



**EIGHTY-SEVENTH ORDINARY SESSION OF THE ECOWAS COUNCIL OF  
MINISTERS**

Abuja, 9-10 December 2021

**REGULATION C/REG. 23/12/21 ON THE RULES OF PROCEDURE FOR  
MERGERS AND ACQUISITIONS IN ECOWAS**

**THE COUNCIL OF MINISTERS,**

**MINDFUL** of Articles 10, 11 and 12 of the ECOWAS Treaty as amended, establishing the Council of Ministers and defining its composition and functions;

**MINDFUL** of the Supplementary Act A/SA.01/12/08 adopting the Community Competition Rules and their implementing rules;

**MINDFUL** of Supplementary Act A/SA.02/12/08 establishing the ECOWAS Regional Competition Authority, its powers and functions;

**MINDFUL** of the Supplementary Act A/SA.03/12/08 adopting Community rules on investment and their implementation within ECOWAS;

**MINDFUL** of the Supplementary Act A/SA.3/12/21 relating to the amendment of the Supplementary Act A/SA. 2/12/08 on the establishment, functions and operation of the ECOWAS Regional Competition Authority;

**CONSIDERING** that the balanced functioning of the regional market may be affected by business combinations or takeovers of companies;

**AWARE** that transparency in the process of bringing together business groups is a sine qua non condition for ensuring the balance of the regional market and free competition;

**AWARE** also that the process of bringing together business combinations requires an adequate legal framework, as well as the establishment of procedures for the organisation of mergers and acquisitions within ECOWAS;

**DESIROUS** of clarifying the general provisions relating to mergers and acquisitions as provided for in the Supplementary Acts A/SA.01/12/08 and A/SA.02/12/08 and to adopt rules and procedures relating thereto;

**UPON RECOMMENDATION** of the meeting of Ministers in charge of Trade held on 25 November 2021 in Lomé, Togolese Republic;

**AFTER THE OPINION OF THE PARLIAMENT** at its Second Ordinary Session held in Abuja from 30<sup>th</sup> November to 18<sup>th</sup> December 2021;

## **ENACTS:**

### **Article 1: Purpose and Scope**

- 1). This Regulation sets out the conditions, rules and procedures for mergers and acquisitions.
- 2). They also serve as a guide for the ERCA in the exercise of its power of prior authorisation in respect of mergers and acquisitions.
- 3). They apply to mergers and acquisitions of undertakings which operate in at least two Member States of the Community. The turnover or any relevant balance sheet item of such undertakings must be above a certain threshold. The ERCA sets the threshold for mergers and acquisitions and publishes it in accordance with ECOWAS publication rules.
- 4). Any person involved in the production, supply, distribution and purchase of goods and services in the Community;

### **Article 2: Mergers and Acquisitions Procedures**

- 1). All mergers and acquisitions of undertakings shall be carried out in accordance with the following formalities:
  - a. Any company or business enterprise wishing to merge with or acquire all or part of another company or undertaking shall submit a notification/application for prior authorisation to the ERCA. The application shall contain the following:
    - i. Name of the applicant companies;
    - ii. Physical address of the companies;
    - iii. E-mail addresses and telephones;
    - iv. Full identities of the companies' directors;
    - v. Amount of share capital;
    - vi. Balance sheet, turnover and profit and loss accounts;
    - vii. Market shares;

- viii. Application fee calculated at 0.1% of the combined annual turnover or the combined value of the assets of the companies in the Community, whichever is higher. This fee is paid to the ERCA, which determines the terms of the fee. The costs of the merger notification paid are not, under any circumstances, refundable.
  - b. The jurisdictional rate (threshold) of the ERCA in merger and acquisition matters is determined by an Enabling Regulation of the President of the Commission.
  - c. The notification is received and registered by the ERCA, which assigns a separate file number to each Merger Notice.
  - d. The ERCA publishes any notification/request for merger or acquisition in the Official Gazette of the Community and in the newspapers of the Member States.
- 2). Consideration of the notification/application by the ERCA
- a. ERCA has a period of sixty (60) days from the date of receipt of the notification to make a recommendation for issuing its decision on authorisation or rejection. However, this period may be extended by a maximum of thirty (30) days if additional information is requested by the ERCA.
  - b. ERCA shall examine the merger or acquisition application by checking the following elements:
    - i. Proven public interest;
    - ii. Whether the merger is beneficial to the State as a whole or only to a fringe group; and
    - iii. Competing interests are balanced;
    - iv. Authorisation of the merger will result in an injustice or a violation of human rights;
    - v. If the merger or acquisition is anti-competitive or substantially lessens competition in the Community.

### **Article 3: Decision of the ERCA Council**

- 1) The Executive Director of the ERCA submits to the ERCA Council the findings and recommendations of the consideration of the notification/application files;
- 2) ERCA Council shall decide on the following within a period of thirty (30) days from the date of reception of the recommendation, as appropriate:

- a. The Council may authorise the merger or acquisition with or without conditions;
- b. It may also reject the merger or acquisition application by a reasoned decision;
- c. It may also request the ERCA to continue and complete the investigations to enable it to take a final decision;
- d. However, this period stated above may be extended for a maximum of fifteen (15) days if the Council requests for additional information.

3) The ERCA shall publish its decision following the review of the notification/application.

**Article 4: Entry into force and publication**

1) These Regulations shall enter into force upon signing by the President of the Council of Ministers.

2). It shall be published by the Commission in the Official Gazette of the Community within thirty (30) days of its signing.

3) It shall also be published by each Member State in its Official Journal within thirty (30) days following notification by the Commission.

**DONE AT ABUJA, THIS 10 DECEMBER 2021**



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**H.E SHIRLEY AYORKOR BOTCHWEY**

**THE CHAIRPERSON**

**FOR THE COUNCIL**