

Tanzania & Zanzibar Merger Control: Is There a Look-Back Period for Unnotified Mergers?

Introduction

Merger control is a cornerstone of competition law in both Tanzania Mainland and Zanzibar. Both jurisdictions require businesses to notify their respective competition authorities before completing qualifying mergers. However, the timeframe within which the authorities can act against failures to notify differs significantly. This divergence became more pronounced following the Fair Competition (Amendment) Act, 2024, effective 11 October 2024.

This article compares the look-back period for unnotified mergers under the Fair Competition Act, 2003 (as amended in 2024) for Tanzania Mainland and the Fair Competition and Consumer Protection Act, 2018 for Zanzibar, and explains the practical implications for businesses.

What Is a Look-Back Period in Merger Control?

A look-back period is the time window within which a competition authority can take enforcement action against a merger completed without the required notification or approval. Once it expires, the authority generally loses the ability to challenge or unwind the transaction.

The Position in Tanzania Mainland: Before and After the 2024 Amendments *Before the 2024 Amendments*

Under the original Fair Competition Act, 2003, it was prohibited to give effect to a notifiable merger without filing a notification with the Fair Competition Commission (FCC) at least 14 days beforehand. The FCC was empowered to make compliance orders – including divestiture or voiding the acquisition – within three years after the acquisition. Additionally, the law provided a general six-year enforcement look-back under which the *Commission* could *act upon any offence*, including completing a merger without notification, within six years of its commission.

After the 2024 Amendments

Among the most significant changes was the deletion of the six-year look-back period. The FCC is no longer constrained by any statutory time limitation when pursuing enforcement action against unnotified mergers. It can now investigate and act against a merger completed without notification at any time, regardless of how many years have elapsed. Businesses that completed notifiable mergers without FCC approval – whether recently or many years ago – now face enforcement action with no statutory time bar.

The Position in Zanzibar: A Defined Three-Year Window

Zanzibar has its own competition law framework under the Fair Competition and Consumer Protection Act, 2018 (Act No. 5 of 2018), administered by the Zanzibar Fair Competition Commission (ZFCC). Under this framework, any merger that creates or strengthens a position of dominance distorting competition is prohibited. Notification to the ZFCC is required when at least one enterprise is established in Zanzibar and the resulting market share is likely to create market power.

Critically, the law provides an enforcement mechanism for unnotified mergers: where the ZFCC is satisfied that shares or assets were acquired in breach of the merger prohibition, it may make an order **at any time within three years after the acquisition**, either requiring the acquirer to dispose of the shares or assets, or declaring the acquisition void and ordering the return of assets and refund of the acquisition price.

Unlike Tanzania Mainland, Zanzibar has not amended this provision. The three-year look-back period remains in place. Once three years have passed from the acquisition date, the ZFCC can no longer order divestiture or void the transaction.

What Can the ZFCC Do Within the Three-Year Window?

Within this three-year window, the ZFCC may:

- (a) **Investigate the transaction** on its own initiative or at the request of any affected person.
- (b) **Order divestiture** of some or all shares or assets acquired.
- (c) **Declare the acquisition void** and order the return of assets to the vendor with a refund of the acquisition price.
- (d) **Issue compliance orders** requiring corrective actions or restraint from contravening conduct.
- (e) **Impose penalties** of TZS 1-5 million, up to one year imprisonment, or both.

After three years, the ZFCC's power to order divestiture or void an acquisition lapses – in stark contrast to Tanzania Mainland, where the FCC now has an unlimited enforcement window.

Practical Implications for Businesses

- A. **Tanzania Mainland:** With no limitation period, any historical unnotified merger could be scrutinised. Businesses should consider proactively engaging with the FCC to regularise their position.
- B. **Zanzibar:** The three-year window should not be treated as an invitation to avoid notification. The ZFCC can unwind transactions entirely within that period, and non-compliance carries criminal penalties.
- C. **Both jurisdictions:** The merger control regimes are separate. FCC clearance does not extend to Zanzibar and vice versa. Businesses must ensure compliance with both regimes independently.

Conclusion

The 2024 amendments mark a significant tightening of merger control on the Mainland – the FCC now has an open-ended mandate to pursue unnotified mergers. In Zanzibar, the three-year window continues to apply, giving the ZFCC a defined but meaningful period to order divestiture or void unauthorised acquisitions. The divergence underscores the importance of understanding each jurisdiction's specific competition framework and ensuring full compliance with notification requirements.