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**PART II**

**Statutory Notifications (S. R. O.)**

GOVERNMENT OF PAKISTAN

**COMPETITION COMMISSION OF PAKISTAN**

**NOTIFICATION**

*Islamabad, the 19th March, 2018*

**S.R.O. 368(I)/2018.**— In exercise of the powers conferred by section 58 of the Competition Act, 2010 (the Act) read with the section 11 and 31 thereof, the Competition Commission of Pakistan (the Commission) is pleased to make following amendments in the Competition (Merger Control) Regulation, 2016 namely:—

## **COMPETITION (MERGER CONTROL) REGULATIONS, 2016**

In the aforesaid Regulations, the following Scheduled I shall be added, namely:—

### **SCHEDULE I**

#### **FORM OF PRE-MERGER APPLICATION (THE FORM)**

*(under regulation 6 of Competition (Merger Control) Regulations, 2016)*

(763)

*Price: Rs. 10.50*

[5587(18)/Ex. Gaz.]

## PART 1

## INTRODUCTION

This Form lists the information and supporting documents which must be provided when making an application in paper form or online electronically<sup>1</sup> for approval of mergers under regulation 6 of the Competition (Merger Control) Regulations 2016 and sub-section (3) of section 11 of the Competition Act, 2010 (the 'Act').

If the undertaking submitting the application (the "Applicant") considers that the Competition Commission of Pakistan (the "Commission") should treat any item of information submitted in this Form as confidential, the applicant must provide a "non-confidential" version of this Form with that item of information removed. The non-confidential version should also contain an annex marked "confidential information" identifying each item of information which has been removed from the non-confidential version and providing a written explanation as to why the information should be treated as "confidential". The same treatment should also be extended to supporting documents accompanying this Form containing any information that the applicant considers should be treated as confidential.

## PART 2

## INFORMATION FOR THE COMMISSION PUBLIC REGISTER

## (TO BE COMPLETED BY THE APPLICANT(S))

1. Please give the full names of the notifying party(s) /the applicant(s).
2. Please provide an executive summary (no more than 250 words) of the notified merger specifying (a) parties to the merger; (b) the nature of the merger (c) the area of activities of the parties to the merger; (d) the relevant product and geographic markets in which the merger is likely to have an impact; (e) expected time frame for completion of various stages of the merger.
3. Please note that this summary will be open to viewing by the public.

## PART 3A

## GENERAL INFORMATION AND CONTACT DETAILS

1. **Summary of the application**
  - 1.1. Please state if the notifying party (or parties) is an acquiring person, an acquired person, or both.
  - 1.2. Please state if the notified merger has or has not been completed.

- 1.3. Please state if the notified merger is a result of bankruptcy or insolvency of one of the merger parties.
- 1.4. Please state if the notified merger is subject to filing requirements of a local or foreign authority other than the Commission. If yes, please state the country and authority to which the filing is made/to be made, and all decisions and/or directions issued by the local or foreign authorities in respect of the notified merger.
- 1.5. Please state whether any ancillary restrictions (non-compete, non-solicitation, etc.) exist as part of the notified merger.
2. **Contact information**
  - 2.1. Name of each merger party along-with its respective address (registered office, and principal place of business, if different) telephone and fax number and email address.
  - 2.2. For each merger party:
    - indicate if it is a company, partnership, sole proprietorship or other unincorporated body trading under a business name; and
    - provide the full name(s) and address(es) of the partners or proprietor(s) or director(s), quoting any reference which should be used.
  - 2.3. Whether the application is made individually or jointly?
  - 2.4. Name, address, telephone and fax numbers, email address, and designation or position held by an authorized representative (with proof of authority), if different from the applicant.
  - 2.5. Name, telephone number, and email address of authorized representative (e.g. an advocate) to receive communication on behalf of each merger notifying party(s) regarding the application and related proceedings, including the Commission's Order(s).
  - 2.6. Where the declaration set out in Part 4 of the Form is signed by an advocate or other representative of the applicant(s), please provide written proof of that representative's authority to act on the applicant(s)'s behalf. The written proof must contain the name and position of the persons granting such authority.
  - 2.7. Provide details of steps taken to notify (such as a duly signed and stamped intimation letter) all other parties to the merger that the application is being submitted.

### 3. General information on the merger

#### 3.1. Describe the nature of the notified merger. In doing so, state:

- the merger parties;
- the nature of the merger, for example, whether the merger is an anticipated merger, an acquisition of sole or joint control, a full-function joint venture or a contract or other means of conferring direct or indirect control;
- the exact number of shares, or voting rights and percentage of shares or voting rights being acquired, directly or indirectly, by the acquirer including the number of shares or voting rights and their percentage held prior to such acquisition; Whether such acquisition of shares or voting rights, directly or indirectly, leads to control or may lead to control at a later date? Explain.
- the detail assets being acquired; Whether such acquisition of assets, directly or indirectly, leads to control or may lead to control at a later date? Explain.
- if the notified merger is a cash tender offer and, if not, the mode of payment for the merger transaction.
- the value of the transaction (the purchase price or the value of all shares or the assets involved, as the case may be);
- for each of the merger parties, the areas of activity and turnover worldwide and in Pakistan for the last financial year;
- whether the whole or parts of the business of parties are subject to the merger;
- the markets on which the merger will have an impact;
- whether any public offer for the securities of one party by another party has the support of the former's supervisory boards of management or other bodies legally representing that party;
- the proposed, expected or past dates of major events designed to bring about the completion of the merger; and
- any financial or other support received from any source (including public authorities, holding company, etc.) by any of the parties and the nature and amount of this support for this merger.

#### 3.2. Describe the strategic and economic rationale of the merger and why the merger should be allowed to proceed.

#### 4. Information on the groups to which merger parties belong

- 4.1. Please furnish a list of all undertakings belonging to the same group for each of the parties to the notified merger and list all the undertaking(s) controlling the parties to the notified merger, directly or indirectly, along-with the nature and means of control.
- 4.2. Whether the parties to the merger, either individually or jointly, directly or indirectly, control the affairs or management of another company or group? If yes, please furnish the following:
- details of undertaking(s) exercising control and undertaking(s) whose affairs are being controlled;
  - form and manner in which the control is exercised; and
  - details of common directorship/partners/copartners/trustees.
- 4.3. The information sought in section 4.1 should be illustrated by the use of organisation charts or diagrams to the extent possible. Applicants who are unable to submit such information pertaining to the other merger parties, should provide reasons for the inability to do so.
- 4.4. Furnish details of the intended structure of ownership and control of the acquired undertaking(s)/acquirer undertaking(s)/merged undertaking(s) after the completion of the merger.

#### 5. Supporting Documents

- 5.1. Please ensure that the following documents (where relevant) are included in the application:

- copies of memorandum and articles of association of all the parties to the merger;
- list of holders of 10 percent or more of voting rights or shares, directly or indirectly, of the parties to the notified merger;
- copies of the final or most recent version of all documents bringing about the merger, whether by agreement between the merger parties, acquisition of a controlling interest or a public bid;
- in the case of a public bid, a copy of the offer document; if it is unavailable at the time of notification, it should be submitted

as soon as possible and not later than when it is posted to shareholders;

- copies of the most recent annual report and accounts (or equivalent for unincorporated bodies) for all the merger parties;
- copies of all analyses, reports, studies, surveys, and any comparable documents prepared by or for any member(s) of the board of directors (or equivalent) or other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting, for the purpose of assessing or analyzing the merger with respect to market shares, competitive conditions, competitors (actual and potential), the rationale of the merger, the potential for sales growth or expansion into other product or geographic markets, and/or general market conditions. For each of these documents, indicate (if not contained in the document itself) the date of preparation and the name and title of each individual who prepared the document; and
- copies of all business plans for each merger party for the current year and the preceding 5 years.

#### PART 3B

### INFORMATION ON MARKETS

#### 6. Information related to merger parties

6.1. Identify all relevant markets. Relevant markets consist of all relevant product and geographic markets as defined under Section 2(1)(k) of the Act.

- identify the products (manufactured and/or sold, etc.) or services of the parties to the notified merger, including their pricing, characteristics and intended use(s);
- whether two or more of the merger parties are engaged in business activities in the same product and/ or geographic market (horizontal relationships); or
- whether one or more of the merger parties are engaged in business activities in a product market, which is upstream or downstream of a market in which any other merger party is engaged, regardless of whether there is or is not any existing supplier/customer relationship between the merger parties (vertical relationships).

- state the scope of the relevant product and relevant geographic market(s) in relation to the notified merger.

6.2. Identify other related/ neighbouring market (s) where an undertaking (s) belonging to the group to which the merger parties belong is/ are active.

**7. Information related to groups to which merger parties belong**

7.1. Please provide a list of all undertaking (s) active on each relevant market identified in section 6 above, that is/ are controlled, directly or indirectly, by:

- each of the merger parties; and
- any other undertaking identified in section 4 above;
- specifying the nature and means of control for each undertaking (including any preferential or special rights).

7.2. With respect to the merger parties and each undertaking or person identified in this form, please provide:

- list of all other undertakings that participate in the relevant markets in which the undertakings or persons of the group hold, individually or collectively 10% or more of the voting rights, issued share capital or other securities. In each case, also identify the holder and state the percentage held;
- list for each undertaking, of the members of their boards of directors (or equivalent) who are also members of the boards' of directors (or equivalent) of any other undertakings in the relevant markets. In each case, also identify the other undertaking and the positions held by the members of the boards of directors;
- a list for each undertaking, acquisitions of undertakings in the relevant markets made during the last three years.

7.3. Information should be illustrated by the use of organisation charts or diagrams to the extent possible.

**8. Detailed information on relevant markets**

8.1. Provide, for each relevant and related market both in relation to merger parties and the groups to which they belong:

- an estimate of the total size of the market in terms of sales value (in Pakistani Rupee) and volume (units),<sup>2</sup> for the preceding year. Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;
- an estimate of the market share of the merged entity before and after the notified merger;
- furnish a list of your main competitors (in your opinion) in the relevant market, along with their market shares;
- Indicate if there have been significant changes to market shares for the last five years;
- estimates of the market shares in value (and where appropriate, volume) for the preceding year of the three largest competitors, suppliers and customers, including the basis for the estimates along with their contact details (where available).

### PART 3C

#### ADDITIONAL INFORMATION (WHERE APPLICABLE)

9. **Cooperative effects of a joint venture (To be completed if the transaction is a joint venture as defined under the Act)**
  - 9.1. Do two or more parent businesses/companies retain activities in the same market as the joint venture or in a market which is upstream or downstream from that of the joint venture, or in a related market?
  - 9.2. If yes, provide for each of the markets referred to:
    - the activities retained by the parents;
    - the turnover of each parent company in the preceding financial year, and the expected turnover of the joint venture; and
    - the market share of each parent company.
  - 9.3. If yes, please provide reasons why, in your view, the creation of the joint venture does not lead to coordination between independent undertakings that restricts competition within the meaning of section 4.
10. **Ancillary restrictions (To be completed if ancillary restrictions are part of the notified merger)**
  - 10.1. Provide the following:
    - Details of each ancillary restriction;



- an explanation as to why each, ancillary restriction is directly related and necessary to the implementation of the merger; and
- 10.2. Please provide copy(s) of agreement in which ancillary restriction may be contained.
- 10.3 Please state whether you have applied to the Exemption Department of the Commission for the grant of an exemption in relation to the ancillary restriction.
- 11. Any other information**
- 11.1. Please provide any other information which may be relevant to the application. Supporting documents should be included where relevant. The Commission reserves the right at its discretion to call for any additional/detailed information if so required.

#### PART 4

#### DECLARATION

**12. Intimation as to false and misleading information and declaration by applicants**

- 12.1 Under section 38 (1) (c), (d) and (e) of the Act, it is an offence, to provide information which is false or misleading, if the person providing it knows that it is false or misleading, or is reckless as to whether it is. If the person is a body corporate, its officers may be guilty of an offence under section 38 (1) (c), (d) and (e).
- 12.2 The following declaration shall be submitted by all internal authorized representatives of the applicants.

I hereby declare and confirm that all information given in the Form and all pages annexed hereto are true, correct and complete to the best of my knowledge and belief, and that all estimates are identified as such and are best estimates based on the underlying facts.

Signature(s)

Name(s) (in block capitals):

Designation(s):

Stamp/Seal:

Date:

## PART 5

**ACKNOWLEDGEMENT OF RECEIPT**

This acknowledgment of receipt will be returned to the address inserted below if the applicant(s) provides the information requested below.

*To be completed by the applicant(s)*

To: (name and address of applicant(s))

Re: The application dated (date of application) concerning (brief description of subject matter) involving the following undertakings: (names of undertakings) [and others]

*To be completed by the COMMISSION*

Received on:

Registered with reference number:

**Please quote this reference number in all correspondence with the Commission.**

**COMPETITION (MERGER CONTROL) REGULATIONS, 2016**

In the aforesaid Regulations, the following Schedule II shall be added, namely:—

## SCHEDULE-II

**PRE-MERGER APPLICATION (SHORT FORM)  
FOR ACQUISITION OF SHARES ON THE CAPITAL MARKETS,  
CONGLOMERATE MERGERS OR GROUP RE-STRUCTURING**

This form lists the information and supporting documents which must be provided when making an application in paper form or online electronically for approval of mergers under Section 11 of the Competition Act, 2010 and Regulation 6 of the Competition (Merger Control) Regulations 2016. Please state and mark if any information hereinbelow is required to be treated as confidential.

1. Name and address of the:
  - (a) Seller
  - (b) Acquirer
  - (c) Target
  - (d) Applicant(s)

2. Legal status of the undertakings (e.g. company, partnership, individual, etc.):
  - (a) Acquirer
  - (b) Target
3. Names and addresses of associated undertakings of the Acquirer and the Target.
4. Detailed coordinates of the duly authorized representative, whether internal or external, for purposes of correspondence and receipt of Commission's Order.
5. Business area(s) of the:
  - (a) Acquirer
  - (b) Target
6. State the nature of the transaction:
  - (a) Acquisition of Shares on the Capital Market(s) and relationship between the parties (vertical or horizontal)
  - (b) Conglomerate Merger
  - (c) Group Re-structuring
7. State which of the following has taken place at the time of submitting the application:
  - (a) A public offering has been announced/intention to launch
  - (b) Transaction has been concluded
8. (a) Assets of the undertakings & their group companies for the last financial year:
  - (i) Within Pakistan
  - (ii) Worldwide
- (b) Turnover of the concerned undertakings & their group companies for the last financial year:
  - (i) Within Pakistan
  - (ii) Worldwide
- (c) Transaction Value:
- (d) Percentage of the Voting Shares being acquired:

9. Identify all relevant market(s):
  - (a) relevant product market(s)
  - (b) relevant geographic market(s)
  - (c) related market(s)
10. Market share of the Acquirer/ Target in the relevant markets:
  - (a) Pre-merger
  - (b) Post- merger:
11. Names, addresses & market shares of the competitors in the relevant market;
12. Ancillary restrictions, *e.g.*, non-compete clause(s) etc., if any, in the contract/acquisition agreement; and whether an application has been filed with the Exemption Department of the Commission for grant of an exemption.
13. Name and authorization of Board of Directors of each of the concerned undertakings.
14. State the economic and strategic rationale for the transaction.
15. Supporting documents required to be attached:
  - (a) Copy of scheme of acquisition/merger
  - (b) Annual audited accounts of the preceding year of the concerned undertakings
  - (c) Organogram representing the concerned undertakings and their group of companies
  - (d) Proof of authorization for the internal and external authorized representative(s)
16. Any other information which may be relevant to the application. Supporting documents should be included where relevant. The Commission reserves the right at its discretion to call for any additional/detailed information if so required.

**Name & Signature of Authorized person**

17. The following declaration shall be submitted by all internal authorized representatives of the applicants.

*I hereby declare and confirm that all information given in the Form and all pages annexed hereto is true, correct and complete to the best of my knowledge and belief and that all estimates are identified as such and are best estimates based on the underlying facts.*

Signature(s)

Name(s) (in block letter)

Designation

Stamp/seal

Date

[No. 11/SY/CCP/GAZ-Notification/18.]

NOMAN LAIQ,  
*Secretary.*

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