

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

[ZAMBIA]

IMPORTANT NOTE: This template is intended to provide introductory material. Reading the template is not a substitute for consulting the referenced statutes and regulations. If you are analyzing a particular transaction, this template should be a starting point only.

1. Merger notification and review materials (please provide title(s), popular name(s) and citation(s))

A. Notification provisions	Sections 7(2)(f) and 8 of the Competition and Fair Trading Act, 1994 (the Act)
B. Notification forms or information requirements	Pre-merger Notification Form ZCC/5
C. Substantive merger control provisions	The Competition and Fair Trading Act, 1994 Section 8(1) and 8(2)
D. Implementing regulations	Merger Guidelines and the Competition Rules in Zambia as given under Section 17 of the Act
E. Interpretive guidelines and notices	Formal interpretations, Merger Guidelines, and Competition Rules in Zambia (under Section 17 of the Act)
F. Annual report	Annual Report for 1999 is on the website: www.zcc.com.zm Otherwise, reports for 2000 and 2001 are available as well.

2. Authority or authorities responsible for merger enforcement.

<p>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</p>	<p>only the Zambia Competition Commission (ZCC)</p>
<p>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</p>	<p>Zambia Competition Commission 4th Floor, Main postoffice building Cairo Road P O Box 34919 Lusaka Zambia Tel: +260-1-222775/ 222787 Inquiries: The Executive Director Fax: + 260-1-222789 Email: zcomp@zamtel.zm Website: www.zcc.com.zm (in English only)</p>
<p>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</p>	<p>Yes. The first point of contact is the Executive Director on the address and numbers shown above.</p>

3. Notification requirements

<p>A. Is notification mandatory pre-merger?</p>	<p>Yes, mandatory pre-merger notification is required.</p>
<p>B. Is notification mandatory post-merger?</p>	<p>According to the current legislation, non-notified mergers are illegal and penalties (including imprisonment) exist. Post-merger parties have to notify to avoid penalties and to legitimise their new arrangement.</p>
<p>C. Can parties make a voluntary pre- or post-merger filing even if filing</p>	<p>No. The current legislation makes prior notification mandatory.</p>

is not mandatory?	
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4. Covered transactions

A. Definitions of potentially covered transactions	Generally, merger notification concerns a merger between two or more independent enterprises engaged in manufacturing or distributing substantially similar goods or providing substantially similar services, or a takeover of one or more such enterprises by another enterprise, or by a person who controls another such enterprise
B. If change of control is a determining factor, how is control defined?	Change of control is not necessarily a determining factor but may be influential in the case of transfer adding up to a controlling majority, which in Zambia is 51%.
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	Yes. They are considered if they give the acquirer an influential and or dominant control of an enterprise or they lead to a total stake of at least 51%. Generally, any stock acquisitions above 40% will be covered.
D. Do the notification requirements cover production joint ventures or any other type of joint venture?	Yes. Section 7(2)(f) of the Act mentions mergers, takeovers, joint ventures or other acquisitions of control whether of horizontal, vertical or conglomerate nature. Notification is however required in principle for certain types of joint ventures and it is handled largely on a case by case basis.
E. Are any sectors excluded from notification requirements? If so, which sectors?	No. The Act does not specify any excluded sectors from notification, except for transactions involving State Owned Enterprises or the Government of Zambia itself.
F. Are transactions that do not meet merger notification thresholds subject to substantive merger control?	No.

5. Thresholds for notification

<p>A. What are the general thresholds? Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>In Zambia, the general thresholds are: 1. The parties involved have to be independent; 2. Any parties to the transaction is engaged in trade or commerce or other effectual business activity in Zambia; 3. The parties produce or distribute substantially similar goods or services; and 4. The acquiring enterprise controls at least 40% of a similar independent enterprise.</p> <p>The thresholds are generally adjustable depending on the market conditions, history of the parties to the transaction, and existing Government policies.</p>
<p>B. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>Largely total assets as presented in at least the last 3 annual audited financial statements</p>
<p>C. Describe methodology for identifying and calculating any values necessary to determine if notification is required, including:</p>	
<p>i. The methodology for identifying and calculating the value of the transaction, if applicable.</p>	<p>Not readily available in the guidelines but operational determination is by way of the net value exchanged between the parties to the transaction. Otherwise, the total assets of the merging parties is also used to value the transaction.</p>
<p>ii. The methodology for identifying and calculating relevant sales or turnover, if applicable.</p>	<p>Generally use of turnover figures from at least the last 3 audited financial statements.</p>
<p>iii. The methodology for identifying and</p>	<p>As presented in the audited accounts of the parties.</p>

calculating the value of relevant assets, if applicable.	
iv. Methodology for calculating exchange rates.	Use of the Central Bank ruling rate and or the parties' bankers.
D. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?	Largely applied to assets within our jurisdiction, and to an increasing extent to those in neighbouring countries (the region). Consideration of overseas assets is also given in case of multinationals.
E. How is the nexus to the jurisdiction determined? If based on an "effects doctrine," please describe how this is applied.	Its largely based on an "effects doctrine" as presented in Section 7(1) and (2) of the Act. Application is by way of consideration of factors such as acquisition of a dominant position of market power; removal of a competitor; creation of entry barriers; consumer welfare and protection implications; and the free flow of trade or general performance of the economy.
F. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	Sales are largely allocated where the customer is.
G. If there are market share tests, are there guidelines for calculating market shares?	No specific tests in guidelines but ZCC generally uses annual gross turnover figures for the players.
H. If there are market share tests, do they apply even if there is no horizontal overlap in the parties' activities, either in the jurisdiction or worldwide?	Not applicable
I. Describe the methodology for determining relevant undertakings/firms for threshold purposes (e.g., group-wide? only the acquired entity? If based on control, how is control	"Control" is based on the Company's Act of Zambia which is set at 51%. Otherwise, the Competition legislation under "definitions" implies control in the definition of "monopoly undertaking" when it states that this is a dominant undertaking or an undertaking which together with not more than two independent undertakings provides or otherwise controls not less than one-half of the services that are rendered in Zambia or any substantial part thereof.

determined?).	
J. Are there special threshold calculations for joint ventures?	No special thresholds but the effects test as in 5E above is applied.
K. Are there special threshold calculations for particular sectors (e.g., banking, airlines) or particular types of transactions (e.g. partnerships, financial investments)?	No

**6. Transactions in which the acquiring and acquired parties are foreign
Are there special rules or exemptions**

A. With respect to application of jurisdictional thresholds?	No special rules or exemptions
B. With respect to information required (e.g. information submitted or document legalization)?	No. The parties to both domestic and foreign transactions submit similar information on the Merger Notification Form ZCC/5, which includes all significant business interests (domestically and or internationally).
C. With respect to waiting periods?	No. For all, at most 3 months.

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7. Simplified procedures

Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, waivers, etc.).

After receipt of a letter from the parties about the transaction, the Commission carries out a preliminary assessment of the transaction after which the parties are notified within a month and negative clearance granted.

8. Timing of notification

A. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?

As soon as either party intend to merge with or takeover another (due to mandatory pre-notification requirement). Letter of intent to this effect will be sent to the Commission without the definitive agreement.

B. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event.

No, notification has to be made prior to signing the definitive agreement.

9. Documents to be submitted

A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).	<ol style="list-style-type: none">1. Letter of intent (from the parties or their representative) to merge or acquire2. Merger Notification Form ZCC/5 (which asks details on the parties, the transaction, products and markets, competitors, industry dynamics, consumers/customers, reasons for the transaction, etc)3. Last three audited accounts, annual reports4. Any transaction documents5. Letter granting power of attorney (if any) of representative
B. Are there any document legalization requirements (e.g., notarization or apostille)?	Not generally, unless there are special circumstances.

10. Translation

Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification, language(s) accepted, and whether selected excerpts are accepted in lieu of complete documents.	If documents are crucial to the decision making process, the parties would be advised to translate through an embassy official. Alternatively, verbal translations from the parties may be sought.
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11. Review and waiting periods/Suspensive effects

<p>A. Describe any applicable review and/or waiting periods following notification, including whether closing is suspended during any initial review or waiting period and/or further review periods (i.e., second-phase proceedings).</p>	<p>The waiting period is about 3 months (although to an extent circumstantial) from the date of submission of a fully completed Form ZCC/5 and relevant documents attached (see 9A).</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>Not specifically</p>
<p>C. Are the applicable waiting periods limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance. (e.g. request for a derogation from the bar on closing, commitment to hold separate the local business operations.)</p>	<p>Waiting period is largely for the whole transaction, although notices of upto 2 weeks may be given for receipt of certain documents before concluding the assessment.</p>
<p>D. Describe any provisions or procedures available to the enforcement</p>	<p>There is no statutory maximum for processing the application although administratively its 3 months. Otherwise, the flow of the process in Zambia depends on the cooperation of the parties by way of submitting comprehensive information as and when</p>

<p>authority, the parties and/or third parties to extend the waiting period. Is there a statutory maximum for extensions of the review period by the authority.</p>	<p>required by the Commission. As mentioned above, notices of upto 2 weeks may be given unless circumstances demand otherwise.</p>
<p>E. Describe any procedures for obtaining early termination of the applicable waiting period, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>No statutory provisions, but generally termination can be requested by the applicants/notifiers at any given time by way of notice to the Commission to this effect. However, the statutory filing fees are not refundable in any situation.</p>
<p>F. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>There are no provisions as a merger or acquisition without authorisation is illegal and punishable by law.</p>

12. Responsibility for notification / representation

<p>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both?</p>	<p>Any party to the transaction or their appointed representative can notify. The parties lodge in a joint-notification. However, if for example, two or more different players wish to take over a competitor, then two or more separate notifications should be made by all (or by their respective representatives). Normally, it is advisable that the acquiring party or its sole representative lodges in a notification.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No</p>
<p>C. Are the parties required to appoint a joint</p>	<p>Not required per se, but they can appoint a joint representative if they so wish (see 12A)</p>

representative?	
D. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	There are no specific rules. Usually parties appoint local and multinational law firms to represent them.
E. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?	A letter from the party/parties has to be presented to the Commission on granting of power of attorney to a representative. Headed paper from any of the parties will generally suffice for power of attorney.

13. Filing fees

A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined?	Notification filing fees are fixed for all enterprises at about US \$450. For negative clearance of mergers or takeovers that need no authorisation, the fee is about US \$ 225. The fees are derived from a Statutory Instrument issued by the Minister of Commerce, Trade and Industry.
B. Who is responsible for payment?	Any party or their (joint) representative.
C. When is payment required?	Payment is required to be submitted together with the notification Form ZCC/5
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Cheques payable to the Zambia Competition Commission or cash.

14. Confidentiality

<p>A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?</p>	<p>The Commission announces all the filed notifications but confidential information (as marked by the parties) is not divulged to the public.</p>
<p>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</p>	<p>The parties may have access to the file as long as they give prior notice. As for the Commission's working papers (investigation reports, assessment reports, staff papers etc) these are not accessible to the parties while the processing is going on but after approval or negative clearance is granted. Documents or other information from third/interested parties that are marked confidential are not readily accessible to the parties or the public.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>Third parties and other interested parties can have access to the notification materials and other information that is not marked as confidential. Commission staff working documents may not be readily available before conclusions of investigations/processing period and official position on a transaction is made public.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>Yes. On the Form ZCC/5, parties are requested to clearly mark the information and documents submitted that they want kept in confidence. Otherwise, the actual notification is made public because of the public consultations relevant to the decision making process of the Commission.</p>
<p>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>The Commission is underway to sign a cooperation agreement with the South African and Zimbabwean competition authorities.</p>

15. Sanctions/penalties

A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods?	Upon conviction by an ordinary court of law, a penalty of 10 million kwachas (US\$ 2,000) or a jail term not exceeding 5 years or to both.
B. Which party/ies are potentially liable?	The one who in the absence of authority from the Commission whether as a principal or agent and whether by himself or his agent participates in effecting a merger or an acquisition.

16. Judicial review

Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.	All decisions made by the Commission can be appealed against (30 days after decision is made by the Commission) to the High Court of Zambia, subject to a further appeal to the Supreme Court.
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17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., foreign investment or regulated sectors?	Some foreign transactions may need to be cleared with the industry specific regulator (where available) and some may have to go through the investment agency for an investment license as well as the Securities and Exchange Commission (in case of stock market transactions)
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18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?

No there is no time period.