
