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Federal Competition And Consumer Protection Act 2018

**Merger Review Regulations 2020**

**Form 4**

**(Application for Negative Clearance)**

Application 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.**

1. **Description of Parties**

1.1 Please provide the following information for the applying undertaking(s):

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

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

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

* 1. Please 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. Please 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, please provide the following information in relation to the group:

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

1. **Information regarding the Transaction**

2.1. Please 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:

* purchase or sale prices, discounts or other commercial conditions,
* the amount of goods or services that would be produced or distributed,
* technical developments or investments,
* selection of markets or sources of supply, purchases or sales to/from third parties,
* implementing similar terms to the supply of equivalent goods or services,
* offering different services together or separately

Please provide information regarding provisions of any such arrangement and their potential effects.

2.3 If undertaking a minority acquisition, please provide an assessment of the factors provided under Regulation 6 of the Merger Review Regulations 2020.

1. **Information regarding Relevant Market**

Relevant market is comprised of relevant product market and relevant geographic market. All goods and/ or services deemed by the consumer as substitutable in respect of quality, prices and intended use constitute the relevant product market.

The factors listed below may be considered while defining the relevant product market:

* the degree of physical similarity between the products;
* intended uses of the products;
* price differences between two products;
* for producers or consumers the cost for switching from one product to the other;
* consumer preferences.

Distinct territories such as states or cities or nationwide, where the relevant undertakings’ are active for the supply and demand of their products and services, where the conditions of competition are sufficiently homogenous and especially where the conditions of competition are significantly different of the adjacent territories constitute the relevant geographical market.

The factors listed below may be considered while defining the relevant geographic market:

* structure and qualities of the products,
* existence of entry barriers or consumer preferences,
* significant differences in market shares of undertakings or major price differences between the adjacent territories, and
* transportation costs.

3.1. In the light of the abovementioned information, please 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), please list goods and services that could be affected directly or indirectly from the Agreement/ Transaction.

3.2. Please 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, please list 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.

**4. Information regarding Parties, Competitors and Customers in the Relevant Product Market**

(When answering the following questions please consider the whole group of companies that the parties belong)

4.1. For the last three years please 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. Please provide the following information regarding the five largest competitors of the parties in the entire relevant market(s):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name-Title | Address | Telephone and Fax Numbers | page6image76489344  Name and Surname of the Authorized Person | Market Share in the Entire Relevant Markets |
|  |  |  |  |  |
|  |  |  | page6image76481280 |  |
|  |  |  |  |  |
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(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. Please provide information regarding the five largest customers of each party in the entire relevant market(s):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name-Title | Address | Telephone and Fax Numbers | page6image76489344  Name and Surname of the Authorized Person | Share |
|  |  |  |  |  |
|  |  |  | page6image76481280 |  |
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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:

* Legal entry barriers (requirement of authorization, requirement of complying with particular standards, legal or regulatory controls etc.);
* Raw material supplies;
* Scope and duration of supply and distribution agreements in the market;
* Importance of research and development activities and particularly patent, know-how and other rights and relevant licenses in the market;
* Existence of economies of scale/ scope in the market;
* Total cost of entry as a significant competitor (investment, research and development, setup of a distribution system, advertisement costs etc.);
* 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:

* Transportation costs,
* Sufficiency of existing distribution and retail options,
* Legal commercial barriers such as tariff, quota and import ban,
* Specifications or technical requirements,
* Procedures for purchase and supply of goods,
* 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, please 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, please explain the reasons for an assessment under Regulation 9(2) of the Merger Review Regulation for negative clearance. Please 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 other issues that you would like to state about the Transaction.

**7. Information regarding the Annexures to the Application**

In addition to 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**

We declare the above provided information on the Application Form as correct and complete.

Date Signature

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