
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 249

25 March 2021

INVITATION FOR THE PUBLIC TO COMMENT ON THE AMENDMENTS TO FORMS, RULES AND REGULATIONS OF THE COMPETITION COMMISSION

1. By virtue of the powers vested in me in terms of section 21(4) of the Competition Act, 1998 (Act No. 89 of 1998), I, Ebrahim Patel, Minister of Trade, Industry and Competition, in consultation with the Competition Commission, hereby intend to amend the forms and prescribe regulations as set out in the Schedule hereto –
2. Stakeholders and interested parties are invited to submit comments regarding the proposed changes including proposals to enhance the ease of use of forms and clarity on regulatory requirements and steps, within a period of 30 days from publication of this notice, to the Minister of Trade, Industry and Competition for the attention of Mrs Linda Herbst, email: lherbst@thedtic.gov.za or hand delivered at 3rd Floor, Block E, 77 Meintjies Street Sunnyside, 0132.

SCHEDULE

1. The following forms are hereby amended and substituted with the following:
 - 1.1. Form CC 3(1) – Application for Exemption (Section 10(1)) (attached hereto as Annexure A);
 - 1.2. Form CC 3(2) – Application for Exemption (Section 10(4), Intellectual Property) (attached hereto as Annexure B);
 - 1.3. Form CC 3(3) – Application for Exemption (Schedule 1: Exemption of Professional Rules) (attached hereto as Annexure C);
 - 1.4. Form CC 4(1) – Merger Notice (attached hereto as Annexure D); and
 - 1.5. Form CC 4(2) – Statement of Merger Information (attached hereto as Annexure E).

2. I hereby insert the following form:

- 2.1 Notice CC 23 – Notice of intention to make a determination (attached hereto as Annexure F).

3. I hereby insert the following rule in the Competition Commission Rules:

Competition Commission Rule 15A

15A Access to Confidential Information submitted to the Commission

- (1) Before the Commission makes the determination contemplated in section 44(3) of the Act in respect of information submitted to the Commission under a confidentiality claim, the Commission must:**
- (a) issue a Notice of intention to make a determination in Form CC 23 to the claimant and the Respondent; and**
 - (b) allow the claimant and the Respondent 5 business days to make representations to the Commission.**
- (2) Within 5 business days after the Commission makes its determination in terms of section 44(3), an aggrieved person may refer the Commission's decision to the Tribunal in accordance with the Tribunal's rules.**

4. I hereby amend the following rule in the Competition Commission Rules:

Competition Commission Rules 35(1) and Rule 35(4)

35 Participation by Minister in Commission merger proceedings

- (1) If the Minister decides to participate in [any intermediate or large merger] ~~any merger~~ proceeding before the Commission, the Minister must file a Minister's Notice of Intention to Participate in Form CC 5(2) within 10 days after receiving a copy of the Merger Notice from the Commission.**
- (2) ...**
- (3) ...**

(4) The Minister may file a concise statement of the public interest grounds on which the Minister relies in respect of a particular [intermediate] merger, and a statement of the decision, if any that the Minister prefers, at any time between –

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.



MR EBRAHIM PATEL

MINISTER OF TRADE, INDUSTRY AND COMPETITION

DATE: 19/3/2021



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Application for Exemption (Section 10(1))

Form CC3(1)

About this Form

- This form is issued in terms of section 10(1) of the Competition Act 89 of 1998 and consists of 9 pages, inclusive of this page.
- If this application is on behalf of a firm, insert the name of the firm in the box to the right.
- This application must be accompanied by a typed statement of particulars listed in Schedules 1 to 6 below, and a certified copy of the agreement if applicable, and must be signed by a person authorised by the Applicant.
- Generally, information relating to this application is part of the public record. You have a right to identify information that you believe is confidential by completing Form CC 7 and submitting it with this application.
- An exemption or conditional exemption may be revoked if it is subsequently discovered that information provided by the applicant is incorrect. Please refer to section 10(5) of the Competition Act 89 of 1998.

Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
Tel: 27 012 394 3226
fax: 27 012 394 0166
e-mail: cса@compcom.co.za

To: The Competition Commission

From:

(Insert name of the Applicant):

The application in terms of section 10(1) of the Competition Act for exemption from the application of Chapter 2 of the Act for:

a single agreement a category of agreements
 a single practice a category of practices
 as described in the attached document.

We seek an exemption for a period of _____ years.

In respect of this matter, has previous exemption been:

granted? Yes No

refused? Yes No

If you answered "yes" to either question above, 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:**

Commission file number:

Date filed:



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Form CC3(1)

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Schedule 1

Contacting the Commission

The Competition Commission
Private Bag X23
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Tel: 27 012 394 3226
fax: 27 012 394 0166
e-mail: ccsa@compcom.co.za

Schedule 1 - General information

In a separate document, titled Schedule 1, provide the following minimum information in the order listed in items 1 to 21:

1. The names and business address of the Applicant, including its address in South Africa for service of documents;
2. The names and business addresses of all other parties involved in or party to the exemption being sought;
3. The duration for the exemption being sought;
4. A description of the Applicant's business activities;
5. A description of each of all other parties' business activities involved or party to the exemption being sought;
6. An organogram fully setting out the parent company to the Applicant, including all its subsidiaries and the respective ownership shares thereto;
7. An organogram fully setting out the parent company for each of the other parties involved in or party to the exemption being sought, including all its subsidiaries and the respective ownership shares thereto;
8. A detailed description for the rationale for the exemption application;
9. A detailed description of the conduct for which the exemption is sought;
10. The relevant section(s) of the Act that you believe are likely to be contravened forming the basis of this exemption application, as well as your motivation for that belief;
11. The objective(s) in terms of section 10(3) of the Act on which you rely for the exemption being sought;
12. The relevant market(s) forming the basis of this exemption application and a detailed motivation for such views;
13. For each of the products and/or services forming part of the market identified in item 12 above, provide full contact details for each of the five (5) leading competitors and/or suppliers thereto, including the name of the company, a relevant contact person, his/her respective telephone number and their email address;
14. For each of the products and/or services forming part of the market identified in item 12 above, provide the five (5) leading customers of the Applicant and each of the other parties involved in this exemption application, including the name of the company, a relevant contact person, his/her respective telephone number and their email address;
15. For the Applicant and each of the other parties involved in this exemption application, identify each product and/or service where there is potentially a direct overlap;
16. For each of the products and/or services identified in 15 above, provide full contact details for each of the five (5) leading competitors and/or suppliers thereto, including the name of the company, a relevant contact person, his/her respective telephone number and their email address;



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Schedule 1 (cont.) – Schedule 2

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17. For each of the products and/or services identified in item 15 above, provide the five (5) leading customers of the Applicant and each of the other parties involved in this exemption application, including the name of the company, a relevant contact person, his/her respective telephone number and their email address;
18. For the Applicant and each of the other parties involved in this exemption application, identify all products and/or services that gives rise to a potential vertical relationship between the parties;
19. For each of the products and/or services identified in 18 above, provide full contact details for each of the five (5) leading competitors and/or suppliers thereto, including the name of the company, a relevant contact person his/her respective telephone number and email address;
20. For each of the products and/or services identified in item 18 above, provide the five (5) leading customers of the Applicant and each of the other parties involved in this exemption application, including the name of the company, a relevant contact person, his/her respective telephone number and their email address;
21. For each of the products and/or services identified in items 12, 15 and 18 above, provide information concerning barriers to entry, such as regulatory requirements, capital requirements and sunk costs, the time it would take potential new entrants to enter the market and the names and contact details of entrants to the market during the past three (3) years, if any.

Schedule 2 - Maintenance or promotion of exports – sec 10(3)(b)(i)

In a separate document, titled Schedule 2, provide the following minimum information, in the order listed in items 22 to 32, if the Applicant relies on the objective stated in section 10(3)(b)(i) of the Competition Act 89 of 1998 in support of the exemption application:

22. Provide a detailed explanation of how the agreement(s) or prohibited practice(s) forming the basis of exemption application will maintain or promote foreign exchange/currency earnings for the Applicant, each of the other parties involved in the exemption being sought and/or the South African economy as a whole.
23. The total value and quantity of exports in each of the relevant market(s) forming the basis of this exemption application for each of the last five (5) full calendar years preceding the exemption application. The export data must be provided in MS Excel format.
24. Provide all sources of data and information used, as well as the detailed methodology(s) utilised in any estimations, in respect of item 22 above.
25. The total value and quantity of exports that is projected to be achieved in each of the relevant market(s) forming the basis of this exemption application if the Competition Commission grants an exemption. These projected figures must cover at least a period of five (5) full calendar years following the granting of the exemption. The data provided should be in MS Excel format.
26. Provide all sources of data and information, as well as the detailed methodology(s) utilised in any estimations, in respect of item 25 above.



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Form CC3(1)

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Schedule 2 (cont.) – Schedule 3

Contacting the Commission

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27. For the Applicant and each of the other parties involved in this exemption application, provide the value and quantity of exports in each of the relevant market(s) forming the basis of this exemption application for each of the last five (5) full calendar years preceding the exemption application. The export data must be provided in MS Excel format.
28. Provide all sources of data and information, as well as the detailed methodology(s) utilised in any estimations, in respect of item 27 above.
29. For the Applicant and each of the other parties involved in this exemption application, provide the value and quantity of exports that is projected to be achieved in each of the relevant market(s) forming the basis of this exemption application if the Competition Commission grants an exemption. These projected figures must cover the period/duration for which the exemption is sought. The data provided should be in MS Excel format.
30. Provide all sources of data and information, as well as the detailed methodology(s) utilised in any estimations, in respect of item 29 above.
31. For the Applicant and each of the other parties involved in this exemption application, provide the value and quantity of exports that is projected to be achieved in each of the relevant market(s) forming the basis of this exemption application if the Competition Commission refuses to grant an exemption. These projected figures must cover the period/duration for which the exemption is sought. The data provided should be in MS Excel format.
32. Provide all sources of data and information, as well as the detailed methodology(s) utilised in any estimations, in respect of item 31 above.

Schedule 3 - Promotion of the effective entry into, participation in or expansion within a market by small and medium businesses, or firms controlled or owned by historically disadvantaged persons – sec 10(3)(b)(ii)

In a separate document, titled Schedule 3, provide the following minimum information, in the order listed in items 33 to 37, if the Applicant relies on the objective stated in section 10(3)(b)(ii) of the Competition Act 89 of 1998 in support of the exemption application:

33. Provide detailed information on whether the Applicant and/or any of the other parties involved in this exemption application can be classified as a 'small business', 'medium business' or firm controlled or owned by 'historically disadvantaged persons', with reference to the definitions or descriptions in section 1 of the Competition Act or section 3(2) of the Competition Act respectively.
34. Provide a detailed explanation of how the agreement(s) or prohibited practice(s) forming the basis of exemption application will promote the effective entry into, participation in or expansion within a market by small and medium businesses or firms controlled or owned by historically disadvantaged persons. With respect to 'participation', refer to the definition thereof in section 1 of the Competition Act.



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Form CC3(1)

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Schedule 3 (cont.) – Schedule 4

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35. For the Applicant and each of the other parties involved in this exemption application, provide their respective audited annual financial statements for each of the last five (5) financial years. If such statements are not compiled as a matter of course, such fact must be stated and motivated and the next best alternative form of financial performance must be submitted instead.

36. For the Applicant and each of the other parties involved in this exemption application, provide their respective projected/forecasted annual financial performance for the next five (5) full financial years following a hypothetical granting of the exemption by the Commission.

37. For the Applicant and each of the other parties involved in this exemption application, provide their respective projected/forecasted annual financial performance for the next five (5) full financial years following a hypothetical refusal of the exemption by the Commission.

Schedule 4 - Change in productive capacity necessary to stop a decline in an industry – section 10(3)(b)(iii)

In a separate document, titled Schedule 4, provide the following minimum information, in the order listed in items 38 to 47, if the Applicant relies on the objective stated in section 10(3)(b)(iii) of the Competition Act 89 of 1998 in support of the exemption application:

38. Provide a detailed explanation of how the agreement(s) or prohibited practice(s) forming the basis of exemption application will contribute to a change in the productive capacity and how this change is related to stopping a decline in a particular industry.

39. Identify the relevant industry that is in decline. Explain the reasons, and provide supporting documentation, of the causes of the decline in such industry. Provide information, and any underlying source documents, on how long such decline is expected to last.

40. For the Applicant and each of the other parties involved in this exemption application, provide its/their-

- a. Annual turnover (in Rand);
- b. Annual total capacity (specify the unit measurement);
- c. Annual total number of units actually produced (specify the unit measurement); and
- d. Annual total number of units actually sold (specify the unit measurement),

for each of the last five (5) full financial years preceding the exemption application. Provide the information in MS Excel format.

41. Provide all sources of data and information, as well as the detailed methodology(s) utilised in any estimations, in respect of item 40 above.

42. For the Applicant and each of the other parties involved in this exemption application, provide the -

- a. Annual projected turnover (in Rand);
- b. Annual projected total capacity (specify the unit measurement);
- c. Annual total number of units projected to be produced (specify the unit measurement); and
- d. Annual total number of units projected to be sold (specify the unit measurement),

expected to be achieved if the Competition Commission grants an exemption. In addition, provide these projected figures for five (5) full financial years following the granting of the exemption in MS Excel format.



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Form CC3(1)

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Schedule 4 (cont.) -
Schedule 5

Contacting the Commission

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43. Provide all sources of data and information, as well as the detailed methodology(s) utilised in any estimations, in respect of item 42 above.

44. For the Applicant and each of the other parties involved in this exemption application, provide -

- a. Annual turnover (in Rand);
- b. Annual total capacity (specify the unit measurement);
- c. Annual total number of units actually produced (specify the unit measurement); and
- d. Annual total number of units actually sold (specify the unit measurement),

expected to be achieved if the Competition Commission refuses to grant an exemption. In addition, provide these projected figures for a period of five (5) full financial years following the refusal of the exemption in MS Excel format.

45. Provide all sources of data and information, as well as the detailed methodology(s) utilised in any estimation of the figures, in respect of item 44 above.

46. For the Applicant and each of the other parties involved in this exemption application, provide -

- a. a list of all plant and equipment required for the provision of all relevant products and/or services in each of the relevant market(s) forming the basis of this exemption application; and
- b. a detailed explanation of whether or not each of the listed plant and equipment identified above can be resold into, and/or utilised by other suppliers in, the relevant market upon the hypothetical exit of the Applicant and/or any of the other parties involved in this exemption application.

47. Provide all sources of data and information, as well as the detailed methodology(s) utilised in any estimations, in respect of item 46 above.

Schedule 5 - The economic development, growth, transformation or stability of any industry designated by the Minister, after consulting the Minister responsible for that industry -section 10(3)(b)(iv)

In a separate document, titled Schedule 5, provide the following minimum information, in the order listed in items 48 to 50, if the Applicant relies on the objective stated in section 10(3)(b)(iv) of the Competition Act 89 of 1998 in support of the exemption application:

48. A detailed explanation setting out of how the agreement(s) or prohibited practice(s) forming the basis of exemption application will contribute to -

- a. the "economic development"; and/or
- b. the "growth"; and/or
- c. the "transformation"; and/or
- d. the "stability"

of an industry that has been designated by the Minister.

49. Provide all sources of data and information, as well as the detailed methodology(s) utilised in any estimations, in the motivations for each respective element relied upon in respect of the grounds listed in item 48(a)-(d) above.

50. Provide the designation issued by the Minister, as well as all the documentation submitted by the Applicant to the Ministry (if any) in support of the designation being made.



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Form CC3(1)

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Schedule 6

Contacting the Commission

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Schedule 6 - Competitiveness and efficiency gains that promote employment or industrial expansion – section 10(3)(b)(v)

In a separate document, titled Schedule 6, provide the following minimum information, in the order listed in items 51 to 59, if the Applicant relies on the objective stated in section 10(3)(b)(v) of the Competition Act 89 of 1998 in support of the exemption application:

51. A detailed explanation setting out how the agreement(s) or prohibited practice(s) forming the basis of exemption application will contribute to an increase in competitiveness and efficiency gains that will promote –
- a. Employment, and/or
 - b. Industrial expansion.
52. If relying on employment, provide the following information from the Applicant and each of the other parties involved in this exemption in MS Excel format:
- a. The total number of employees across the relevant organisation(s) as a whole for each of the last five (5) full financial years;
 - b. The total number of employees segmented by remuneration packages/bands across the relevant organisation(s) for each of the last five (5) full financial years;
 - c. The total number of employees segmented by the education/qualifications required across the relevant organisation(s) for each of the last five (5) full financial years;
 - d. The total number of employees segmented by the level of experience required across the relevant organisation(s) for each of the last five (5) full financial years;
 - e. The projected number of employees (total) across the relevant organisation(s) as a whole for each of the next five (5) full financial years should the Commission grant the exemption;
 - f. The total number of employees segmented by remuneration packages/bands across the relevant organisation(s) for each of the next five (5) full financial years should the Commission grant the exemption;
 - g. The total number of employees segmented by the education/qualifications required across the relevant organisation(s) for each of the next five (5) full financial years should the Commission grant the exemption;
 - h. The total number of employees segmented by the level of experience required across the relevant organisation(s) for each of the next five (5) full financial years should the Commission grant the exemption;
 - i. The projected number of employees (total) across the relevant organisation(s) as a whole for each of the next five (5) full financial years should the Commission refuse the exemption;
 - j. The total number of employees segmented by remuneration packages/bands across the relevant organisation(s) for each of the next five (5) full financial years should the Commission refuse the exemption;
 - k. The total number of employees segmented by the education/qualifications required across the relevant organisation(s) for each of the next five (5) full financial years should the Commission refuse the exemption; and
 - l. The total number of employees segmented by the level of experience required across the relevant organisation(s) for each of the next five (5) full financial years should the Commission refuse the exemption.



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Form CC3(1)

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Schedule 6 (cont.)

Contacting the Commission

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53. Provide the detailed methodology(s) utilised in any estimation of the figures in respect of item 52 above and list the source(s) of the information.

54. If relying on industrial expansion, for the Applicant and each of the other parties involved in this exemption application, provide their respective audited annual financial statements for each of the last five (5) financial years. If such statements are not compiled as a matter of course, such fact must be stated and motivated and the next best alternative form of financial performance must be submitted instead.

55. If relying on industrial expansion, provide the following information from the Applicant and each of the other parties involved in this exemption:

- a. Their respective projected/forecasted annual financial performance for the next five (5) full financial years following a granting of the exemption by the Commission; and
- b. Their respective projected/forecasted annual financial performance for the next five (5) full financial years following a refusal of the exemption by the Commission.

56. If relying on industrial expansion, provide the following information for the Applicant and each of the other parties involved in this exemption application:

- a. Annual total capacity (specify the unit measurement);
- b. Annual total number of units actually produced (specify the unit measurement); and
- c. Annual total number of units actually sold (specify the unit measurement),

for each of the last five (5) full financial years preceding the exemption application in MS Excel format.

57. If relying on industrial expansion, provide the following information for the Applicant and each of the other parties involved in this exemption application:

- a. Annual projected total capacity (specify the unit measurement);
- b. Annual total number of units projected to be produced; and
- c. Annual total number of units projected to be sold.

for each of the next five (5) full financial years should the Competition Commission grant the exemption, in MS Excel format.

58. If relying on industrial expansion, provide the following information for the Applicant and each of the other parties involved in this exemption application:

- a. Annual projected total capacity (specify the unit measurement);
- b. Annual total number of units projected to be produced; and
- c. Annual total number of units projected to be sold.

for each of the next five (5) full financial years should the Competition Commission refuse the exemption, in MS Excel format.

59. Provide all sources of data and information, as well as the detailed methodology(s) utilised in any estimations, in respect of items 57 and 58 above.



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Form CC3(1)

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Certification of Accuracy

Schedule 7 – Certification of Accuracy

I, _____,
have prepared, or supervised those who prepared, this application for exemption.

To the best of my knowledge, the information contained in the application for exemption, and any attachments to it, are true, correct and complete, except to the extent that I have indicated that the required information or data is not available and have instead used reasonable estimates.

Where required information is not available, I hereby certify that I have explained why such information is not available and will, if required, confirm the reasons in an affidavit or sworn statement.

I understand that:

- a. It is an offence in terms of section 73(2)(d) of the Competition Act 89 of 1998 to knowingly provide false information to the Competition Commission;
- b. The Competition Commission may, in terms of section 10(5) of the Competition Act 89 of 1998, revoke the granting of an exemption if the exemption was granted on the basis of false or incorrect information.

Name and title of Person authorised to sign:

Authorised Signature:

Date:

Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
Tel: 27 012 394 3226
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e-mail: ccsa@compcom.co.za

This form is prescribed by the terms of Section 21 (4) of the Competition Act 1998 (Act No. 89 of 1998)



Form CC3(2)

About this Form

- This form is issued in terms of section 10(4) of the Competition Act 89 of 1998 and consists of three (3) pages inclusive of this page.
- This application must be accompanied by a typed statement of particulars listed in page 2, and a certified copy of the agreement if applicable, and must be signed by a person authorised by the Applicant.
- Generally, information relating to this application is part of the public record. You have a right to identify information that you believe is confidential by completing Form CC 7 and submitting it with this application.
- An exemption or conditional exemption may be revoked if it is subsequently discovered that information provided by the applicant is incorrect. Please refer to section 10(5) of the Competition Act 89 of 1998.

Contacting the Commission

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competition commission south africa

Application for Exemption (Section 10(4), Intellectual Property)

To: The Competition Commission

From:

(Insert name of the Applicant):

The application in terms of section 10(4) of the Competition Act for exemption from the application of Chapter 2 of the Act for:

- | | |
|---|---|
| <input type="checkbox"/> a single agreement | <input type="checkbox"/> a category of agreements |
| <input type="checkbox"/> a single practice | <input type="checkbox"/> a category of practices |
- as described in the attached document.

We seek an exemption for a period of _____ years.

In respect of this matter, has previous exemption been:

granted? Yes No

refused? Yes No

If you answered "yes" to either question above, 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: Commission file number:

Date filed:



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Form CC3(2)

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Contacting the Commission

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The following minimum information must be included in the exemption application:

1. The names and business address of the Applicant, including its address in South Africa for service of documents.
2. The names and business addresses of all other parties involved in or party to the exemption being sought.
3. The duration for the exemption being sought.
4. A description of the Applicant's business activities.
5. A description of each of all other parties' business activities involved or party to the exemption being sought.
6. An organogram fully setting out the parent company to the Applicant, including all its subsidiaries and the respective ownership shares thereto.
7. An organogram fully setting out the parent company for each of the other parties involved in or party to the exemption being sought, including all its subsidiaries and the respective ownership shares thereto.
8. The relevant market(s) forming the basis of this exemption application and a detailed motivation for such views.
9. For each of the products and/or services identified in 8 above, provide full contact details for each of the five (5) leading competitors and/or suppliers thereto, including the name of the company, a relevant contact person, his/her respective telephone number and their email address.
10. For each of the products and/or services identified in item 8 above, provide the five (5) leading customers of the Applicant and each of the other parties involved in this exemption application, including the name of the company, a relevant contact person, his/her respective telephone number and their email address.
11. A detailed description for the rationale for the exemption application.
12. A detailed description of the conduct for which the exemption is sought, including the relevant provisions or legislation to which the intellectual property is borne; a description of how the exercise of intellectual property rights is likely to contravene the Act, as well as all supporting documents and information.
13. The relevant section(s) of the Act that you believe are likely to be contravened by the agreement, practice or category of agreements or practices forming the basis of this exemption application, as well as your motivation for that belief.
14. A brief overview of the product(s) or service(s) subject to the exemption application. The information provided herein must include the technical and commercial names and descriptions of the work to which the intellectual property right belongs, its characteristics, functionality or usage as well as other products in the relevant market with similar functionality, if any.
15. All documentation supporting the conduct subject to this exemption application, including how the conduct relates to the exercise of intellectual property rights; the registration of the intellectual property right, its expiry date and how the intellectual property right will be relaxed following the expiry date (if at all).



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Form CC3(2)

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Certification of Accuracy

Contacting the Commission

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Certification of Accuracy

I, _____,
have prepared, or supervised those who prepared, this application for exemption.

To the best of my knowledge, the information contained in the application for exemption, and any attachments to it, are true, correct and complete, except to the extent that I have indicated that the required information or data is not available and have instead used reasonable estimates.

Where required information is not available, I hereby certify that I have explained why such information is not available and will, if required, confirm the reasons in an affidavit or sworn statement.

I understand that:

- a. It is an offence in terms of section 73(2)(d) of the Competition Act 89 of 1998 to knowingly provide false information to the Competition Commission;
- b. The Competition Commission may, in terms of section 10(5) of the Competition Act 89 of 1998, revoke the granting of an exemption if the exemption was granted on the basis of false or incorrect information.

Name and title of Person authorised to sign:

Authorised Signature:

Date:



competition commission south africa

Form CC3(3)

About this Form

- This form is issued in terms of Schedule 1 of the Competition Act 89 of 1998, as amended and consist of three (3) pages, inclusive of this page.
- Generally, information relating to this application is part of the public record. You have a right to identify information that you believe is confidential, by completing Form CC7 and its annexure and submitting it with this application.
- If the applicant association is registered, attach a copy of the registration certificate, or other comparable proof of registration application must be accompanied by a typed statement of particulars listed on page 2, and a certified copy of the agreement if applicable, and must be signed by a person authorised by the Applicant.

Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
Tel: 27 012 394 3226
fax: 27 012 394 0166
e-mail: ccsa@compcom.co.za

Application for Exemption

(Schedule 1: Exemption of Professional Rules)

To: The Competition Commission

From:

(Insert name of the Applicant):

We apply in terms of Schedule 1 of the Competition Act to exempt the professional rules of the applicant association from the provisions of Part A of Chapter 2 of the Act:

This profession is registered is not registered,
in terms of a particular Act: (insert name of Act below):

We seek an exemption for a period of years.

The exemption is required in order to maintain:

Professional Standards the orderly function of the profession
as motivated in the attached document.

Insert name of Minister or MEC referred to in item 3(c) of Schedule 1:

Name and title of Person authorised to sign:

Authorised Signature

Date

For Office Use Only: Commission file number:

Date filed:



competition commission south africa

Form CC3(3)

Page 2 of 3

Contacting the Commission

The Competition Commission
Private Bag X23
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Pretoria 0040
Republic of South Africa
Tel: 27 012 394 3226
fax: 27 012 394 0166
e-mail: ccsa@compcom.co.za

The following minimum information must be included in your exemption -

1. The names and business address of the Applicant, including its address in South Africa for service of documents.
2. The names and business addresses of all other parties involved in or party to the exemption being sought.
3. The duration for the exemption being sought.
4. A description of the Applicant's business activities.
5. A description of each of all other parties' business activities involved or party to the exemption being sought.
6. An organogram fully setting out the parent company to the Applicant, including all its subsidiaries and the respective ownership shares thereto.
7. An organogram fully setting out the parent company for each of the other parties involved in or party to the exemption being sought, including all its subsidiaries and the respective ownership shares thereto.
8. The relevant market(s) forming the basis of this exemption application and a detailed motivation for such views.
9. A detailed description for the rationale for the exemption application.
10. A detailed description of the conduct for which the exemption is sought, including a description of how part or all of the association rules are likely to contravene the Competition Act.
11. The relevant section(s) of the Competition Act that you believe are likely to be contravened, as well as your motivation for that belief.
12. The objective(s) in terms of section 2 of Part A of Schedule 1 of the Competition Act on which you rely for the exemption being sought.
13. Identify the relevant professional association(s) forming the basis of this exemption application, as set out in Part B of Schedule 1 of the Act.
14. Provide a brief overview of the professional association concerned, including, but not limited to, a historical background on the establishment of the professional association, a description of the product or service provided by the professional association, a description of internationally applied norms, details of the association's members, the total number of members and their respective contact details.
15. Specify all relevant provisions or legislation that governs/regulates the association in question.
16. Provide a detailed explanation of part or all the professional associations rules forming the basis of this exemption application for the requested time period, and with regard to internationally applied norms, will maintain the professional standards or the ordinary function of the profession as set out in section 2 of Part A of Schedule 1 of the Act, including all supporting documentation utilised in respect of all motivations.

This form is prescribed by the terms of Section 21 (4) of the Competition Act 1998 (Act No. 89 of 1998).



competition commission south africa

Form CC3(3)

Page 3 of 3

Certification of Accuracy

Certification of Accuracy

I, _____,
have prepared, or supervised those who prepared, this application for exemption.

To the best of my knowledge, the information contained in the application for exemption, and any attachments to it, are true, correct and complete, except to the extent that I have indicated that the required information or data is not available and have instead used reasonable estimates.

Where required information is not available, I hereby certify that I have explained why such information is not available and will, if required, confirm the reasons in an affidavit or sworn statement.

I understand that it is an offence in terms of section 73(2)(d) of the Competition Act 89 of 1998 to knowingly provide false information to the Competition Commission.

Name and title of Person authorised to sign:

Authorised Signature:

Date:

Contacting the Commission

The Competition Commission
Private Bag X23
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Tel: 27 012 394 3226

This form is prescribed by the terms of Section 21 (4) of the Competition Act 1998 (Act No. 89 of 1998).



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Merger Notice

FORM CC 4 (1)

About this form

This form is issued in terms of sections 13 and 13A of the Competition Act.

Two copies of this form, and Schedule 1 and 2 as noted, together with a completed Statement of Merger Information in Form CC4 (2), must be filed in accordance with Competition Commission Rules 26 — 28.

Complete and sign the Statement of Accuracy on page 3.

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

(Instructions continued on page 2.)

To: Competition Commission

From:

(Name of firm filing this statement)

Please take notice of a

small intermediate large

merger, as defined in section 12 of the Competition Act, involving the reporting firm as:

the primary acquiring Firm the primary target Firm

and involving _____ as

the primary acquiring Firm the primary target Firm

Schedule 1 - Identification

1) For the primary acquiring firm(s), provide the following information:

- The name(s) and principal business address of the primary acquiring firm(s) as defined in the Competition Act.
- The contact details of the primary acquiring firm(s).
- The name(s) and principal business address of all trade unions, or employee representatives of the primary acquiring(s) firms. If a primary acquiring firm is a special purpose vehicle or a newly established firm, provide the details of the trade unions, or employee representatives of the holding company's employees.
- Provide proof of service of the non-confidential version of the merger filing to the main office of all trade unions, or employee representatives of the primary acquiring firm(s).

2) For the primary target firm(s), provide the following information:

- The name(s) and principal business address of the primary target firm(s) as defined in the Competition Act.
- The contact details of the primary target firm(s).

For Office

Commission case number

Filing Date

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FORM CC 4 (1)
Page 2

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 of up to 10% of the party's annual turnover in the Republic, or be 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 filing in terms of this form must be in compliance with Practice Notes issued by the Commission.

- c) The name(s) and principal business address of all trade unions, or employee representatives of the primary target firm(s).
- d) Provide proof of service of the non-confidential version of the merger filing to the main office of all trade unions, or employee representatives of the primary target firm(s).

Schedule 2 – A summary of the effect of the proposed merger on each of the public interest considerations outlined in section 12A(3) of the Competition Act and applicable to the merger, must be attached as Schedule 2 to this Notice.

Effect on a particular industrial sector or region

- 3) Does the merger have an effect on a particular industrial sector or region? (Yes/No)
- 4) If your answer to (3) above is "Yes", provide your submissions on how the proposed merger will impact:
 - a) local production or manufacturing, for example, closure of existing local production facilities or opening of new production facilities and/or substitution of locally produced goods with imports;
 - b) local or regional supply chains, including termination of supply or development of local supply chains;
 - c) impact on significant social projects and upliftment programs that contribute to upliftment of the region or sector;
 - d) impact on local resources or inputs, for example, whether the merger results in the movement or diversion of local resources to international markets or the creation of opportunities to benefit local resources;
 - e) impact on regional sustainability;
 - f) impact on public policy goals; and
 - g) proposed remedies to address any concern identified.

Effect on employment

- 5) Does the merger have an effect on employment? (Yes/No)
- 6) Have there been any retrenchments at the target firm(s) in the 12 months preceding the merger? (Yes/No)
- 7) If your answer to (5) or (6) above is "Yes", please provide:
 - a) A detailed explanation of the effect of the proposed merger on employment, including reasons for the effect. This should include:
 - b) details of any retrenchments proposed or implemented at either of the merging parties in the 12 months prior to the notification of the transaction; and
 - c) all offer letters, expressions of interest, due diligences, term sheets, board minutes or presentations prepared by or exchanged between the merging parties between the inception of merger negotiations until the date of the notification of the merger.
- 8) Where the merger has a negative effect on employment, the merging parties are to provide the following information:

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- a) the number of employees that are likely to be affected relative to the total workforce; and
- b) the affected employees' skills level or positions (should the individuals not be identified at the time of filing). This information should entail, *inter alia*:
 - i. the affected employees' highest qualification;
 - ii. job grade;
 - iii. salary; and
 - iv. position within the relevant organisation.
- c) details of the rational process followed to determine the number of jobs to be lost; and
- d) any countervailing public interest arguments that may mitigate the negative effects on employment.

Ability of small and medium businesses (SMEs), or firms controlled or owned by historically disadvantaged persons (HDP), to effectively enter into, participate in or expand within the market

- 9) Does the merger have an effect on the ability of small and medium businesses (SMEs), or firms controlled or owned by historically disadvantaged persons (HDP), to effectively enter into, participate in or expand within the market (Yes/No)
- 10) If your answer to (9) above is "Yes", provide your submissions on whether the proposed merger:
 - a) raises or lowers barriers to entry for SMEs and/or firms owned or controlled HDPs in any relevant markets;
 - b) restricts or promotes dynamic competition with respect to SMEs and /or firms owned or controlled by HDPs that exert a competitive constraint in relevant markets;
 - c) will result in the maintenance of suppliers that are either SMEs and/or firms owned or controlled by HDPs post implementation of the merger;
 - d) promotes the integration of SMEs or firms owned or controlled by HDPs in the relevant supply chains; and
 - e) promotes the development of training, skills and technology transfer amongst SMEs and firms owned or controlled by HDPs in relevant markets.

Ability of national industries to compete in international markets

- 11) Does the merger have an effect on the ability of national industries to compete in international markets? (Yes/No)
- 12) If your answer to (11) above is "Yes", provide your submissions on the following:
 - a) how the proposed merger will promote the ability of national industries to compete regionally or globally;
 - b) whether a change in productive capacity is required in order for the merged firm to compete globally against other firms;

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- c) whether the proposed merger promotes any public and industrial policy considerations relevant to the sector in which the proposed merger is taking place; and
- d) the strategy of the merging firms in relation to international competition;
- e) the role and importance of the national industry to the national relevant markets.

The promotion of a greater spread of ownership, in particular to increase the levels of ownership by HDPs and workers in firms in the market

- 13) Does the merger promote a greater spread of ownership, in particular, does the merger increase the levels of ownership by HDPs and workers in firms in the market (Yes/No) – If “No”, what are the reasons?
- 14) If your answer to (13) above is “Yes”, please indicate whether:
 - a) the target firm/s has any HDPs as its direct or indirect shareholders;
 - b) the merging parties have an employee share scheme for their employees and the terms of such schemes, including financial benefits;
 - c) the merging parties have contemplated implementing any employee or HDP share ownership schemes within 1 year, or a–within a reasonable time period not exceeding 5 years from the merger filing date. If so, please provide details. If not, what are the reasons;
 - d) the merger will result in a change in the quality of B-BBEE shareholding, such as whether the shareholding confers voting rights, or board representation;
 - e) the merger will result in increased shareholding by HDPs and/or workers; and
 - f) The merger will result in employee participation or representation at board level.
- 15) Please provide your latest verified B-BBEE certificate.

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Particulars of the merger are set out in the attached Statement of Merger Information, which forms part of this Notice.

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

(Details of law firm)

Certification of Authenticity

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 complete in terms of the Competition Act and Competition Commission Rules, 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. that 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 Commission in any manner, including in these documents; and
- b. that sections 73 and 74 of the Competition Act provide for a penalty of a fine, or imprisonment, or both, if I am found guilty of knowingly providing false information to the Competition Commission.

Name and Title of Person authorised to sign:

Authorised Signature

Date:

For Office

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FORM CC 4 (2)

About this form

This form is issued in terms of section 13A of the Competition Act, and must be filed in accordance with Commission Rule 26-28.

Attach to this form the following items:

- Schedules 3-6, and Schedule 8 inclusive as noted in the form.
- The most recent version of all documents constituting the merger agreement.
- Where the shareholding does not amount to 100%, provide the shareholders agreement or other relevant incorporation document setting out the rights attached to such shareholding.
- Each report or other document assessing the likely impact of the proposed merger on competition in the relevant markets.
- Any document, including minutes, reports, presentations and summaries, prepared for the Board of Directors regarding the transaction.
- Your most recent annual report.
- Your most recent business plan.
- The most recent report you provided to the Takeover Regulation Panel during the past year.

Statement of Merger Information

To: Competition Commission

From:

(Name of firm filing this statement)

The firm filing this statement is:

The Primary Acquiring Firm

The Primary Target Firm

Schedule 3 - Identification

On a separate document, titled Schedule 3, provide the following information in the order listed in items 1 - 10.

1. State the name and principal business address of the party filing this Notice.
2. List the name and principal business address of each firm you directly or indirectly control. State the percentage of shares held by all shareholders. Indicate whether the shareholder is an HDI as defined in section 3(2) of the Act.
3. State the following information of all firms directly or indirectly controlling you up to the ultimate controlling firm:
 - a. Name and principal business address
 - b. The shareholding held by each firm.
 - c. Should the controlling firms not be directly or indirectly controlled by any firm, list the name of the top 5 shareholders of the controlling firms and their respective shareholding. Indicate whether the shareholder is an HDI as defined in section 3(2) of the Act.
 - d. Where the controlling entities are trusts, state the trustees of the trust.
4. List the name and principal business address of each firm directly or indirectly

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Until the Commission 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.

For items 7 - 9, refer to the Threshold regulations for the instructions to calculate turnover and asset values.

When describing the merger, please indicate any relevant facts concerning the impact of the merger on employment, or other public interest issues set out in section 16(3) of the Act.

You may include any other relevant information that you want the Commission to consider

controlled by each firm referred to in item 3.

5. Provide an organogram which sets out the control structure of each party to the merger.
6. State your annual turnover in, into or from the Republic for your preceding financial year and the range of months covered by your financial year. If you are the acquiring firm, provide the turnover of the entire Acquiring group.
7. State the value of your assets in the Republic as of the end of your preceding financial year. If you are the acquiring firm provide the asset value for the entire Acquiring group.
8. State the value of your assets in the Republic, as of the date of the Merger Notice
9. State your annual turnover in, into or from the Republic as of the date of the Merger Notice.

Schedule 4 — Transaction Information

10. Describe the merger, including:
 - a. the parties to the transaction;
 - b. the assets, shares, or other interests being acquired or sold;
 - c. whether the assets, shares, or other interests are being purchased, leased, combined or otherwise transferred;
 - d. the purchase consideration in South African Rands;
 - e. the intended structure of ownership and control on the completion of the merger.
 - f. rationale for the transaction for each of the merging parties; and
 - g. the contemplated timing of suspensive conditions or any major events required to bring about the completion of the transaction.
11. Where the market shares post-merger will be equal to or more than 35%, each party filing this form must provide the following:
 - a. Provide all strategy documents detailing the deliberations and rationale for the merger. These should include board packs, non-redacted board meeting minutes, business plans, due diligence reports, SWOT analysis, research reports, market reports and customer survey reports related to the merger.
12. Indicate and give details of whether the transaction involves:
 - a. Foreign Direct Investment;
 - b. A management Buy-out; and
 - c. A buy-back of shares.
13. For international transactions, the merging parties must indicate all other

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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 Commission is considering the merger.

However, if the merger is referred to the Tribunal, information relating to it becomes a public record.

You have a right to identify information that you believe is confidential, by completing form CC7 and submitting with this Statement.

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

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

jurisdictions in which the transaction has been notified (or to be notified), the date of the notification and the status of the investigation in those jurisdictions at the time of notification.

14. Details of any mergers and/or acquisitions, whether notifiable or not notifiable, which involve either of the parties to the merger concluded in the last 3 years.
15. Details of the ability of any party to the Merger to appoint a director/s at another firm/s operating in a related market/s.

Schedule 5— Products and services

16. Identify each product that you or another acquiring firm (or target firm, if applicable) sell, and/or each service that you provide in, into or from the Republic.
17. Identify each product that you sell and each service that you provide in competition with any other party to the Merger, in, into or from the Republic. This includes 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 the Republic by another party to the merger.
18. Where the market shares post-merger will be equal to or more than 35%, each party filing this form must provide the following:
 - a. For each identified product or service where there are overlapping activities, state your turnover in each of the identified geographic areas for the preceding three financial years.
 - b. For each of the identified products and services where there are overlapping activities, provide your estimated market shares (by annual turnover, annual sales volumes and/or actual and maximum capacity where

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

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

relevant) and estimated market shares of your competitors per geographic market identified for the preceding three calendar years. This should include the source of data relied on which must also be submitted to the Commission. If you have relied on best estimates of the market, you should clearly indicate the factors considered in such estimation.

- c. For each identified product or service where there are overlapping activities, provide details of the distribution and value chain and also details of how transactions are typically entered into e.g. tendering/bidding, long term contracts, spot/ad hoc sales.
19. For each identified product or service where there are overlapping activities, identify, and provide contact details (including name of relevant contact person, designation, email address and direct telephone number) for, the top five and bottom five competitors in each identified geographic area based on estimated turnover in value or volumes produced in the preceding calendar year.
 20. For each identified product or service where there are overlapping activities, identify and provide contact details (including name of relevant contact person, designation, email address and direct telephone number) for your top five, customers in each of the identified geographic areas based on aggregate purchases in value during the last full 12 months.
 21. Provide information regarding the history of collusion involving any party to the merger or in any market in which the merging parties are involved.
 22. If you are relying on a "failing firm defence", please include the following information:
 - a. Financial information demonstrating that the firm will be unable to meet its financial obligations in future. This must include audited annual financial statements for the past three financial years and management accounts for the last calendar year to date of merger filing.
 - b. Information concerning efforts taken to elicit reasonable alternative offers including evidence of communication to and from the prospective buyers.
 - c. Information indicating that the failing firm would reasonably be expected to exit the market unless the merger is implemented e.g. board minutes, proof of business rescue or potential liquidation etc.

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Schedule 6 – Vertical Effects

23. Where the market shares post-merger will be equal to or more than 35%, each party filing this form must provide the following:

- a. State the name of any other Acquiring firm (or Target firm, if applicable) that you sell products or services to, identify each product or service that you sell or provide, and for each such product or service, show the proportion (in terms of value and volume) of that product or service sold during your preceding calendar year to any other company within the Acquiring firm (or Target firm, if applicable) relative to your total value derived and volume sold in the applicable year.

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Schedule 7 – Certification of Authenticity

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 complete in terms of the Competition Act and Competition Commission Rules, except to the extent that I have indicated

- b. that requested data is not available in books or records, and reasonable estimates have been used instead; or
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 Commission in any manner, including in these documents; and
- b. that sections 73 and 74 of the Competition Act provide for a penalty of a fine, or imprisonment, or both, if I am found guilty of knowingly providing false information to the Competition Commission.

Name and Title of Person authorized to sign:

Authorized Signature

Date:

CONTACTING THE COMMISSION

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