

Guideline on small merger notification

Introduction

The Competition Act 89 of 1998 (*the Act*) requires that the Minister of Trade and Industry set merger thresholds, based on the asset values and turnover of the merging firms, which classify transactions as:

- large (above the higher threshold),
- intermediate (between the lower and higher thresholds) and
- small (below the lower threshold).

Large and intermediate merger transactions require mandatory notification and approval by the competition authorities. Small mergers do not require mandatory notification, but the Competition Commission (*Commission*) may require that such mergers be notified and approved by the Commission.

On 6 March 2009, the Minister of Trade and Industry published a notice in the Government Gazette raising the merger thresholds and the filing fee for their notification. These are effective from 01 April 2009.

Raising the merger thresholds means that some mergers previously classified as intermediate will now be classified as small and will not require mandatory notification. There are concerns that this may result in some anti-competitive mergers escaping regulatory scrutiny.

According to Section 13(3) of the Act, the Commission has discretion to require the parties to a small merger to notify the Commission of that merger, if the merger may substantially prevent or lessen competition or cannot be justified on public interest grounds. Merging parties may not take further steps to implement that merger until it has been approved or conditionally approved.

The Commission will remain vigilant in identifying small mergers that may require notification. In addition to its own monitoring, the Commission relies on the public to alert it to possible anti-competitive transactions.

This notice communicates the approach of the Commission to the notification of small mergers.

Guideline

The Commission will evaluate whether a small merger requires notification on its own merits, within the guidance provided by section 13(3) of the Act. Notice is hereby given, however, that the Commission will require the notification of all small mergers which meet any of the following criteria:

- at the time of entering into the transaction any of the firms, or firms within their group, are subject to an investigation by the Commission in terms of Chapter 2 of the Act; or
- at the time of entering into the transaction any of the firms, or firms within their group, are respondents to pending proceedings referred by the Commission to the Competition Tribunal in terms of Chapter 2 of the Act.

Procedure

Parties to small mergers which meet the above criteria are advised to voluntarily inform the Commission in writing, by way of a letter, of their intention to enter into the transaction. The letter should contain sufficient detail on the parties, the proposed transaction and the markets in which the parties compete. The letter should be addressed to:

The Manager: Mergers & Acquisitions Division
The Competition Commission
Mulayo Building
77 Meintjies Street
Sunnyside,
Pretoria
Private Bag X23, Lynnwood Ridge 0040

E-mail: mergers@compcom.co.za

Fax: + 27 (0) 12 394 4295

The Commission will reply to the parties in writing and inform them whether or not they would be required to notify the small merger to the Commission in the prescribed manner and form, in terms of Section 13 of the Act.

Merger threshold as at 1 April 2009

| Thresholds | Combined turnover / Asset value | Target turnover / asset value |
|------------------|---------------------------------|-------------------------------|
| Lower threshold | R 560m | R 80m |
| Higher threshold | R 6 600m | R 190m |

Threshold Calculator

If you would like to know whether your merger is classified as small, intermediate or large, you may use the Commission's new merger calculator at <http://www.compcom.co.za/merger/Default.aspx>

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Block C: Mulayo Building
77 Meintjies Street
Sunnyside, Pretoria
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