

# COMPETITION COMMISSION OF PAKISTAN

\*\*\*

Islamabad, November 20, 2007

## NOTIFICATION

S.R.O. 1188(I)/2007- In exercise of the powers conferred by section 56 of the Competition Ordinance, 2007 (the Ordinance) read with sections 11 and 31 thereof, the Competition Commission of Pakistan (the Commission), is pleased to make the following regulations, namely:-

## Competition (Merger Control) Regulations, 2007

### 1. Short title, extent, application and commencement

- (1) These regulations may be called the Competition (Merger Control) Regulations, 2007.
- (2) They shall come into force at once.
- (3) These regulations shall apply to all the undertakings which are party to merger or intended merger, whether incorporated in Pakistan or not and all or any of such undertakings doing business in Pakistan.

### 2. Definitions

- (1). In these regulations, unless there is anything repugnant in the subject or context,—
  - (a) ~~applicant(s)~~” means merger parties who have filed an application under section 11.
  - (b) ~~complainant~~” means person or persons who provide such information to the Commission which is alleged having been concealed or omitted by the merger parties.
  - (c) ~~confidential information~~” means commercial or technical information the disclosure of which would, or might, in the opinion of the Commission, significantly harm the legitimate business interests of the undertaking to which it relates.
  - (d) ~~concerned undertaking~~” means such undertaking intending to merge and meets the pre-merger notification threshold prescribed in regulation 4 hereof.
  - (e) ~~favourable decision~~” means decision that a merger has not infringed, or that an intended merger if carried into effect, will not infringe section 11.
  - (f) ~~Form~~” means application form set out in the Schedule to these regulations.
  - (g) ~~intended merger~~” means arrangement that is in progress or in contemplation that, if carried into effect, will result in the occurrence of a merger referred to in section 11.
  - (h) ~~merger parties~~” means parties to an intended merger or parties involved in a merger.

- (i) ~~merger~~ situation” refers to both mergers and intended mergers
- (j) ~~Ordinance~~” means the Competition Ordinance, 2007
- (k) ~~private litigants~~” means person or persons who are not party (ies) to a merger and suffer loss or damage as a result of merger or apprehends such loss or damage after intended merger.
- (l) ~~section~~” means section of the Ordinance.
- (m) ~~unfavourable decision~~” means decision that a merger has infringed, or that an intended merger if carried into effect, will infringe section 11.
- (n) ~~working day~~” means a day which is not a Saturday, Sunday or a public holiday.

(2) Words and expressions used in these rules, and not defined herein, shall have the meanings respectively assigned to them in the Ordinance or the rules and regulations prescribed under the Ordinance.

### 3. Mergers

Without prejudice to the generality of the term merger as defined under clause (h) of sub-section 1 of section, 2 merger shall be deemed to have occurred if –

- (a) two or more undertakings, previously independent of one another, *merge to form*<sup>1</sup> a new undertaking and cease to exist as separate legal entities; or
- (b) one undertaking is absorbed by another with the latter retaining its legal entity and former ceasing to exist; or
- (c) one or more persons or other undertakings who or which control one or more undertakings or acquire direct or indirect control of the whole or part of one or more other undertakings; or
- (d) one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or
- (e) the result of an acquisition by one undertaking (the first undertaking) of the assets *or shares*<sup>2</sup> (including goodwill), or a substantial part of the assets *or shares*<sup>3</sup>, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition; or
- (f) a collaborative arrangement by which two or more undertaking devote their resources to pursue a common objective; provided that such arrangement must be:

---

<sup>1</sup> Amendment vide SRO NO 1125(I)/2008 dated 30-10-2008

<sup>2</sup> Amendment vide SRO NO 1125(I)/2008 dated 30-10-2008

<sup>3</sup> Amendment vide SRO NO 1125(I)/2008 dated 30-10-2008

- (i) subject to joint control;
- (ii) perform the functions of an autonomous entity; and
- (iii) on a lasting basis.

**Explanation:** Control, in relation to an undertaking, shall be regarded as existing if, by reason of securities, contracts or any other means, or any combination of securities, contracts or other means, influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by –

(a) ownership of, or the right to use all or part of, the assets of an undertaking; or

(b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

#### 4. Thresholds

(1)<sup>4</sup> Any one or two or more of the concerned undertakings shall, as soon as they agree in principle or sign a non-binding letter of intent to proceed with the intended merger, but in any case, before consummation of the merger, shall give notice of its/their intention to do so, to the Commission;”

(2)<sup>5</sup> The merger parties may not be required to make application for clearance from the Commission under sub-section (2) of section 11, unless:

(a) the value of gross assets of the undertaking, excluding value of goodwill, is not less than three hundred million rupees and/or the combined value of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged, is not less than one billion rupees; or

(b) annual turnover of the undertaking in the preceding year is not less than five hundred million rupees and/or the combined turnover of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged is not less than one billion rupees; and<sup>6</sup>

(c)<sup>7</sup> the transaction relates to acquisition of shares or assets of the value of *one hundred million rupees*<sup>8</sup> or more; or

(d)<sup>9</sup> in case of acquisition of shares by an undertaking, if an acquirer acquires voting shares, which taken together with voting shares, if any, held by the acquirer shall entitle the acquirer to more than 10% voting shares;<sup>10</sup>

---

<sup>4</sup> Previous sub-regulation (1) deleted & sub-regulation (2) re-numbered as sub-regulation (1) and amended vide SRO NO 1125(I)/2008 dated 30-10-2008

<sup>5</sup> Re-numbered as sub-regulation (2) vide SRO NO 1125(I)/2008 dated 30-10-2008

<sup>6</sup> Inserted vide SRO NO 1125(I)/2008 dated 30-10-2008

<sup>7</sup> Inserted vide SRO NO 1125(I)/2008 dated 30-10-2008

<sup>8</sup> Inserted vide SRO NO 935(I)/2009 dated 30-10-2009

<sup>9</sup> Inserted vide SRO NO 1125(I)/2008 dated 30-10-2008

<sup>10</sup> Inserted vide SRO NO 935(I)/2009 dated 30-10-2009

(e)<sup>11</sup> in the case of an asset management company carrying out asset management services, its collective exposure for itself and in all of its collective investment schemes in a single entity is more than 25% of total voting rights; or

(f)<sup>12</sup> the value of total assets under management of an Asset Management Company is one billion rupees or more; and

(3)<sup>13</sup> The Commission may change the thresholds prescribed in sub-regulation (3) above from time to time and any such change shall be notified in the Gazette of Pakistan.

#### **4A.<sup>14</sup> Transactions exempted**

The following transactions shall be exempt from filing pre-merger notification:-

(1) A transaction in which a holding company (whether incorporated in or outside Pakistan) increases its stake in its subsidiary or the subsidiaries thereof (whether incorporated in or outside Pakistan) *acquire or*<sup>15</sup> increase their equity investment in each other;

(IA)<sup>16</sup> a transaction in which a holding company (whether incorporated in or outside Pakistan) merges, amalgamates, combines or ventures jointly with its subsidiary or the subsidiaries thereof (whether incorporated in or outside Pakistan) merge, amalgamate, combine or venture jointly with each other; and

(2) Shares acquired by succession or inheritance;

(3) allotment of voting shares pursuant to a right issue; provided that the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issue.

(4)<sup>17</sup> Where an undertaking, the normal market activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others, acquires securities of another undertaking and sells back the acquired securities on pre-determined price within a period of 6 months from the date of such acquisition.

While the above transaction may be exempt from pre-merger notification, they may still be subject to substantive review under the Ordinance, if so deemed appropriate by the Commission.”

---

<sup>11</sup> Inserted vide SRO NO 935(I)/2009 dated 30-10-2009

<sup>12</sup> Inserted vide SRO NO 935(I)/2009 dated 30-10-2009

<sup>13</sup> Re-numbered vide SRO NO 1125(I)/2008 dated 30-10-2008

<sup>14</sup> Inserted vide SRO NO 1125(I)/2008 dated 30-10-2008

<sup>15</sup> Inserted vide SRO NO 421(I)/2009 dated 29-05-2009

<sup>16</sup> Inserted vide SRO NO 421(I)/2009 dated 29-05-2009

<sup>17</sup> Inserted vide SRO NO 421(I)/2009 dated 29-05-2009

## 5. Pre-merger application

(1) The pre-merger application to be made under sub-section (3) of section 11, shall be in the Form in the Schedule to these regulations.

(2) The Commission may, by giving notice to the applicant, dispense with the obligation to submit any particular information or document (including any supporting document forming part of the Form), if it considers that such information or document is unnecessary for examination of the application.

(3) Where strict compliance with any part of the application is not possible, the Commission may allow that part of the application to be complied with in such other manner as it thinks fit.

(4) Notwithstanding sub-regulation (3), the Commission may refuse to accept the application submitted to it, if it does not comply with requirements of the Ordinance or these regulations.

(5) Every application shall be submitted in three copies, or as many copies, in such manner, as the Commission may require.

(6) No person shall make an application under sub-regulation (1) hereof unless it is accompanied by a processing fee amounting to Rs. 250,000/- (two hundred fifty thousand rupees) or at rates indicated below, which- ever amount is greater. The fee may be paid in the form of bank challan or bank draft in favour of the Commission. **Turnover of the applicant undertaking(s)**

### Amount of fee

(i)	Up to 500 million rupees.	Rs. 250,000/-
(ii)	More than 500 million but not exceeding 750 million rupees.	Rs. 400,000/-
(iii)	More than 750 million but not exceeding 1000 million rupees.	Rs. 500,000/-
(iv)	Exceeding 1000 million rupees.	Rs. 750,000/-

### <sup>18</sup>Assets under management of the applicant Asset Management Company(ies)

(i)	Up to 5 billion rupees	Rs 250,000/-
(ii)	More than 5 billion rupees But not exceeding 7.5 billion rupees	Rs 400,000/-
(iii)	More than 7.5 billion but not exceeding 10 billion rupees	Rs 500,000/-
(iv)	Exceeding 10 billion rupees	Rs 750,000/-

<sup>18</sup> Inserted vide SRO NO 935(I)/2009 dated 30-10-2009

**6. Factors for determination of substantial lessening of competition**

(1) Whenever required to consider a merger situation, the Commission shall initially determine whether or not merger situation is likely to substantially prevent or lessen competition, by assessing the factors set out in sub-regulation (2).

(2) When determining whether or not the merger situation is likely to substantially prevent or lessen competition, the Commission shall assess the strength of competition in the relevant market, and the probability that the merger parties in the market after the merger will behave competitively or co-operatively, taking into account any factor that is relevant to competition in that market, including but not limited to—

- (a) the actual and potential level of import competition in the market;
- (b) the ease of entry into the market, including tariff and regulatory barriers;
- (c) the level and trends of concentration, and history of collusion, in the market;
- (d) the degree of countervailing power in the market;
- (e) the dynamic characteristics of the market, including growth, innovation, and product differentiation;
- (f) the nature and extent of vertical integration in the market;
- (g) whether the business or part of the business of a merger party or merger has failed or is likely to fail; and
- (h) whether the merger situation will result in the removal of an effective competitor.

*Explanation:* In taking the relevant market into account, the Commission may be guided by the principle that the relevant geographical market comprises the area in which the merger parties are involved in the demand and supply of the goods or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.

**7. Persons making the application**

(1) An application shall be made (jointly or otherwise) by the following , and no others:

- (a) where the applicant is an individual, by the individual;
- (b) where the applicant is a company or other body corporate, by a duly authorized officer of that company or body corporate; and
- (c) where the applicant is a partnership firm, by a partner of that firm.

(2) If a joint application is made, the application shall be regarded as being made to the Commission by or on behalf of all the applicants, and a joint representative shall be appointed as authorized to act on behalf of all the joint applicants for the purposes of these regulations, unless relaxed by the Commission.

**8. Notice of application to other parties of the intended merger**

(1) Where a party to an intended merger wishes to make or makes an application under section 11, it shall give notice to all other parties to the intended merger, with a copy endorsed to the Commission.

(2) If the applicant is unable, despite the exercise of due diligence, to contact other parties or persons as required under this regulation, the Commission may, if it considers appropriate, require the applicant to notify such other parties or persons in such mode and manner as the Commission may specify.

**9. Additional information or documents**

(1) The Commission may, at any time after receiving the application, give notice to the applicant for supply of further information or documents, within a stipulated period.

(2) Where the Commission finds that the information submitted in the application, is incomplete, it may give notice to the applicant specifying –

(a) the information which is outstanding; and

(b) such time limit as the Commission considers appropriate for the outstanding information to be submitted to the Commission.

(3) If, in relation to the application, the Commission does not receive the outstanding information referred to in sub-regulation (2) before the end of the time limit prescribed or of such further period, if any, as the Commission considers appropriate, the application shall be deemed not to have been made.

(4) The Commission may refuse to accept an application submitted to it, if -

(a) the application is incomplete or is not accompanied by the relevant supporting documents; or

(b) is not substantially in the prescribed form; or

(c) is not accompanied by the prescribed amount of fee; or

(d) is not in compliance with any requirement under the Ordinance or regulations made there under;

Where upon the application shall be deemed not to have been made.

(5) The receipt of an application by the Commission shall not in any way mean that the application is complete. The thirty working days time frame for phase I review will not commence unless the non-conformity, if any, has been rectified by the applicant.

**10. Phase I Review**

(1) Upon accepting a complete application form that meets all the applicable filing requirements, the Commission will carry out preliminary assessment whether the transaction falls within the meaning of a ‘merger’ as defined in the Ordinance.

(2) Where the Commission considers that the transaction does not fall within the meaning of a merger as defined in the Ordinance or intended merger as defined in these regulations, the Commission will inform the applicant as soon as is practicable.

(3) Phase 1 review shall entail a quick review and allow merger situations that clearly do not raise competition concerns under section 11 to proceed without delay.

(4) Subject to sub-regulation (5) of regulation 9, the Commission shall complete a Phase 1 review within 30 working days. By the end of this period, the Commission will determine whether to issue a favourable decision and allow the merger situation to proceed, or to carry on to a Phase 2 review. The Commission's decision will be communicated to the applicant in writing.

(5) The Commission after the Phase 1 review may proceed to pass an order in accordance with the section 31 (d).

(6) Subject to sub-regulation (5) of regulation 9, failure to make a determination under sub-regulation 4 hereof shall mean that the Commission has no objection to the intended merger.

## **11. Phase 2 Review**

(1) If the Commission, during the Phase 1 review, on the basis of all information before it, is unable to conclude that merger situation does not raise competition concerns, the Commission shall proceed to carry out a more detailed assessment as a Phase 2 review.

(2) If Commission decides to proceed with phase 2 review, it shall notify to the merger parties of its decision and may require them to provide such further information as it considers necessary.

(3) The Commission shall complete the phase 2 review and shall give its decision within 90 working days.

(4) The 90 working days shall only commence after the Commission notifies to the merger parties that the merger situation has proceeded to a phase 2 review and all the information required under sub-regulation (2) of this regulation has been received by the Commission.

(5) In case, after the phase 2 review, the Commission determines:

(a) that the intended merger under review lessens competition by creating or strengthening a dominant position and does not qualify the approval criteria as stipulated in regulation 14, it may;

(i) prohibit consummation of the intended merger; or

(ii) approve the intended merger subject to conditions; or

(iii) approve the intended merger on the condition that the concerned undertakings enter into contracts specified by the Commission



(b) that the intended merger under review does not lessen competition by creating or strengthening dominant position, it may give its clearance and authorize the intended merger with or without conditions.

## **12. Interim measures**

During phase 1 and phase 2 review if the Commission is of the opinion that in the situation that exists or is likely to emerge, the intended merger may adversely affect competition in the relevant market and an interim order is necessary in public interest, it may direct such undertaking to do or refrain from doing or continuing to do any act or thing specified in the order.

## **13. Merger without clearance**

(1) Where an undertaking has consummated the merger which substantially lessens competition by creating or strengthening a dominant position in the relevant market, without obtaining clearance from the Commission, the Commission may without prejudice to the powers of imposing penalty under section 38, proceed to pass one or more of such order specified under section 31 after:

- (a) it gives notice of its intention to make such order stating the reasons therefor to such undertaking as may appear to it to be in contravention; and
- (b) it gives the undertaking an opportunity of being heard on such date as may be specified in the notice and placing facts and material in support of its contention before the Commission.

(2) During the proceedings under clause (1) above if the Commission is of the opinion that in the situation that exists or is likely to emerge, serious or irreparable damage may occur and an interim order is necessary in public interest, it may direct such undertaking to do or refrain from doing or continuing to do any act or thing specified in the order.

## **14. Exemptions**

(1) If after the Phase 2 review, the Commission determines that the intended merger substantially lessens competition by creating or strengthening a dominant position, it may nonetheless approve the intended merger, if it is shown by the applicant that:

- (a) it contributes substantially to the efficiency of the production or distribution of goods or to the provision of services;
- (b) such efficiency could not reasonably have been achieved by a less restrictive means of competition;
- (c) the benefits of such efficiency clearly outweigh the adverse effect of the absence or lessening of competition; or
- (d) it is the least anti-competitive option for the failing undertaking's assets, when one of the undertakings is faced with actual or imminent financial failure;

## **15. Hearings**

(1) The Commission shall, before passing any order with respect to phase 1 and phase 2 review, provide the concerned undertakings an opportunity of being heard.

(2) If the concerned undertaking does not appear personally or through its attorney or counsel, on the date of hearing in spite of notice. ex-parte decision shall be taken on the basis of facts of the case placed on record before the Commission.

(3) The hearings before the Commission shall normally be in private. But in exceptional circumstances and that too after having the views of the parties to the case, decide to conduct hearings in public.

**16. Favourable Decisions**

(1) Where the Commission makes a favourable decision, it may impose conditions on the concerned undertaking for carrying out the merger and shall give notice of the decision to the concerned undertakings. The Commission may also place the favourable decision on its website.

(2) The Commission may, at the time of issuing a favourable decision for any intended merger, specify the validity period of the decision within which the intended merger must be carried into effect. The Commission will not take further action if the intended merger is effected within the validity period, unless any of the circumstances sated in regulation 17 occurs. In specifying the validity period, the Commission will consider that generally one year is sufficient period for merger parties to act on the favourable decision and to carry the intended merger into effect. However, the Commission will take account of the circumstances of each merger situation when specifying the duration of any validity period.

**17. Review subsequent to clearance**

(1) Subject to sub-section (13) of section 11, once a favourable decision has been made, the Commission will not take further action unless:-

(a) the Commission has reasonable grounds for suspecting that information on which it has based its decision was materially incomplete, false or misleading; or

(b) the Commission has reasonable grounds for suspecting that any of the merger parties failed to adhere to one or more terms of a commitment.

Should any of these circumstances occur, the favourable decision may be revoked.

(2) Where the Commission has granted clearance subject to conditions, the Commission may within one year of its decision, review the same on its own or on the application of the concerned undertaking on the ground that the circumstances of the relevant market have so changed, as to warrant review of the conditions imposed.

**18. Unfavourable Decisions**

(1) Where the Commission is proposing to issue an unfavourable decision, it will issue a notice of the proposed unfavourable decision to the merger parties. The notice will state the facts on which the Commission relies upon, as well as the objections which the Commission proposes to take.

(2) When the Commission makes an unfavourable decision, it will give notice of the decision to the merger parties and will also place the decision on its website. The Commission may also issue directions to remedy, mitigate or eliminate the adverse effects arising from the merger situation.

## **19. Confidential information**

(1) Subject to sections 49 and 50, if the applicant considers any part of the information in the application, or any document or correspondence submitted by the applicant to the Commission to be confidential, the applicant shall, at the time of submitting that application, document or correspondence, submit to the Commission -

- (a) a confidential version of that application, document or correspondence, containing and clearly identifying the confidential information;
- (b) a non-confidential version of that application, document or correspondence, in which the confidential information has been removed in the manner specified by the Commission; and
- (c) a written statement explaining why the information is confidential information.

(2) The Commission may dispense with the obligation to submit a non-confidential version of any application, document or correspondence if it considers that such version is unnecessary for examination of the application.

(3) If, in respect of the application, the applicant identifies any information therein to be confidential but does not provide the Commission with a non-confidential version of the application or the written statement referred to in sub-regulation (1) at the time he submits the application before the end of such further period, if any, as the Commission considers appropriate, the application shall be deemed not to have been made.

## **20. Confidentiality**

(1) The non-confidential versions of the application and their supporting documents may be shared with third parties, whether by placing on the Commission's website for public viewing or through other means. Any confidential information removed from the non-confidential versions should be replaced by square brackets containing the word "~~CONFIDENTIAL~~".

(2) Any subsequent correspondence and documents sent by the applicant to the Commission shall be accompanied by a non-confidential version, except those where the applicant is of the view that they can be freely disclosed in their entirety. The Commission may share the non-confidential version of such correspondence or documents with third parties, either by placing them on the Commission's website or through other means.

(3) Even if the Commission allows any information to be treated as confidential, it may at any subsequent point in time require the applicant to resubmit the non-confidential version of the relevant application, document or correspondence with that item of information included. This may happen when it becomes necessary for the Commission to share the information with third parties in order to properly assess the intended merger.

## **21. Compliance**

In order to ensure compliance with any decision of the Commission, the concerned undertaking may be required to provide to the Commission a monthly compliance statement. In addition, the Commission may require further information or a further statement of compliance to be provided to it on periodical basis.

## **22. Investigations**

The Commission may undertake, carry out or conduct an investigation if there are reasonable grounds for suspecting that a merger or that an intended merger if carried into effect will substantially lessen competition in the relevant market.

## **23. Complaints about Merger situations**

(1) In making complaints about merger situations to the Commission, complainants shall be required to provide all the relevant information including the following:-

(a) Name and address of the complainant;

(b) a description of the relationship between the complainant and the merger parties or merged entity;

(c) a concise explanation of the reasons for, and details of, the complaint, including details of the merger situation to which the complaint relates, when and how the complainant became aware of the merger situation, and (where possible) the relative market positions of the parties named in the complaint; and

(d) evidence directly related to the facts set out in the complaint, including appropriate copies of relevant correspondence, statistics or data which relate to the facts set out in the complaint (in particular, where they show developments in the market).

The Commission may also ask the complainant for further information or clarifications.

(2) The Commission will consider each complaint on its merits to determine if an investigation is warranted. If the Commission decides to pursue the complaint, it will seek further information from the merger parties.

(3) If a complainant does not wish to be identified, this should be made clear to the Commission at the earliest opportunity. However, potential complainants should note that it is sometimes necessary to reveal information which may identify the source of a complaint where this is necessary for the effective handling of the complaint.

(4) When providing information or documents to the Commission, complainants shall provide a non-confidential version of the complaint and of any other information or documents which the complainant may furnish.

(5) The Commission may recognize the importance of complainants voluntarily supplying information and also their interest in maintaining confidentiality. If the Commission proposes to disclose any of the information over which confidentiality has been claimed, it may in appropriate cases and to the extent that it is practicable to do so, consult the complainant who has provided the information.

**24. Directions**

(1) If the Commission concludes that the situation prevails and may prevail, or that after an intended merger which substantially lessens competition in the relevant market, the Commission may give such directions as it considers appropriate to remedy, mitigate or prevent the adverse effects to competition caused by the merger situation.

(2) The directions envisaged in sub-regulation (1) may include the following:-

(a) Prohibiting an intended merger from being carried into effect or requiring a merger to be dissolved or modified in such manner as the Commission may direct;

(b) requiring the merger parties to enter into such legally-enforceable agreements as may be specified by the Commission to prevent or lessen the anti-competitive effects which have arisen;

(c) requiring the merger parties to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the Commission; and

(d) providing a performance bond, guarantee or other form of security on such terms and conditions as the Commission may determine.

(3) The directions must be in writing and may be given to such person(s) as the Commission considers appropriate.

**25. Right of Private Litigants:**

Parties suffering loss or damage directly arising from a merger that substantially lessens competition in the relevant market are entitled to commence a civil action seeking relief against the relevant undertakings. Such rights shall only arise after the Commission has made a decision that a merger has infringed the relevant provisions of the Ordinance and the appeal period has expired or, where an appeal has been brought, upon determination of the appeal.

**26. Appeals:**

The person aggrieved by any order passed by the any Member or authorized officer of the Commission in respect of a merger situation may file an appeal before the Appellate Bench of the Commission in accordance with the Competition Commission (Appeal) Rules, 2007.

**27. Coordination and Cooperation in Transnational mergers:**

Subject to section 47, where the merger situation is subject to review under merger laws in more than one jurisdiction, the commission shall:

- (a) without compromising effective enforcement of the domestic law, seek to cooperate its reviews of transnational mergers in appropriate cases;
- (b) consider actions by which they can eliminate or reduce the impediments to cooperation and coordination;
- (c) encourage merging parties to facilitate coordination among competition authorities, in particular with respect to timing of notifications and voluntary waivers of confidentiality rights, without drawing any negative inferences from a party's decision not to do so;
- (d) give the merging parties, the opportunity to consult with the concerned competition authority at key stages of investigation with respect to any significant or practical issue that may arise during the course of investigation;
- (e) give an opportunity to third parties, with a legitimate interest, in the merger review as recognized under reviewing country's merger laws, to express their view under the merger review process;
- (f) treat foreign undertakings, no less favorably than domestic undertakings in like circumstances; and
- (g) endeavor in reaching, in so far as possible, consistent, or at least non-conflicting outcomes.

**28. Issuance of guidelines**

- (1) The Commission may issue from time to time guidelines in respect of the merger frame work.
- (2) The guidelines shall be illustrative and not exhaustive and shall not set a limit on the investigation and enforcement powers of the Commission.
- (3) The guidelines shall not be a substitute for the Ordinance, the rules, regulations and orders.

(Mohammed Hayat Jasra)  
Secretary

**SCHEDULE**

**FORM OF PRE MERGER APPLICATION (THE FORM)**

*(See regulation 5 of Competition (Merger Control) Regulations)*

**PART 1**

**INTRODUCTION**

This Form lists the information and supporting documents which must be provided when making an application for approval of mergers under regulation 5 of the Competition (Merger Control) Regulations 2007 and sub-section (3) of section 11.

If the undertaking submitting the application (~~the applicant~~) considers that the COMMISSION should treat any item of information submitted under this Form as confidential, the applicant must provide a non-confidential version of this Form with that item of information removed. The non-confidential version should also contain an annex marked ~~“confidential information”~~ identifying each item of information which has been removed from the non-confidential version and providing a written explanation as to why the information should be treated as confidential. The same treatment should also be extended to supporting documents accompanying this Form containing any information that the applicant considers should be treated as confidential.

**PART 2**  
**GENERAL INFORMATION AND CONTACT DETAILS**

**1. Summary information regarding the application**

1.1. Please state if the notifying party (or parties) is an acquiring person, an acquired person, or both.

1.2. Please state if the notified merger has or has not been completed.

1.3. Please state if the notified merger is a cash tender offer and, if not, the mode of payment for the merger transaction.

1.4. Please state if the notified merger is a result of bankruptcy or insolvency of one of the merger parties.

1.5. Please state if the notified merger is subject to filing requirements of a local or foreign authority other than the COMMISSION. If yes, please state the country and authority to which the filing is made/to be made, and all decisions and/or directions issued by the local or foreign authorities in respect of the notified merger.

1.6. Please state whether ancillary restrictions are notified as part of this application.

**2. General contact information**

2.1. For each undertaking making the application, all other merger parties<sup>19</sup>, the joint representative of the merger parties (where appointed) in a joint application, and/or separate representatives for the merger parties (where appointed), please provide the following:

- full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers, and e-mail address (where available) of the undertakings;
- full name, address, telephone and fax numbers and email address of, and designation or position held by a contact person; and
- address for service to which documents and, in particular, COMMISSION's correspondences may be delivered, as well as the full name, telephone number and email address of a person at each address who is authorised to accept service.

2.2. For each applicant and merger party:

- indicate if each undertaking is a partnership, sole proprietorship or other unincorporated body trading under a business name;
- provide a brief description of the nature of each undertaking's business; and

---

<sup>19</sup> This includes the target company in the case of a contested bid, in which case the details should be completed as far as possible.



- provide the full name(s) and address(es) of the partners or proprietor(s) or director(s), quoting any reference which should be used.

2.3. Where any representative(s) has been authorised to act for the applicant(s), and the relevant merger parties, please indicate clearly whom the representatives represent and in what capacity (e.g. an advocate). Where separate representatives have been appointed in a joint application, please explain why a joint representative could not be appointed.

2.4. Where the declaration set out in Part 3 of the Form is signed by an advocate or other representative of the applicant(s), please provide written proof of that representative's authority to act on the applicant(s)'s behalf. The written proof must contain the name and position of the persons granting such authority.

### **3. General information on the merger**

3.1. Describe the nature of the notified merger. In doing so, state:

- the merger parties;
- the nature of the merger, for example, whether the merger is an anticipated merger, an acquisition of sole or joint control, a full-function joint venture or a contract or other means of conferring direct or indirect control;
- the value of the transaction (the purchase price or the value of all the assets involved, as the case may be);
- for each of the merger parties, the areas of activity and turnover worldwide and in Pakistan for the last financial year;
- whether the whole or parts of the business of parties are subject to the merger;
- the markets on which the merger will have an impact (including the main reportable markets as explained in section 6 of the Form);
- a brief explanation of the economic and financial structure of the merger;
- whether any public offer for the securities of one party by another party has the support of the former's supervisory boards of management or other bodies legally representing that party;

- the proposed, expected or past dates of major events designed to bring about the completion of the merger; and
- any financial or other support received from any source (including public authorities) by any of the parties and the nature and amount of this support.

3.2. Describe the strategic and economic rationale of the merger and why the merger should be allowed to proceed.

#### **4. Information on the groups to which merger parties belong**

- 4.1. Please provide a list of all undertakings belonging to the same group to which each merger party belongs, specifying the nature and means of control for each undertaking (including any preferential or special rights). Undertakings belong to the same “group” when one undertaking controls another or when the undertakings concerned are under common control. This list should include all undertakings or persons controlling or controlled by each of the merger parties, directly or indirectly.
- 4.2. The information sought in section 4.1 may be illustrated by the use of organisation charts or diagrams. Applicants who are unable to submit such information pertaining to the other merger parties, should provide reasons for the inability to do so.

#### **5. Supporting Documents**

- 5.1. Please ensure that the following documents (where relevant) are included in the application:
- if section 2.3 of this Form applies, written proof of the representative’s authority to act on the applicant(s)‘ behalf;
  - copies of the final or most recent version of all documents bringing about the merger, whether by agreement between the merger parties, acquisition of a controlling interest or a public bid;
  - in the case of a public bid, a copy of the offer document; if it is unavailable at the time of notification, it should be submitted as soon as possible and not later than when it is posted to shareholders;
  - copies of the most recent annual report and accounts (or equivalent for unincorporated bodies) for all the merger parties;
  - copies of all analyses, reports, studies, surveys, and any comparable documents prepared by or for any member(s) of the board of directors (or equivalent) or other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders‘ meeting, for the purpose of assessing or analysing the merger with respect to market shares, competitive conditions, competitors (actual and potential), the rationale of the merger, potential for sales growth or expansion into other

product or geographic markets, and/or general market conditions. For each of these documents, indicate (if not contained in the document itself) the date of preparation and the name and title of each individual who prepared the document; and

- copies of all business plans for each merger party for the current year and the preceding 5 years.

**PART 2B**  
**INFORMATION ON MARKETS**

**6. Market definition**

- 6.1. Identify all ~~reportable~~ reportable markets<sup>7</sup>. Reportable markets consist of all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets, on the basis of which:
- two or more of the merger parties are engaged in business activities in the same relevant market (horizontal relationships); or
  - one or more of the merger parties are engaged in business activities in a product market, which is upstream or downstream of a market in which any other merger party is engaged, regardless of whether there is or is not any existing supplier/customer relationship between the merger parties (vertical relationships).

**7. Information on groups to which merger parties belong**

- 7.1. Please provide a list of all undertakings active on each reportable market identified in section 6 above, that are controlled, directly or indirectly, by:

- each of the merger parties; and
- any other undertaking identified in section 4,

specifying the nature and means of control for each undertaking (including any preferential or special rights).

- 7.2. With respect to the merger parties and each undertaking or person identified in response to section, 4 and 7.1, please provide:

- a list of all other undertakings that participate in the reportable markets in which the undertakings or persons of the group hold, individually or collectively, 5% or more of the voting rights, issued share capital or other securities. In each case, also identify the holder and state the percentage held;
- a list for each undertaking, of the members of their boards of directors (or equivalent) who are also members of the boards of directors (or equivalent) of any other undertakings in the reportable markets. In each case, also identify the other undertaking and the positions held by the members of the boards of directors;
- a list for each undertaking, acquisitions of undertakings in the reportable markets made during the last three years.

7.3. Information may be illustrated by the use of organisation charts or diagrams to give a better understanding.

## **8. Information on markets**

8.1. Provide, for each reportable market:

- an estimate of the total size of the market in terms of sales value (in Pakistani Rupee) and volume (units<sup>20</sup>), for the preceding year. Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;
- the sales in value and volume for the preceding year, as well as an estimate of the market shares, of each of the merger parties. Indicate if there have been significant changes to the sales and market shares for the last three years;
- an estimate of the market share that the merged entity is likely to have. For completed mergers, provide the sales value and volume and market share before and after completion of the merger; and
- estimates of the market shares in value (and where appropriate, volume) for the preceding year of the three largest competitors, suppliers and customers, including the basis for the estimates. Provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions, and in cases where there is no such person, then the chief executive) for these entities.

---

<sup>20</sup> The value and volume of a market should reflect output less exports plus imports for the geographic areas under consideration where possible.

**PART 2C**  
**ADDITIONAL INFORMATION (WHERE APPLICABLE)**

**9. Cooperative effects of a joint venture (To be completed if the transaction is a joint venture as defined under the Ordinance)**

- 9.1. Do two or more parent businesses/companies retain activities in the same market as the joint venture or in a market which is upstream or downstream from that of the joint venture, or in a neighbouring market closely related to this market?
- 9.2. If yes, provide for each of the markets referred to:
- the activities retained by the parents;
  - the turnover of each parent company in the preceding financial year, and the expected turnover of the joint venture; and
  - the market share of each parent company.
- 9.3. If yes, please provide reasons why, in your view, the creation of the joint venture does not lead to coordination between independent undertakings that restricts competition within the meaning of section 4.

**10. Ancillary restrictions (To be completed if ancillary restrictions are included in the notification)**

10.1. Provide the following:

- Details of each ancillary restriction;
- an explanation as to why each ancillary restriction is directly related and necessary to the implementation of the merger; and
- an explanation of why each ancillary restriction may infringe the section 4 prohibitions.

10.2. Please provide copies of each agreement in which the ancillary restriction may be contained.

**11. Any other information**

11.1. Please provide any other information which may be relevant to the application. Supporting documents should be included where relevant.

### **PART 3**

#### **DECLARATION**

Under section 38 (1) (c) and (d), it is an offence, to provide information which is false or misleading, if the person providing it knows that it is false or misleading, or is reckless as to whether it is. If the person is a body corporate, its officers may be guilty of an offence under section 38 (1) (c) and (d).

#### **DECLARATION**

The undersigned declares and confirms that all information given in the Form and all pages annexed hereto are correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts.

Signature(s)

Name(s) (in block capitals):

Designation(s):

Date:

**PART 4**  
**ACKNOWLEDGEMENT OF RECEIPT**

This acknowledgement of receipt will be returned to the address inserted below if the applicant(s) provides the information requested below.

*To be completed by the applicant(s)*

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

Re: The application dated (date of application) concerning (brief description of subject matter) involving the following undertakings: (names of undertakings) [and others]

*To be completed by the COMMISSION*

Received on:

Registered under reference number:

**Please quote this reference number in all correspondence with the COMMISSION.**



## **PART 5**

### **INFORMATION FOR THE COMMISSION PUBLIC REGISTER (TO BE COMPLETED BY THE APPLICANT(S))**

1. Please give the full names of the Applicants.
2. Please provide a short summary which does not contain any confidential information (no more than 250 words) of the description of the merger and the supporting reasons why the merger has not infringed, or (where applicable) why the intended merger if carried into effect will not infringe the section 11 prohibition. Please note that this summary will be open to viewing by the public.
3. Please describe the relevant good(s) or service(s) involved as fully and accurately as possible.