S.I. OF 2022

FAIR TRADING ACT, 2022

(Act 12 of 2022)

FAIR TRADING (THRESHOLD FOR MERGER APPLICATION) REGULATIONS, 2022

ARRANGEMENT OF REGULATIONS

REGULATIONS

1. Citation
2. Definitions
3. Notifiable merger
4. Calculation of threshold
5. Calculation in case of acquisition
6. Calculation based on most recent financial year
7. Turnover taken at place of operation
8. Value of subsidiaries exempted from calculation

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FAIR TRADING ACT, 2022

(Act 12 of 2022)

Fair Trading (Threshold for Merger Application) Regulations, 2022

In exercise of the powers conferred by section 132 of the Fair Trading Act, 2022, the Minister responsible for trade in consultation with the Commission, hereby makes the following regulations—

Citation

1. These Regulations may be cited as Fair Trading (Threshold for Merger Application) Regulations, 2022.

Definitions

2. In these regulations, unless the context otherwise requires —

"parent company" refers to an enterprise which controls (as set forth in section 131(2) of the Fair Trading Act 2022), owns or operates another enterprise known as a subsidiary;

Notifiable merger

3. In accordance with section 132 of the Act, any merger shall be notifiable if the combined annual turnover or combined value of assets, whichever is higher, of all parties to a merger equals to or exceeds SCR 10 million.

Calculation of threshold

4.(1) For the purposes of regulation 3, the annual turnover or value of assets of enterprise shall be calculated by adding together, respectively, the annual turnover or value of—

(a) the enterprises concerned;

(b) its subsidiaries;

(c) its parent companies and

(d) other subsidiaries of its parent company.

(2) Notwithstanding subregulation (1), the annual turnover or value of assets of a target enterprise shall not, for the purposes of these Regulations, include the annual turnover or value of assets of its parent company and its parent company's other subsidiaries where, after the merger is implemented, such parents are not parents of —

(a) the target enterprise if it remains after the merger; or

(b) the merged enterprise in the case of an amalgamation or combination.

(3) For the purposes of these Regulations, an enterprise is a subsidiary of another juristic person if that juristic person, one or more other subsidiaries of that juristic person, or one or more nominees of that juristic person or any of its subsidiaries, alone or in any combination —

(a) is or are entitled to a majority of the voting rights that may be cast at a general meeting of that enterprise, or the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;

(b) is or are able to appoint or to veto the appointment of a majority of the directors of that enterprise;

(c) beneficially owns more than one-half of the issued share capital of that enterprise; or

(d) has or have the ability to materially influence the policy of that enterprise in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in part (a) to (c).

Calculation in case of acquisition

5. Where a merger consists of the acquisition of parts, whether or not constituted as legal entities, of one or more enterprises, only the turnover

relating to the parts, which are the subject of the merger, shall be taken into account.

Calculation based on most recent financial year

6. For the purposes of regulation 4, the annual turnover shall comprise turnover in the most recent financial year, and the value of assets shall comprise the value of assets as at the end of the most recent financial year.

Turnover taken at place of operation

7. For the purposes of these Regulations, turnover shall be attributed to the place where the customer is located, which is typically the place where the service is actually provided or the product is actually delivered, whether directly to the customer or indirectly through agents or traders.

Value of subsidiaries exempted from calculation

8. For the purposes of calculation of value of assets of an enterprise under regulation 4, the value of the assets of its subsidiaries shall not include the value of the shares held or interests in another enterprise.

MADE this ....15..... day of September, 2022

NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE