

# Guide to Key African Merger Control Regimes: 2022

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## List of acronyms and abbreviations

ACF – African Competition Forum  
CCC – COMESA Competition Commission  
CCOPOLC – Competition and Consumer Policy and Law Committee  
CEMAC – Central African Economic and Monetary Community  
COMESA – Common Market for Eastern and Southern Africa  
EAC – East African Community  
ECOWAS – Economic Community of West African States  
ICN – International Competition Network  
SADC – Southern African Development Community  
WAEMU – West African Economic and Monetary Union

# Preface

Primerio is pleased to produce the second edition of our Guide to Key African Merger Control Regimes: 2022. This new edition expands on our previous edition by taking into account the most recent legislative developments.

Primerio would like to thank all the contributors who assisted in putting together the Guide to Key African Merger Control Regimes: 2022 as well as all our clients who have trusted Primerio with their transactions.

For more information regarding the Primerio team, please visit Primerio's website at <https://primerio.international>

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# Overview of African Merger Control Regimes

- \* Draft Competition Laws, not yet in force at time of publication.
- \*\* Competition laws in force, enforcement agency not yet operational at time of publication.
- \*\*\* Competition laws in force and enforcement agency established. Not yet fully operational at the time of publication due to, inter alia, pending regulations or guidelines on merger control.
- # No competition laws in place at the time of publication.

Jurisdiction	Status of domestic merger control	Relevant Legislation, Regulations and Guidelines	Relevant regional body	Notes
<b>Algeria</b>	Active	Act n°08-12.  Ordinance n°03-03 of 19 July 2003.  Executive Decree n°05-219 of 22 June 2005.	—	—
<b>Angola</b>	Active **	Competition Act, approved by Law No. 5/18 of 10 May 2018.  Competition Regulations, approved by Presidential Decree No. 240/18 of 12 October 2018.	SADC	—
<b>Benin</b>	#	—	ECOWAS, WAEMU.	—
<b>Botswana</b>	Active	Competition Act 2018 Competition Regulations of 2019.	SADC.	See page 10.
<b>Burkina Faso</b>	Active	Law No. 016-2017/AN portant organisation de la concurrence au Burkina Faso.	ECOWAS, WAEMU.	—
<b>Burundi</b>	**	Competition Act 2010 (Loi portant Regime Juridique de la Concurrence) Not implemented.  Law No 1/01 of 2015 on the Revision of the Commercial Code.	COMESA, EAC, CEMAC.	—

Jurisdiction	Status of domestic merger control	Relevant Legislation, Regulations and Guidelines	Relevant regional body	Notes
<b>Cameroon</b>	Active	The Competition Law No. 98/013 of 14 July 1998 (the Act);  Decree No. 2005/1363/PM dated 6 May 2005, which establishes the composition and operation of the National Competition Commission (NCC);  Ministerial Order No. 00003/MINCOMMERCE of 16 February 2010.	CEMAC.	—
<b>Central African Republic</b>	—	—	CEMAC.	—
<b>Chad</b>	Active	The Law No.043/PR/2014 of 24 December 2014.	CEMAC, OHADA.	—
<b>Comoros</b>	Active	Law No.13-014/AU (Loi relative a la concurrence en Union des Comores).	COMESA, SADC.	There is no statutory obligation to notify a merger.  Voluntary merger control.
<b>Congo</b>	#	—	—	—
<b>Cote d'Ivoire (Ivory Coast)</b>	Active	Law No 91-1999 on competition (Loi 91-999 relative a la concurrence).	WAEMU, ECOWAS.	Voluntary control regime.
<b>Democratic Republic of Congo</b>	#	—	COMESA, CEMAC, SADC.	—
<b>Djibouti</b>	Not active	Law N0 28/AN/on competition, repression of fraud, and protection of consumer 2008.  Executive Decree of 2011.	COMESA.	Although an active competition law, no dedicated domestic merger control legislation.

Jurisdiction	Status of domestic merger control	Relevant Legislation, Regulations and Guidelines	Relevant regional body	Notes
<b>Egypt</b>	Active	Law No. 3 of 2005 on the Protection of Competition and Prohibition of Monopolistic Practices, and amending laws of 2008.	COMESA.	See page 18.
<b>Equatorial Guinea</b>	#	—	CEMAC.	—
<b>Eritrea</b>	#	—	COMESA.	—
<b>Eswatini (Swaziland)</b>	Active	Competition Act 8 of 2007.	COMESA, SADC.	See page 20.
<b>Ethiopia</b>	Active	The Trade Competition and Consumer Protection Proclamation No.813/2013.	COMESA.	See page 23.
<b>Gabon</b>	Active	Gabonese Law No. 014/1998 on competition.	CEMAC.	The CEMAC regulations regarding competition are only applicable to mergers with a regional dimension.
<b>Gambia</b>	***	Companies Act.	ECOWAS.	The Gambia Competition Commission will not deal with mergers until the merger regulations under the Competition Act, 2007 is enacted.  Guidelines for the interpretation of the Competition Act were published in 2019.
<b>Ghana</b>	*	Protection Against Unfair Competition Act, 2000 (Act 589).	ECOWAS, AfCFTA.	—
<b>Guinea</b>	#	—	ECOWAS, OHADA.	—

<b>Jurisdiction</b>	<b>Status of domestic merger control</b>	<b>Relevant Legislation, Regulations and Guidelines</b>	<b>Relevant regional body</b>	<b>Notes</b>
<b>Guinea-Bissau</b>	#	—	ECOWAS, WAEMU.	—
<b>Kenya</b>	Active	Competition Act No. 12 of 2010.	COMESA, EAC, AfCFTA.	See page 25.
<b>Lesotho</b>	#	—	SADC.	—
<b>Liberia</b>	Active	The Act to Enact the Competition Law of Liberia to Provide for an Efficient Free Market System.	ECOWAS.	—
<b>Libya</b>	#	—	COMESA.	—
<b>Madagascar</b>	Active	Law No.2005-020 on Competition, 2005 (Loi sur la concurrence).  Decree No 2008-771 on the application of Law No 2005-020.	COMESA, SADC.	A newly adopted legislation, which has not yet been published, is expected to amend certain aspects of the merger control regime.
<b>Malawi</b>	Active	Chapter 48:09, Competition and Fair Trading Act 43 of 1998 G.N. 9/2000.	COMESA, SADC.	—
<b>Mali</b>	#	—	ECOWAS, WAEMU.	—
<b>Mauritania</b>	#	—	—	—
<b>Mauritius</b>	Active	Competition Act 25 of 2007.	COMESA, SADC.	See page 28.
<b>Morocco</b>	Active	Law No. 104-12 of 30 June 2014 on free pricing and Competition Decrees of 2004.	—	See page 30.
<b>Mozambique</b>	***	Competition Law No 10/2013.  Decree 97/2014	SADC.	—
<b>Namibia</b>	Active	Competition Act 2 of 2003 Rules made under the Competition Act 2003.	SADC.	See page 33.

Jurisdiction	Status of domestic merger control	Relevant Legislation, Regulations and Guidelines	Relevant regional body	Notes
<b>Niger</b>	#	—	ECOWAS, WAEMU.	—
<b>Nigeria</b>	**	Federal Competition and Consumer Protection Act, 2019.  Merger Review Regulations, 2020.	ECOWAS.	See page 37.
<b>Rwanda</b>	**	Law No 36/2012 relating to Competition and Consumer Protection.	COMESA, EAC.	—
<b>São Tomé and Príncipe</b>	#	—	—	—
<b>Senegal</b>	Not active	Law No 94-63 on Prices, Competition and Commercial Litigation, 1994.	UEMOA/ WAEMU, ECOWAS.	Although an active competition law, no dedicated domestic merger control legislation.
<b>Seychelles</b>	Active	Fair Competition Act 18 of 2009.  Fair Competition Regulations 2013.  Fair Trading Commission Act 17 of 2009.	COMESA, SADC.	See page 40.
<b>Sierra Leone</b>	Active	Companies Regulations 2015.	ECOWAS.	—
<b>Somalia</b>	#	—	—	—
<b>South Africa</b>	Active	Competition Act 89 of 1998.	—	See page 43.  Competition Amendment Bill signed into law in 2019.
<b>St Helena, The Ascension Islands &amp; Tristan da Cunha</b>	#	If any matter is not covered by a local law, English law applies.	—	—



Jurisdiction	Status of domestic merger control	Relevant Legislation, Regulations and Guidelines	Relevant regional body	Notes
<b>South Sudan</b>	*	—	—	Draft Competition Bill pending.
<b>Sudan</b>	Active	Organisation of Competition and Prevention of Monopoly Act 2009.	COMESA.	—
<b>Tanzania</b>	Active	The Fair Competition Act 8 of 2003.  Fair Competition Commission Procedure Rules 2010.	EAC, SADC.	See page 47.
<b>Togo</b>	#	—	ECOWAS, WAEMU.	—
<b>Tunisia</b>	Active	Law No 91-64 of July 29, 1991, as amended and completed.	COMESA.	—
<b>Uganda</b>	*	Draft Competition Bill 2004, revised in 2009.	COMESA, EAC.	Expected to be implemented imminently.
<b>Zambia</b>	Active	The Competition and Consumer Protection Act 24 of 2010.	COMESA, SADC.	See page 49.
<b>Zanzibar</b>	Active	Fair Competition and Consumer Protection Act No. 5 of 2018.	EAC, SADC.	See page 52.
<b>Zimbabwe</b>	Active	Chapter 14:28, Competition Act 7 of 1996.	COMESA, SADC.	See page 54.  The Competition Act has been amended in its entirety. Approval of the amended legislation is expected to be introduced during 2020.

# Merger control in African jurisdictions

## Botswana

### 1. What is the applicable legislative framework?

Competition Act 2018 (“Act”);  
Competition Regulations of 2019 (“Regulations”).

### 2. Who are the relevant agencies?

Competition and Consumer Authority (“Commission”).

### 3. What is the definition of a “merger”?

Section 45(1) of the Act defines a merger as the occurrence of one or more enterprises directly or indirectly acquiring or establishing direct or indirect control over the whole or part of the business of another enterprise.

### 4. Threshold for notification?

According to the Regulations, mergers are subject to review if:

- The turnover of the target enterprise or enterprises in Botswana exceeds P10 000 000;
- The assets of the target enterprise or enterprises in Botswana exceeds P10 000 000; or
- Following implementation of the merger, the enterprises concerned would supply or acquire 20% or more of a particular description of goods or services in Botswana.

### 5. Is the merger regime based on pre-closing or post-closing notification

Mergers must be notified to the Authority if it meets the definition of a “merger” as defined in the Act, and meets the applicable thresholds. Moreover, section 48 of the Act provides that no merger which satisfies the thresholds provided for by the Regulations may be implemented without the prior approval of the Commission or before the lapsing of the Commission’s review period.

### 6. What triggers a “change in control”?

An acquisition of control may be achieved in any manner, including:

- The purchase or lease of shares, an interest, or assets of the other enterprise in question; or
- Amalgamation or other combination with that enterprise.

### 7. What is the substantive test used to assess a merger?

The substantive test involves the following:

- Substantial lessening of competition;
- Dominance; and
- Public interest concerns.

### 8. Are public interests taken into consideration?

Yes. Public interest considerations are taken into account in the Commission’s assessment of the merger, and the Authority may approve the merger subject to public interest considerations.

### 9. Are joint ventures notifiable?

Yes, provided the thresholds for mandatory notification have been met.

### 10. Are foreign to foreign mergers notifiable?

Yes, provided the mergers economic activity occurs within or has an effect in Botswana, and the required thresholds have been met.

### **11. A summary and overview of the merger review process.**

The Commission shall make a determination within 30 days of receiving the notification, unless the complexity of the issues involved requires a longer period of up to 60 days. For the purpose of considering a notified merger, the Commission may refer the notification to an inspector for an investigation and report.

If the Commission considers it appropriate, it may determine that one or more hearings should be held in relation to the proposed merger.

### **12. What information is typically required to accompany a merger notification?**

Where a merger is proposed, each of the enterprises involved shall notify the Commission of the proposed merger through a "Form K" available on the Commission's website. The form must be hand delivered to the Commission's office.

The form sets out what information is required by the merging enterprises, which include:

- Information pertaining to the merging parties (such as: structure and ownership, turnover and asset value in Botswana);
- Transaction information (description of the merger, a general competition assessment);
- Products and services;
- Business relationships among parties.

The form must be accompanied by supporting documentation as specified in Form K.

### **13. What are the applicable filing fees?**

A merger notice shall be accompanied by a merger fee of 0.01% of the merging enterprises' combined turnover or assets in Botswana, whichever is higher.

The merger fee shall not apply to the turnover or assets of an enterprise which is a party to the merger, if:

- the enterprise has been bankrupt for at least three consecutive financial years; or
- the assets of the enterprise are being disposed of following a liquidation process.

Where an enterprise is bankrupt or liquidated as stated above, the merger fee shall apply to the turnover or assets of the other merging enterprise or enterprises.

If the merger is hostile, an acquiring enterprise shall pay the merger fee.

### **14. Do third parties have rights to participate or intervene?**

Any person may make a submission to the Authority with regards to the consideration of a merger.

### **15. Is the merger notification considered on the papers or are oral representations/ hearings provided for as part of the review process?**

The Authority may, if appropriate, determine that one or more hearings be held with regards to the proposed merger.

## **16. Are there appeal procedures?**

The Commission's decisions can be appealed by the High Court of Botswana.

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# COMESA

## 1. Governing legislation and agency

COMESA Competition Regulations and COMESA Competition Rules of 2004.

## 2. Who are the relevant agencies?

COMESA Competition Commission (“**CCC**”).

## 3. What is the definition of a “merger”?

Article 23(5) defines a “notifiable merger” as a merger or proposed merger with a “regional dimension” with a value at or above the threshold of turnover or assets prescribed by the Commission’s Board under Article 23(4) – this threshold is currently set at combined annual turnover or combined value of assets in the Common Market of all parties COM\$ 50 million; and those of at least two of the parties exceeding COM\$ 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State. Either or both of the acquiring undertaking and the target undertaking must operate in two or more Member States.

## 4. Threshold for Notification?

A merger is mandatorily notifiable to the CCC if the following thresholds are satisfied:

- the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds COM\$50 million; **and**
- the annual turnover or asset value, whichever is higher, in the Common Markets of each of at least two of the parties to a merger equals or exceeds COM\$10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market with one and the same Member State.

Evidently, there are both “regional dimension” and “notification threshold” requirements that must be satisfied for a transaction to be notifiable.

The “regional dimension test” is satisfied if: the merging parties must operate in at least two Member States; the acquiring firm can operate in at least two Member States while the target firm operates in a single Member State; or the target firm operates in at least two Member States whilst the acquirer only operates in one Member State.

## 5. Is the merger regime based on pre-closing or post-closing notification?

The proposed merger must be notified in the prescribed form within 30 days of the formal decision is taken to implement the merger.

Parties may implement a merger before the CCC has given approval, however in doing so risk potentially having to undo the merger if it later transpires that the Commission does not approve.

## 6. What triggers a “change in control”?

A merger may be achieved as a result of

- The purchase or lease of the shares of assets of a competitor, supplier, customer or other person; or
- The amalgamation or combination with a competitor, supplier, customer or other person.

## **7. What is the substantive test used to assess a merger?**

The Commission must determine whether the merger, if implemented, is likely to substantially prevent or lessen competition.

## **8. Are public interest considerations taken into account?**

Public interest considerations are taken into account if it seems as though the merger is likely to substantially prevent or lessen competition. The CCC will investigate whether any significant public interest grounds exist in which to justify the merger, despite potential anti-competitive effects.

## **9. Are joint ventures notifiable?**

Yes, provided it is a “full-function” joint venture and contemplates the functions of an independent economic entity.

## **10. Are foreign to foreign mergers notifiable?**

Provided the relevant thresholds are met, foreign to foreign mergers are notifiable.

The CCC also aims to publish amendments to the Merger Notification Rules during 2022 in attempts to improve regulation of global digital mergers.

## **11. A summary and overview of the merger review process.**

The notification is either completed jointly by the parties or by the acquiring firm in the case of the acquisition of a controlling interest.

The CCC must make a determination within 120 days of receiving a complete merger notification, which may be extended by 30 days.

## **12. What information is typically required as part of the merger notification?**

The notification must include information related to the relevant markets, any relevant documents and specifically:

- Annual reports and financial statements for the last three years;
- Lists of shareholders and directors;
- Board resolutions;
- The merger agreement.

## **13. What are the applicable filing fees?**

Merging parties must pay a filing fee of 0.1% of their combined annual turnover or combined value of assets in the common market, whichever is higher. The fee is capped at USD 200,000.

## **14. Do third parties have the right to participate or intervene?**

Interested persons are given the opportunity to submit written representations to the CCC with regards to the subject matter of the Commission’s inquiry into competition concerns.

## **15. Is the merger notification considered on the papers or are oral representations/ hearings provided for as part of the review process?**

The CCC is open to engagements with the parties before notification and during its assessment of the merger until a decision is delivered. The CCC typically makes its determinations based on written representations.

## **16. Are there appeal procedures?**

Yes. Aggrieved parties may appeal to the Board of Commissioners, whose decisions may in turn be appealed to the COMESA Court of Justice.

## **17. Are there imminent legislative developments?**

The CCC aims to publish amendments to the Merger Notification Rules during 2022 in attempts to improve the regulation of global digital markets.

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## **1. What is the applicable legislative framework?**

East African Community Competition Act 2006 (“**Act**”);

East African Community Competition Regulations, 2010 (“**Regulations**”).

## **2. Who are the relevant agencies?**

East African Community Competition Authority (“**EACCA**”).

## **3. What is the definition of a “merger”?**

The Competition Act defines “acquisition” as “any acquisition by an undertaking of direct or indirect control of the whole or part of one or more other undertakings, irrespective of whether the acquisition is effected by merger, consolidation, take-over, purchase of securities or assets, contract or by any other means”.

The Competition Act further defines “merge” as “an amalgamation or joining of two or more firms into an existing firm or to form a new firm”.

## **4. Thresholds for Notification?**

Presently, there are no thresholds for merger notification.

## **5. Is the merger regime based on pre-closing or post-closing notification?**

Parties must submit the merger notification prior to implementation. A merger shall not come into effect prior to being notified and approved by the EACCA.

## **6. What triggers a “change in control”?**

In terms of the Competition Act, “control” includes:

- Control over the composition of the board of a company;
- to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the company;
- to hold more than one half of the issued share capital of the company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- the company is a subsidiary of a subsidiary of another company.

## **7. What is the substantive test used to assess a merger?**

The substantive test in terms of the Competition Act is whether the merger may lead to the creation, or strengthening of an already subsisting dominant position, and in doing so substantially lessen competition.

## **8. Are public interests taken into consideration?**

Public interest consideration does not form part of the merger process. A merger which is prohibited by the EACCA may be approved by the Council on appeal (with or without conditions) where the merger fulfils an “overriding public interest”.

## **9. Are joint ventures notifiable?**

There are no specific provisions regulating joint ventures. Joint ventures will need to be notified to the EACCA if they meet the definition of a merger as defined in the Competition Act.



## **10. Are foreign-to-foreign mergers notifiable?**

The Competition Act applies to all economic activities having a cross-border effect. The definition of undertaking for purposes of the Competition Act does not exclude foreign firms.

## **11. A summary and overview of the merger review process.**

Once a merger notification is filed with the EACCA and the EACCA has issued an acknowledgement of receipt of the notification, the EACCA must within 14 days publish a notice of the intended merger in at least 2 newspapers of national circulation in each Partner State as well as on the EAC website to allow interested parties to make submissions.

Interested parties have 14 days from publication of the notice to express their views.

The EACCA must publish its final decision with regards to the merger within 45 days after the notification requirements have been met.

## **12. What information is typically required as part of the merger notification?**

The merger notification has to be in the prescribed form.

Schedule 1 of the Competition Regulations sets out what is required as part of the merger notification.

## **13. What are the applicable filing fees?**

In terms of the Competition Regulations, a merger notification must be accompanied by a prescribed fee to be determined by the EACCA. The EACCA has yet to promulgate any filing fees.

## **14. Do third parties have the right to participate or intervene?**

Interested persons are afforded an opportunity to participate in the merger review process through submitting any document, affidavit, statement or other relevant document to the EACCA.

## **15. Is the merger notification considered on the papers or are oral representations/hearings provided for as part of the review process?**

Oral representations are not strictly provided for as part of the merger review process. The EACCA, has the powers to hold hearings and may, at its election, grant the parties an opportunity to make oral representations either formally or informally.

## **16. Are there appeal procedures?**

Any undertaking(s) aggrieved by the decision of the EACCA has 30 days from the date the EACCA communicated its decision to appeal to the Council.

## **17. Are there imminent legislative developments?**

The EAC merger regime is not yet fully operational and is not currently accepting merger notifications. However, the regime is expected to become operational imminently and EACCA has prioritized the development of merger and acquisition regulations and guidelines to facilitate analysis of merger transactions.

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# Egypt

## **1. What is the applicable legislative framework?**

Law No. 3 of 2005 on the Protection of Competition and Prohibition of Monopolistic Practices, and amending laws of 2008 and 2014; And its Executive Regulations No. 1316 of 2005 and amending decrees of 2010 and 2016).

## **2. Who are the relevant agencies?**

The Egyptian Competition Authority (“ECA”).

## **3. What is the definition of a “merger”?**

A merger occurs through the acquisition of any assets, proprietary rights, rights of use, shares, the establishment of unions, mergers, amalgamations or joint management of two Persons or more.

## **4. Thresholds for Notification?**

Articles 19(2) of the competition law provides that the Egyptian competition commission must be notified if the combined annual turnover of the parties involved in a transaction totals 100 million Egyptian Pounds.

## **5. Is the merger regime based on pre-closing or post-closing notification?**

A post-merger notification framework exists.

## **6. What triggers a “change in control”?**

No express definition is given for what constitutes a “change in control”. However, notification must be given by entities whose annual turnover is above the threshold and who: acquires assets, property, usufruct, shares, formulates mergers, amalgamations, appropriations, or joint management by two or more persons.

## **7. What is the substantive test used to assess a merger?**

The Authority must make sure that the merger does not cause harm to competition or consumers.

## **8. Are public interests taken into consideration?**

Public interest considerations are taken into account, where applicable as part of the overall assessment.

The Authority also considers public interest issues (amongst other issues) in certain sectors, sometimes through cooperation with sector regulator.

## **9. Are joint ventures notifiable?**

Joint ventures are notifiable in terms of the the ECA instructions contained in the filing form effective, June 2018 (“Instructions”).

## **10. Are foreign-to-foreign mergers notifiable?**

Foreign to foreign mergers will be notifiable either when the transaction meets the definition of a merger and has an effect in Egypt.

In terms of the Instructions, foreign to foreign mergers are notifiable only where such merger is likely to distort, restrict or harm competition in Egypt (Extraterritoriality Effect).

### **11. A summary and overview of the merger review process.**

All entities should file a notification post-closing to the Authority, within 30 days (starts at the 1st day of implementation) from the acquisition of any assets, ownership rights or shares, or from the establishment of companies or from the completion of mergers or amalgamation of control over management of two entities.

If the notification file is considered complete by the Authority, it will issue a notification receipt.

The Authority does not have the power to prohibit or impose remedies on the merger, unless special circumstances exist which requires intervention by the Authority.

Time periods are specified for the Authority to make a decision. These periods may be extended where the Authority requests additional information from the merging parties.

### **12. What information is typically required as part of the merger notification?**

The following information must be included in the notification:

- Name of concerned parties, their nationalities, main location of business(s) and their headquarters;
- Transaction date, description and its legal consequences;
- Relevant licenses and approvals;
- The entities annual turnover;
- Any relevant supporting documents.

### **13. What are the applicable filing fees?**

None specified.

### **14. Do third parties have the right to participate or intervene?**

The ECA will generally allow interested persons to informally intervene and/or make submissions to it, in respect of a merger.

### **15. Is the merger notification considered on the papers or are oral representations/hearings provided for as part of the review process?**

The ECA will generally allow for oral representations upon request, although a formal hearing is not provided for.

### **16. Are there appeal procedures?**

The ECA's decisions may be appealed to the the Administrative Court.

Non-compliance with the Act is a criminal offense. Generally, defendants in criminal law cases must file an appeal within 10 to 15 days from the date of the ruling.

### **17. Are there imminent legislative developments?**

The Egyptian Council of Ministers have approved a draft proposal to amend Egypt's legislation, shifting its merger control regime from a post-notification to a pre-notification system.

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# Eswatini (Swaziland)

## 1. What is the applicable legislative framework?

Competition Act 8 of 2007 (“**Competition Act**”).

Competition Commission Regulations of 2010 (“**Regulations**”). External Merger Guidelines. Guidelines for the Issuance of Administrative Penalty

## 2. Who are the relevant agencies?

Eswatini Competition Commission (“**ECC**”).

High Court of Eswatini.

## 3. What is the definition of a “merger”?

‘Mergers’ is defined as “the acquisition of a controlling interest in-

- Any trade involved in the production or distribution of any goods or services; or
- An asset which is or may be utilized for or in connection with the production or distribution of any commodity

A merger may occur through a purchase or lease of shares, an interest or assets, joint ventures and/or the amalgamation or other combination with another enterprise.

## 4. Thresholds for Notification?

All transactions which meet the definition of a merger are notifiable prior to implementation.

## 5. Is the merger regime based on pre-closing or post-closing notification?

Merging parties must file a joint notification, through single filing, before implementation.

## 6. What triggers a “change in control”?

The Competition Act does not define ‘controlling interest’.

In terms of the Regulations, a person is deemed to have a controlling interest if that person:

- Beneficially owns more than one half of the voting rights or economic interest of the target firm;
- Is permitted to vote a majority of votes at a general meeting;
- Has the ability to appoint or veto the appointment of a majority of the directors; or
- Has the capacity to exercise critical influence over firm’s policies and strategic direction.

## 7. What is the substantive test (i.e. substantial lessening of competition?)

The framework for assessment of mergers is the following:

- Is the merger likely to substantially prevent or lessen competition in the relevant markets?
- If the above is answered in the affirmative, a determination whether the anti-competitive effects can be outweighed by pro-competitive gains.

## 8. Are public interest considerations taken into account?

Public interest considerations are not expressly catered for in the Competition Act. The ECC has, however, in practice, considered various public interest factors such as employment in approving transactions.

## 9. Are joint ventures notifiable?

Joint ventures are notifiable to the extent that they meet the definition of ‘merger’ in the Competition Act.

## **10. Are foreign-to-foreign mergers notifiable?**

Foreign to foreign mergers are notifiable if they constitute “economic activity within or having an effect within Swaziland”.

A merger is notifiable if one or both of the parties has an economic presence in Eswatini. Economic presence may be through:

- Direct presence in Eswatini;
- Through subsidiaries; or
- Through any economic activity (i.e. selling their products in Eswatini).

## **11. A summary and overview of the merger review process.**

The ECC must make a determination in relation to the proposed merger within 90 days of receipt of the application. This period can be extended by 30 days, where further information is requested on receipt of such further information. This period may be further extended by 60 days on notice to the parties.

**12. What information is typically required to accompany a merger notification?** The application must include: for each party, a Substantive Statement on the merger in the prescribed form (Form 3) and including:

- Information on the parties and their representatives;
- Lists and details of subsidiaries of the same group as the parties;
- A description of the proposed transaction;
- A description of the structure of supply in the affected markets;
- A description of the market demand and of the largest customers;
- An assessment of the market entry barriers;
- Estimated grounds for approving the transaction;
- A Certificate of Completeness

## **13. What are the applicable filing fees?**

For larger mergers, filing fees are calculated as 0.1% of the combined global annual turnover or assets, whichever is greater, up to a maximum of E 600,000 for any single merger. These fees exclude Sales tax or VAT.

Small mergers are exempt from payment of filing fees.

## **14. Financial penalties for failure to file?**

According to section 35 of the Act, implementation of the merger prior to obtaining approval from the ECC is a statutory offence and could result in a fine (which cannot exceed E 250 000) or imprisonment (not exceeding 5 years) or both.

Regulation 28A of the Competition Commission (Amendment) Regulations Notice of 2016 empowers the ECC in the event of a breach of the Act to impose a fine of up to 10% of a firm's total turnover.

## **15. Do third parties have the right to participate or intervene?**

Third parties may make submissions before the conclusion of merger investigation by the ECC. Such comments may be done orally or in writing to the ECC.

All submissions must, within 7 days of receipt, be made available to the merging parties, who have 14 days from receipt to respond.

Further, the Chairperson of the ECC may issue an invitation to third parties to participate in the

deliberations of the ECC.

**16. Is the merger notification considered on the papers or are oral representations/hearings provided for as part of the review process?**

Upon receipt of the Executive Director's report, the ECC may, if appropriate, order that an oral hearing be held in relation to the proposed merger. If the ECC decides an oral hearing shall be held, it must give the involved merging parties notice of the intended hearing and the issues to be considered at the hearing.

A party to the merger or a third party interested in the merger may request an oral hearing, provided the Executive Director has given his report to the ECC and the ECC has not yet made a decision in relation to the merger. The request must be in writing and set out:

- Issues to be discussed during the hearing;
- Reasons as to why written submissions are insufficient to deal with issues specified;
- Reasons why an oral hearing was not requested before the investigation was concluded.

**17. Are there appeal procedures?**

Parties aggrieved by the ECC's decision may, within 30 days from the decision, appeal the decision to the High Court of Eswatini.

**18. Are there imminent legislative developments?**

Eswatini is currently seeking to repeal the existing Competition Act, 2007 and adopt a new competition act, currently in the form of the Competition Bill, 2018. The Bill will bring about significant change to the enforcement and merger control regime, including granting the ECC the powers to review mergers that do not meet the relevant thresholds and allowing the, to be constituted, Competition Tribunal, to impose a penalty of up to 10% of a firm's annual turnover for prior implementation of a merger.

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# Ethiopia

## 1. What is the applicable legislative framework?

The Trade Competition and Consumer Protection Proclamation No.813/2013 (“**Proclamation**”).

## 2. Who are the relevant agencies?

The Trade Competition and Consumers’ Protection Authority (“**TCCPA**”).

## 3. What is the definition of a “merger”?

A merger is defined as “(a) when two or more business organizations previously 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 (b) by directly or indirectly acquiring shares, securities or assets of a business organization or the taking of control of the management of the business of another person by a person or group of persons through purchase or any other means”.

## 4. Thresholds for Notification?

A merger between firms resident in Ethiopia shall be notifiable if:

- In the instance of an amalgamation, the combined assets or turnover (whichever is higher) of both the acquirer and target is more than ETB30 million; or
- In the instance of an acquisition, the target’s assets or turnover (whichever is higher) is more than ETB30 million.

## 5. Is the merger regime based on pre-closing or post-closing notification?

The Proclamation requires parties to notify and secure approval from the TCCPA prior to legally executing the transaction. Presentation of the approval of the TCCPA is necessary to register the merger in the commercial register.

## 6. What triggers a “change in control”?

Three kinds of transactions are considered as a merger:

- The amalgamation of two or more business organizations previously having independent existence form a new organization or when one takes over the other
- When two or more business organizations pool the whole or part of their resources for the purpose of carrying on a certain commercial activity (joint venture)
- When 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.

## 7. What is the substantive test used to assess a merger?

Whether the merger causes or is likely to cause a significant adverse effect on competition or eliminate competition.

## 8. Are public interests taken into consideration?

The TCCPA is allowed to approve mergers if it is likely that its adverse effects on competition will be outweighed by technological efficiency or other pro-competitive gain. There are no express public interest provisions to be taken into account.

### **9. Are joint ventures notifiable?**

Joint ventures will be notifiable where they meet the definition of a merger in terms of the Competition Act.

### **10. Are foreign-to-foreign mergers notifiable?**

Foreign to foreign mergers are captured if the merger has an effect in Ethiopia.

### **11. A summary and overview of the merger review process.**

No time periods are specified for the TCCPA's investigation and decision-making.

The TCCPA may approve the merger subject to conditions designed to mitigate any significant adverse effect on trade competition the transaction may have.

### **12. What information is typically required to accompany a merger notification?**

The parties must disclose the details of the arrangement to the TCCPA and submit documents such as trade license/ commercial registration certificate ; minutes containing the resolution passed for the merger; memorandum of association and tax clearance along with a completed form.

### **13. What are the applicable filing fees?**

No filing fee is required.

### **14. Do third parties have the right to participate or intervene?**

The TCCPA may offer any business person likely to be affected by the merger to submit written objections. The objections to the merger must be submitted within 15 days of the Authority publishing a notice in a newspaper.

### **15. Is the merger notification considered on the papers or are oral representations/ hearings provided for as part of the review process?**

The merger review is purely based on written representations. Where further submissions are called for by the TCCPA, such further submissions can be made orally as well, although this is not formally provided for.

### **16. Are there appeal procedures?**

An appeal against the TCCPA decision may be taken to the Federal Trade Competition and Consumers Protection Appellate Tribunal within 30 days from the date of the decision.

### **17. Are there imminent legislative developments?**

Certain provisions of Ethiopia's competition law, particularly relating to merger control in general, change of control and definitions, is currently being reviewed.

It is probable that the current filing fees may be amended.

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# Kenya

## 1. What is the applicable legislative framework?

Competition Act No. 12 of 2010 (“**Act**”);  
Competition (General) Rules, 2019 (“**Rules**”).

## 2. Who are the relevant agencies?

Competition Authority of Kenya (“**CAK**”).

## 3. What is the definition of a “merger”?

A merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking.

## 4. Thresholds for Notification?

Mergers which meet any of the following thresholds shall be notified to the CAK:

- Where the parties to the merger have a minimum combined turnover or assets (whichever is higher) of KES1 billion and the turnover or assets (whichever is higher) of the target undertaking is above KES500 million;
- Where the turnover or assets (whichever is higher) of the acquiring undertaking is above ten billion shillings and the merging parties are in the same market or can be vertically integrated, unless the transaction meets the COMESA Competition Commission Merger Notification Thresholds;
- In the carbon based mineral sector, if the value of the reserves, the rights and the associated assets to be held as a result of the merger exceeds ten billion shillings; or
- Where the undertakings operate in the COMESA, meet the criteria set in subparagraph 6 (a) and two-thirds or more of their turnover or assets (whichever is higher) is generated or located in Kenya.

Moreover, where the combined turnover or assets (whichever is higher) of the merging parties is between KES500 million and KES1 billion or if the undertakings are engaged in the carbon-based mineral sector, irrespective of their asset value, such transactions may be considered to be excluded from having to submit a merger notification.

## 5. Is the merger regime based on pre-closing or post-closing notification?

Parties are prohibited from implementing a merger transaction prior to receiving clearance from the Authority. Each party to the proposed transaction must complete the notification form.

It is important to note that parties are not considered to have implemented the merger transaction if 20% or less of the agreed purchase price has been paid.

## 6. What triggers a “change in control”?

A merger can be achieved in any way, including:

- The purchase or lease of shares, acquisition of an interest, or the purchase of assets of the other undertaking in question;
- The acquisition of a controlling interest in a section of the business of an undertaking capable of itself being operated independently whether or not the business in question is carried on by a company;
- The acquisition of an undertaking under receivership by another undertaking either situated

inside or outside Kenya;

- The acquisition by whatever means of the controlling interest in a foreign undertaking that has a controlling interest in a subsidiary in Kenya;
- In the case of a conglomerate, the acquisition of the controlling interest of another undertaking or section of the undertaking being acquired capable of being operated independently;
- Vertical integration;
- The exchange of shares between or among undertakings that result in substantial change in ownership structure through whatever strategy or means adopted by the concerned undertakings; or
- By an amalgamation, takeover or any other combination with the other undertaking.

### **7. What is the substantive test used to assess a merger?**

The Authority considers the following two tests:

- Whether it is likely that the merger will prevent or lessen competition or generate or reinforce a dominant position; and
- The public interest test.

### **8. Are public interests taken into consideration?**

Public interest considerations are taken into account by the Authority when applying the substantive test to the proposed merger.

### **9. Are joint ventures notifiable?**

Yes, provided it meets the definition of a notifiable “merger” in the Act and can be classified as a “full-function” joint venture.

### **10. Are foreign-to-foreign mergers notifiable?**

Yes, mergers occurring outside of Kenya must be notified if it results in the change of control of a business, a part thereof or an asset belonging to a business in Kenya.

The extra-territorial application of the Act is further governed by Section 6.

### **11. A summary and overview of the merger review process.**

The Authority shall acknowledge receipt of applications or complaints within 3 days from receipt in the Authority’s offices.

The Authority makes a determination on a merger proposal within 60 days after receipt of notification, or after receipt of further information it had requested from the parties within 60 days after receiving the notification.

If Authority determines that a hearing conference is needed, it must decide so within 60 days of notification and must make a decision 30 days after the date of conclusion of that conference.

### **12. What information is typically required as part of the merger notification?**

The form “MERGER NOTIFICATION FORM CAK/M&A/F-001” which can be found on the Authority’s website, provides the schedules that need to be submitted which corresponds with the relevant thresholds and merger characteristics.

The key documents required as part of the notification include:

- A signed copy of the merger agreement;
- Audited financial statements for the past three years; and

- Latest annual reports, board resolutions and related documents regarding the merger.

### **13. What are the applicable filing fees?**

For a combined turnover or asset value between Zero and KES500 million:

- Zero Fees (Excluded from notification)

For a combined turnover or asset value between KSH500 million and one and KSH1 billion:

- Zero fees (Excluded transactions requiring approval from the CAK)

For a combined turnover or asset value between KES1 billion and one and KES10 billion:

- Fees of KES1 million

For a combined turnover or asset value of between KES10 billion and one and KES50 billion:

- Fees of KES2 million

For a combined turnover or asset value of above KES50 billion:

- Fees of KES4 million.

### **14. Do third parties have the right to participate or intervene?**

Provided it is during the review period, any person is allowed to submit information regarding the merger to the Authority. The information can be provided by way of an affidavit or any document containing relevant information or statements.

### **15. Is the merger notification considered on the papers or are oral representations/ hearings provided for as part of the review process?**

If the Authority determines that a hearing conference is needed, it must decide so within 60 days of notification.

### **16. Are there appeal procedures?**

Yes, an appeal against the decision of the Authority can be made to the Competition Tribunal, provided it is made within 30 days from the day the Authority gave notice of its decision in the Kenya Gazette. If the Authority or aggrieved parties wish to appeal the decision of the Tribunal, they may appeal to the High Court of Kenya, provided the appeal is made within 30 days from the day the Tribunal gave notice of its decision being filed.

### **17. Are there imminent legislative developments on the horizon?**

None at time of publication.

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# Mauritius

## **1. What is the applicable legislative framework?**

Competition Act 25 of 2007.

## **2. Who are the relevant agencies?**

The Competition Commission of Mauritius (CCM).

## **3. What is the definition of a “merger”?**

A merger occurs when two or more firms, of which at least one carries its activities, in Mauritius, or through a company incorporated in Mauritius, are brought under common ownership or common control.

## **4. Is the merger regime based on pre-closing or post-closing notification?**

Prior notification is not mandatory, but where a merger has not been notified before implementation, the CCM may launch an enquiry.

## **5. What triggers a “change in control”?**

A change of control will occur when there is an acquisition of control or of material influence over an enterprise, OR a change from material influence to control of an enterprise.

## **6. What is the substantive test used to assess a merger?**

Whether the merger has resulted in, or is likely to result in a substantial lessening of competition within the market.

## **7. Are public interests taken into consideration?**

Apart from the substantive test, the CCM may take public interest or benefit considerations into account in assessing a merger.

## **8. Are joint ventures notifiable?**

Yes, provided the joint venture falls within the definition of a merger.

## **9. Are foreign-to-foreign mergers notifiable?**

Yes, provided it meets the criteria set out in the definition of a merger.

## **10. A summary and overview of the merger review process.**

The CCM assesses the merger at an initial stage within 30 working days of receiving the complete application. If the merger is likely to result in a substantial lessening of competition, the CCM will conduct a full investigation which must be completed within 6 months.

## **11. What information is typically required as part of the merger notification?**

Form 1 must be completed by the parties, including:

- Summary information regarding the proposed transaction;
- Contact information;
- The nature of the merger (horizontal, vertical or conglomerate) and information on the merging parties;
- Annual reports and business plans;

- Analysis and surveys conducted in relation to the merger; and
- Market information such as its definition, its size, groups involved, sales volume etc.

**12. What are the applicable filing fees?**

No filing fees are imposed.

**13. Do third parties have the right to participate or intervene?**

The CCM will consider customer surveys and interviews as part of the merger assessment.

**14. Is the merger notification considered on the papers or are oral representations/hearings provided for as part of the review process?**

The CCM may allow oral representation on request.

**15. Are there appeal procedures?**

Aggrieved parties can appeal to the Supreme Court of Mauritius, provided a written notice of appeal has been lodged within 21 days of the CCM's order.

**16. Are there imminent legislative developments?**

The CCM is undertaking a review of the merger regimes and its guidelines, and is also proposing to introduce mandatory notification of mergers.

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# Morocco

## 1. What is the applicable legislative framework?

Law No. 104-12 of 30 June 2014 on free pricing and Competition Decrees of 2004.

## 2. Who are the relevant agencies?

Competition Council (“MCC”) (*Conseil de la Concurrence*).

The Chief of Government retains residual powers particularly decisions concerning public interest.

All notifications now have to be filed to the MCC instead of the head of government, except the transactions involving businesses active in the telecommunications sector, which fall within the jurisdiction of the ANRT (l'Agence Nationale de Réglementation des Télécommunications).

In the case of transactions involving financial institutions (or equivalent accredited bodies), the MCC will have to refer to the Bank Al-Maghrib for its prior opinion before making any decision.

## 3. What is the definition of a “merger”?

A merger occurs when:

- Two or more independent undertakings merge
- One or more persons, already holding control of at least one undertaking, acquires, directly or indirectly, whether through shares or assets, or by contract or other means, control of all or part of another company or group of companies;
- One or more undertaking acquires, directly or indirectly, whether through shares or assets, or by contract or other means, control of the whole or parts of one other or more other undertakings.

## 4. Is the merger regime based on pre-closing or post-closing notification?

The parties may not implement their proposed transaction before authorisation is given by the MCC. In this regard, parties must apply for notification as soon as a ‘sufficiently advanced project’ is in place.

## 5. What triggers a “change in control”?

‘Control’ is defined as resulting from rights, contracts or any other means, either separately or in combination, with regard to considerations of fact or law, the possibility to exercise a decisive influence on the activity of an undertaking and particularly:

- Ownership rights or rights of use over the assets of an undertaking (whether in full or part);
- Decisive influence with respect to the composition, voting or decisions of an undertaking.

## 6. What is the substantive test used to assess a merger?

Whether the proposed merger is likely to infringe competition through the creation or strengthening of a dominant position or buyer power which places suppliers in a situation of economic dependency.

If an in-depth review is undertaken, the MCC will consider whether the competition infringements can be offset by the proposed merger’s contribution to economic progress.

## 7. Are public interests taken into consideration?

Yes, the Chief of Government may approve or prohibit the merger based on public interest considerations.

## 8. Are joint ventures notifiable?

Joint ventures may also constitute mergers where they perform on a lasting basis all the functions of an economic entity (full function joint ventures).

### **9. Are foreign-to-foreign mergers notifiable?**

Foreign-to-foreign transactions will be notifiable to the extent that they satisfy one of the merger thresholds and are capable of having an effect on the market in Morocco.

### **10. A summary and overview of the merger review process.**

The Phase I review must be concluded within 60 days where after the MCC may either approve the merger or initiate an in-depth review (Phase II). The Phase 2 review must similarly be concluded within 90 days.

An extension of 20 days may be requested and where commitments are offered by the merging parties less than 30 days before the end of the 90 day period, the review period will be extended by 30 days from receipt of the commitments. Parties may also request that the period be suspended for 30 days to finalize commitments.

Theoretically, Phase II of the review can last up to 150 days.

The Government then has a further 30 days to take a final decision based on public interest grounds rather than competitive.

On receipt of the notification file, the MCC publishes a press release including summary information.

### **11. What information is typically required as part of the merger notification?**

Parties should follow the form set out by decree n°2-14-652 dated 1 December 2014 with regards to their notification files.

The notification file must contain information relating to:

- The proposed operation and a copy of the agreement;
- The relevant undertakings and the groups they belong to (as well as their annual accounts etc)
- The applicable product and geographical markets accompanied by the market shares of the parties;
- If a market is affected, details with regards to the market and firms active in the relevant market;
- A declaration of the accuracy and completeness of the notification.

### **12. What are the applicable filing fees?**

There are no merger filing fees.

### **13. Do third parties have the right to participate or intervene?**

Third parties may be requested to provide information to the MCC in their assessment of the impact of the merger.

### **14. Is the merger review considered purely on the papers or are there rights to make oral representation?**

If an in-depth merger analysis is undertaken, concerned parties may attend a hearing at the MCC.

### **15. Are there appeal procedures?**

The parties have 30 days from the date of notification of the decision, to appeal the decision.

## 16. Are there imminent legislative developments?

None at the time of publication.

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# Namibia

## 1. What is the applicable legislative framework?

Namibian Competition Act 2 of 2003 (“**Act**”); Rules made under the Competition Act 2003; Merger Guidelines 2016.

## 2. Who are the relevant agencies?

Namibian Competition Commission (the “**Commission**”).

## 3. What is the definition of a “merger”?

Section 42(1) of the Act stipulates that a merger occurs when one or more undertakings acquires control, either directly or indirectly, over the whole or part of another undertakings business.

The Act further provides that a merger may be achieved through the purchase or lease of shares, an interest, or assets of the other undertaking in question or through the amalgamation or other combination with the other undertaking.

## 4. Thresholds for Notification?

A merger shall be notifiable if:

- The combined values of the merger parties, being the highest combination of assets or revenue of the acquiring and target groups, meets or exceeds N\$30 million; and
- Either the gross assets or revenue of the target group meets or exceeds N\$15 million.

## 5. Is the merger regime based on pre-closing or post-closing notification?

The proposed merger must be notified (by each undertaking involved) to the Commission in the prescribed manner and form. The merger may not be implemented prior to the Commission’s approval or prior to the Commission’s review period lapsing.

## 6. What triggers a “change in control”?

In terms Section 42(3) of the Act, a person acquires control if that person:

- Beneficially owns more than one half of the issued share capital of the undertaking;
- Is entitled to exercise a majority of the votes that may be cast at a general meeting of the undertaking, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that undertaking;
- Is able to appoint or to veto the appointment of a majority of the directors of the undertaking;
- Is a holding company, and the undertaking is a subsidiary of that company as contemplated in the Companies Act;
- In the case of an undertaking being a trust, has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;
- In the case of the undertaking being a close corporation, owns the majority of the members’ interest or controls directly or has the right to control the majority of members’ votes in the close corporation; or
- Has the ability materially to influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in part (a) to (f).

### **7. What is the substantive test used to assess a merger?**

An investigation is undertaken into whether or not the merger will:

- Substantially prevent or lessen competition in any of the markets the parties compete in;
- Likely result in any undertaking acquiring a dominant position in the market or strengthening a dominant in a market; as well as
- The impact on public interest grounds.

### **8. Are public interest taken into consideration?**

The following public interest grounds are taken into account when considering the merger:

- A certain industrial sector or region;
- Employment;
- The capability of small business, or undertakings controlled or owned by historically disadvantaged persons, to become competitive; and
- The capability of national industries to compete in international markets.

### **9. Are joint ventures notifiable?**

Yes, if it meets the definition of a “merger”.

### **10. Are foreign-to-foreign mergers notifiable?**

Foreign to foreign mergers are only notifiable if the proposed merger meets the requisite thresholds for notification and constitutes “economic activity in Namibia” or will have “an effect in Namibia”.

### **11. A summary and overview of the merger review process.**

The Commission will make its determination within 30 working days of receiving a completed notification.

This period can be extended due to complexity of issues and Commission can:

- Request information – the Commission must make a determination within 30 days of receipt by Commission of the information; or
- Convene a conference – the Commission must make a determination within 30 days after date conference concluded.

The Commission can prohibit the implementation of the merger, approve it, or approve it with conditions to address any competition concern.

### **12. What information is typically required as part of the merger notification?**

A notification must be submitted by way of a Form 38 (which informs the Commission of the proposed merger and its effect on employment) to which must be attached a completed Statement of Merger Information (Form 39), relating to:

- The parties to the proposed merger;
- The proposed transaction;
- The markets the merging parties are active in (their competitors and customers, barriers to entry, import competition, countervailing powers of customers and suppliers).

The following items must also be attached:

- The most recent version of all documents constituting the signed merger agreement;
- A competitiveness report;
- Any document prepared for the Board of Directors regarding the proposed transaction;
- The most recent business plan;
- The most recent audited financial statement.

### **13. What are the applicable filing fees?**

The fee for filing a merger notification depends on the combined turnover of the merging parties:

- NAD 10,000 if the combined figure is valued below NAD 50 million;
- NAD 25,000, if the combined figure is valued at or above NAD 50 million but less than NAD 65 million;
- NAD 50,000, if the combined figure is valued at or above NAD 65 million, but less than NAD 75 million;
- NAD 75,000, if the combined figure is valued at or above NAD 75 million, but less than NAD 100 million;
- NAD 125,000, if the combined figure is valued at or above NAD 100 million, but less than NAD 1 billion;
- NAD 250,000, if the combined figure is valued at or above NAD 1 billion, but less than NAD 3,5 billion; or
- NAD 500,000, if the figure is valued at or above NAD 3,5 billion.

The “combined figure” is the greater of:

- The combined annual turnover in Namibia of the acquirer and the target;
- The combined assets in Namibia of the acquirer and the target;
- The annual turnover in Namibia of the acquirer plus the assets in Namibia of the target;
- The assets in Namibia of the acquirer plus the annual turnover in Namibia of the target.

### **14. Financial penalties for failure to file?**

According to section 51 of the Act, if a merger implemented in contravention of the provisions of the Act the Commission may apply to the High Court for the imposition of fine of up to 10% of the global turnover of the party in the preceding financial year.

### **15. Do third parties have the right to participate or intervene?**

If the Commission decides to convene a conference in relation to the proposed merger, it may invite third parties to make representations.

The Commission can also decide to refer the proposed merger to an inspector for investigation. Any person can submit any document, affidavit or other relevant information to the inspector with regards to the proposed merger.

### **16. Is the merger notification considered on the papers or are oral representations/ hearings provided for as part of the review process?**

If the Commission considers it appropriate to convene a conference in relation to the proposed merger, stakeholders will have an opportunity to express their views on the possible effects of the merger on competition and public interest. The merging parties will then be allowed an opportunity to address the views expressed.

### **17. Are there imminent legislative developments?**

The Namibian Competition Draft Bill proposes important changes to the Act, including, inter alia, changes to the definition of a merger, the substantive test used to assess a merger, categorization of mergers.

Important elements to promote public interest were set out in the recently published (8 December 2020) competition policy titled “Growth at home National Competition Policy, 2020-2025” (“policy”). The policy largely promotes the suggested amendments in the Namibian Competition Draft Bill.

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# Nigeria

## 1. What is the applicable legislative framework?

Federal Competition and Consumer Protection Act (“**Act**”);  
Merger Review Regulations, 2020 (“**Regulations**”);  
Merger Review Guidelines, 2020.

## 2. Who are the relevant agencies?

Federal Competition and Consumer Protection Commission (“**FCCP**”)  
The Competition and Consumer Protection Tribunal (“**Tribunal**”)

## 3. What is the definition of a “merger”?

According to section 92 of the Act, a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking.

A merger can be achieved through:

- The purchase or lease of shares, interests of assets of the other undertaking;
- An amalgamation or combination with the other undertaking; or
- A joint venture.

## 4. Thresholds for Notification?

In accordance with the Section 12 of the 2020 Merger Review Regulations, the threshold for notification for large mergers, to be notified to the Commission, is the following:

- The combined annual turnover of the merging parties in, into or from Nigeria equals to or is greater than NGN 1 billion; or
- The target undertakings annual turnover in, into or from Nigeria equals to or is greater than NGN 500 million.

According to Section 11 of these Regulations, small mergers are not notifiable unless the parties to the merger voluntarily notify the Commission thereof, or in a case where the Commission considers that the merger could substantially prevent or lessen competition in accordance with Section 95(1) of the Act.

## 5. Is the merger regime based on pre-closing or post-closing notification?

Under the Act, a large merger may not be implemented without notification and approval from the Commission. Small mergers will only be notifiable if the Commission requires so in terms of Section 95(1) of the Act, or the parties to the merger voluntarily notify the Commission.

## 6. What triggers a “change in control”?

According to the Act, “control” occurs if:

- The beneficiary owns more than one half of the issued share capital or assets of the undertaking;
- Is entitled to cast a majority of the vote that may be cast at a general meeting of the undertaking or has the capacity to control the voting of a majority of those votes, either directly or through a controlled entity of the undertaking;
- Has the ability to appoint or veto the appointment of a majority of the directors of the undertaking;
- Is a holding company, and the undertaking is a subsidiary of that company (contemplated under the Companies and Allied Matters Act);
- If the undertaking is a trust, it has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

- Has the ability to materially influence the policy of the undertaking in a manner akin to a person who, in ordinary commercial practice, can exercise an element of control.

## **7. What is the substantive test used to assess a merger?**

Whether the merger is likely to substantially prevent or lessen competition.

## **8. Are public interests taken into consideration?**

In accordance with Regulation 37 of the Regulations, public interest grounds are taken into account if it appears that the merger is likely to substantially prevent or lessen competition.

## **9. Are joint ventures notifiable?**

Yes. In line with section 92(1)(b)(iii) of the Act, all Joint ventures are captured when they meet the definitions and statutory thresholds.

## **10. Are foreign-to-foreign mergers notifiable?**

Yes. Foreign to foreign mergers are captured when they meet the definitions and statutory thresholds.

## **11. A summary and overview of the merger review process.**

If the Commission requires a small merger to be notified:

- No further steps may be taken to implement the merger until approval by the Commission.
- The notification must be published within 5 days from the day the Commission received notification.
- The Commission has 20 business days after notification to consider the merger. This period may be extended by 40 days.
- The Commission must publish a notice of its decision in the Federal Government Gazette.
- The Commission can make a determination to: approve, approve subject to conditions, prohibit or prohibit the merger.

With regards to a large merger

- After receiving the notification, the Commission must publish the notification within 5 days.
- The merger may not be implemented until the Commission has given its approval.
- The Commission must issue its report within 60 business days of notification. This period may be extended to 120 business days.
- The Commission may approve subject to conditions or prohibit the merger.

## **12. What information is typically required as part of the merger notification?**

A notification must be submitted by way of Form 1 (notice of merger), which requires, inter alia, the following information:

- A non-confidential executive summary of the merger;
- Nature of the parties' business;
- Information about the parties;
- Details of the merger, ownership and control;
- Details of authorised representatives;
- Annual turnover;
- Supporting documents;
- Market/industry reports;
- Competition assessment;
- Market definition;
- Structure of demand and supply in affected markets;
- Third party contact details;
- Reasoned submission;
- Declaration.

### **13. What are the applicable filing fees?**

The processing fee for a merger notification is calculated as percentages of either the consideration of the transaction, or latest annual turnover (whichever is higher).

Schedule 1 of the Merger Review (Amended) Regulations provides the following thresholds (based on the combined turnover of the merging parties):

#### **If the consideration of the transaction is higher:**

- First NGN 500 million: 0.45%
- Next NGN 500 million: 0.4%
- Any sum thereafter: 0.35%

#### **If the latest annual turnover is higher:**

- First NGN 500 million: 0.45%
- Next NGN 500 million: 0.4%
- Any sum thereafter: 0.35%

Additionally, an application fee of NGN50 000 must accompany all merger applications per undertaking.

For purposes of calculating the respective fees in respect of mergers involving foreign entities with a local component, “turnover” is based on, or attributable to the business of or in the local component in Nigeria.

To expedite a merger notification, a fee of NGN10 000 000 is applicable.

The fee applicable for a negative clearance is NGN2 500 000.

### **14. Do third parties have the right to participate or intervene?**

In making a finding on a merger notification, the Commission can hear any third party (other than the parties to the merger) who is able to assist the Commission in its determination of the merger notification.

### **15. Is the merger notification considered on the papers or are oral representations/ hearings provided for as part of the review process?**

Before making its decision, the Commission may, if undertaking a second detailed review, decide to hold a hearing.

### **16. Are there appeal procedures?**

Aggrieved parties can apply for a review to the Tribunal. Parties aggrieved by the decision of the Tribunal may appeal to the Federal High Court within 30 days after the judgement.

### **17. Are there imminent legislative developments on the horizon?**

There are no imminent legislative developments, particularly after the recent amendment of the Merger Review Regulations in August 2021.

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# Seychelles

## 1. What is the applicable legislative framework?

Fair Competition Act 2009 (“Act”);  
Fair Trading Commission Act 2009.

## 2. Who are the relevant agencies?

The Fair Trading Commission (“FTC”);  
The Board of Commissioners;  
The Appeal Tribunal.

## 3. What is the definition of a “merger”?

According to the Act a “merger” is the acquisition or establishment, direct or indirect, by one or more enterprises, whether by purchase or shares or assets, lease of assets, amalgamation or combination of control over the whole or part of the business of an intermediate competitor, supplier, consumer or other enterprise.

## 4. Thresholds for Notification?

All mergers involving a firm that controls, either by itself or with any other party to the merger, 40% of a market requires notification before implementation.

## 5. Is the merger regime based on pre-closing or post-closing notification?

Parties wishing to effect a notifiable merger must apply to the FTC for permission in order to effect the merger.

## 6. What triggers a “change in control”?

“Control” is not defined in the Act.

## 7. What is the substantive test used to assess a merger?

As per Section 38(1)(c), the Commission shall have regard to whether the proposed merger has resulted in, or is likely to result in a substantial lessening of competition within any market, having regard to the factors set out in Section 24, those being:

- the structure of the market likely to be affected by the proposed merger;
- the degree of control exercised by the enterprises concerned in the proposed merger in the market, and particularly the economic and financial power of the enterprises;
- the availability of alternatives to the services or goods supplied by the enterprises concerned in the merger;
- the likely effect of the proposed merger on consumers and the economy; and
- the actual or potential competition from other enterprises and the likelihood of detriment to competition.

## 8. Are public interests taken into consideration?

The Act does not explicitly make mention of public interest considerations. However, the Act mentions that the FTC takes into account whether:

*“the merger is likely to bring about gains in real as distinct from pecuniary efficiencies that are greater than or more than offset the effects of any limitation on competition that result or are likely to result from the merger”.*

## 9. Are joint ventures notifiable?

Although the legislation does not make specific mention of joint ventures, it is likely that they are captured where they meet the statutory criteria and thresholds.



## **10. Are foreign-to-foreign mergers notifiable?**

Foreign to foreign mergers are not specifically mentioned in the Fair Competition Act. The Act stipulates that parties who wish to complete a merger must notify the FTC and obtain permission. Foreign to foreign mergers will be notifiable when they meet the statutory criteria and threshold and can be shown to have an effect in Seychelles.

## **11. A summary and overview of merger review process.**

In terms of section 34(1)(b) of the Act, the FTC must investigate any merger which satisfies the merger threshold provided by section 22(1). However, the Act does not provide for an express time line or procedure to be followed by the FTC during its investigation. In this regard, the Act merely states that where the FTC decides to discontinue its investigation, it must notify the parties to the transaction of its decision to do so within 14 days of the discontinuation and must further submit a report to Minister within 3 months.

## **12. What information is typically required as part of the merger notification?**

A prescribed form must be submitted, to which must be attached:

- Two copies of latest annual report and audited accounts (including balance sheet);
- A copy of the transaction or other documents relating to it;
- Press releases or other management statements on the transaction;
- Market or industry study reports supporting the transaction;
- Copies of business plans for each party to the merger for the current year and medium term.

## **13. What are the applicable filing fees??**

A fee of SCR 1500 is payable on submission of the notification.

If the proposed merger is approved, an additional fee will be imposed depending on the combined most recent turnover for the merging entities' preceding financial year:

- 0.1% for such a turnover or asset value below SCR 500,000;
- 0.5% for such a turnover or asset value above SCR 501,000.

## **14. Do third parties have the right to participate or intervene?**

The right to intervene is not included in the Act. The FTC may consider submissions made by interested persons.

## **15. Is the merger notification considered on the papers or are oral representations/ hearings provided for as part of the review process?**

Merging parties may offer written undertakings to the FTC to address concerns before the FTC makes a decision.

## **16. Are there appeal procedures?**

Merging parties may appeal to the Tribunal. If the parties are aggrieved by the decision of the Tribunal, they can appeal to the Supreme Court.

## **17. Are there imminent legislative developments?**

The Commission has finalized, and the Cabinet of Ministers have approved the consolidated Fair Trading Bill ("Bill").

A new Tribunal, which will formally pass judgment on all matters related to consumers and competition, is expected to be created. The aim of this Bill is consolidation and revision of the legislation regarding fair trading, consumer protection and competition, and to repeal the existing Fair Trading Commission Act, Fair Competition Act and Consumer Protection Act. Essentially, the Bill's provisions and international legal

tools will allow the FTC to act as investigative force in the enforcement and effective delivery of its mandate. The Tribunal will create a mechanism by which to provide timely and effective redress to both businesses and consumers.

Furthermore, the Bill has an increased penalty quantum, which will be particularly effective in the fight against cartels, provides for more administrative and financial autonomy, and ensures more flexibility through the introduction of more competition and consumer related provisions. There is also a set of mechanisms aimed at the continuity of current unheard cases (stemming from the Board of Commissioners).

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# South Africa

## 1. What is the applicable legislative framework?

Competition Act No. 89 of 1998 (as amended) (“**Act**”).

## 2. Who are the relevant agencies?

Competition Commission (“**Commission**”);

Competition Tribunal (“**Tribunal**”); and

Competition Appeal Court (“**CAC**”).

## 3. What is the definition of a “merger”?

A merger occurs when one or more firms directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another firm.

A merger may occur through a purchase or lease of shares and assets, joint ventures and/or pure amalgamation of firms/businesses.

## 4. Thresholds for Notification?

The Commission must be notified of all intermediate mergers and acquisitions if the value of the proposed merger equals or exceeds ZAR600 million (calculated by either combining the annual turnover of both firms or their assets), and the annual turnover or asset value of the target firm is at least ZAR100 million.

If the combined annual turnover or assets of both the acquiring and target firms are valued at or above R6.6 billion, and the annual turnover or asset value of the target firm is at least ZAR190 million, the merger must be notified to the Competition Commission as a large merger.

## 5. Is the merger regime based on pre-closing or post-closing notification?

Section 13(3)(a) of the South African Competition Act, prohibits the implementation of a merger, which meets all thresholds of an intermediate or large merger, prior to receipt of approval from the Competition Authorities.

Depending on the circumstances, it may be advisable for parties to engage with the Commission prior to implementing globally with a ring-fencing arrangement in respect of South Africa.

## 6. What triggers a “change in control”?

The control test in South Africa is similar to the EU test of ‘decisive influence’ and it is likely that any transaction which meets the EU test of decisive influence would meet the equivalent South African test. In addition, there are certain ‘deeming’ provisions in the South African Competition Act in terms of which certain persons are ‘deemed’ to have control. For example, section 12(2)(a) of the South African Competition Act, which provides that any person who ‘beneficially owns more than half the issued share capital of the firm’ controls the firm in question and the Competition Tribunal has found that this deeming provision is not dependent on whether beneficial ownership of the majority of the issued share capital actually confers control upon the beneficial owner.

As in the EU test for ‘decisive influence’, minority protections are considered in the South African context, given that a party is deemed to have control in respect of another firm if that party has the ability to materially influence the policy of the firm in a manner which is comparable to a person who, in ordinary commercial practice, can exercise an element of control as contemplated in sections 12(2)(a) to (f) of the South African Competition Act such as that which would be exercised

by a majority shareholder.

## **7. What is the substantive test used to assess a merger?**

Section 12A of the Act sets out the analytical framework for the competitive assessment of mergers as follows:

- Whether the merger is likely to substantially prevent or lessen competition in the relevant markets?
- If it appears that the merger is likely to substantially prevent or lessen of competition in the relevant markets, then the Commission needs to determine whether these anti-competitive effects can be outweighed by technological, efficiency or other pro-competitive gains and whether a merger can or cannot be justified on substantial public interest grounds by assessing certain factors set out in the Act.

## **8. Are public interests taken into consideration?**

When determining whether a merger can or cannot be justified on public interest grounds. the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on:

- A particular industrial sector or region;
- Employment;
- The ability of small businesses', or firms controlled or owned by historically disadvantaged persons, to become competitive; and
- The ability of national industries to compete in international markets.

Following amendments to section 12A, the Competition Commission and Tribunal now have additional public interest factors to consider when determining whether a merger should be granted. Mergers will now be assessed taking into account additional factors such as the impact of the merger: the ability of small and medium businesses or firms owned by historically disadvantaged persons to effectively enter, participate in, or expand within the market; as well as the promotion of a greater spread of ownership by historically disadvantaged persons and workers in firms in the market.

Furthermore, public interest considerations are afforded the same weight as traditional competition factors.

## **9. Are joint ventures notifiable?**

The South African Competition Act does not specifically refer to joint ventures. However, the merger control provisions contained in Chapter 3 of the South African Competition Act will apply to the extent that a joint venture constitutes a merger as defined. In other words, if the transaction creating the joint venture results in an entity acquiring control over the whole or part of the business of another firm, it will constitute a merger for purposes of the South African Competition Act. The test for what constitutes 'the whole or part of the business' of a firm is not identical to the test which has been adopted in Europe.

## **10. Are foreign-to-foreign mergers notifiable?**

Yes.

## **11. A summary and overview of the merger review process.**

In the case of an intermediate merger, the Commission must approve, conditionally approve, or prohibit the proposed merger within 20 business days of filing. However, in the event that the intermediate merger is classified as a phase 3 (complex) merger, the Commission can take up to 60

days to complete its investigation.

In the case of a large merger, the Commission must refer the merger to the Competition Tribunal (the Tribunal) within 40 business days of filing. This period may be extended by the Tribunal for 15 business days per application for extension. The Commission has indicated that to the extent that a large merger is classified as a phase 3 (complex) merger, the Commission takes on average 120 business days to complete its investigation.

## **12. What information is typically required as part of the merger notification?**

- Merger Notice Form CC4(1);
- Schedule 1 & 2 to Form CC4(1);
- Statement of Merger information Form CC4(2) – Acquiring firm;
- Schedule 3-7;
- Statement of Merger information Form CC4(2) – Target firm
- Schedule 3-7;
- A report on Competition in the affected markets;
- Merger Agreement including the sale of business agreement and the draft / final shareholder's agreement;
- Board Minutes, Reports and presentations;
- Most recent annual financial statements;
- Most recent business plans;
- Claim for confidentiality Form CC7;
- Most recent report provided to the Securities regulation panel;
- Proof of service on trade unions; and
- Proof of payment of the filing fee.

## **13. What are the applicable filing fees?**

Prior to filing the forms, the following merger notification/filing fees must be paid into the Commission's bank account:

- Small mergers – n/a (no filing required);
- Intermediate mergers – ZAR 165 000;
- Large mergers – ZAR 550 000.

## **14. Do third parties have the right to participate or intervene?**

Yes. The Minister of the Department of Trade and Industry is also entitled to intervene in merger proceedings on public interest grounds.

## **15. Is the merger notification considered on the papers or are oral representations/hearings provided for as part of the review process?**

Merging parties may make written submissions.

## **16. Are there appeal procedures?**

Yes, Competition Tribunal and Competition Appeal Court.

In terms of the Competition Amendment Act the Competition Commission and the Minister (provided the Minister participated in the initial merger proceedings) now have an automatic, independent right of appeal to the Competition Appeal Court in respect of merger decisions of the Tribunal.

## **17. Are there imminent legislative developments?**

A significant number of the provisions of the Competition Amendment Act, No 18 of 2018 have recently been brought into operation (as of 12 July 2019)., however, some remain inactive –

such as the newly included provision regulating foreign mergers and national security. This will require that the acquisition of a South African business by a foreign acquiring firm must be notified to the National Security Committee (yet to be established) before they can be considered and approved by the Commission or the Tribunal.

The President must publish a list of national security interests in due course.

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# Tanzania

## **1. What is the applicable legislative framework?**

The Fair Competition Act 8 of 2003 (“**Act**”);  
Fair Competition Commission Procedure Rules 2010 (“**Rules**”).

## **2. Who are the relevant agencies?**

Fair Competition Commission (“**FCC**”).

## **3. What is the definition of a “merger”?**

A merger is defined as an acquisition of shares, a business or other assets, whether inside or outside Tanzania, resulting in the change of control of a business, part of a business or an asset of a business.

## **4. Thresholds for Notification?**

A merger is notifiable if the combined market value of the assets or turnover of the merging parties exceeds TZS3.5 billion.

## **5. Is the merger regime based on pre-closing or post-closing notification?**

Parties are not allowed to implement a notifiable merger if it has not given notification to the FCC at least 14 days before implementation.

## **6. What triggers a “change in control”?**

No clear definition is provided for “change in control”, However, the Fair Competition Commission has interpreted “change in control” to be a change in ownership structure.

## **7. What is the substantive test used to assess a merger?**

Whether the post-merger firm will result in either the creation of a dominant position or strengthening of an existing dominant position.

## **8. Are public interests taken into consideration?**

Yes. Under Section 12(1)(b) of the Act, public benefits are listed as a circumstance to be utilized by the Commission in making their decision with regard to a merger.

## **9. Are joint ventures notifiable?**

Yes, if they meet the definition of mergers that are notifiable.

## **10. Are foreign-to-foreign mergers notifiable?**

Foreign to foreign mergers are captured if the foreign parties to the merger transaction have a local presence in Tanzania and the transaction meets the definition of a merger and the applicable threshold.

## **11. A summary and overview of the merger review process.**

Within 5 days of filing a notification, the FCC issues a notice of either complete filing or incomplete filing.

The Commission is required to make a determination within 14 days as to whether the merger requires further review or not, within 90 working days.

## **12. What information is typically required as part of the merger notification?**

The prescribed form must be completed (Form 8) from the Fair Competition Commission Procedure Rules of 2013 and attached for each merging entities:

- Memorandum and articles of association
- Copies of audited financial statements for the last three years
- Strategic business plans
- Certificates of incorporation or registration
- Annual performance plan.

## **13. What are the applicable filing fees?**

Filing fees are calculated from the combined total annual turnover of the last audited accounts of the merging firms:

- Firms with annual turnover between TZS 800 million and TZS 25 billion will pay fees of TZS 25 million;
- Firms with annual turnover between TZS 25 billion and TZS 100 billion will pay fees of TZS 50 million;
- Firms with annual turnover of above TZS 100 billion shall pay TZS 100 million.

## **14. Do third parties have the right to participate or intervene?**

Any person with a sufficient interest in the proposed merger can make submissions to the FCC (or Tribunal).

## **15. Is the merger notification considered on the papers or are oral representations/hearings provided for as part of the review process?**

After the completion of the second stage of the investigation and the Director's presentation of the report of the case, the FCC shall conduct a hearing.

## **16. Are there appeal procedures?**

Yes, aggrieved parties can lodge an appeal with the Fair Competition Tribunal. Further, According to Section 61 of the Act, anyone with a pecuniary and material grievance arising from a decision of the Commission may appeal to the Tribunal for a review of the decision within 28 days after notification or publication of the decision.

## **17. Are there imminent legislative developments?**

None at the time of publication.

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# Zambia

## 1. What is the applicable legislative framework?

The Competition and Consumer Protection Act 24 of 2010 (“**Act**”); Competition and Consumer Protection (General) Regulations (“**Regulations**”).

## 2 Who are the relevant agencies?

The Competition and Consumer Protection Commission (“**CCP**”).

## 3. What is the definition of a “merger”?

A merger occurs where an enterprise, directly or indirectly, acquires or establishes, direct or indirect, control over the part of the business of another enterprise, or when two or more enterprises mutually agree to adopt arrangements for common ownership or control over the whole or part of their respective businesses.

## 4. Thresholds for Notification?

For a merger to be notifiable to the CCP, a three-fold test is applied, namely:

- There must be a change in control of the target enterprise or its assets;
- The parties to the transaction must meet the threshold of ZMW15 million of combined assets or turnover (whichever is higher); and
- The parties to the transaction must be operating in the Zambian market directly, through a subsidiary or make sales through exports.

## 5. Is the merger regime based on pre-closing or post-closing notification?

Parties to the merger must notify the transaction to the CCPC prior to implementation and can submit single, joint or severable applications in triplicate. Parties outside Zambia must appoint local legal representatives.

## 6. What triggers a “change in control”?

The Act gives the following instances when control occurs:

- Beneficially owning over half of the issued share capital of the enterprise;
- Being entitled to majority of votes at a general meeting, or having capability to control the voting of a majority of those votes;
- Possessing the power to appoint or veto the appointment of a majority of the directors of the company;
- Constituting the holding company of a subsidiary;
- In case of a trust being the enterprise, having the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or appoint or change the majority of the beneficiaries of the trust;
- Capability to materially influence the policy of the business;
- Capability to veto strategic decisions of the enterprise such as the appointment of directors and other strategic decisions which may affect the operations of the enterprise; or
- Capability to control the majority of: votes of the trustees, appointment of trustees, or appointment/change of beneficiaries of the trust.

## 7. What is the substantive test used to assess a merger?

The following 3 substantive tests exist:

- the probable effects of the merger in the relevant market, on trade and the economy;
- whether the merger is likely to prevent or substantially lessen competition;

- whether the proposed merger will be in the interest of the public.

### **8. Are public interests taken into consideration?**

The following public interest factors are taken into account during the assessment of the proposed merger:

- The extent to which the merger being beneficial to the public would outweigh any detriment attributable to a substantial lessening of competition;
- The extent to which the proposed merger could promote technical or economic progress and the transfer of skills or otherwise improve the production or distribution of goods or the provision of services in Zambia;
- The saving of a failing firm;
- Maintenance or promotion of exports from Zambia or employment in Zambia;
- The promotion of progress and the transfer of skills in Zambia;
- Socioeconomic factors as may be appropriate; and
- Any other factor that bears upon the public interest.

### **9. Are joint ventures notifiable?**

Full-function joint ventures, whose assets or turnover are above the notification threshold, must be notified to the CCPC.

Parties to auxiliary joint ventures might have to apply to the CCPC for authorization under the Act (see particularly Part III in this regard).

### **10. Are foreign-to-foreign mergers notifiable?**

Foreign-to-foreign mergers are notifiable if they, a) have an indirect or direct effect on the structure of local markets; and b) have sufficient presence in the Zambian markets, such as at least 10% of export sales for a period of at least three years.

### **11. A summary and overview of the merger review process.**

The CCPC must make a determination within 90 calendar days from the date of application, otherwise the transaction is deemed to have been approved. This period can be extended by 30 days, on notice to the parties, 14 days prior to the expiry of 90 days.

The CCPC may approve the transaction, with conditions to address competition or other concerns, without conditions, or prohibit it.

### **12. What information is typically required as part of the merger notification?**

The following must be filed with the CCPC:

- A completed Form 1;
- Audited financial statements of the merging parties generating a turnover in Zambia;
- The share purchase agreement between the parties or other documents relating to the transaction;
- Strategic plans of the merging parties and plans for the merged entity or the minutes of the board on the transaction;
- Relevant market or industry study reports which support the transaction.

### **13. What are the applicable filing fees?**

The filing fee is 0.1%, based on the highest of the turnover or assets of the economic entities in Zambia. Merging parties must submit their financial statements for purposes of the calculation. Turnover includes global turnover and, in respect of entities wholly domiciled outside of Zambia, turnover generated in Zambia.

**14. Do third parties have the right to participate or intervene?**

Public consultations (which include customers and competitors) are conducted by the CCPC in which stakeholders can comment on the proposed merger.

**15. Is the merger notification considered on the papers or are oral representations/ hearings provided for as part of the review process?**

The Act and Regulations do not provide the parties an opportunity to make representations prior to a decision being issued.

**16. Are there appeal procedures?**

Any person aggrieved by the decision may appeal to the Competition and Consumer Protection Tribunal within 30 days of the order. Any person aggrieved by the decision of the Tribunal may appeal to the High Court within 30 days of the Tribunal's decision.

**17. Are there imminent legislative developments?**

There are proposals to amend the Act as well as proposed amendments to the Fines Guidelines.

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# Zanzibar

## **1. What is the applicable legislative framework?**

Fair Competition and Consumer Protection Act No. 5 of 2018 (“Act”).

## **2. Who are the relevant agencies?**

Zanzibar Fair Competition Commission (“FCC”).

## **3. What is the definition of a “merger”?**

A merger is defined as an acquisition of shares, a business or other assets, whether inside or outside Zanzibar, resulting in the change of control of a business, part of a business or an asset of a business in Zanzibar.

## **4. Threshold for Notification?**

Where the combined asset value or turnover (whichever is higher) of the merging firms exceeds TZS500 000 000, such transaction shall be notifiable to the FCC.

## **5. Is the merger regime based on pre-closing or post-closing notification?**

Parties will only implement the merger transaction after the FCC has examined and allowed the merger.

## **6. What triggers a “change in control”?**

The Act does not make provision for “control”.

## **7. What is the substantive test used to assess a merger?**

The FCC considers the following, in checking whether the merger strengthens or creates dominant position;

- The actual potential level of import competition in the market,
- Ease of entry and exit into the market,
- The level of concentration and the degree of countervailing power in the market,
- Whether the merger will result in the increase of prices or profit margins
- The extent to which substitutes are available in the market,
- Whether the merger will result in the removal of a competitor in the market, and
- Whether the merger will result or is likely to benefit the public.

## **8. Are public interests taken into consideration?**

Public interest considerations are taken into account by the FCC when assessing the likely benefits of the merger to the public.

## **9. Are joint ventures notifiable?**

Yes. Joint ventures are required to be notified where the joint venture involves an entity established within Zanzibar and will affect business or assets in Zanzibar.

Joint ventures that lead to market control are specifically prohibited in terms of the Act.

## **10. Are foreign-to-foreign mergers notifiable?**

Mergers are only notifiable when one of the parties is established within Zanzibar.

**11. A summary and overview of the merger review process.**

The Act does not provide a breakdown of the merger review process.

**12. What information is typically required as part of the merger notification?**

The Act does not provide what information is required to accompany a merger notification.

**13. What are the applicable filing fees?**

Filing fees are 2% of the combined total annual turnover or assets (whichever is higher) of the merging parties and such amount shall not exceed TZS100 million.

**14. Do third parties have the right to participate or intervene?**

Third parties may submit information to the FCC to be considered as part of the merger review process.

**15. Is the merger notification considered on the papers or are oral representations/ hearings provided for as part of the review process?**

If the FCC deems that information or a merger notification will affect market power or create a dominant position in the market, it may call a person to give oral information/ evidence on the transaction or identified concerns.

**16. Are there appeal procedures?**

Yes, an appeal against the decision of the FCC may be lodged in the Zanzibar Fair Competition Tribunal.

The aggrieved party can also appeal the decision of the Tribunal in the Court of Appeal.

**17. Are there imminent legislative developments?**

None at the time of publication.

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# Zimbabwe

## 1. What is the applicable legislative framework?

Competition Act [Chapter 14:28] (“Act”) and the corresponding Regulations.

## 2. Who are the relevant agencies?

Competition and Tariff Commission (“Commission”).

## 3. What is the definition of a “merger”?

In terms of the Act, a ‘merger’ means the direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person whether that controlling interest is achieved as a result of:

- The purchase or lease of the shares or assets of a competitor, supplier, customer or other person;
- The amalgamation or combination with a competitor, supplier, customer or other person; or
- Any other means other.

## 4. Threshold for Notification?

According to Section 34A of the Act, parties to a merger must notify the Commission within 30 days of conclusion of the merger agreement between the merging parties, or the acquisition by any one of the parties to that merger of a controlling interest in another, in writing. Such notification should occur if the combined annual turnover or assets (whichever is higher) totals more than ZWD 10 million.

## 5. Is the merger regime based on pre-closing or post-closing notification?

As mentioned above, the Commission must be notified within 30 days of closing. Parties to a global merger may close the deal globally prior to obtaining approval from the Commission.

It should be noted, however, that the Commission may prohibit the merger or approve the merger subject to conditions. Parties, therefore, run the risk of implementing a merger which may subsequently have to be ‘undone’.

## 6. What triggers a “change in control”?

The Act defines ‘controlling interest’ broadly as follows:

- for a business – any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the undertaking;
- for an asset – any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the asset.

The test for control in Zimbabwe is, therefore, broader than the ‘decisive influence’ test.

## 7. What is the substantive test used to assess a merger?

When assessing a merger, the Commission will consider whether the proposed transaction will lead to substantial lessening of competition, whether the merger will either enhance or lead to creation of a monopoly in the relevant market; and consider issues of public interest such as the creation of jobs, investment, and social issues such as ‘indigenization’ and ‘empowerment’.

## 8. Are public interests taken into consideration?

Yes, the Commission will consider issues of public interest such as the creation of jobs, investment, and social issues such as ‘indigenization’ and ‘empowerment’.

In determining whether the merger is contrary to the public interest, the Commission considers all relevant facts and especially the following factors:

- the desirability of maintaining and promoting effective competition between businesses producing or distributing products or services in Zimbabwe;
- promoting the interests of consumers, purchasers and other users in terms of prices, quality and variety; and
- Promoting competition that will have the effect of reducing costs, enhancing innovation in the market, and encouraging the entry of new competitors.

### **9. Are joint ventures notifiable?**

The term 'merger' as defined in the Act envisages that there should be either a horizontal or vertical relationship between the merging parties.

Accordingly, transactions (such as pure conglomerate mergers) where there is no horizontal or vertical relationship between the parties is not notifiable. The same would apply in respect of the establishment of a 'green field' or new enterprise.

In practice, however, parties who do pursue a joint venture (including co-operative joint ventures) notify the joint venture as a merger if the financial thresholds are met. Similarly, where a party acquires a controlling interest in an existing joint venture, the transaction will fall within the 'merger' definition.

### **10. Are foreign to foreign mergers notifiable?**

Zimbabwe's merger-control regime does not have separate financial thresholds for the acquiring firm and the target. Accordingly, pure foreign-to-foreign mergers may meet the mandatorily notifiable thresholds without having an effect in Zimbabwe. The Commission's current practice, however, is that it does not require notification of mergers that have no domestic effect in Zimbabwe. There is, however, no formal agency guidance on this topic to date.

### **11. A summary and overview of the merger review process.**

The merger must be notified to the Commission within 30 calendar days after:

- The conclusion of the merger agreement between the parties; or
- The acquisition by any party of a controlling interest in another business.

The Act does not prescribe time frames in terms of which a merger must be evaluated. Accordingly, there is only a single 'phase' during which all mergers (complex and non-complex) are evaluated.

The Commission currently requires between 30-90 calendar days to consider a merger and issue its decision. As noted in question 1 above, proposed amendments to the Commission's policy is likely to require the Commission to evaluate mergers within 60 calendar days.

Typically, merger filings are not published. However, the Commission may, at its discretion, publish a notice of the transaction in the Government Gazette and in a national newspaper. The notice states the authorisation sought by the parties to the transaction, and calls upon interested parties to submit written comments about the transaction.

### **12. What information is typically required as part of the merger notification?**

- Details of the proposed arrangements by which the merging parties will cease to be distinct;
- Details of the ownership and control of the merging parties, before and after the conclusion of the transaction;
- Copies of the latest annual reports and accounts;

- Reasons for the merger;
- Estimated time scale for the completion of the merger;
- How the merger may impact the public interest or have any other adverse effect;
- The main products and/or services supplied by each of the merging firms;
- An estimate of each party's market share;
- Names and market shares of competitors; and
- An estimate of the capital expenditure required to enter the market on a scale necessary to gain a significant market share.

**13. What are the applicable filing fees?**

The filing fees are calculated at 0.5% of the combined annual turnover or combined value of assets in Zimbabwe of the merging parties, whichever is higher; however, the minimum filing fee payable is USD 10,000 and the maximum filing fee payable is USD 50,000. The calculation is based on the previous fiscal year's financials.

**14. Do third parties have the right to participate or intervene?**

Yes, a member of the public or another business entity which has concerns or information on a proposed merger may submit their views on the proposed merger to the Authority.

**15. Is the merger notification considered on the papers or are oral representations/ hearings provided for as part of the review process?**

Oral submissions may be considered on merit.

**16. Are there appeal procedures?**

The Commission is an autonomous body empowered in terms of section 4 of the Act and is the only agency authorised to investigate and approve a merger. As such its decisions are not subject to review by any other authority in Zimbabwe.

**17. Are there imminent legislative developments?**

None at time of publication.

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# About Primerio

The African continent remains an important investment destination. Understanding the legal framework and culture of each African jurisdiction is crucial to managing commercial and reputational risks. With our on-the-ground team of legal practitioners and advisors, Primerio works intimately with each of our clients to navigate the legal landscape and deliver commercially oriented legal advice as we continue to manage the African legal and commercial landscape.

Primerio offers dedicated legal and economic consultancy services to high-profile multinational corporations, SMEs, as well as individuals throughout the continent:

- Antitrust and Competition
- Anti-Corruption and bribery
- African Regulatory Compliance
- Dispute Resolution, including Mediation, Arbitration, Cross Border Litigation and White Collar Crime Matters
- Business Development, incl. Pan-African and Domestic Government Relations,
- Rights Issuance and Advice.

We have unparalleled experience with multi-jurisdictional bodies such as COMESA (with two former Commissioners on our team) and have represented clients in more than 17 countries.

With a laser focus on African issues, Primerio is able to provide uncompromising client service and tailor-made solutions: cost-effective, nimble, and experienced counsel responsive to your needs, always keeping in mind the balance of local focus and the increasingly global context of today's Africa matters.

We have handled hundreds of complex and sensitive personal and business matters for our clients, both in Africa and worldwide.

Our unique approach and outstanding regional expertise ensure that you are in full compliance with relevant African, European, and North American laws.

We specialise in all aspects of competition law, regulatory, anti-corruption / FCPA, M&A, dawn-raid preparation, and litigation. We are experts in the design and audit of corporate compliance programmes.

Our team members are present across the African continent, including Kenya, Nigeria, Ghana, Egypt, Cameroon, Zambia, South Africa, Mauritius, the Democratic Republic of Congo, Namibia, and Zimbabwe, as well as in the EU and the U.S.

# Key Primerio personnel: Mergers & Acquisitions



**John Oxenham** Founding director of Primerio, John practices broadly in the regulatory field and principally in competition law and white-collar crimes, including industry restructuring initiatives, joint ventures, cartel investigations, leniency applications, merger control, merger intervention, general competition litigation, FCPA and similar investigations and defence work, and commercial litigation across various African jurisdictions.



**Andreas Stargard** A senior member of Primerio, Andreas is legal, strategic, and business advisor to companies and individuals across the globe. His focus areas are antitrust and competition advice, white-collar counselling, contract litigation and negotiation, and resolution of global business disputes, including cartel work, corruption allegations and internal investigations, intellectual property and distribution issues.



**Michael-James Currie** Senior member of Primerio, Michael practices principally in the field of competition and general regulatory law and has experience in a broad range of competition law matters including advising clients on general restrictive practices, abuse of dominance cases, cartel investigations, search and seizure operations, leniency and exemption applications, market inquiries and merger control across Africa.



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