

Statutory Instrument No. 154 of 2019

COMPETITION ACT
(Act No. 4 of 2018)

COMPETITION REGULATIONS, 2019
(Published on 2nd December, 2019)

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SCHEDULE

IN EXERCISE of the powers conferred on the Minister of Investment, Trade and Industry by section 95 of the Competition Act, the following Regulations are hereby made —

PART I — *Preliminary*

- | | |
|--------------------------------------|---|
| Citation
Interpretation | 1. These Regulations may be cited as the Competition Regulations, 2019. |
| | 2. In these Regulations unless the context is required —
“leniency policy” means a policy that gives an enterprise full or partial immunity from the payment of fines under the Act. |
| Exemption from
fees
Cap. 43:01 | 3. An enterprise classified as small, micro and medium enterprise under the Industrial Development Act is exempted from paying any fees under regulations 10 and 18, respectively. |

PART II — *Horizontal and Vertical Agreements*

- | | |
|--|--|
| Threshold for
determining
prohibition | 4. The Authority may carry out an investigation to determine whether a horizontal or vertical agreement referred to under section 28 of the Act may be prohibited if the Authority is satisfied that the parties to the agreement —
(a) in the case of a horizontal agreement, together supply or acquire 10 percent or more of goods or services in any market in Botswana; or
(b) in the case of a vertical agreement, individually supply or acquire, at either one of the two levels of the market that are linked by the agreement, 10 per cent or more of goods or services in a market in Botswana. |
| Threshold for
determining
dominant
position | 5. The Authority may consider an enterprise or enterprises to be in a dominant position if it is satisfied that —
(a) the enterprise supplies or acquires at least 25 per cent of the goods or services in the market; or
(b) three or fewer enterprises together supply or acquire at least 50 per cent of the goods or services in the market. |
| Investigation on
Authority’s
initiative | 6. Notwithstanding the thresholds under regulations 4 and 5, the Authority may initiate an investigation into the conduct of any enterprise where the Authority has reasonable grounds to suspect that —
(a) the conduct or practice of one or more enterprises has caused or is likely to cause serious or irreparable harm to the market or consumer; or
(b) one or more enterprises possess such economic strength in a market as to allow the enterprise or enterprises to adjust prices or output without effective constraint from competitors or potential competitors. |

PART III — *Exemptions*

- | | |
|------------------------------|---|
| Application for
exemption | 7. (1) An enterprise may apply to the Authority for an exemption in terms of section 33 of the Act in Form A set out in the Schedule.
(2) An application made under subregulation (1) shall be accompanied by —
(a) an application fee of 0.01 per cent of the applicant’s latest annual turnover;
and
(b) any document, affidavit, statement or other relevant information in respect of the applicant’s turnover as may be required by the Authority. |
|------------------------------|---|

8. (1) The Authority shall, by notice in the *Gazette*, invite interested parties to make representations before granting or revoking an exemption. Consultation by Authority on exemption
- (2) The notice referred to in subregulation (1) shall be published 14 days before consultation with interested parties.
9. Where an applicant enterprise meets the requirements of section 33 of the Act and regulation 8, the Authority may grant an exemption in Form B set out in the Schedule. Issue of exemption
10. An enterprise shall pay an annual fee of 0.01 per cent of the enterprise's latest annual turnover for the duration of the exemption as required by section 93 (a) of the Act. Exemption fees

PART IV — *Investigations by the Authority*

11. (1) Any information or complaint made under section 36 (1) of the Act shall be made in Form C set out in the Schedule. Complaints made to the Authority
- (2) A preliminary inquiry conducted by the Authority in terms of section 36 (1) of the Act shall be conducted within 90 days of receipt of the information or complaint.
- (3) The Authority may, in conducting a preliminary inquiry under section 36 (1) of the Act, request for information from any other person or enterprise it considers to be relevant.
- (4) A request for information under subregulation (3) shall follow the same notice process and requirements specified under sections 36 (2) and 36 (4) of the Act.
- (5) A decision by the Authority not to commence an investigation under section 36 (5) of the Act shall be made and communicated to the complainant if any, within 90 days of receipt of the information or complaint.
12. (1) Where on its own initiative, the Authority decides to conduct a preliminary inquiry in terms of section 36 (2) of the Act, it shall give notice of its intention to investigate as set out in Form D set out in the Schedule to every enterprise which is suspected to be a party to the practice being investigated. Investigation by the Authority
- (2) Where the Authority decides to carry out an investigation upon completion of a preliminary inquiry under subregulation (1), it shall give notice of its intention to do so in Form E set out in the Schedule to the parties mentioned under subregulation (1).
- (3) The Authority may, before or during investigations, utilise the leniency policy where an enterprise —
- (a) voluntarily discloses the existence of an agreement that is prohibited by section 25 and 27 (1) of the Act; and
 - (b) co-operates with the Authority in the investigation of the practice; in its investigation report for referral to the Tribunal.
- (4) Where the Authority carries out an investigation without giving notice, it may issue an *ex post* notice of investigation in Form F set out in the Schedule.
13. The Tribunal shall, in imposing a financial penalty in terms of section 76 (2) of the Act, take cognisance of an enterprise's cooperation with the Authority's investigations and utilise the leniency policy in order to mitigate the financial penalty or not to impose the financial penalty. Mitigation of financial penalty

Issue of
inspector's
identification
card

14. (1) The Authority shall issue an inspector appointed under sections 19 (2) and 37 (1) of the Act with an identification card in Form G set out in the Schedule.

(2) When entering and searching the enterprise's premises or any other premises, the inspector shall present his or her identification card to —

- (a) the owner of the premises;
- (b) any person in control of the premises;
- (c) any person who has control of a document or article that may have a bearing on the investigation; or
- (d) any other person who may have information relevant to the investigation.

(3) For the purposes of this regulation, a person in control of the premises includes any staff member of the enterprise.

Claim of legal
professional
privilege

15. Where a person or enterprise refuses to disclose or produce information or a document on the grounds of legal professional privilege in terms of section 38 of the Act, the person or enterprise shall submit to the Authority a claim for legal professional privilege in Form H set out in the Schedule, within seven days, indicating —

- (a) the name of the document that contains the confidential information;
- (b) the page and line number at which the confidential information begins and ends;
- (c) the name of the enterprise that owns the confidential information;
- (d) the economic value, where possible, of the confidential information; and
- (e) the reasons for the existing restrictions on access to the information.

Referral to
Tribunal

16. (1) A notice of non-referral issued to the complainant in terms of section 73 (1) (b) of the Act shall be in Form I set out in the Schedule.

(2) A referral to the Tribunal in terms of section 73 (4) (a) of the Act shall be as in Form J set out in the Schedule.

Interim relief

17. (1) A party who is likely to suffer irreparable damage or wants to protect public interest in terms of section 80 of the Act, may make an application to the Tribunal in terms of the rules and procedure of the Tribunal.

(2) A document containing the rules and procedure of the Tribunal referred to in subregulation (2) shall be obtained from the office of the Registrar of the Tribunal.

(3) Upon receipt of application by the concerned enterprise, the Tribunal shall give written notice to such enterprise prior to giving a direction in terms of section 80 of the Act —

- (a) indicating the specific prohibited practice which is being investigated or likely to be investigated;
- (b) showing evidence of the irreparable damage suffered or likely to be suffered as a result of the practice; and
- (c) inviting the enterprise or each of the enterprises to make written or oral representations they may wish to make to the Tribunal within 14 days from the date of receipt of the notice.

PART V — Control of mergers

- 18.** (1) A notification to the Authority of a proposed merger in terms of section 49 (1) of the Act shall be in Form K set out in the Schedule. Notification of merger
- (2) A merger notice shall be accompanied by a merger fee of 0.01 per cent of the merging enterprises combined turnover or assets in Botswana, whichever is
- (3) If the merger is hostile, an acquiring enterprise shall pay the merger fee.
- (4) A merger notice shall be submitted in a single file and shall include a merger control statement and declaration from each merging enterprise.
- (5) Subject to the protection of confidential information, the details relating to a notification referred to under section 49 (2) of the Act may include —
- (a) the names of all the enterprises involved in the merger;
 - (b) details of the shareholders of each enterprise involved in the merger;
 - (c) details of the Directors of each enterprise involved in the merger; and
 - (d) details of the business activities in Botswana of each enterprise involved in the merger.
- 19.** A request for further information by the Authority in terms of section 49 (3) of the Act shall be made in Form L set out in the Schedule. Request for further information on merger
- 20.** A notice to enterprises made in terms of section 49 (5) of the Act shall be given in Form M set out in the Schedule. Notification of extension assessment period for a merger
- 21.** A document, affidavit, statement or other relevant information given in respect of a proposed merger under section 50 (3) of the Act may be given through any legal means of communication whether that is done orally or in writing. Information by third party on merger
- 22.** As provided for under section 47 of the Act, a proposed merger is subject to control in terms of the Act if — Threshold for merger control
- (a) the annual turnover in Botswana, of the enterprise or enterprises being taken over exceeds P10 000 000;
 - (b) the value of assets in Botswana, of the enterprise or enterprises being taken over exceeds P10 000 000; or
 - (c) the enterprises concerned would, following implementation of the merger, supply or acquire at least 20 per cent of a particular description of goods or services in Botswana.
- 23.** (1) Where a merger notice is made under regulation 18 and the parties abandon the proposed merger, notice of the abandonment of the merger shall be given to the Authority in Form N set out in the Schedule by the parties previously proposing to merge. Abandonment of merger
- (2) The notice of abandonment of merger under subregulation (1) shall be accompanied by a certificate of consent in Form O set out in the Schedule signed by all parties confirming that the merger is abandoned.
- (3) A merger fee paid under regulation 18 shall not be refundable if the merger is abandoned after 14 days from the date the merger notice is received by the Authority.
- 24.** A notice by the Authority to revoke, in terms of section 56 (1) of the Act, its decision approving the implementation of a merger shall be made in Form P set out in the Schedule. Revocation of approved merger

Revocation of
S.I. No. 84 2011

25. The Competition Regulations are hereby revoked.

SCHEDULE

FORM A

COMPETITION AND CONSUMER AUTHORITY

APPLICATION FOR EXEMPTION

(reg 7 (1))

To: The Competition and Consumer Authority

From:

(Name of Applicant)

We apply in terms of section 33 of the Competition Act for an exemption.

A single agreement

A category of agreements

A single practice

A category of practices

We seek an exemption for a period of years.

In respect of this matter, have you previously applied for an exemption?

Yes

No

If you answered "yes" to the above, was the exemption granted?

Yes

No

Please provide the case number for the previous exemption application

.....

Name and Title of person authorised to sign:

Authorised Signature:

Date:

For Office Use only

Authority file number:

Date filed:

.....

About this Form

This form is issued in terms of section 33 of the Competition Act.

This application must be accompanied by a typed statement of particulars listed in points 1 — 6 listed below, and a certified copy of the agreement if applicable, and must be signed by a person authorised by applicant.

NB: The form should be sent to the Competition and Consumer Authority at the address to be published by the Authority.

COMPETITION AND CONSUMER AUTHORITY

The following information must be included in your description of the agreement or practice for which you seek an exemption:

1. Your address in Botswana for service of documents.
2. A short description of your business.
3. A brief description of the agreement or practice which you seek to be exempted from and if an agreement has already been made, its date.
4. The names and addresses of other parties to that agreement or practice.
5. The facts and contentions on which you rely.
6. The sections of the Act that you believe may be contravened by the agreement, practice, or category of agreements or practices you have described, and a motivation for the belief.

NB: The form should be sent to the Competition and Consumer Authority at the following address:

Competition and Consumer Authority
Private Bag 00101
Gaborone

FORM B

COMPETITION AND CONSUMER AUTHORITY

EXEMPTION CERTIFICATE IN RESPECT OF RESTRICTIVE PRACTICES

(reg 9)

To: _____

From:
(Name and file number of applicant)

1. In terms of your application for exemption on: (Date)
_____ in
accordance with section 33 of the Act; and
2. Because the agreement, decision or practice concerned contributes to the objective set
out in section 33 (1) _____^{1*} of the Act, the Authority grants an exemption
in terms of section 33 (1) of the Act for a period of _____ years, ending on
_____, for:

- A single agreement a category of agreements
 A single practice a category of practices,
as described in your application. This exemption is subject to:

- No conditions
 The conditions listed on the attached sheet.

3. The Authority has the authority in terms of section 34 of the Act to revoke the exemption if —
- (a) the exemption was granted on materially incorrect or misleading information;
 - (b) there is a material change of circumstances since the exemption was granted; or
 - (c) a condition, upon which the exemption was granted, has not been complied with.

Name and Title of person authorised to sign:

Authorised Signature:

Date:

For Office Use only

Authority file number:

Date filed:

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.....

FORM C
COMPETITION AND CONSUMER AUTHORITY
COMPLAINT FORM
(reg. 11)

PART A

(Name and contact details of person submitting a complaint)

(Name of person or enterprise whose conduct is the subject of this complaint)

(Provide a concise statement of the conduct that is the subject of this complaint)

Please attach to this Form any relevant documents, the names of each party involved in the conduct and the dates on which the conduct occurred. Provide details on when and how you became aware of the conduct.

Is the conduct continuing? Yes _____ No _____

Complainant _____

Signature _____ Date _____

PART B

The alleged conduct appears to be in contravention of section _____
of the Act.

Officer _____ Signature _____

Position _____

(Endorsement by Head of Department):

Date Signed/Endorsed:

PART C

CHIEF EXECUTIVE OFFICER'S AUTHORITY

In terms of the facts in Part A above in relation to the identified contravention under section _____ of the Act:

(tick as appropriate)

The investigation is authorised

The investigation has not been approved

DATED this _____ day of _____ 20_____

At _____

Chief Executive Officer

FORM D

COMPETITION AND CONSUMER AUTHORITY

NOTICE OF A PRELIMINARY INQUIRY

(reg. 12 (1))

To: _____

Concerning: _____

(Name and file number of complainant)

1. The Authority has received a complaint against the above named respondent on _____
_____, in relation to the above subject matter:

2. The Authority gives notice that it has decided to conduct a preliminary inquiry into the
conduct of the respondent.

3. The purpose of the preliminary inquiry is as follows:

4. You are required to produce to the Authority:

- a. the documents or articles specified in the notice; and
- b. any other document or article in your possession or under your control that relate to
this matter.

Name and title of person authorised to sign:

Authorised signature:

Date:

FORM E
COMPETITION AND CONSUMER AUTHORITY
NOTICE OF INTENTION TO INVESTIGATE

(reg 12 (2))

To:

Concerning:

(Name and file number of complaint)

1. The Authority has received a complaint against the above named respondent on: _____, in relation to the following subject matter:

2. The Authority gives notice that it has decided to conduct an investigation into the alleged infringement(s) concerned.

3. The purpose of the investigation is as follows:

4. You are hereby invited to submit to the Authority within 30 days as from the date of this notice, any written representations which you may wish to make to the Authority in connection with any matter to be investigated.

5. The Authority requires you to appear at _____ and give evidence before the Authority on _____ at _____ o' clock, in the morning/afternoon.*

6. You are also required to produce to the Authority:

(a) The documents or article specified in the notice; and

(b) Any other documents or articles in your possession or under your control that relate to this matter.

Name and Title of person authorised to sign:

Authorised Signature:

Date:

FORM F

COMPETITION AND CONSUMER AUTHORITY

EX POST NOTICE OF INVESTIGATION

(reg 12 (4))

TO:

DATE:

Pursuant to section 36 of the Competition Act, the Authority has reason to believe that
(Defendant Name)

.....
has or maybe engaged in (Describe Conduct)
.....
.....

The purpose of the investigation is to ascertain the facts and assist the Authority in its next course of action.

IN RELATION TO THE AFORE CONDUCT, (State Names)..... are hereby directed to:

APPEAR before the Authority to assist accordingly by
(Date) (Time) (Place)

SUBMIT TO THE AUTHORITY the following documents or any relevant information in a sealed envelope by
(Date) (Time) (Place)

GIVE evidence or provide any relevant information by.....
(Date) (Time) (Place)

Signature:
Chief Executive Officer

FORM G

COMPETITION AND CONSUMER AUTHORITY

INSPECTORS' IDENTITY CARD

(reg 14 (1))

FRONT SIDE

PASSPORT PHOTO	COMPETITION AND CONSUMER AUTHORITY	 REPUBLIC OF BOTSWANA
	IDENTIFICATION CARD	
	NAME OF OFFICER:	
	SIGNATURE OF OFFICER:	

REVERSE SIDE

This officer is engaged by the Government of Botswana under the powers granted by the Competition Act and has been authorised to exercise the powers vested in him/her under the Act.

DATE OF ISSUE:

SIGNATURE OF CHIEF EXECUTIVE OFFICER:

Property of the Government of Botswana. If found, hand it to an officer of the Competition and Consumer Authority or to any Police Officer or mail it to the Chief Executive Officer, Competition and Consumer Authority, Private Bag 00101, Gaborone, Botswana.

FORM H

COMPETITION AND CONSUMER AUTHORITY
CLAIM FOR LEGAL PROFESSIONAL PRIVILEGE

(reg 15)

To: The Competition and Consumer Authority
Concerning:

(Name and file number)

On a separate sheet of paper, list the following information, and set out the facts and contention supporting your claim that the identified information is confidential.

- Column 1 — name of the document that contains the confidential information
- Column 2 — the page and line number at which the confidential information begins and ends
- Column 3 — the name of the Enterprise that owns the particular information
- Column 4 — the economic value of the information
- Column 5 — the existing restrictions on access to the information

Statement of Confidentiality:

I _____ compiled, or supervised the persons who compiled the attached list. I believe that the information identified in that list is confidential information as defined in section 38 of the Competition Act.

Name and Title of person authorised to sign:

Authorised Signature:

Date:

For Office

Use only Authority file number:

Date filed:

.....

.....

About this Form

This form is issued in terms of section 38 of the Competition Act.

The Authority shall treat confidentially any information identified by you in this form.

Confidential information means trade, business or industrial information that belongs to an Enterprise, has a particular economic value, and is not generally available to or known by others.

NB: The form should be sent to the Competition and Consumer Authority at the following address:

Competition and Consumer Authority
Private Bag 00101
Gaborone

FORM I

COMPETITION AND CONSUMER AUTHORITY

NOTICE OF NON-REFERRAL OF CASE TO THE COMPETITION
AND CONSUMER TRIBUNAL

(reg 16 (1))

To: _____
(the complainant details)

Concerning:
(Name and file number of complaint)

1. Take notice that in the matter of the aforementioned which has been under investigation for _____ day(s)/month(s), the Authority shall not refer the case to the Tribunal on the following grounds:

- (a) _____
 - (b) _____
 - (c) _____
- etc.

2. The Authority has henceforth decided to: (tick as appropriate)

- Discontinue with the investigation
- As per section 73 (2) of the Act, not refer to the Tribunal the following particulars of the complaint:

- (1) _____
 - (2) _____
 - (3) _____
- etc.

3. The indicated particulars shall not be referred to the Tribunal on the following grounds:

- (a) _____
 - (b) _____
 - (c) _____
- etc.

Name and Title of person authorised to sign:

Authorised Signature:

Date:

**From: The Chief Executive Officer
Competition and Consumer Authority
Gaborone**

FORM J

COMPETITION AND CONSUMER AUTHORITY

REFERRAL OF CASE TO THE COMPETITION AND CONSUMER TRIBUNAL

(reg 16 (2))

(BY AUTHORITY OR COMPLAINANT)

To: COMPETITION AND CONSUMER TRIBUNAL

Cc: THE AUTHORITY

THE COMPLAINANT

Concerning:

(Name and file number of complaint)

1. TAKE NOTICE THAT I/We have referred the case to the Tribunal for the following reasons:

(a) _____

(b) _____

(c) _____

2. I/We have enclosed the following attachments:

(a) _____

(b) _____

(c) _____

3. THUS DONE AND SIGNED this _____

day of _____ year _____

AUTHORISED OFFICER/COMPLAINANT

WITNESS

FORM K

COMPETITION AND CONSUMER AUTHORITY

MERGER NOTICE

(reg 18 (1))

Part I — Notice

To: The Competition and Consumer Authority

From:

(Name, address and contact numbers of the Enterprise reporting the merger).

The acquiring Enterprise & the target Enterprise

And involving as

The acquiring Enterprise & the target Enterprise

Schedule 1

The names and address of all other acquiring or target Enterprises as defined in the Competition Act, and of all trade unions, or employee representatives of the acquiring and target Enterprises, are listed on this Notice.

Schedule 2

Particulars of the merger are set out, in the attached statement of merger information, which forms part of this Notice.

Notices and other documents concerning this merger may be served on the following person at the address and contact number shown:

About this form

Complete and sign the declaration form on page 2.

Parties to the merger must not implement that merger until they have received a certificate of approval, or conditional approval, in terms of the Competition Act.

NB: The form should be sent to the Competition and Consumer Authority at the following address:

Competition and Consumer Authority
Private Bag 00101
Gaborone

Part II — Declaration Form

(Name and File number of merger)

Declaration:

I have prepared, or supervised those who prepared this Statement of Merger Information. To the best of my knowledge, the information contained in this document, and the attachments to it, is true, correct and completed in terms of the Competition Act and Competition Regulations, except to the extent that I have indicated ---

- (a) that requested data is not available in books or records, and reasonable estimates have been used instead: or
- (b) Complete information has not been provided because it is unavailable, in which case I have attached an affidavit sworn by me, explaining why the information is unavailable.

I understand ---

- (a) that it is an offence in terms of the Competition Act to provide false information to the Competition and Consumer Authority in any manner, including in these documents; and
- (b) That section 91 of the Competition Act provides for a penalty of a fine, or imprisonment, or both, if I am found guilty of knowingly providing false information to the Competition and Consumer Authority.

Name and Title of person authorised to sign:

Authorised Signature:

Date:

For Office Use only

Authority's file number:

Date filed:

.....

About this Form

If any required information is not available, you must attach a sworn affidavit explaining why that information is unavailable.

A party to a merger who does not file a notice of that merger as required by the Competition Act may be fined an administrative penalty or made subject to an order of divestiture.

Approval or conditional approval of a merger may be revoked if it is subsequently discovered that this Notice does not provide correct and complete information.

The application should be sent to the address to be determined by the Authority.

NB: The form should be sent to the Competition and Consumer Authority at the following address:

Competition and Consumer Authority
Private Bag 00101
Gaborone

Part III — Merger Control Statement

To: The Competition and Consumer Authority

From:

(Name of Enterprise filing this Statement)

The Enterprise filing this statement is:

The Acquiring Enterprise

The Target Enterprise

On a separate document, provide the following information in the order listed in items 1 – 7.

1. State the name and principal business address of the party filing this Notice.
2. State the name and principal business address of all firms directly or indirectly controlling you.
3. List the name and principal business of each firm directly or indirectly controlled by each firm referred to in item 2.
4. List the name and principal business address of each firm you directly or indirectly control.
5. State your annual turnover in Botswana for your preceding financial year and the range of months covered by your financial year.
6. State the value of your assets in Botswana as of the end of your preceding financial year, and as of the date of the Merger Notice.
7. State your annual turnover in Botswana as of the date of the Merger Notice.

Authorised Signature:

Date:

For Office Use only Authority file number:

Date filed:

.....

.....

About this form

Attach to this form the following items:

The most recent version of all documents constituting the merger agreement.

Each report or other documents assessing the transaction with respect to competitive conditions.

Any document including minutes, reports presentations and summaries, prepared for the Board of Directors regarding the transaction.

NB: The form should be sent to the Competition and Consumer Authority at the following address:

Competition and Consumer Authority
Private Bag 00101
Gaborone

COMPETITION AND CONSUMER AUTHORITY

Transaction Information

On a separate document provide the following information in the order listed in items 8 – 12.

8. Indicate whether the party filing this Notice is –
 - (a) Acquiring assets, shares, or other interests.
 - (b) Selling assets, shares, or other interests: or
 - (c) Acquiring and selling assets, shares or other interests
9. Indicate whether the transaction involves:
 - (a) Foreign Direct Investment
 - (b) a management Buy-out
 - (c) a Buy-back of shares
10. Describe the merger, including: the parties to the transaction; the assets shares, or other interests being required; whether the assets, shares, or other interests are being purchased, leased, combined or otherwise transferred; the consideration, the contemplated timing for any major events required to bring about the completion of the transaction, and the intended structure of ownership and control of the completion of the merger.
11. Unless you have submitted a report addressing the issues listed below, provide the following details:
 - (a) the estimated market shares of the merging parties and other competitions.
 - (b) information concerning barriers to entry, such as regulatory requirements, capital requirements and sunk costs, the time it will take for potential entrants to enter the market, the names and contact details of entrants to the market during the past three years;
 - (c) information concerning import competition, such as existing import duties; and
 - (d) countervailing power (customers of suppliers).
12. If you are relying on a “failing enterprise defence”, please include the following information:

- (a) financial information demonstrating that the enterprise will be unable to meet its financial obligations in future;
- (b) information concerning efforts taken to elicit reasonable alternative offers; and
- (c) information indicating that the failing enterprise would reasonably be expected to exit the market unless the merger is implemented.

Authorised Signature:

Date:

For Office Use only

Authority file number:

Date filed:

.....

.....

.....

Until the Authority has reached a decision concerning the merger, you must submit any revised or final version of each document referred to in the instructions on Page 1 of this form, as it becomes available. You may include any other relevant information that you want the Chief Executive Officer to consider.

NB: The form should be sent to the Competition and Consumer Authority at the following address:

Competition and Consumer Authority
Private Bag 00101
Gaborone

COMPETITION AND CONSUMER AUTHORITY

Products and Services

On a separate document provide the following information in the order listed in items 13 – 17.

13. Identify each product that you or another acquiring enterprise (or target enterprise, if applicable), sell, and each service you or that other enterprise provide in, into or from Botswana. In addition, identify any products or services that you believe are considered by buyers as reasonably interchangeable with, or a substitute for, a product or service provided in, into or from Botswana by another party to the merger.
14. For each identified product or service, state the geographic areas(s) in Botswana in which you sell or provide service.
15. For each identified product or service, identify, and provide contact details for, the five producers or providers in each identified geographic area with the largest estimated turnover in value, and their estimated share of the total turnover during the last full 12 months.
16. For each identified product or service, state your turnover in each of identified geographic areas during the last full 12 months.

17. For each identified product or service identify and provide contact details for your five customers in each of identified geographic area with the largest aggregate purchases in value during the last full 12 months.

Business Relationships among parties

On a separate document provide the following information set out in item 18.

18. State the name of any other Acquiring Enterprise (or Target Enterprise, if applicable) that sells to you, identify each product or service sold, and for each such product or service, show the value of that product or service sold during your preceding financial year.

For Office Use only Authority file number: Date filed:

.....
Approval or conditional approval of a merger may be revoked if it is subsequently discovered that this statement of information is not accurate.

Generally, information relating to this merger is not part of the public record while the Competition and Consumer Authority is considering the merger.

On a separate document provide the following information in the order listed in items 19 – 24.

19. Name of the Competition Agency where parties have already notified or plan to notify;
20. Anticipated impact, if any, of the merger in Botswana —
 - (i) Employment creation and/or maintenance,
 - (ii) Skills transfer,
 - (iii) FDI,
 - (iv) Citizen Economic empowerment,
 - (v) SMME advancement, and
 - (vi) Consumer benefits.
21. Provide certified copies of certificate of incorporation and Shareholders Agreements, indicating names of the shareholders and directors of each enterprise together with their nationalities.
22. State other business interests that the shareholders have in Botswana.
23. State any previous acquisition that the company was involved in over the past 5 years in Botswana, if any.
24. Submit audited financial statements or signed management accounts.

NB: The form should be sent to the Competition and Consumer Authority at the following address:

Competition and Consumer Authority
Private Bag 00101
Gaborone

FORM L
COMPETITION AND CONSUMER AUTHORITY
REQUEST FOR ADDITIONAL MERGER INFORMATION

(reg 19)

Date:

To:
(Name of enterprise)

(Name and file number of merger)

On, you filed documents in connection with the above named merger, as required by the Competition Act and the Competition Regulations.

Following a preliminary review of your notice, and the information you have provided to date, the Competition and Consumer Authority has concluded that your notification is incomplete.

Please be advised that the Competition and Consumer Authority has reason to believe that a document filed by you in respect of this merger —

- (a) contains false or misleading information; or
- (b) does not have complete information

as noted on the attached sheet. ***please tick (appropriate)**

In terms of section 49 (3) of the Competition Act, the Competition and Consumer Authority requires you to file the following additional information in respect of your merger, as listed on the attached sheet, within business days after you received this notice.

Please note that you will not have completed your notification requirements until you have filed corrected information to the satisfaction of the Competition and Consumer Authority.

Name and Title of person authorised to sign on behalf of the Competition and Consumer Authority.

Authorised Signature:

NB: The form should be sent to the Competition and Consumer Authority at the following address:

Competition and Consumer Authority
Private Bag 00101
Gaborone

FORM M

COMPETITION AND CONSUMER AUTHORITY

NOTICE OF EXTENSION OF MERGER ASSESSMENT AND DETERMINATION

(reg 20)

To: Date:

Pursuant to section 49 (5) of the Competition Act, the Authority is extending the period of assessment before determination of the merger for days (not exceeding 60 days).

The extension of the period has been necessitated by the following factors:

- (i)
- (ii)
- (iii)

SIGNATURE :
Chief Executive Officer

FORM N
COMPETITION AND CONSUMER AUTHORITY
NOTICE OF ABANDONED MERGER

(reg 23 (1))

To: The Competition and Consumer Authority

From:

(Name of acquiring enterprise):

(Name and file number of merger):

Take notice that the above named enterprise:

(a) has abandoned the intended merger previously notified under the file number shown above on the basis that (state/provide the reasons for abandonment)

.....; and

(b) has no intention of taking any further steps to implement that intended merger.

Name and Title of person authorised to sign:

Authorised Signature:

Date:

For Office Use only

Authority file number:

Date filed:

.....

.....

.....

NB: The form should be sent to the Competition and Consumer Authority at the following address:

Competition and Consumer Authority
Private Bag 00101
Gaborone

FORM O

COMPETITION AND CONSUMER AUTHORITY

CERTIFICATE OF CONSENT TO ABANDONMENT OF MERGER

(reg. 23 (2))

To: Chief Executive Officer
Competition and Consumer Authority
Gaborone

TAKE NOTICE THAT by consent and/or following abandonment of the merger that was notified to the Authority in the manner and style of *(state the merger parties)* _____

we, the undersigned, confirm that the merger shall not proceed.

WE UNDERSTAND that should we resolve to proceed with the merger in future with the withdrawal parties or any other parties, we shall have to comply with the requirements under PART XI of the Competition Act and/or any amendments thereto as at that time may be in force.

Name and Title of person authorised to sign:

Authorised Signature:

Date:

FORM P

COMPETITION AND CONSUMER AUTHORITY

NOTICE OF INTENTION FOR REVOCATION OF APPROVED MERGER
(reg 24)

To: _____

Concerning:

(Name and file number of complaint)

1. The Authority has approved merger filed by the above named applicant or enterprise on

2. The Authority gives notice that it intends to revoke the approval on the grounds that;
 - (i) the decision was based on materially incorrect or misleading information for which a party to the merger is responsible, or
 - (ii) any condition attached to the approval of the merger that is material to the implementation is not complied with.
3. You may submit to the Authority within 30 days of receipt of the notice, any written representations which you may wish to make in regard to the proposed action.

Name and Title of person authorised to sign:

Authorised Signature:

Date:

MADE this 27th day of November, 2019.

PEGGY O. SERAME,
Minister of Investment, Trade and Industry.