

MERGER/ACQUISITION APPLICATION FORM

The FCCC oversees the mergers and acquisition control regime in Fiji, as set out in Sections 72 and 73 of the FCCC Act 2010 (“FCCC Act 2010”). Fiji operates a mandatory notification regime for domestic mergers and acquisitions, and also assesses overseas transactions involving businesses which operate in Fiji.

If the acquisition is to occur inside Fiji, the transaction falls under Section 72 of the FCCC Act 2010. Under Section 72, no transfer of shares may be given legal effect without authorisation by the FCCC. As such, if the transfer of shares occurs within Fiji, an application to the FCCC must be made for the transaction to go ahead.

This form provides a framework for supplying to the Fijian Competition and Consumer Commission the information required under Section 72 of the FCCC Act 2010. This form should be completed separately for each party to the proposed transaction, although only one party needs to supply a description of the proposed transaction.

Please note that the Fijian Competition and Consumer Commission will only communicate on this matter with authorised individuals.

Applications must be submitted in typed form on A4 paper. Any material that is considered properly confidential must be clearly marked and should be included as an annexure to the main submission.

Application is made under Section 72 of FCCC Act 2010 for an authorization under that subsection to acquire shares in the capital of the body corporate, or to acquire assets of the person (including body corporate), named in item 2.

Key points for lodging your application

- We encourage you to consult the FCCC before you lodge your application for a discussion to clarify what information and evidence may be needed to assess your application.
- Failure to provide sufficient information result in the FCCC being unable to provide authorisation for the transaction. As the transaction will be invalid without authorisation from the FCCC, this will mean that you will be unable to complete the transaction.
- You should provide all relevant information and evidence, including any expert reports you intend to rely on.
- Less weight will likely be given to a statement or submission that is not supported with corroborating evidence. If we cannot substantiate submissions made to the FCCC, we will be unable to rely on them in assessing the transaction.
- A valid application **must** contain the following:
 - A public version of your application for publication on the public register. You may provide a clearly marked confidential version if you wish to claim confidentiality for parts of your application. All confidentiality claims must be substantiated. The public version must contain sufficient information to enable public consultation on your application.
 - A signed declaration by the applicant acquirer.
 - A signed section undertaking not to complete the proposed acquisition until the FCCC's assessment is complete and our authorisation is granted.
 - Payment of the \$14,000 fee.

(PLEASE READ DIRECTIONS AND NOTICE ON PAGE #4)

1.

- a) Name of applicant.....
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- b) Short description of business carried out by applicant
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- c) Address in Fiji for service of documents to the applicant
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- d) Name and address of any person for whose benefit the shares or assets will be held
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2.

a) In the case of a body corporate whose shares or assets are to be acquired, the following to be provided:

- i.** Name of the body corporate.
- ii.** Place of incorporation of the body corporate.
- iii.** Registered office of the body corporate.
- iv.** Short description of the business carried on by the body corporate:

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b) In the case of a person (other than a body corporate) whose assets are to be acquired or merged. The following to be provided to the Commission:

- i.** Name and address of the person.
- ii.** Short description of the business carried out by the person.
- iii.** Description of assets to be acquired:

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3. Where a contract, arrangement, understanding or proposal for the acquisition or merger has been made, brief description of the contract, arrangement, understanding or proposal and its date to be provided:

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Provide the following documents:

- the most recent versions of the transaction documents, such as the sale and purchase agreement, heads of agreement, offer documents, and any related agreements.
- final or most recent versions of documents governing or particularising the sale process for the proposed acquisition, such as information memoranda or documents required for schemes of arrangement, takeover bids or trust schemes.
- documents submitted to the applicant’s board or prepared by or for the applicant’s senior management for purposes of assessing or making a decision in relation to the proposed acquisition, and any minutes or record of the decision made. Provide the same documents from other parties to the proposed acquisition, to the extent available.

(See Direction 3 at page #4 of this Form)

4.

a) Grounds for grant of authorization:

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b) Facts and contentions relied upon in support of those grounds:

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In assessing the transaction for which this application form is submitted, the FCCC will almost always request some kinds of information. It is therefore strongly recommended that you provide the following information, as failure to do so is likely to delay the authorisation process for this transaction.

The Proposed Acquisition

Provide details of the proposed acquisition, including:

- the assets and/or shares to be acquired, and the structure of the proposed acquisition, including any proposed ancillary arrangements.
- diagrams to show the change in ownership structure post acquisition.
- the rationale for the proposed acquisition.
- the expected completion date.

Market Information and Concentration

- Describe the products and/or services and the geographic areas supplied by the parties.
- Describe the industry or industries affected by the proposed acquisition. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.
- Describe any other activities currently undertaken by the parties (including their related bodies corporate).
- Identify all products and services in the relevant areas in which they overlap or for which one party is a supplier or customer of the other.
- For each relevant product or service in respect of which the parties overlap or have a vertical relationship, provide (for each party):
 - the geographic locations in which the product or service is manufactured, distributed, or supplied;
 - the sales revenues and volumes and, where relevant, current capacity and capacity

utilization; and

- an estimate of the total market size (by sales in dollars and units and, where relevant, capacity or an alternative measure if more appropriate) and the current market shares for each of the parties and each competitor (including via imports).

- Identify the source of the data used to prepare this information, and any assumptions used.
- Provide each party's most recent annual report, audited financial statements, business and strategic plans, and management accounts for the company as a whole and for each relevant division or business unit.

For each party to the proposed acquisition, please provide:

- a company structure chart identifying each party, its respective subsidiaries, and all related bodies corporate and companies in which it holds minority shareholdings that are involved in a relevant business for purposes of assessing this application.
- a current organisation chart for each party and for each of the party's relevant businesses, identifying the key personnel with their full name, title, and contact details.

Identify filings in other Jurisdiction (where applicable)

Provide a list of overseas competition agencies that have or will be notified of the proposed acquisition and the date on which those agencies were or will be notified.

(See Notice at page #4 of this Form)

5.

a) Does this application deal with a matter relating to a joint venture?

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b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

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c) If so, by whom or on whose behalf are those applications being made?

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6. Name and address of person authorised by the applicant to provide additional information in relation to this application.

Date, 20 Signed by/on behalf of the applicant

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(Signature)

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(Full Name)

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(Designation)

GENERAL INSTRUCTION FOR MAKING A SUBMISSION:

- Submissions should relate to the reasons why the merger/acquisition should be permitted. For a merger/acquisition to be permitted the applicant only needs to satisfy two of the three tests described above.
- The onus is on the parties to provide all relevant information. Wherever possible parties should fully substantiate their submission with detailed evidences.
- If parties have already provided FCCC with some of the relevant information in merger/acquisition form, they should refer to this information in the submission.
- Parties should include any additional information they believe to be relevant that is not specifically requested in the questions above.

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), note the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Furnish with the application, the particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished:
 - a. In so far as the particulars or any of them have been reduced to writing - by lodging a true copy of the writing; and

- b. So far as the particulars or any of them have not been reduced to writing- by lodging a memorandum containing a full and correct statement of the particulars that have been reduced in writing.

NOTICES

1. Your attention is drawn to **Section 72** and **Section 73** of the Fijian Competition and Consumer Commission Act 2010.
2. The Application Fee is **FJ\$ 14,000.00**.
3. Your application shall not be deemed as complete unless the duly filled, application fee form along with the relevant documents is received.
4. Mere submission of application does not in any manner guarantees an approval.
5. The FCCC reserves the right to ask for further information in this regard.
6. The applicant is free to furnish further information at a later date that was not known and/or available at the time of making the application. The FCCC reserves the right to extend our investigation for a decision based on any further information provided.

Information

The following information will commonly be requested by the FCCC in the course of our investigation into a proposed transaction. It is recommended that, if appropriate, you prepare the following information for the FCCC to help us to assess the proposed transaction as quickly as possible.

Competition Effects

- Describe the constraints on the parties to the proposed acquisition in the relevant industry or industries, including any likely change to those constraints should authorisation be granted and the proposed acquisition proceed.
- Provide information, data, documents, or other evidence relevant to the FCCC's assessment of the competition effects. You should address:
 - existing or potential competitors, including via imports, to the parties;
 - the likelihood, sufficiency and timeliness of entry and expansion by existing and potential competitors (including costs);
 - the countervailing power of customers; and
 - any other relevant factors.

Public Benefits and Detriments

- Describe all benefits and detriments to the public likely to result from the proposed acquisition, including those likely to result from any lessening of competition.
- In addressing the likely benefits of the proposed acquisition, include details of any significant increase in the real value of exports, any significant substitution of domestic products for imported goods, and any other relevant matters that relate to the international competitiveness of any Fijian industry.
- Provide information, data, documents or other evidence relevant to the FCCC's assessment of the public benefits and detriments.

Contact details of Relevant Market Participants

- For each area of overlap, provide contact details (email addresses and phone numbers) for:
 - actual or potential competitors;
 - each party's top 10 customers (depending on the total number of customers and whether these customers are known);
 - each party's top five to ten suppliers (depending on the total number of suppliers); and
 - trade or industry associations in which one or more of the parties are members.