

MERGER DIRECTIVE NUMBER 1/2016

PREAMBLE

WHEREAS, commercial activities must be conducted in accordance with the appropriate practice based on the free market economy policy of the country;

WHEREAS, in a free economy market system a fair trade competition enables the acceleration of economic development, the protection of the rights and interests of consumers, and the assurance of the accruing of equitable benefit to the business community;

WHEREAS, an unregulated merger distorts and harms trade competition, the public interest and the market;

WHEREAS, the absence of a directive which enables the Trade Competition and Consumers Protection Authority to exercise the powers vested in it by the Proclamation to regulate mergers has created gaps in implementation and procedures, thereby necessitating the issuance of a directive which regulates merger activities;

NOW, THEREFORE, this Directive is issued in accordance with Article 46(2) of Proclamation No. 813/2014.

PART ONE

GENERAL

1. Short Title

This Directive may be cited as the "Merger Directive No. 1/2016".

2. Definitions

In this Directive unless the context otherwise requires:

- 2.1. "Authority" means the F.D.R.E Trade Competition and Consumers Protection Authority;



- 2.2. "Director General" means the Director General of the F.D.R.E Trade Competition and Consumers Protection Authority;
- 2.3. "Deputy Director General" means the Deputy Director General who heads the Sector of the F.D.R.E Trade Competition and Consumers Protection Authority responsible for the Merger Directorate;
- 2.4. "Director" means the Merger Directorate Director of the F.D.R.E Trade Competition and Consumers Protection Authority;
- 2.5. "Proclamation" means the Trade Competition and Consumers Protection Proclamation No. 813/2014;
- 2.6. "commercial activity" has the definition assigned to it under Article 2(6) of the Trade Competition and Consumers Protection Proclamation No. 813/2014;
- 2.7. "business organization" has the definition assigned to it under Article 210 of the Commercial Code;
- 2.8. "businessperson" has the definition assigned to it under Article 2(5) of the Proclamation;
- 2.9. "business" has the definition assigned to it under Article 124 of the Commercial Code;
- 2.10. "merger notification" means an application submitted by parties or their authorized representatives who intend to merge;
- 2.11. "Merger assessment" means an investigation carried out to determine whether or not a merger has or is likely to have a significant adverse effect on trade competition with a view to approve, prohibit or revoke the merger.

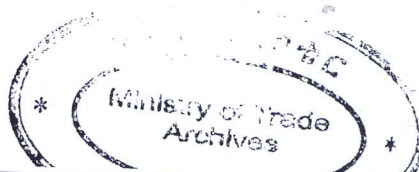
3. Objective

This Directive shall have the following objectives:

- 3.1. to prevent the significant adverse effect of merger on trade competition, the market and the public interest;
- 3.2. to put in place a procedure which enables the handling of merger activities falling under the scope of the Proclamation;

4. Scope of Application

The scope of this application is the scope of application set out by Article 4 of the Proclamation.



PART TWO

DEFINITION OF MERGER AND TYPE OF MERGER

5. Definition of Merger

As provided for by Article 9(3) of the Proclamation, a merger shall be deemed to have occurred when two or more business organizations having independent existence amalgamate or when such business organizations pool the whole or part of their resources for the purpose of carrying on a certain commercial activity; or by directly or indirectly acquiring shares, securities or assets of a business organization or taking control of the management of the business of another person by a person or group of persons through purchase or any other means.

6. Types of Mergers (Based on Economic Chain)

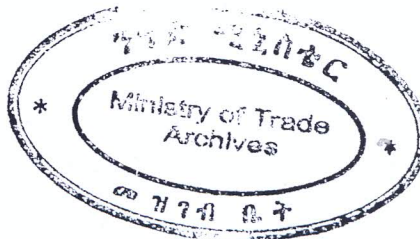
For the purpose of applying this Directive mergers are classified as horizontal mergers, vertical mergers and conglomerate mergers based on economic chain.

- A. **Horizontal Merger**:- is a merger between competitors active in supplying actually or potentially competing products, typically at the same level of the production or supply chain and in the same geographic market;
- B. **Vertical Merger**:- is a merger between businesses which operate at different levels of a supply chain in a given industry, such that the different levels in the production chain at which the merging parties are active, are complementary;
- C. **Conglomerate Merger**:- is a merger between suppliers of goods or services which do not operate within the same market. A merger between organizations which produce different and yet related products and between organizations which produce unrelated products falls under this type of merger.



7. Types of Mergers (Based on Market Transaction)

7.1 For the purpose of applying this Directive mergers are classified as share ownership, asset ownership, joint venture of organizations or persons and securities ownership on the basis of the transaction that business organizations or persons undertake.



- A. **Share Ownership**:- involves the acquisition by business organizations or persons having independent existence of shares from themselves or other organizations through purchase or any other means;
- B. **Asset Ownership**:- involves the transfer by organizations or persons of a particular asset to another organization through sales or any other means;
- C. **Joint Venture of organizations or persons**:- involves the creation of an alliance by business organizations or persons who pool the whole or part of their resources for the purpose of carrying on a certain commercial activity;
- D. **Securities Ownership**:- involves the transfer of financial instruments through purchase or any other means.

7.2 Without prejudice to the provisions of Article 7.1, exercising controlling interest, annual turnover or assets, market shares, level of concentration of suppliers in the market and the relevant markets shall be taken into consideration during an assessment of a merger.

- A. **Exercising Controlling Interest**:- includes the acquisition by a business organization or a person a stake in excess of 50% in another business organization or business; or having the ability to determine a majority of the votes that may be cast at a general meeting, or to appoint or to veto the appointment of a majority of the board of directors of the organization or to influence the strategic commercial policy of a business organization;
- B. **Annual Turnover**:- means the total sales revenue derived from the sale of any commercial good or service at the end of the financial year immediately before the year during which a decision is to be given; provided, however, that for a new business organization which has been in operation for less than one budget year the turnover shall be the total revenue earned during its operation as certified by a licensed accountant or auditor;
- C. **Market Share**:- is an indication of the share that an organization or a person operating in the relevant market or production area has in the market as measured using sales revenue, capacity and production volume. It is calculated by taking the total sales or capital or assets volume of a business organization and divide by the



total sales or capital or assets volume of all organizations' operating in the market;

D. Concentration of Suppliers in the Market:- is an indication of the number of suppliers operating in the relevant market enjoying a dominant market share and their share of the market or industry. In order to measure this, Concentration Ratios or Herfindahl-Hirschman Index will be used. If the CR result using the top three or four or five companies' summation in the relevant market is 70% and above, or if HHI result is 25% and above, that indicates the likely Significant adverse effects on competition.

E. Relevant Market:- is a notion which refers to the market (product market and geographic market) in which a particular product or service is available and helps to assess its effects on competition.

PART THREE

SUBMISSION OF MERGER NOTIFICATION

8. Any businessperson who proposes to enter into an agreement or arrangement of merger shall give notice on his own or through his authorized representative.

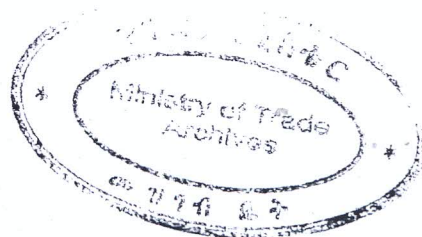
9. Submission Language and Procedure

9.1 Merger applicants or their authorized representatives can submit their merger notification to the Authority in person or by fax, post or email.

9.2 Applicants or their authorized representatives shall submit their merger notification and other supporting documents in the Amharic language. Any document written in another language shall be translated into Amharic.

10. Content and Requirements of Merger Notification

10.1 A merger notification shall contain the following: date, the name and address of the merging parties, place of business, the trade the parties propose to carry on, the conditions of merger, amount of capital of the proposed merger, a list of documents submitted, the signature of the notifying parties or their authorized representatives and official seal;



When the merger applicants are business organizations the following shall be fulfilled: a renewed trade license/commercial registration certificate; a valid memorandum of association; a returnable original or certified copy of minutes stating that the applicants are desirous to merge; the official seals of the respective merging parties to be stamped on the notification form; a valid power of attorney; in the case of foreign business organizations or foreign nationals working in a joint venture with domestic investors the documents compliance with the requirements of the investment proclamation in force. The documents submitted by foreign organizations must be authenticated, as appropriate, by the Ministry of Trade, the Ministry of Foreign Affairs, and the Documents Authentication and Registration Office. The audit reports expected from any business organization must be approved by registered accountants/auditors. Other related information or documents also shall be submitted as required;

10.2 When the merger applicants are individuals who wish to purchase shares or securities from a business organization a valid identification card/passport of the applicant, the value in Ethiopian Birr of the share, asset or security the intends to purchase (supported by minutes or a letter), a valid power of attorney; compliance with the requirements of the investment proclamation for foreign applicants and other related information and documents.

PART FOUR

GENERAL MINIMUM THRESHOLD

11. Minimum Threshold for Merger

11.1 Minimum threshold means the value used to determine the type of mergers that are likely to cause significant adverse effect on trade competition, the market or public interest.

11.2 In merger investigations, the Authority may use as a basis the combined annual turnover, asset or registered capital of applicants to determine the minimum threshold.



11.3 Where the initial capital of applicants is prescribed by law, that amount shall be used as the minimum threshold.

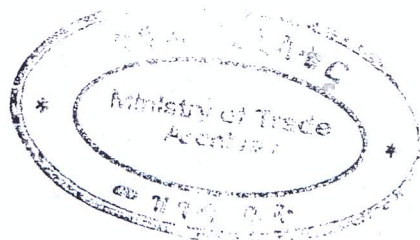
12. For the purpose of regulating merger in this directive, mergers may be classified as Small, Intermediate and Large.
13. Where the annual turnover, asset or registered capital of the undertakings is below ETB 30,000,000.00 (Thirty Million Birr), the merger is classified as Small; where the capital is between ETB 30,000,000.00 (Thirty Million Birr) and ETB 300,000,000.00 (Three Hundred Million Birr) the merger is classified as Intermediate and mergers with capitals above ETB 300,000,000.00 (Three Hundred Million Birr) are classified as Large.
14. The minimum threshold of annual turnover, asset or registered capital prescribed under Article 13 is the combined annual turnover, asset or registered capital of the merger applicants.
15. Merger applicants exceeding the minimum threshold who intend to enter into a merger arrangement shall give notice to the Authority and be subject to an assessment.
16. Notwithstanding the obligation to give notice to the Authority as prescribed by the Proclamation, merger applicants whose annual turnover, asset or registered capital is below ETB 30,000,000.00 (Thirty Million Birr) are presumed to have notified the Authority and shall notify the body authorized to register merger approvals. There shall be no assessment study for Small merger notices; provided, however, that this shall not bar the Authority from following up and investigating the merger's impact on the market.

PART FIVE

ASSESSMENT OF MERGER

17. General

1. A merger notification will be deemed complete when it contains all essential information. The period for the commencement of the assessment study will be calculated from the date the information is fully submitted.
2. The Authority shall notify applicants its decision where the application process enters Phase Two.



3. When requested by applicants, the Authority shall give advice on the proposed merger notification; it may demand the applicants to propose alternatives that counteract the merger's adverse effect on trade competition, market or public interest and analyze the alternatives thus presented.
4. During the merger assessment, the positive and negative impacts of the merger on competition, the potential efficiency it may result in, its effect on technology transfer as well as other pro-competitive gains, and whether the merger protects public interest or has a significant adverse effect shall be investigated thoroughly.
5. Regarding the merger work flows, the Director General will refer the notified merger to the Advocacy and enforcement sectoral Deputy Director General and then to the merger directorate, after an assessment or disk review (where necessary) the directorate will endorse a recommendation to the sectoral Deputy Director General, the Deputy Director General will verify and incorporate his/her own recommendation , where necessary, and forward to the Director General and the Director General will approve and made the final decision.

18. Intermediate Merger

An intermediate merger may go through a two-phase assessment.

21.1 Phase 1

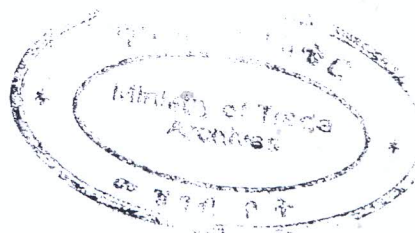
1. It ensures merger notifications are submitted in fulfillment of the relevant conditions prescribed under Part Three.
2. A decision shall be made within 15 working days from the date a complete merger notification is submitted. This timeframe shall exclude the time needed for public advertisements as may be deemed necessary.
3. During this phase, the Authority shall conduct an assessment study on the merger and approve it where it finds that the merger is not likely to have a significant adverse effect on stakeholders and third parties.
4. If it is possible to approve the merger by attaching conditions where it is likely to have an adverse effect on trade competition, the public interest and the market, the merger may be approved upon the fulfillment of the prescribed preconditions by the applicants.



5. During this phase, the Authority shall render a decision on the merger notification where sufficient information is available or there is no need to conduct additional assessment study.
6. Where there are grounds that prevent a decision from being reached on intermediate merger notices within 15 working days and there is a need for additional information, the Authority shall extend the timetable for another 10 working days and proceed to Phase Two.
7. During this phase, a decision on intermediate merger notices may not be given where:
 - A. Additional information is needed;
 - B. Where it is believed that the findings from the assessment study regarding market, competition and public interest necessitate adequate additional time and recommendation for a decision to be reached;
 - C. Other reasons deemed to be justifiable by the Authority.
8. Intermediate merger notifications shall be assessed at Phase Two where a decision cannot be reached at Phase One and when it is deemed necessary to conduct a thorough assessment.

21.2 Phase Two

1. At this Phase, the Merger Directorate may request merging parties to submit additional information.
2. A decision on a merger notification transferred to this Phase shall be given within 10 working days.
3. Should the Authority be of the opinion, on the basis of the assessment study, that the merger is not likely to have a significant adverse effect on trade competition, the public interest and the market, it shall approve the merger.
4. The Authority shall prohibit the merger where it is of the opinion that the merger is likely to have a significant adverse effect on trade competition.
5. The Authority may approve the merger subject to certain conditions even if it is likely to have a significant adverse effect.
6. The Authority may approve the merger proposal where the merger is likely to result in technological, efficiency or other pro-competitive gain that outweigh the significant



adverse effects of the merger on competition, and such gain may not otherwise be obtained if the merger is prohibited.

19. Large Merger

22.1 Phase One

1. It ensures merger notifications are submitted in fulfillment of the relevant conditions prescribed under Part Three.
2. A decision shall be given within 30 working days from the date a complete large merger notification is submitted.
3. During this phase, the Authority shall conduct an assessment study on the merger and approve it where it finds that the merger is not likely to have a significant adverse effect on stakeholders and third parties.
4. If it is possible to approve the merger by attaching conditions where it is likely to have an adverse effect on trade competition, the public interest and the market, the merger may be approved upon the fulfillment of the prescribed preconditions by the applicants.
5. During this phase, the Authority shall render a decision on the merger notification where sufficient information is available or there is no need to conduct additional assessment study.
6. Where there are grounds that prevent a decision from being reached on large merger notices within 30 working days and there is a need for additional information, the Authority shall extend the timetable for another 15 working days and proceed to Phase Two.
7. During this phase, a decision on large merger notices may not be given where:
 - A. Additional information is needed;
 - B. Where it is believed that the findings from the assessment study regarding market, competition and public interest necessitate adequate additional time and recommendation for a decision to be reached;
 - C. Other reasons deemed to be justifiable by the Authority.
8. Large merger notifications shall be assessed at Phase Two where a decision cannot be reached at Phase One and when it is deemed necessary to conduct a thorough assessment.



22.2 Phase Two

1. At this Phase, the Merger Directorate may request merging parties to submit additional information.
2. A decision on a merger notification transferred to this Phase shall be given within 15 working days.
3. Should the Authority be of the opinion, on the basis of the assessment, that the merger is not likely to have a significant adverse effect on trade competition, the public interest and the market, it shall approve the merger.
4. The Authority shall prohibit the merger where it is of the opinion that the merger is likely to have a significant adverse effect on trade competition.
5. The Authority may approve the merger subject to certain conditions even if it is likely to have a significant adverse effect.
6. The Authority may approve the merger proposal where the merger is likely to result in technological, efficiency or other pro-competitive gain that outweigh the significant adverse effects of the merger on competition, and such gain may not otherwise be obtained if the merger is prohibited.

PART SIX

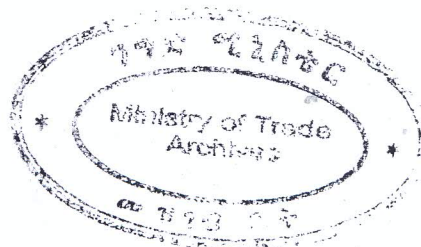
MERGER ASSESSMENT AND DECISION

20. Pre-merger Assessment

A merger assessment shall be conducted from trade competition, public interest and market perspectives.

20.1 The following points shall be taken into consideration when a pre-merger assessment is conducted from trade competition perspective:

- A. the number of actors in the market;
- B. the current or potential capacity to dominate the market;
- C. the obstacles to entering into the same line of business and the potential to eliminate competitors from the market;
- D. the market share or amount of substitute products or services;



- E. the level of import of products traded in the same line of business which is the subject of the merger;
- F. the growth, innovation, price and intrinsic nature of the market;
- G. the potential to cause disruption to suppliers and consumers in the market and whether it exerts influence on the bargaining power of suppliers, distributors and retailers;
- H. other related issues.

20.2 The following points shall be taken into consideration when a pre-merger assessment study is conducted from the market perspective:

- A. relevant market analysis;
- B. the state of demand and supply of the product/service;
- C. the price and quality standard of the product/service;
- D. the state of inputs;
- E. the state of the distribution channels of the product/service;
- F. market share;
- G. market concentration in the relevant market;
- H. other related issues.

20.3 The following points shall be taken into consideration when a pre-merger assessment study is conducted from public interest perspective:

- A. Whether or not the gain made by restricting competition outweighs its adverse effect on the public if the merger is approved;
- B. Whether or not the approval of the merger significantly contributes to accelerating economic development, or promoting the transfer of technical knowledge, or improving the production and distribution of trading goods or provision of service delivery;
 - 1. Whether or not the approval of the merger contributes significantly to salvaging a failing business;
 - 2. Whether or not the approval of the merger helps/ creates an opportunity that enables small and micro businesses to become capable or competitive;
 - 3. Other technological, capacity or competitiveness gains.

21. Objection to Merger Notification

21.1 After verifying the completeness of the merger notification, the Authority shall, where deemed necessary, issue a notice of objection on a newspaper having a wide circulation. Any entity who objects the merger may lodge the objection in writing and submit same to the Authority either in person or via an authorized agent within 15 working days.

21.2 The notice of objection shall include the date of the notice, the names and addresses of the merging parties, the nature of the proposed merger, the place where the applicants conduct their business, the duration of the period by which the objection may be submitted, the name of the Authority, the place of submission of the objection and other particulars.

21.3 The Merger Directorate shall examine the objection and forward its recommendation to the sectoral Deputy Director General. The Deputy Director General shall forward his recommendation to the Director General within a short period of time. After examining the recommendation, the Director General shall render the final decision.

21.4 The cost of notice of objection shall be covered by the merging parties.

22. Timeframe for Decision on Notified Mergers

22.1 Decisions on intermediate merger notifications shall be made within 15 working days. Where necessary, the period may be extended for additional 10 working days subject to the Approval of the Authority.

22.2 Decisions on large merger notifications shall be made within 30 working days. Where necessary, the period may be extended for additional 15 working days subject to the approval of the Authority.

23. Merger Decision

23.1 Decisions rendered on merger notifications following the conduct of an assessment may be approval or prohibition of the merger, conditional approval, special approval or revocation of the merger license.

23.2 Such decision may contain the names of the merging parties, the title of the decision, the type of the merger notification, the amount of capital, the value of the transaction in

shares, justifications and a summary of the decision, and the signature of the Director General or his representative.

24. Issuance of Decision

24.1 The Authority shall notify its decision in writing to the merging parties or to their authorized agent within two working days from the date it delivered the decision.

24.2 Notwithstanding Article 24.1, the Authority may notify its decision via website, e-mail, by post, fax or letter as it deems necessary.

25. Appeal

Any person aggrieved by the decision of the Authority may submit his appeal to the Federal Trade Competition and Consumer Protection Appellate Tribunal within 30 days from the date the decision is delivered.

26. Abandonment of Merger Notification

The merging parties may notify the Authority that they have abandoned the merger before a decision is given.

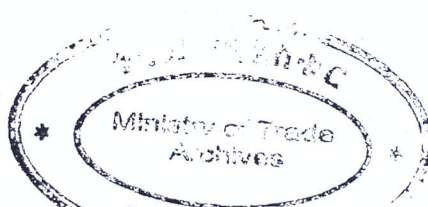
26.1 Such notification may be made jointly or severally by the applicants.

26.2 Where the notification is made by one of the parties pursuant to Article 26.1, the Authority shall notify same to the other party (ies).

26.3 The merger shall be abandoned where the merging parties fail to submit the information and documents requested by the Authority within three consecutive months from the date of the merger notification or upon other legal grounds.

26.4 The abandonment of a merger by the Authority or the merging parties themselves does not preclude the resubmission of a merger notification.

26.5 Where a merger notification is resubmitted within six months of the conduct of an assessment, the Authority shall give a decision on the basis of such a study. However, this shall not prohibit the Authority from conducting another assessment study where it deems it necessary.



PART SEVEN

POST-MERGER ASSESSMENT AND FOLLOW-UP

27. The Authority may conduct, either upon receiving a tip-off or on its own motion, a post-merger assessment and follow-up to determine if the conditions under which the merger is approved are complied with.
28. Where, after a merger approval has been given to the merging parties, information is obtained indicating that the merger has a significant adverse effect on the market, the finding and information shall be referred to the relevant section for investigation pursuant to Article 36 of the Proclamation.

PART EIGHT

PENALTIES

29. Where it is determined during the Authority's post-merger follow-up that:
- 29.1 the approval was obtained on the presentation of false or fraudulent evidence;
 - 29.2 the conditions on the basis of which the approval was obtained are not fulfilled;
- The Authority may revoke the merger approval pursuant to Article 13 of the Proclamation.
30. The Authority shall inform the concerned government offices of the decisions it gives in accordance with Article 29 (1 and 2) and follow-up their implementation.

