

EACCA, FCC, AND ZFCC INTERFACES IN MERGER CONTROL

Background

In the merger and acquisition space, this week marks a significant milestone. It is the final week before the East African Community Competition Authority (“**EACCA**”) begins accepting merger applications for approval. As explained below, EACCA will officially start receiving merger filings effective 1 November 2025, which means we technically have five clear days before the process kicks off.

This development raises important questions about the role of national competition authorities, specifically, the Fair Competition Commission (“**FCC**”) and the Zanzibar Fair Competition Commission (“**ZFCC**”). What will be the filing requirements going forward? Will parties be required to submit triple merger notifications to EACCA, FCC, and ZFCC? Or will double or even single notifications suffice?

In this article, we examine these questions by analyzing the current legal framework and the positions of the relevant authorities.

EACCA

Via the East African Community Gazette dated 1 July 2025 (Legal Notice No. EAC/191/), the EACCA issued a general notice of commencement of receipt of notifications of mergers and acquisitions with cross-border effect. According to the notice, the EACCA shall commence receiving mergers and acquisitions applications and notifications under the Under the East African Community Competition Act, 2006 from 1 November 2025.

EACCA is an independent organ of the EAC. The EAC is a regional intergovernmental body composed of eight partner states: Burundi,

Kenya, Rwanda, Tanzania, Uganda, and South Sudan, Democratic Republic of Congo and Somalia. The EACCA is tasked with the role of developing appropriate procedures for public awareness, consultation, and participation. Its objective is to enhance the analysis of cross-border mergers and acquisitions while preventing any anti-competitive impacts resulting from such mergers.

According to Article 21(I) of the Customs Union Protocol and Article 33(I) of the Common Market Protocol, EAC Member States are required to prohibit any practices that negatively affect free trade, including agreements or actions aimed at preventing, restricting, or distorting competition. These prohibitions apply to mergers or acquisitions that create or strengthen a dominant position, thereby significantly impeding effective competition within the EAC or a substantial part of the EAC Member States.

Notifiable Merger: EACCA

Under the East African Community Competition Act, 2006, where a merger or acquisition transaction has cross-border implications and meets the notification thresholds, it must be reported to the EACCA if the combined turnover or assets of the merging undertakings in the EAC, whichever is higher, reaches or exceeds USD 35 million and if at least two undertakings involved in the merger or acquisition have a combined turnover or assets of USD 20 million within the EAC, unless each party to the merger achieves at least two-thirds of its aggregate turnover or assets in the EAC within a single Member State.

Notifiable Merger: Tanzania

The Fair Competition Act, Cap 285 R.E 2023 (the “**FCA**”), and the Competition Rules, 2018 (the “**Competition Rules**”), set out a two-

pronged test (both of which must be met) to determine if a 'merger' is notifiable to the Fair Competition Commission.

- (a) change of control – the transaction must involve a change of control of a business or assets in Tanzania; and
- (b) financial threshold – the combined turnover or asset value, whichever is higher, of the merging parties must meet or exceed a set threshold.

Change of Control

The FCA defines a “merger” 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 in Tanzania.”

Although change of control is not specifically defined under Tanzanian law, the FCC takes a broad view. It considers change of control as any situation where a party gains significant or decisive influence over the target's assets or operations.

Financial threshold

A merger is notifiable to the FCC if the merging parties combined annual turnover or asset value (whichever is higher) during the previous financial year is equal to or greater than TZS 3.5 billion. In practice, the FCC assesses this based on the combined worldwide turnover of the parties, making almost merger transactions to be notifiable.

Target's presence in Tanzania

Under Tanzanian competition law, a merger is defined as the acquisition of shares, a business, or other assets, whether inside or outside Tanzania, that results in a change of control over a business or its assets in Tanzania. The requirement to notify the FCC only arises where the

transaction leads to a change of control in Tanzania. This includes situations where the target has a presence or nexus in Tanzania, either directly or through business arrangements such as distributorship agreements.

Where the target entity has no physical presence in Tanzania and no business arrangements (such as distributorships or agency relationships) that would establish a nexus in the country, the proposed offshore transaction is unlikely to result in a change of control over any business or assets in Tanzania, in which case it would not be notifiable in Tanzania even though the combined turnover or asset value is above TZS 3.5 billion (approx. EUR 1.30 million)). It would be necessary to assess how the target is deriving turnover in Tanzania (e.g. how the sales are made, the frequency of the sales etc).

If the two thresholds mentioned above are met and provided that the target has a presence in Tanzania as outlined, we have observed that the FCC has increasingly sought to impose penalties on parties that fail to comply with merger notification requirements. Accordingly, the likelihood of the FCC conducting an investigation is higher. Notably, under the 2024 amendments to the Fair Competition Act, the FCC now has the authority to investigate transactions without any time limitation (previously this was capped at 6 years), which reflects a broader regulatory trend toward stricter enforcement. Failure to notify a notifiable transaction may result in substantial penalties, including fines of up to 10% of the combined annual turnover of the merging parties.

EACCA Interface with FCC

The FCC administers Tanzania's local competition regime, which operates under thresholds that differ from those of the EACCA. Similar to the EACCA regime, transactions may not be implemented in Tanzania

until clearance is obtained from the FCC. Currently, Tanzania's competition framework does not provide for formal coordination with the EACCA. As a result, transactions with a cross-border effect are subject to dual notifications, to both the FCC and the EACCA. However, based on regional practice, it is anticipated that the FCC may cede jurisdiction to the EACCA where EACCA thresholds are triggered, in order to avoid overlapping reviews and regulatory duplication.

Status of Jurisdictional Ceding

On 1 November 2023, the EACCA and FCC signed a Memorandum of Understanding (“**MoU**”) aimed at enhancing cooperation in the enforcement of competition laws. However, the MoU does not address how the two authorities will handle merger filings with cross-border implications.

Technically, the MoU does not constitute formal acceptance of EACCA's jurisdiction over mergers in Tanzania. As at the date of this article, the FCC has not formally recognized EACCA's authority over mergers and acquisitions affecting Tanzania. Consequently, any transaction with a cross-border effect remains subject to dual filings, with both the FCC and the EACCA.

In this context, the FCC's directives regarding jurisdictional acceptance, whether through public notice or other forms of communication, are critical during this interim period. This is especially important ahead of any amendments to the Tanzanian Competition Act that would formally recognize EACCA's jurisdiction. Such amendments may take time, as they must be passed by Parliament, which has currently been dissolved.

Recommended Way Forward

In the interim, prior to the issuance of a public notice or any other forms of communications, the clients may wish to obtain an official written response from the FCC. This could take the form of a confirmatory letter requesting the FCC to confirm whether a filing with the EACCA alone would be deemed sufficient. This approach may provide an added layer of comfort, as the confirmation would be issued directly by the FCC.

EACCA Interface with ZFCC

Tanzania comprises Mainland Tanzania and Zanzibar. While Tanzania represents both parts of the union in international affairs, the Constitution of Tanzania does not list competition as a union matter. As a result, the FCC does not exercise jurisdiction over mergers and acquisitions in Zanzibar. In this context, the ZFCC must separately accept EACCA's jurisdiction, and corresponding amendments to Zanzibar's competition laws would be required.

At present, we are not aware of any formal steps taken by the ZFCC to cede jurisdiction to the EACCA for transactions with a cross-border effect that extend to Zanzibar. In the absence of formal jurisdictional acceptance and legal amendments, any transaction involving Zanzibar may also be subject to dual notifications, to both the ZFCC and the EACCA.