

Merger Notification in Tanzania: What You Need to Know About the Fair Competition Commission (FCC)

A practical guide to understanding merger control, change of control, and notification requirements under Tanzania's Fair Competition Act.

Is Your Transaction Notifiable? Understanding the Two-Prong Test

Under the Fair Competition Act (FCA), a merger is notifiable to the Fair Competition Commission (FCC) if it meets two conditions: (1) it involves a **change** of control, and (2) it meets the **financial threshold**. Specifically, a merger is notifiable if the combined annual turnover or asset value (whichever is higher) of the merging parties during the previous financial year is equal to or greater than TZS 3.5 billion (approximately USD 1.6 million).

Pre-Implementation Requirements: No Closing Without Approval

The Competition Rules prohibit parties from implementing a notifiable merger until it has been approved by the FCC. When filing a merger notification application, parties must also submit an undertaking confirming they will not implement the proposed transaction until FCC approval is obtained.

Key Definitions Under Section 2 of the FCA

Section 2 of the FCA defines several key terms. A "**merger**" means "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." An "acquisition" is defined as, "in relation to shares or assets means acquisition, either alone or jointly with another person, of any legal or equitable interest in such shares or assets but does not include acquisition by way of charge only."

What Constitutes a "Change of Control" in Tanzania?

Notably, there is no statutory definition of "change of control" under Tanzanian competition law. However, the FCC Tribunal provided critical guidance in the landmark case of *Toyota Tsusho Corporation (Alliance Autos Ltd) v. FCC*, Appeal No. 6 of 2013. The Tribunal held 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 influence may arise from ownership of all or part of the company's assets, shares, or rights. The FCC will assess 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.

How the FCC's Approach to Change of Control Has Evolved

Historically, the FCC took a very broad view of the change of control provision. This resulted in virtually all changes in shareholding, both direct and indirect, being notifiable if the financial



threshold was met, regardless of the size of shareholding concerned. Even internal restructurings where the ultimate ownership of a corporate group did not change were deemed notifiable. However, over the last few years, there has been a **favorable shift** in the FCC's interpretation, particularly for internal restructurings. In several recent opinions involving transactions that did not result in an appreciable shift in the concentration of decision-making power, the FCC determined that such mergers were not notifiable. These decisions suggest a softening of approach compared to the FCC's historical hard stance.

Minority Acquisitions: When Do They Trigger a Notification?

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

Influence From International Best Practices

The FCC's position on minority acquisitions is inspired by international best practices. The **European Commission's approach** requires that minority acquisitions be 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.

Similarly, the FCC's decisions are persuasively influenced by **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.

Key Takeaways for Businesses Operating in Tanzania

If you are considering a merger, acquisition, or restructuring that involves a Tanzanian business, here are the essential points to keep in mind:

- **Check both prongs.** A transaction is notifiable only if it involves a change of control and meets the TZS 3.5 billion financial threshold.
- **Do not close before approval.** Parties must obtain FCC approval and submit a non-implementation undertaking before completing the transaction.
- **Change of control is broadly interpreted.** While the FCC's approach has softened in recent years, even minority acquisitions and internal restructurings may trigger notification requirements depending on the circumstances.



- **Seek early legal advice.** Given the evolving nature of the FCC's interpretation, it is advisable to obtain legal guidance early in the transaction process to determine whether notification is required.

This article is for informational purposes only and does not constitute legal advice. For specific guidance on merger notification in Tanzania, please contact our team.