

DO I NEED COMPETITION APPROVAL FOR THE ACQUISITION OF A SINGLE SHARE?

Background

A frequently asked question under Tanzania's competition regime is whether the acquisition or transfer of even a single share requires approval from the Fair Competition Commission (**FCC**). Some parties tend to overlook this issue, assuming that the transfer of just one share is too minor to trigger regulatory scrutiny. While this assumption may hold true in certain cases, it is not universally true, particularly where the acquiring party is a third party (i.e., a prospective buyer who is not already directly or indirectly involved in the company). Regardless of the size or number of shares being transferred, competition approval may be required if the thresholds or conditions set out below are met. Please note that if competition approval is required, the parties to the transaction are not permitted to implement the transaction until approval has been granted by the FCC. Failure to comply with this requirement may expose the parties to penalties under Tanzanian competition law.

Applicable Tests/Conditions

The competition law in Tanzania sets out a two-pronged test (*both of which must be met*) to determine whether a “merger” is notifiable:

- (a) Change of Control Test; and
- (b) Financial Test.

Regarding the Financial Test, a merger is notifiable to the FCC if the combined annual turnover or asset value of the merging

parties, whichever is higher, during the preceding financial year is equal to or exceeds TZS 3.5 billion (c. USD 1.6 million).

The law defines a **“merger”** as the acquisition of shares, a business, or other assets, whether inside or outside Tanzania, that results in a change of control of a business, part of a business, or an asset of a business in Tanzania. It further defines an **“acquisition”** in relation to shares or assets as the acquisition, either alone or jointly with another person, of any legal or equitable interest in such shares or assets. However, this definition expressly excludes acquisitions made solely by way of charge.

As for Change of Control Test, there is no statutory definition of “Change of Control” under Tanzanian competition law. However, the Fair Competition Tribunal decided in the landmark case of Toyota Tsusho Corporation (Alliance Autos Ltd) v. FCC, Appeal No. 6 of 2013, that change of control means a situation where one party acquires the possibility of exercising significant or decisive influence on the decision-making process of the company. Such an influence may arise by the ownership of all or part of the company’s assets, shares or rights. In conducting its analysis, the FCC will review whether the purchasing party has acquired the potential ability to materially influence the business policy and operations of the target in the post-merger scenario, irrespective of the size of ownership change.

In FCC v. Mo Simba and Simba Sports Club (2021), the FCC emphasized that the acquisition of minority shares may amount to a notifiable merger only if it entails a change of control or confers special rights on minority shareholders, such as veto powers or influence over strategic decisions. A merger that

either results in the acquisition of a minority interest or shifts a jointly controlled entity to sole control may, therefore, meet the mandatory notification requirement.

This position by the FCC is inspired by the European Commission's approach, where minority acquisitions are assessed if they confer "decisive influence" on the acquiring firm. Only minority acquisitions that allow substantial influence over the target company's strategic decisions are reviewed. The European Commission considers whether the acquisition provides veto rights, board representation, or other rights that permit influence over critical decisions.

FCC's decision on transactions that involve minority acquisitions is also persuasively influenced by the South African competition law where the South African Competition Commission requires notification if a minority stake affords "significant influence" over the target's policies or strategic direction.

Conclusion

To conclude, before implementing any share transfer transaction, it is essential to consult an experienced M&A legal advisor or firm for guidance. This will help you avoid potential penalties in cases where the FCC may invoke various enforcement provisions under Tanzanian competition law. As a note, 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.