



Competition law merger guide: Africa





PwC Legal

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Drawing upon the capabilities of our global network of competition economists, valuation specialists, competition lawyers and forensic consultants, PwC Legal offers strategic, commercially relevant advice on a range of domestic and transnational competition matters, including merger control, compliance, prohibited practices and dawn raids.

In respect of Africa, PwC Legal is able to advise and otherwise assist clients in respect of most African competition law regimes.

The contents of this guide are for general information purposes only and do not constitute legal or other advice.

Should you require any advice in respect of the contents hereof, kindly contact the PwC contact in the relevant jurisdiction.

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Merger control in Africa

Merger control regimes have been introduced across Africa at an unprecedented rate in recent years. With only a handful of jurisdictions having an operational merger control regime in 2000, there are now over 25 jurisdictions (both domestic and regional) with operational merger control regimes.

In the first half of 2019, merger control authorities in Angola and Nigeria have become operational, with Mozambique expected to become operational soon.

In addition to the numerous domestic merger control regimes, there are no less than four regional merger control regimes on the continent, with the East African Community being the most recent to become operational.

With more countries in Africa adopting merger control regimes, merger control law must be front of mind when conducting business, and investing, in Africa.





Algeria

Relevant legislation and enforcement agency

The relevant legislation is Act No. 08-12, Ordinance No. 03-03 of 19 July 2003 (the 'Algerian Ordinance') and Executive Decree No. 05-219 of 22 June 2005, which is enforced by the National Competition Council.

Definition of a merger

A merger occurs if –

- two or more previously independent undertakings merge; or
- one or more natural persons already controlling of at least one undertaking acquire, or if one or more undertakings acquire, control of all or part of one or more other undertakings, directly or indirectly, whether by the acquisition of a holding in the capital, or by purchasing assets; or
- a joint venture is created which performs all the functions of an autonomous economic entity.

Thresholds

A merger is notifiable to the National Competition Council if it is likely to threaten competition, or if the merger will result in the merging parties acquiring 40% or more of a relevant market in Algeria.

No notification is required if the merger is likely to (i) increase employment in Algeria, (ii) increase competition in Algeria, or (iii) reinforce the market position of small and medium-sized businesses in Algeria.

Pre-implementation

The National Competition Council must be notified of any notifiable mergers, which mergers may not be implemented unless and until approved by the National Competition Council. If a notifiable merger is implemented without the prior approval of the National Competition Council, the National Competition Council may impose an administrative penalty of up to 7% of the merging parties' combined turnover derived in Algeria during their previous financial year.

Timing

The National Competition Council must make a decision within three months, and no extension of the time is permitted.

Filing fee

No filing fee is payable.



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Angola

Relevant legislation and enforcement agency

The relevant legislation is the Law No. 5/18 of 10 May (the 'Angolan Competition Act'), which is enforced by the Competition Regulatory Authority.

The Competition Regulatory Authority became operational in the first week of February 2019.

Definition of a merger

A merger occurs if there is a permanent change in control of a company or part of one or more companies resulting from (i) a merger of two or more companies, or parts of companies, which were formerly independent, or (ii) the direct or indirect acquisition of control of whole or part of the share capital, or assets, of one or more companies, by one or more companies or by one or more individuals.

Control may be achieved or acquired in any manner, including –

- the acquisition of the whole or a part of the share capital of a company;
- the acquisition of ownership rights, or rights to use the whole or part of the assets of a company; and
- the acquisition of rights or the signing of contracts which confer a decisive influence on the composition, voting or decisions of the company's corporate bodies.

Thresholds

A merger is notifiable if –

- the merger leads to or reinforces a market share of 50% or more; or
- the merger leads to or reinforces a market share of more than 30% and less than 50%, and, in the most recent financial year of the merging parties, the turnover of each merging party in Angola Kz450 million; or
- in the last year, all the parties involved in the merger have achieved a combined turnover of Kz3.5 billion or more.

Pre-implementation

The Competition Regulatory Authority must be notified of any notifiable mergers and such mergers may not be implemented unless and until approved by the Competition Regulatory Authority. If a notifiable merger is implemented without the prior approval of the Competition Regulatory Authority, the Competition Regulatory Authority may impose an administrative penalty of up to 10% of the merging parties' combined turnover derived during their previous financial year.



Timing

The Competition Regulatory Authority has a period of 120 days within which to complete its investigation and issue its report in respect of a non-complex merger, and 180 days in respect of a complex merger. If the Competition Regulatory Authority does not complete its investigation and issue a decision within 120 days in respect of a non-complex merger, the merger will be deemed approved. However, in respect of a complex investigation, the merger will be deemed prohibited if the investigation is not completed and a decision issued within 180 days.

Filing fee

The Angolan Competition Act contemplates the payment of filing fees, which have not yet been promulgated.

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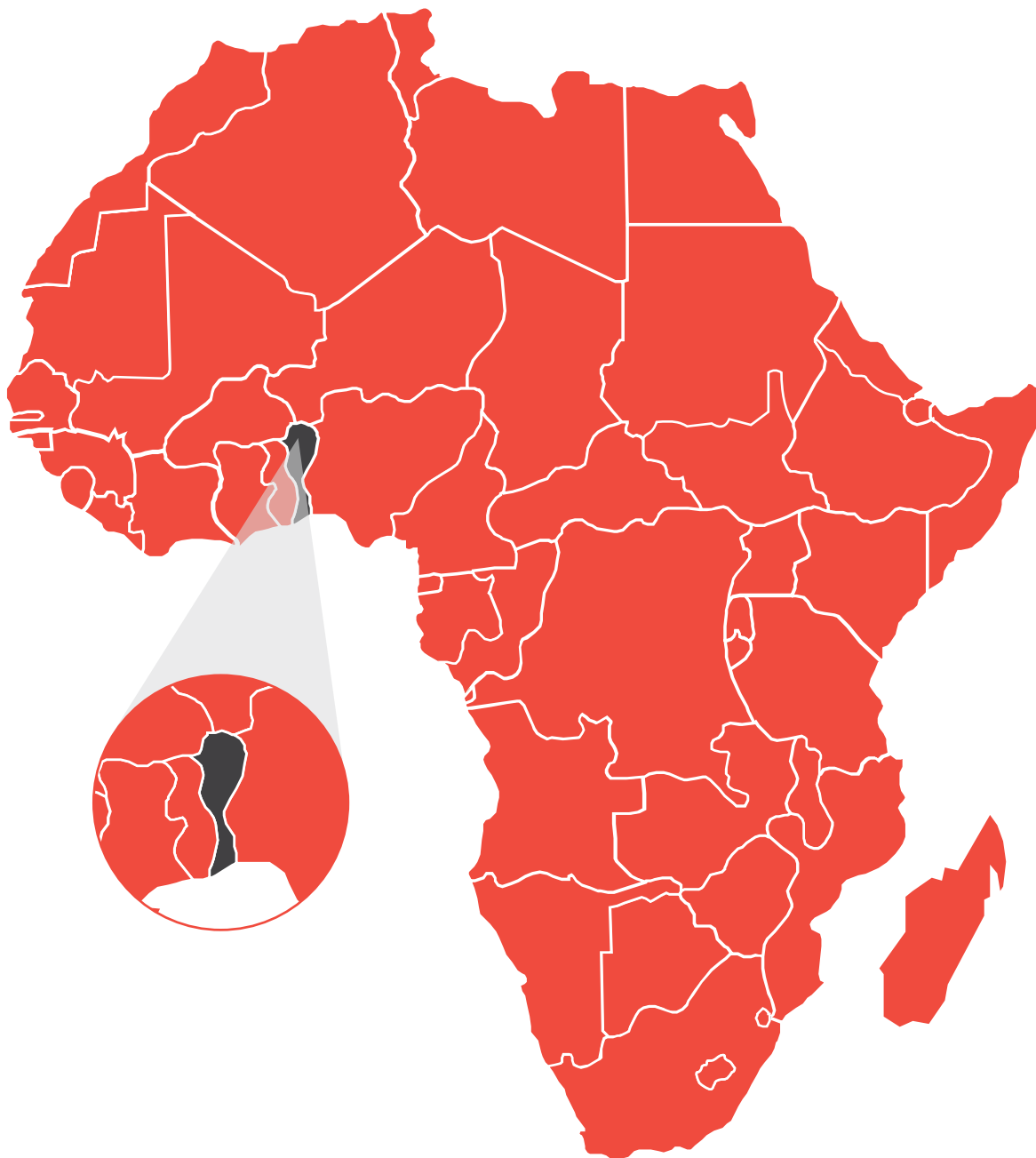
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Benin

There is no domestic competition law merger control regime in Benin, however, it is a member of the Union Economique et Monétaire Ouest Africaine. Kindly refer to page 45 for further information in this regard.



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Botswana

Relevant legislation and enforcement agency

The relevant legislation is the Competition Act 4 of 2018 (the 'Botswana Competition Act'), which is enforced by the Competition Authority and the Competition Tribunal. The Competition Authority conducts investigations and deals with matters incidental to the Botswana Competition Act, and the Competition Tribunal deals with adjudicative matters under the Botswana Competition Act.

Definition of a merger

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

Control may be achieved in any manner, including –

- the purchase or lease of shares, an interest, or assets of another enterprise; or
- the amalgamation or other combination with another enterprise.

Thresholds

A proposed merger is notifiable if –

- the turnover in Botswana of the target enterprise(s) exceeds P10 million;
- the combined assets in Botswana of the target enterprise(s) exceed P10 million; or
- the enterprises concerned would, following implementation of the merger, supply or acquire at least 20% of a particular description of goods or services in Botswana.

Pre-implementation

If a merger is notifiable, the parties may not implement the merger unless and until approved by the Competition Authority. If a notifiable merger is implemented without the prior approval of the Competition Authority, the Competition Authority may (i) impose an administrative penalty of up to 10% of the merging parties' combined turnover derived during their previous financial year, (ii) declare the merger void and/or (iii) order the merging parties to divest of any assets, interests or shares acquired pursuant to such merger.

Timing

The Competition Authority has an initial period of 30 days to conduct its investigation and make a decision in respect of the merger, which period may be extended by a further period of 60 days. If the Competition Authority does not make a decision within the prescribed period, the merger will be deemed approved by the Botswana Competition Authority.



Filing fee

The filing fee is an amount equal to 0.01% of the merging enterprises' combined turnover or asset value in Botswana, whichever is higher, during their previous financial year.

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Burundi

Relevant legislation and enforcement agency

The relevant legislation is the Competition Law No. 1/06 of March 2010 (the 'Burundian Competition Act'), which is enforced by the Competition Commission (the 'Burundian Commission'). As at the date of publication hereof, the Burundian Commission has not been established.

Burundi is also a member of the Common Market for Eastern and Southern Africa and the East African Community. Kindly refer to pages 43 and 44 for more information in this regard.

Definition of a merger

A merger occurs (referred to as a 'concentration' in the Burundian Competition Act) if –

- two or more undertakings unite through a merger or acquisition or any other form of horizontal, vertical or heterogeneous takeover;
- there is a transfer of ownership or use of all or part of the property, rights or obligations of a company; or
- the transaction has the effect or purpose of allowing a company or group of companies to directly or indirectly exercise a dominant influence in the relevant market.

Thresholds

All mergers are notifiable to the Burundian Commission, however, the Burundian Competition Act provides that the Ministry of Trade must prescribe thresholds for mergers that require prior approval from the Burundian Commission. Such thresholds have not yet been promulgated.

Pre-implementation

Mergers that are required to be approved may not be implemented without the prior approval of the Burundian Commission. Mergers that are not required to be approved must still be notified, but may be implemented without the prior approval of the Burundian Commission. If a merger which requires the prior approval of the Burundian Commission is implemented without such prior approval, the Burundian Commission may order the merging parties to divest of assets, interests or shares acquired pursuant to such merger.



Timing

The Burundian Commission must finalise its investigation and make a determination in respect of the merger within four months of notification of the merger. If the Burundian Commission does not finalise its investigation and make a determination within the prescribed period, the merger will be deemed approved.

Filing fee

No filing fees are payable.

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Cameroon

Relevant legislation and enforcement agency

The relevant legislation is the Competition Law No. 98/013 of 14 July 1998, which is enforced by the National Competition Commission (the “Cameroonian Commission”).

Cameroon is also a member of Communauté Economique et Monétaire de l’Afrique Centrale. Kindly refer to page 42 for more information in this regard.

Definition of a merger

A merger occurs if there is a –

- transfer of assets of one or more companies to another; or
- transfer of all or part of the shares, assets, rights and/or obligations of one or more companies to another, enabling the latter to exercise decisive influence over all or part of the business activities of the former.

Thresholds

A merger is notifiable if –

- the turnover of the parties to the merger, during the preceding year, is equal or greater than XAF4 billion; or
- where the combined market share held by the parties to the merger is 30% or greater.

Pre-implementation

Notifiable mergers may not be implemented unless and until approved by the Cameroonian Commission. If a notifiable merger is implemented without the prior approval of the Cameroonian Commission, the Cameroonian Commission may impose an administrative penalty of up to 20% of the merging parties’ combined turnover derived in Cameroon during their previous financial year.

Timing

The Cameroonian Commission has six months to investigate and make a decision in respect of a merger. If no decision is reached within the prescribed period, the merger will be deemed approved.

Filing fee

A filing fee of XAF1 million is payable. In addition, depending on the turnover of the merging parties, a fee of between XAF9 million and XAF27 billion is payable by the merging parties based on the merging parties’ turnover.



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Chad

Relevant legislation and enforcement agency

The relevant legislation is law No. 043/PR/2014, which is enforced by the Conseil National de la Concurrence (the 'National Competition Council').

Chad is also a member of Communauté Economique et Monétaire de l'Afrique Centrale. Kindly refer to page 42 for further information in this regard.

Definition of a merger

A merger occurs when there is a transfer of assets, rights or obligations from one enterprise to another, or where one enterprise acquires the ability to materially influence the activities of another enterprise.

Thresholds

A merger is notifiable to the National Competition Council if the merging enterprises have a combined share of 30% of any market in Chad.

Pre-implementation

During the investigation, the National Competition Council will submit a report to the Minister of Trade and Industry and request that Minister to make a determination. A merger may not be implemented unless and until approved by both the Minister of Trade and Industry and the National Competition Council. If a notifiable merger is implemented without the prior approval of the Minister of Trade and Industry and the National Competition Council, the National Competition Council may impose an administrative penalty of up to 5% of the merging parties' combined turnover derived in Chad during their previous financial year.

Timing

A merger will be deemed approved if –

- the National Competition Council has not submitted its report to the Minister of Trade and Industry within two months from the date the merging parties have notified the merger to the National Competition Council; or
- no decision is forthcoming from either the National Competition Council or the Minister of Trade and Industry within four months after the merging parties have notified the merger to the National Competition Council.

Filing fee

No filing fees are payable.



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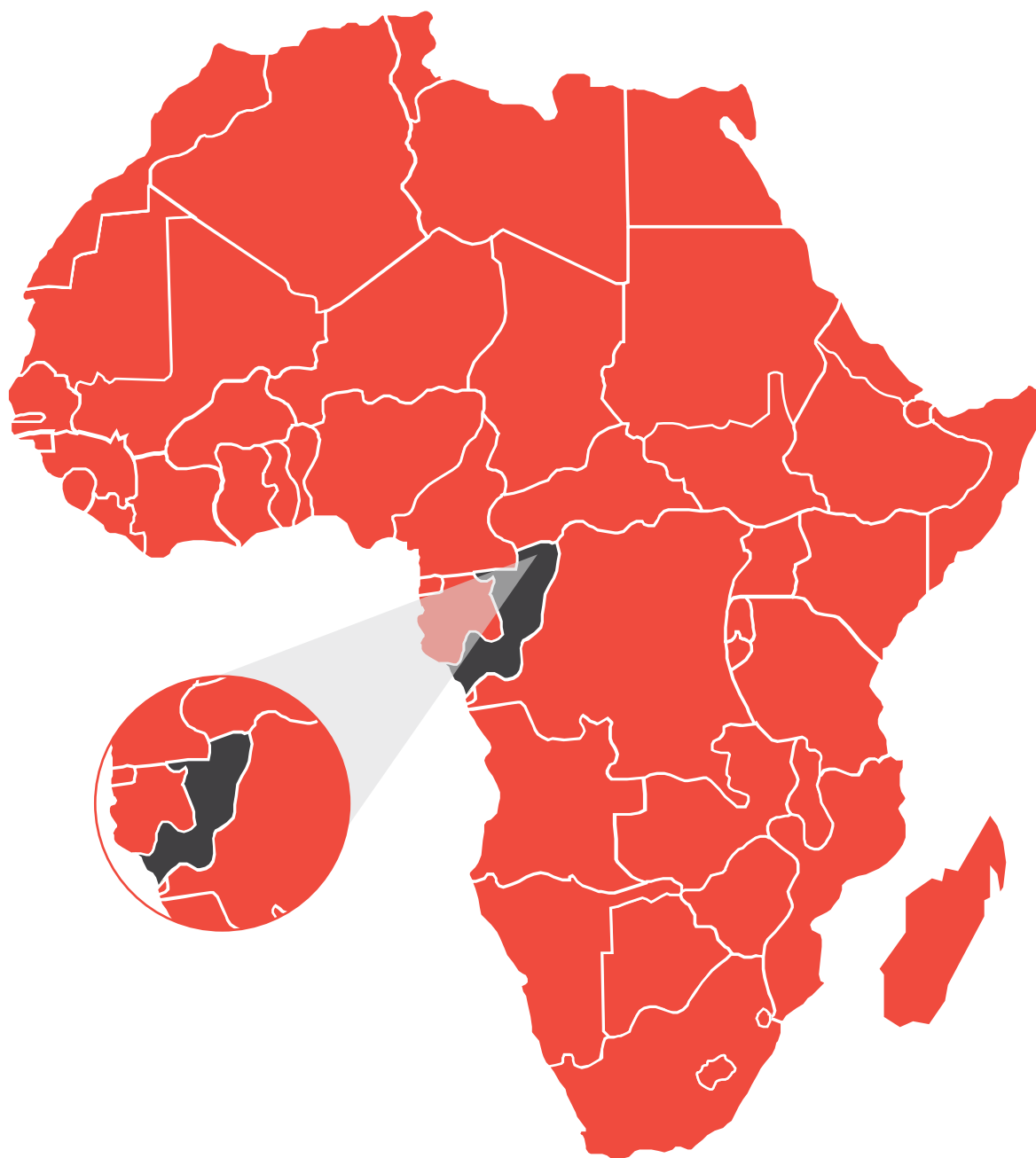
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Congo

There is no domestic competition law merger control regime in Congo. Congo is a member of Communauté Economique et Monétaire de l'Afrique Centrale. Kindly refer to page 42 for further information in this regard.



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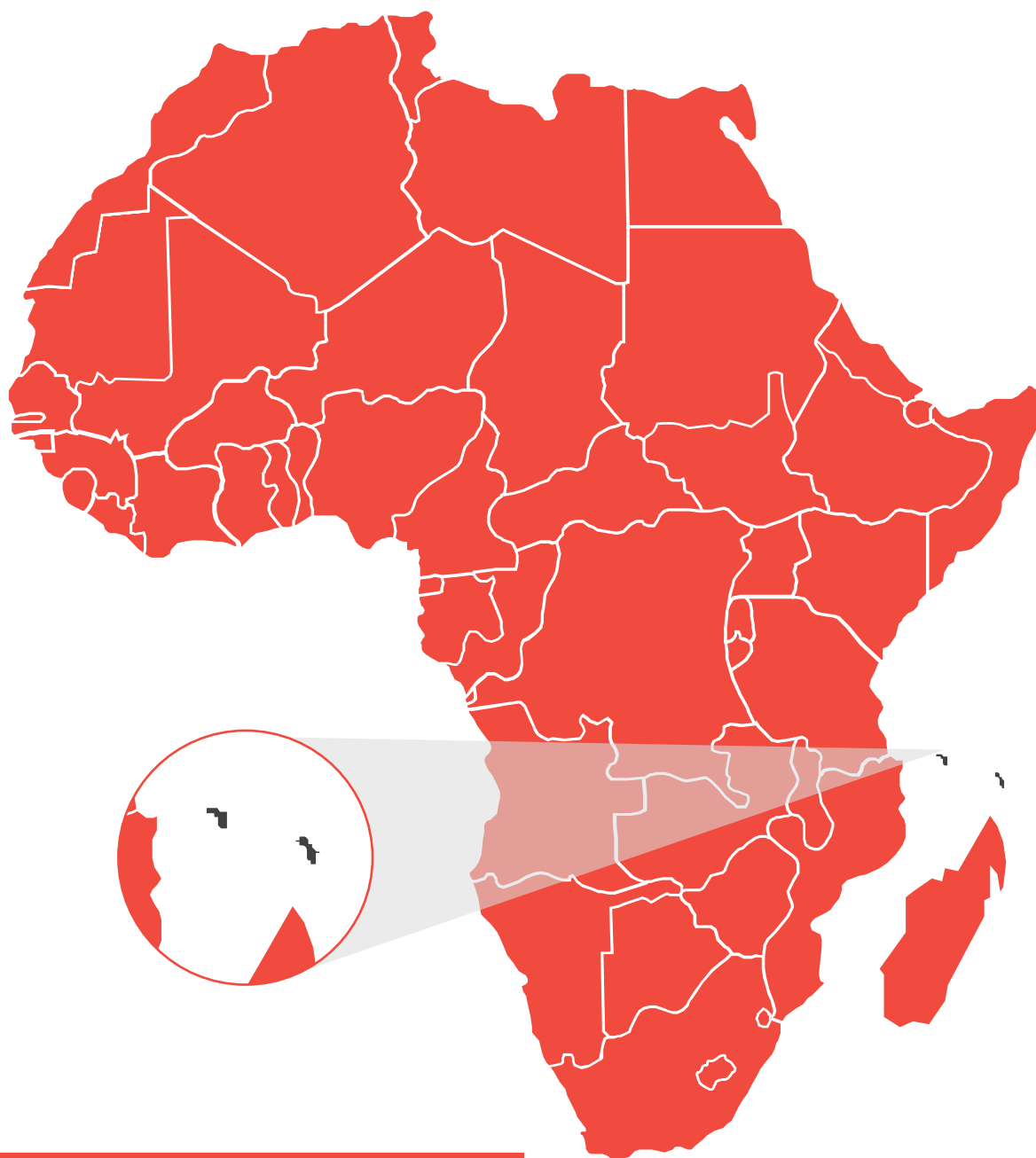
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Comoros

The relevant competition legislation is Loi No.13-014 /AU – Relative à la concurrence en Union des Comoros (the ‘Comoros Competition Act’). The Comoros Competition Act does not provide for a merger control regime, but makes provision for the imposition of an administrative penalty if incorrect information is provided to the Commission Nationale de la Concurrence (the ‘CNC’) in relation to a merger.

The CNC has not yet been established.



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Democratic Republic of Congo

Relevant legislation and enforcement agency

The relevant legislation is the Organic Law No. 18/020 on Pricing Freedom and Competition (the 'DRC Competition Act'), which is enforced by the Competition Commission of the Democratic Republic of Congo (the 'DRC Commission'). The powers of the DRC Commission relating to merger control have not yet been promulgated.

The Democratic Republic of Congo ('DRC') is a member of the Common Market for Eastern and Southern Africa. Kindly refer to page 43 for more information in this regard.

Definition of a merger

The DRC Competition Act applies to transactions in terms of which influence is acquired over the composition, and decisions, of the administrative bodies of a company by way of a transfer of ownership of goods, the acquisition of rights or shares, or the creation of a joint venture.

Thresholds

A transaction is notifiable to the DRC Commission if –

- the pre-tax turnover generated in the DRC by the natural and legal persons involved in the transaction equals or exceeds certain thresholds, which have not yet been promulgated;
- the natural and legal persons involved in the project together hold a market share of at least 25% in the DRC in respect of the products or services concerned; or
- the general economy of the project creates or reinforces a dominant position.

Pre-implementation

A notifiable transaction may be implemented only after it has been approved by the Minister of Economy. If a notifiable merger is implemented without the prior approval of the Minister of Economy, the DRC Commission may impose an administrative penalty of up to 20% of the merging parties' combined turnover derived in the DRC during their previous financial year.

Timing

The Minister of Economy must issue his/her decision within 60 days, or 90 days if, in the view of the Minister of Economy, additional investigation is required.

Filing fee

No filing fees are payable.



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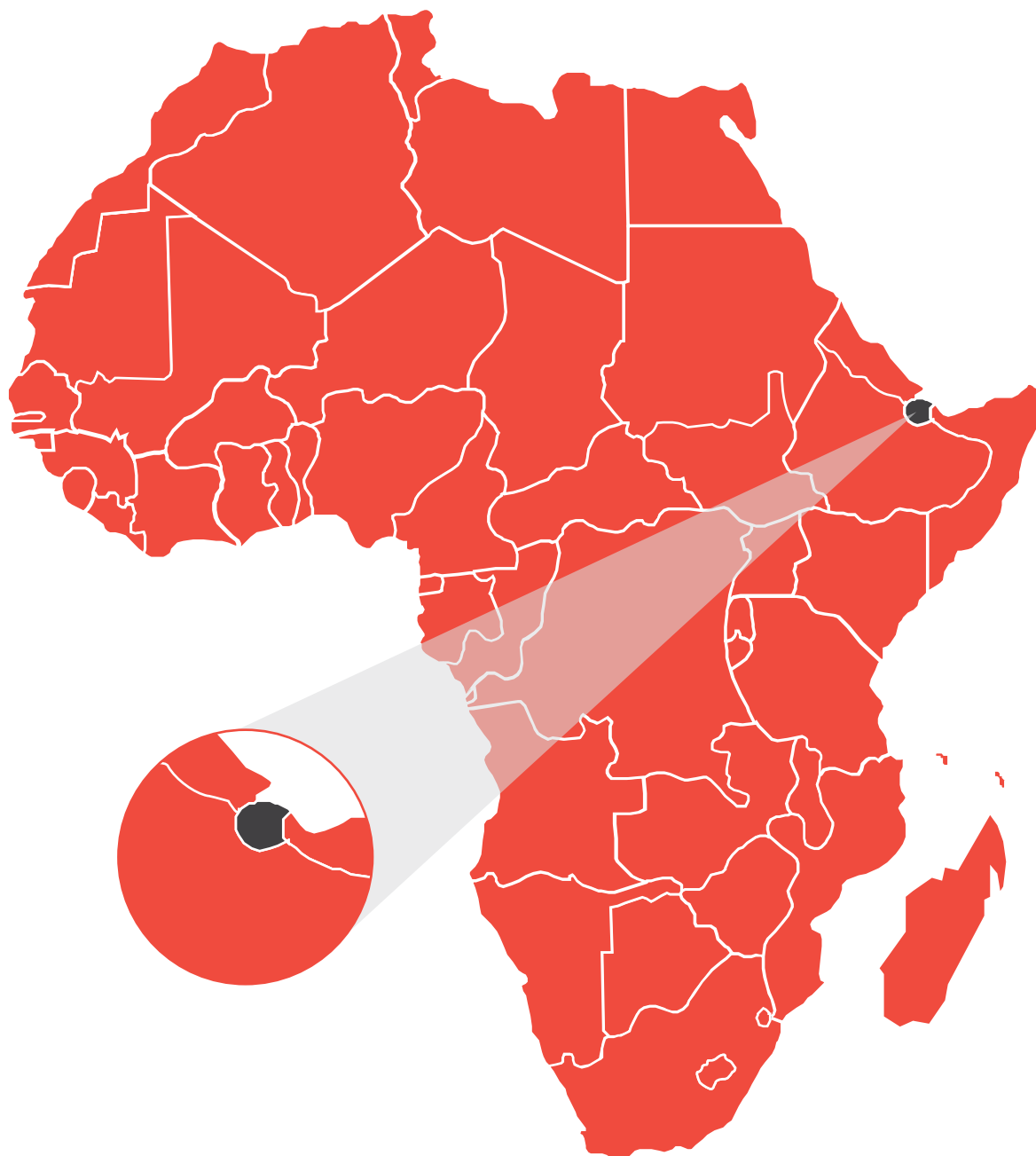
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Djibouti

There is no domestic competition law merger control regime in Djibouti. Djibouti is a member of the Common Market for Eastern and Southern Africa. Kindly refer to page 43 for more information in this regard.



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Egypt

Relevant legislation and enforcement agency

The relevant legislation in Egypt is the Protection of Competition and Anti-Monopoly Act 3 of 2005 (the 'Egyptian Competition Act'), which is enforced by the Protection of Competition and Anti-Monopoly Authority.

Egypt is also a member of the Common Market for Eastern and Southern Africa. Kindly refer to page 43 for more information in this regard.

Definition of a merger

The Egyptian Competition Act defines a merger as the acquisition of any assets, proprietary rights, rights of use or shares, or the establishment of unions, mergers, amalgamations or joint management of two or more persons.

Thresholds

A merger is notifiable if the merging parties generated a combined annual turnover in Egypt of EGP100 million or more in the most recent financial year.

Pre-implementation

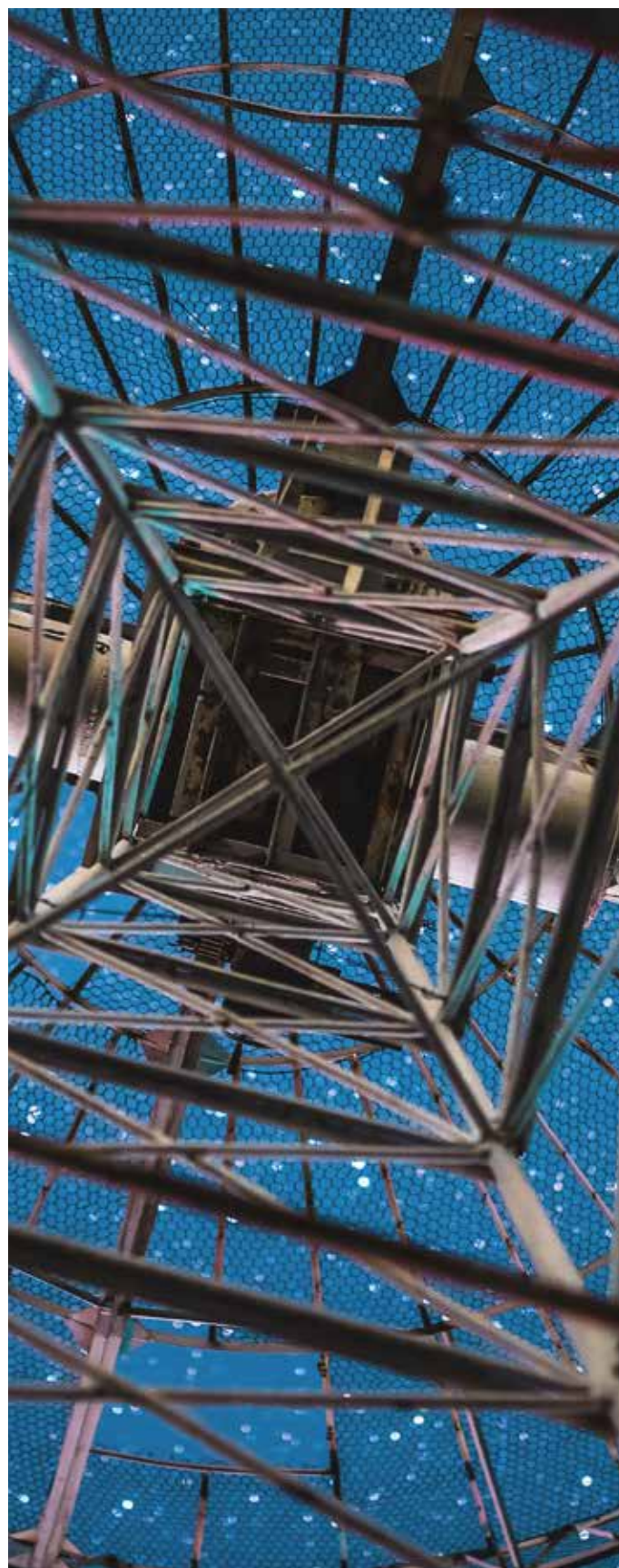
Notifiable mergers must be notified within 30 days after closing of the merger transaction. This may change in the near future as the Egyptian government has stated that it wants to revise its merger regime to provide for a pre-implementation notification regime.

Timing

There are currently no timelines within which the Protection of Competition and Anti-Monopoly Authority must conduct its investigation. It cannot prohibit a merger.

Filing fee

No filing fees are payable.



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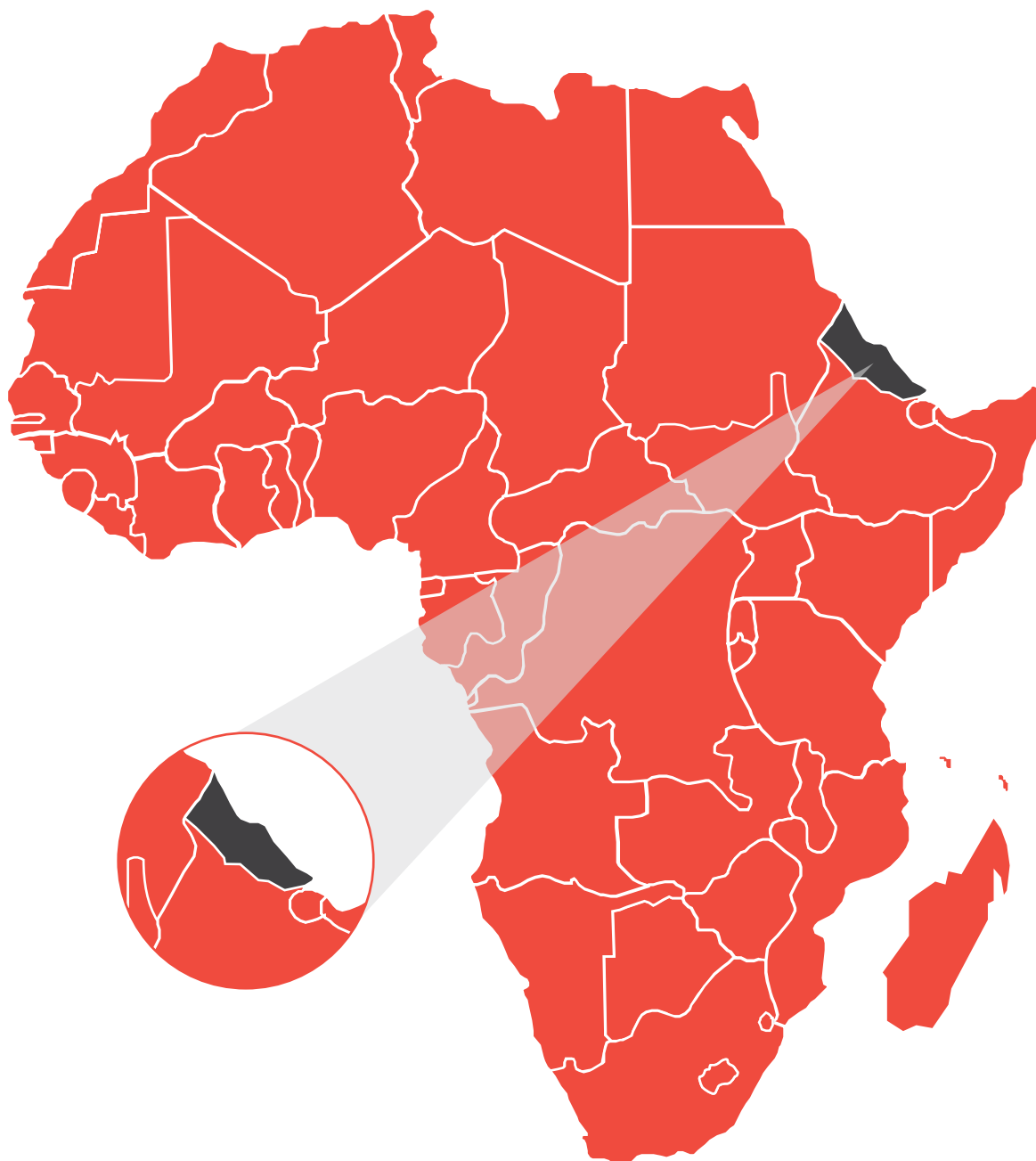
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Eritrea

There is no domestic competition law merger regime in Eritrea. It is a member of the Common Market for Eastern and Southern Africa. Kindly refer to page 43 for more information in this regard.



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eSwatini

Relevant legislation and enforcement agency

The relevant legislation is the Competition Act No. 8 of 2007 (the 'eSwatini Competition Act'), which is enforced by the eSwatini Competition Commission (the 'eSwatini Commission').

eSwatini is also a member of the Common Market for Eastern and Southern Africa. Kindly refer to page 43 for more information in this regard.

Definition of a merger

A merger 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 utilised for or in connection with the production or distribution of any commodity.

Thresholds

There are no thresholds and, accordingly, any transaction which falls within the definition of a merger and has an effect in eSwatini must be notified.

Pre-implementation

Notifiable mergers may not be implemented without the prior approval of the eSwatini Commission. If a notifiable merger is implemented without the prior approval of the eSwatini Commission, the merging parties may be liable for a fine of up to SZL250 000 or the responsible individuals of the merging parties may be imprisoned for a term not exceeding five years.

Timing

The eSwatini Commission must consider and make a determination in relation to a proposed merger within 90 days from the date on which the eSwatini Commission receives the notification. The eSwatini Commission may, before the expiry of the 90-day period, extend it by a further period not exceeding 60 days. The eSwatini Competition Act does not deal with the consequence of the eSwatini Commission not making a determination within the prescribed periods.

Filing fee

Small mergers (where the combined global annual turnover or global asset values of the merging parties do not exceed SZL8 million) are exempt from paying any filing fees. In respect of large mergers (where the combined global annual turnover or global asset values of the merging parties exceed SZL8 million), the filing fee is equal to 0.1% of combined global annual turnover or asset value of the merging parties, subject to a maximum of SZL600 000.



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Ethiopia

Relevant legislation and enforcement agency

The relevant legislation is the Ethiopian Trade Competition and Consumer Protection Proclamation No. 813/2014 (the 'Ethiopian Competition Proclamation'), which is enforced by the Ethiopian Competition Authority.

Ethiopia is also a member of the Common Market for Eastern and Southern Africa. Kindly refer to page 43 for more information in this regard.

Definition of a merger

A merger occurs if –

- two or more business organisations previously having independent existence amalgamate;
- two or more business organisations pool the whole or part of their resources for the purpose of carrying on a certain commercial activity; or
- a person or group of persons directly or indirectly acquires control of the management of another person through the acquisition of shares, securities or assets or by any other means.

Thresholds

A merger is notifiable if the combined assets or turnover (whichever is higher) of both the acquirer and target is more than ETB30 million in Ethiopia.

Pre-implementation

Notifiable mergers may not be implemented without the prior approval of the Ethiopian Competition Authority.

Timing

The Ethiopian Competition Proclamation does not prescribe any time periods within which the Ethiopian Competition Authority must conduct its investigation and make a determination. It is contemplated that timelines will be prescribed in a 'merger guideline' to be promulgated by the Ethiopian Competition Authority.

Filing fee

No filing fees are payable.



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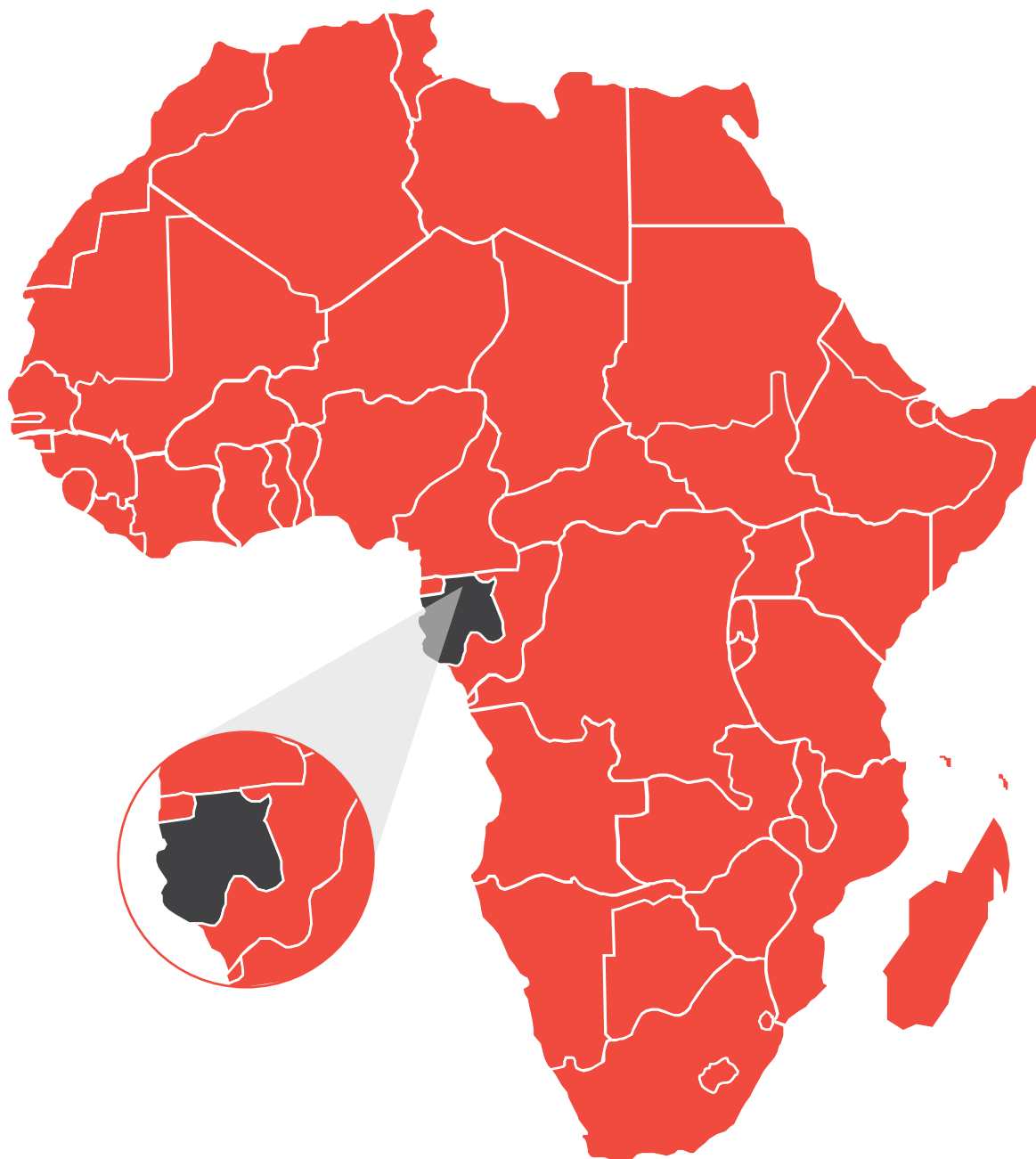
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Gabon

There is no domestic competition law merger regime in Gabon. Gabon is a member of Communauté Economique et Monétaire de l'Afrique Centrale. Kindly refer to page 42 for further information in this regard.



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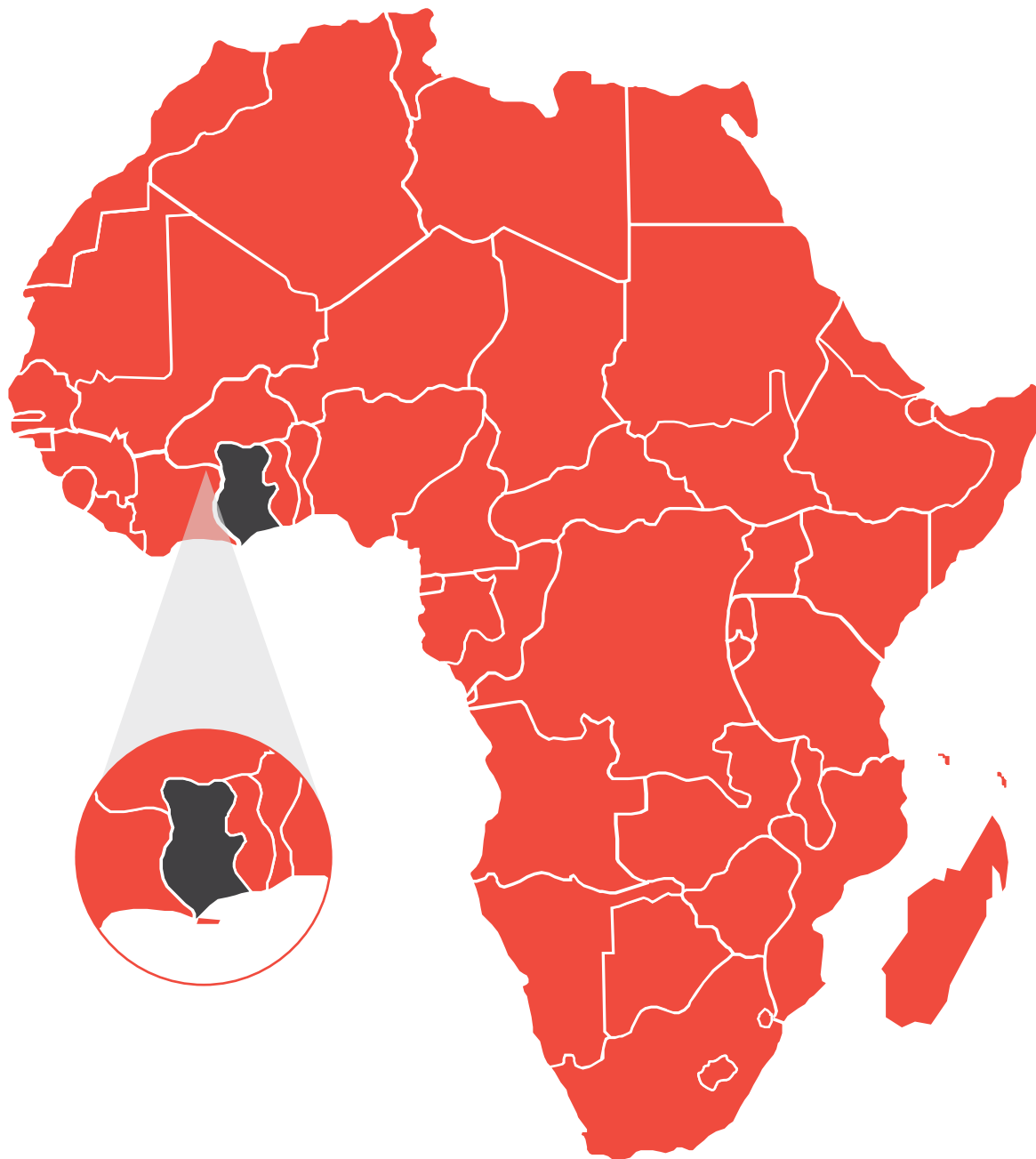
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Ghana

There is currently no domestic competition law merger regime in Ghana, however, the Competition and Fair Trade Practices Bill was published some time ago. There is no indication as to when the Bill will be enacted.



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Ivory Coast

Ivory Coast is a member of of Union Economique et Monétaire Ouest Africaine. Kindly see page 45 for more information in this regard.



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Kenya

Relevant legislation and enforcement agency

The relevant legislation is the Competition Act 12 of 2010 (the 'Kenyan Competition Act'), which is enforced by the Competition Authority of Kenya (the 'Kenyan Competition Authority').

Kenya is also a member of the Common Market for Eastern and Southern Africa and the East African Community. Kindly refer to pages 43 and 44 for more information in this regard.

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.

Thresholds

All mergers are notifiable, however, parties to a proposed merger may apply for an exclusion from merger approval if (i) they generated a combined turnover of less than KES1 billion in Kenya during their most recent financial year, or (ii) the target undertaking generated less than KES100 million turnover during its most recent financial year.

Pre-implementation

Parties may not implement a merger prior to obtaining approval (or an exclusion, as the case may be) for the merger from the Kenyan Competition Authority. The Kenyan Competition Authority will regard the payment of more than 20% of the purchase price as the implementation of a merger. If a notifiable merger is implemented without the prior approval of the Kenyan Competition Authority, the merging parties (including the individuals responsible of the merger parties) may be liable for a fine of up to KES10 million or the responsible individuals of the merging parties may be imprisoned for a term not exceeding five years.

Timing

The Kenyan Competition Authority has a period of 60 days within which to conduct its investigation and make a determination. This period can be extended for a further 60 days if the merger is regarded by the Kenyan Competition Authority to be complex. The Kenyan Competition Act does not deal with the consequences of the Kenyan Competition Authority not making a determination within the prescribed periods.

In respect of exclusion applications, the Kenyan Competition Authority, in practice, provides a decision within 14 days.

Filing fee

The following filing fees must be paid to the Kenyan Competition Authority when a proposed merger is notified –

- if the combined turnover of the merging parties is between KES500 million and KES1 billion, KES500 000 (healthcare sector only);
- if the combined turnover of the merging parties is between KES1 billion and KES50 billion, KES1 million; and
- if the combined turnover is above KES50 million, KES2 million.

No fee is payable in respect of exclusion applications.



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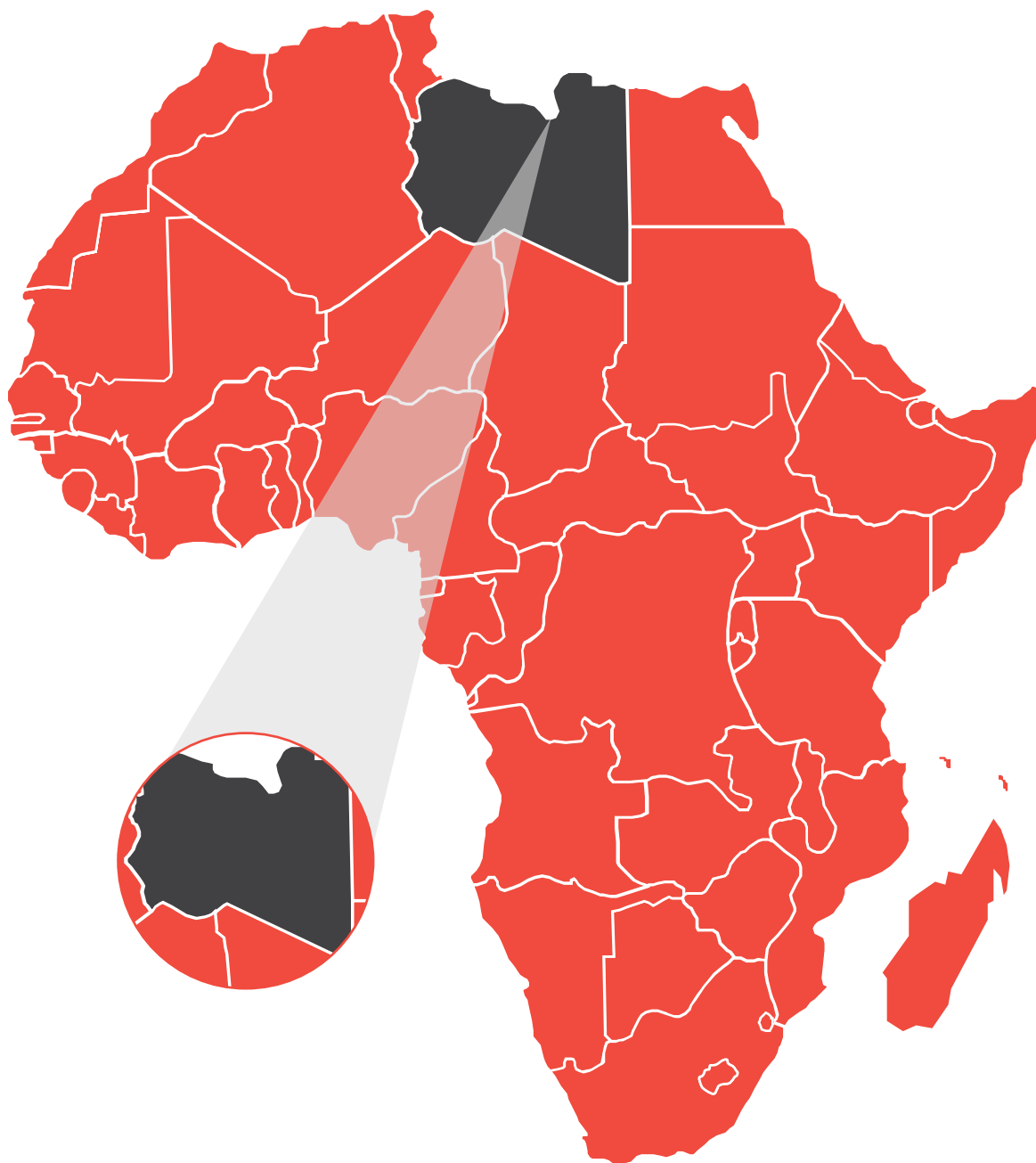
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Libya

Libya has no domestic competition law merger control regime. It is a member of the Common Market for Eastern and Southern Africa. Kindly refer to page 43 for more information in this regard.



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Madagascar

Relevant legislation and enforcement agency

The relevant legislation is the Competition Law No. 2005-020 of 17 October 2005, and its implementing decree No. 2008-771 of 28 July 2008 and order No. 12220-2014 of 25 March 2014 (collectively, the 'Madagascan Competition Act'), which is enforced by the Conseil de la Concurrence (the 'Madagascan Competition Authority').

Madagascar is also a member of Common Market for Eastern and Southern Africa. Kindly refer to page 43 for more information in this regard.

Definition of a merger

A transaction constitutes a merger if it entails the transfer of ownership or rights to use all or part of the assets of a company which has the purpose or effect of allowing one company, or a group of companies, to exercise direct or indirect control over one or more other companies.

Thresholds

A merger is notifiable if –

- the merging parties realise more than 30% of the sales, purchases or other transactions on the national market of substitutable products or services; or
- the merging parties generated a combined turnover of more than MGA10 million in Madagascar in the preceding financial, and at least two of the merging parties, individually, generated a turnover of more than MGA2.5 million in Madagascar.

Pre-implementation

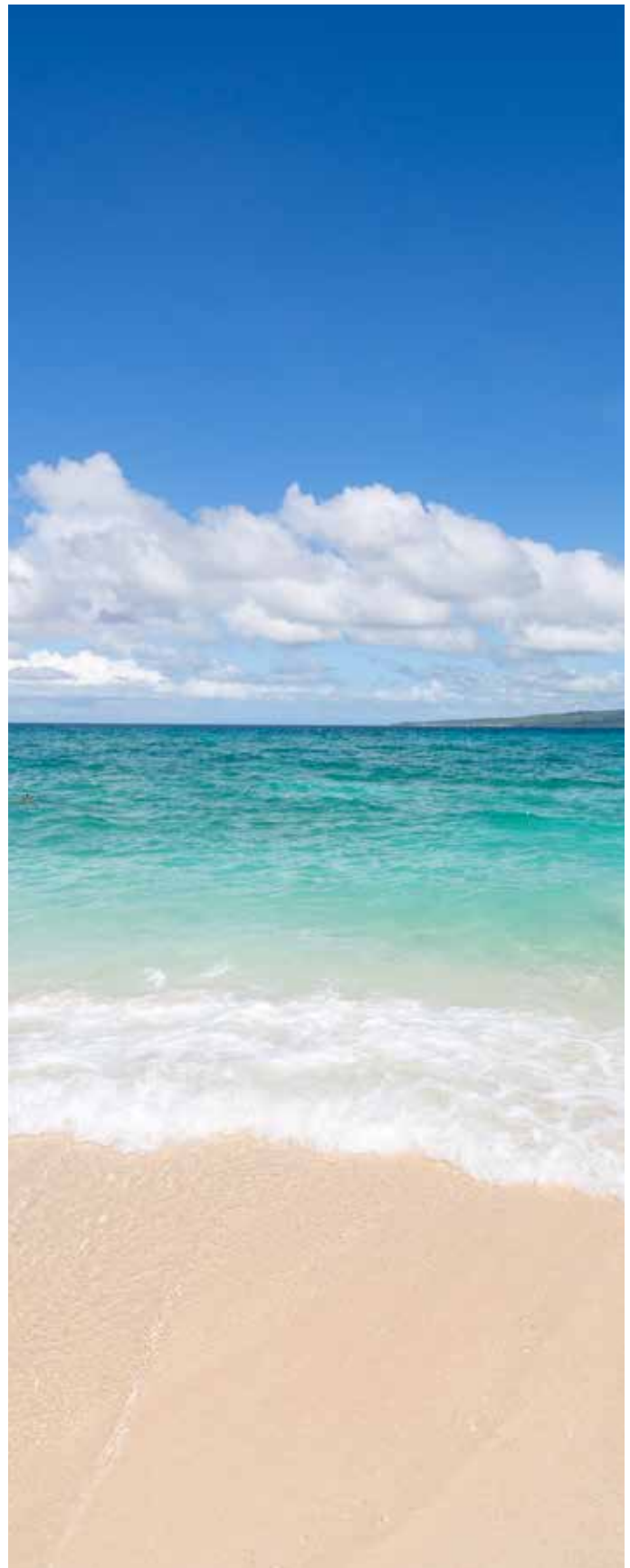
Parties may not implement a merger prior to obtaining approval (or an exemption, as the case may be) from the Madagascan Competition Authority.

Timing

The Madagascan Competition Authority has six months and ten days to conclude its investigation and make a determination in respect of a merger, failing which the merger will be deemed approved.

Filing fee

No filing fees are payable.



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Malawi

Relevant legislation and enforcement agency

The relevant legislation is Chapter 48:09, Competition and Fair Trading Act 43 of 1998 G.N. 9/2000, which is enforced by the Competition and Fair Trading Commission of Malawi (the 'Malawian Commission').

Malawi is also a member of the Common Market for Eastern and Southern Africa. Kindly refer to page 43 for more information in this regard.

Definition of a merger

A merger occurs if –

- there is an 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 utilised for or in connection with the production or distribution of any commodity,
 - where the person who acquires the controlling interest already has a controlling interest in any undertaking involved in the production or distribution of the same goods or services;

or

- there is an acquisition of a controlling interest in any trade whose business consists wholly or substantially of
 - supplying goods or services to the person who acquires the controlling interest; or
 - distributing goods and services produced by the person who acquires the controlling interest.

Thresholds

There are no financial thresholds. Rather, mergers that will substantially lessen competition must be notified to the Malawian Commission.

Pre-implementation

Parties may not implement mergers that are likely to result in the substantial lessening of competition without the prior approval of the Malawian Commission.

Timing

The Malawian Commission has 45 working days to conclude its investigation and make a determination regarding the merger.

Filing fee

The filing fee is equal to 0.05% of the merging parties' combined turnover or the merging parties' combined gross asset value, whichever is greater.



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Mauritius

Relevant legislation and enforcement agency

The relevant legislation is the Competition Act 25 of 2007 (the 'Mauritian Competition Act'), which is enforced by the Competition Commission of Mauritius (the 'Mauritian Commission').

Mauritius is also a member of Common Market for Eastern and Southern Africa. Please refer to page 43 for more information in this regard.

Definition of a merger

A merger is defined as the bringing together under common ownership and control of two or more enterprises of which at least one conducts its activities in Mauritius, or through a company incorporated in Mauritius.

Thresholds

Notification is not mandatory, but the merging parties can apply for guidance as to whether the proposed merger is likely to result in a substantial lessening of competition within any market for goods or services.

The merger will be subject to review if –

- all the parties to the merger supply or acquire goods or services of any description and will following the implementation of the merger together supply or acquire 30% or more of all those goods or services in the market;

or

- one of the parties to the merger alone supplies or acquires prior to the merger, 30% or more of goods or services of any description in the market; and
- the Mauritian Commission has reasonable grounds to believe that the creation of the merger has resulted in, or is likely to result in, a substantial lessening of competition within any market for goods or services.

Pre-implementation

There is no general prohibition against implementing a merger without the prior approval of the Mauritian Commission. However, if the Mauritian Commission determines after an investigation that a merger has resulted, or is likely to result, in a substantial lessening of competition within a particular market, the Mauritian Competition Commission may issue directives to the merging parties as it considers necessary, reasonable and practicable to –

- remedy, mitigate or prevent the substantial lessening of competition; and
- remedy, mitigate or prevent any adverse effects that have resulted from, or are likely to result from, the substantial lessening of competition.

In the case of a prospective merger, a directive may require the parties to –

- desist from completing or implementing the merger insofar as it relates to a market in Mauritius;
- divest such assets as are specified in the directive within the period so specified in the directive, before the merger can be implemented; or
- adopt, or desist from, such conduct, including conduct in relation to prices, as is specified in the directive as a condition of proceeding with implementing the merger.

In the case of an implemented merger, a directive may require the merged parties to –

- divest of such assets as are specified in the directive within a certain period; or
- adopt, or to desist from, such conduct, including conduct in relation to prices, as is specified in the directive as a condition of maintaining, or proceeding with, the merger.

Timing

If a merger is under investigation by the Mauritian Commission, the Executive Director of the Mauritian Commission will publish a timetable setting out the timeframes within which the investigation will be completed. The administrative timetable set by the Executive Director typically allows for up to six months for the investigation. However, if at any point during the investigation the Executive Director has reason to believe that the timetable will have to be revised, he/she shall prepare a revised timetable and ensure that such revision is notified to all the parties to the merger involved and he/she may provide notification of the timetable on its website or any other media, as he/she may consider appropriate.

Filing fee

No filing fees are payable.

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Morocco

Relevant legislation and enforcement agency

The relevant legislation is the Law No. 104-12 of 30 June 2014 (Dahir No. 1-14-116) on free pricing and competition, which is enforced by the Competition Council.

Definition of a merger

The following transactions are regarded as a 'concentration' –

- mergers of two or more independent undertakings;
- the acquisition of control by an undertaking, or several undertakings, over all or part of another undertaking (or several undertakings), by the acquisition of shares or assets, or by entering into a contract. Control may result from rights, contracts or any other means (considered alone or collectively), which confer, having consideration to circumstances of fact or law, the ability to exert decisive influence on an undertaking's activities; and
- the creation of a joint venture.

Thresholds

Concentrations are subject to merger control if –

- the parties generate a combined global turnover of more than DH750 million; or
- at least two of the parties to the concentration generate an individual turnover of more than DH250 million in Morocco; or
- the parties to the proposed concentration have a combined market share of at least 40% in Morocco.

Pre-implementation

Parties to a notifiable concentration may not implement such concentration prior to obtaining approval from the Competition Council. If a notifiable merger is implemented without the prior approval of the Competition Council, the Competition Council may impose an administrative penalty of up to 5% of the merging parties' combined turnover derived in Morocco during their previous financial year.

Timing

Depending on the complexity of the concentration, whether the government intervenes in the concentration and how many times the Competition Council requests additional information, the Competition Council can take between 60 to 150 days to complete its investigation and make a decision.



Filing fee

No filing fees are payable.

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Mozambique

Relevant legislation and enforcement agency

The relevant legislation is Law No. 10/2013, 11 April 2013 (the 'Mozambican Competition Law'), which is enforced by the Competition Regulatory Authority. The Competition Regulatory Authority is not yet operational.

Definition of a merger

The following transactions are regarded as a merger (a 'concentration' in terms of the Mozambican Competition Law) –

- a merger between two or more independent undertakings;
- the acquisition of control by one or more undertakings over another undertaking, undertakings, or part of another undertaking; and
- the creation of a joint venture.

Thresholds

Notification of a merger is mandatory if –

- the combined turnover of all the undertakings involved in the concentration in Mozambique in the preceding year is equal to or exceeds MZN900 million; or
- the concentration results in the acquisition, creation or reinforcement of a market share of 50% or more of the national market; or
- the transaction results in the acquisition, creation or reinforcement of a market share of 30% or more of the national market, provided that each of at least two of the undertakings concerned generated a turnover of at least MZN100 million in Mozambique in the preceding year.

Pre-implementation

Concentrations that meet the thresholds are subject to mandatory notification within seven working days after conclusion of the agreement which gives rise to the concentration. The concentration may not be implemented unless and until approved by the Competition Regulatory Authority. If a notifiable merger is implemented without the prior approval of the Competition Regulatory Authority, it may impose an administrative penalty of up to 5% of the merging parties' combined turnover derived in Mozambique during their previous financial year.

Timing

If a concentration is regarded as non-complex, the Competition Regulatory Authority has 45 days to conclude its investigation and make a decision. If a concentration is regarded as complex, the Competition Regulatory Authority has 75 days to conclude its investigation and make a decision.



Filing fee

The filing fee is equal to 5% of the combined turnover of merging parties in Mozambique during the previous year.

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Namibia

Relevant legislation and enforcement agency

The relevant legislation is the Competition Act 2 of 2003 (the 'Namibian Competition Act'), which is enforced by the Competition Commission of Namibia (the 'Namibian Commission').

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. A merger may be achieved in any manner, including (i) the purchase or lease of shares, an interest, or assets of the other undertaking, or (ii) the amalgamation or merger with the other undertaking.

Thresholds

A merger will be notifiable if –

- the combined annual turnover in, into or from Namibia or the combined gross asset value of the acquirer and target (and any combination thereof) during the previous financial year is equal to or more than N\$30 million; and
- the gross asset value in Namibia of, or the annual revenue generated in, into or from Namibia by, the target group during its previous financial year is equal to or more than N\$15 million.

Pre-implementation

Notifiable mergers may not be implemented without the prior approval of the Namibian Commission. If a notifiable merger is implemented without the prior approval of the Namibian Commission, it may bring an application to the High Court for (i) the imposition of an administrative penalty of up to 10% of the merging parties' combined global turnover derived during their previous financial year, (ii) an order declaring the merger void, and/or (iii) an order directing the merging parties to divest of assets, interests or shares acquired pursuant to such merger.

Timing

Depending on the complexity of the merger and whether the Namibian Commission requests additional information, the Namibian Commission can take anything between 30 days to 120 days to conclude its investigation and make a determination in respect of the merger. If the Namibian Commission does not make a determination within the prescribed periods, the merger will be deemed approved.

Filing fee

The filing fee payable to the Namibian Commission is calculated based on the combined assets and/or turnover values of the merging parties in Namibia, whichever is greater, and are as follows –

- N\$10 000 if the combined figure is < N\$50 million;
- N\$25 000 if the combined figure is ≥ N\$50 million but < N\$65 million; or
- N\$50 000, if the combined figure is ≥ N\$65 million but < N\$75 million; or
- N\$75 000, if the combined figure is ≥ N\$75 million, but < N\$100 million;
- N\$125 000 if the combined figure is ≥ N\$100 million, but < N\$1 billion;
- N\$250 000 if the combined figure is ≥ N\$1 billion, but < N\$3.5 billion; or
- N\$500 000 if the figure is ≥ N\$3.5 billion.

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Nigeria

Relevant legislation and enforcement agency

The relevant legislation is the Federal Competition and Consumer Protection Act (the 'FCCP Act'), which is enforced by the Federal Competition and Consumer Protection Commission (the 'Nigerian Commission').

Definition of a merger

A merger occurs if 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 may be achieved in any manner, including through

- the purchase or lease of shares, an interest or assets;
- the amalgamation or other combination with the other undertaking in questions; or
- a joint venture.

Thresholds

The FCCP Act provides for thresholds for small and large mergers to be prescribed, however, the thresholds have not yet been promulgated.

Pre-implementation

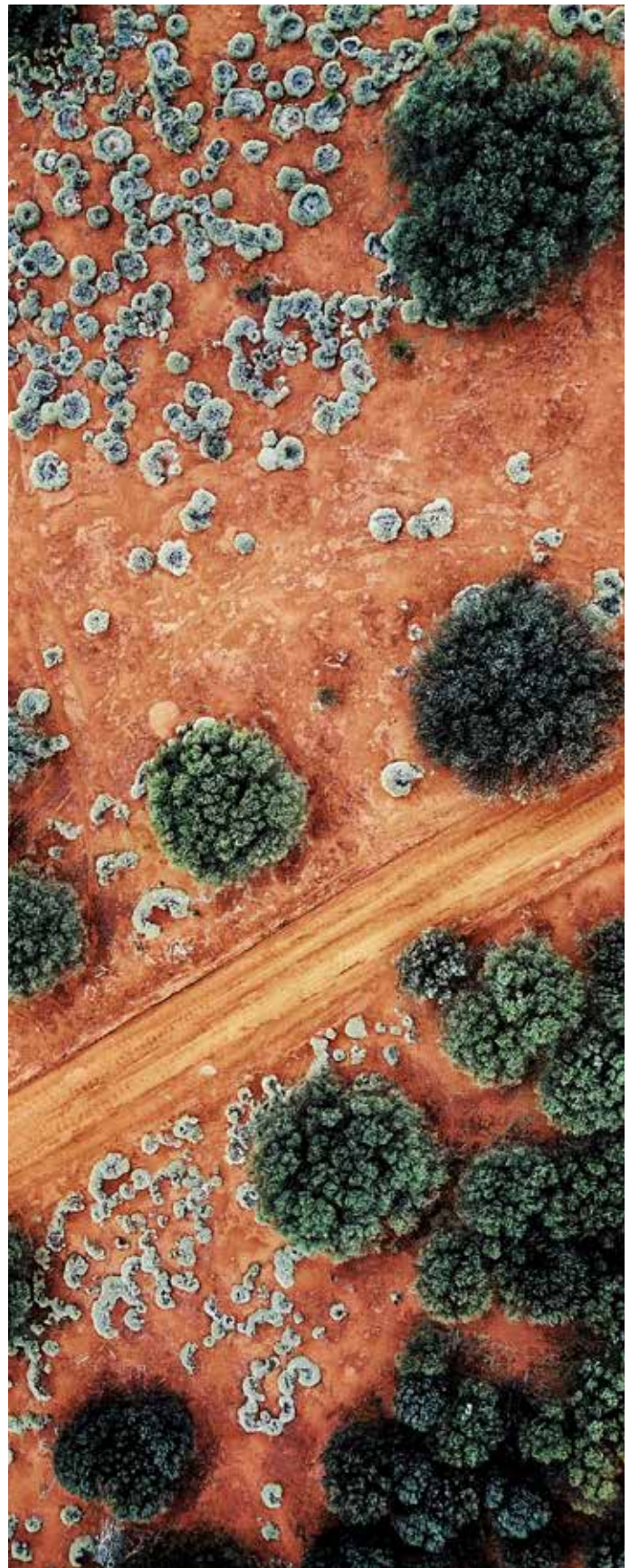
Large mergers may not be implemented prior to obtaining the approval of the Nigerian Commission. If a notifiable merger is implemented without the prior approval of the Nigerian Commission, the Nigerian Commission may impose an administrative penalty of up to 10% of the merging parties' combined turnover derived during their previous financial year.

Timing

The Nigerian Commission has an initial period of 60 business days within which to conduct its investigation and make a determination, which period may be extended by a further 120 business days. If the Nigerian Commission does not take a decision in respect of the proposed merger, the proposed merger will be deemed approved.

Filing fee

No filing fees are payable.



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Rwanda

Relevant legislation

The relevant legislation is the Competition Act No. 36/2012 of 21/09/2012 (the 'Rwandan Competition Act'), which is enforced by the Competition and Consumer Protection Regulatory Body (the 'CCPRB').

Rwanda is also a member of the Common Market for Eastern and Southern Africa and the East African Community. Kindly refer to pages 43 and 44 for more information in this regard.

Definition of a merger

The Rwandan Competition Act defines a merger as the direct or indirect acquisition or establishment of a controlling interest by two or more persons in the whole or part of the business of a competitor, supplier or any other person.

Thresholds

The Rwandan Competition Act provides for thresholds for a notifiable merger to be published, however, no thresholds have yet been published.

Pre-implementation

Notifiable mergers may not be implemented without the prior approval of the CCPRB. If a notifiable merger is implemented without the prior approval of the CCPRB, the CCPRB may (i) declare the merger void, and/or (ii) order the merging parties to divest of assets, interests or shares acquired pursuant to such merger.

Timing

The CCPRB has an initial period of 30 business days to conclude its investigation and make a determination in respect of a merger, which period may be extended by up to 15 business days.

Filing fees

Filing fees have not yet been promulgated yet.



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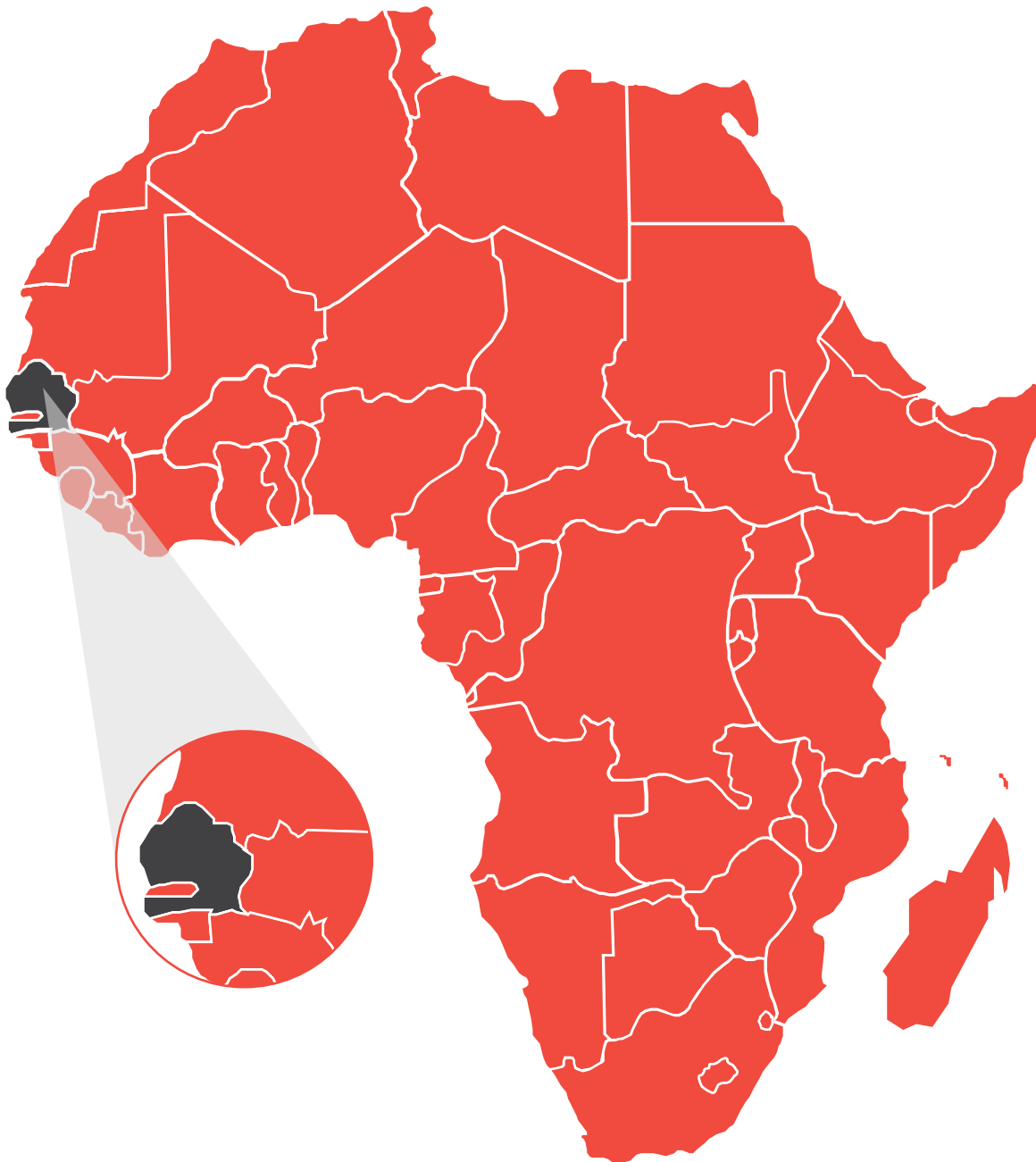
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Senegal

Senegal has no domestic competition law merger control regime. It is however, a member of the Common Market for Eastern and Southern Africa and the Union Economique et Monétaire Ouest Africaine. Kindly refer to pages 43 and 45 for further information in this regard.



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Seychelles

Relevant legislation and enforcement agency

The relevant legislation is the Fair Competition Act 18 of 2009 (the 'Seychelles Competition Act'), which is enforced by the Fair Trading Commission.

The Seychelles is also a member of Common Market for Eastern and Southern Africa. Please refer to page 43 for more information in this regard.

Definition of a merger

A merger is defined as the direct or indirect acquisition or establishment, by one or more enterprises, whether by purchase of shares or assets, lease of assets, amalgamation or combined or otherwise, of control over the whole or a part of the business of an immediate competitor, supplier, consumer or other enterprise.

Thresholds

A merger is notifiable if one of the parties to the merger by itself controls, or together with any other enterprise with which it intends to effect the merger will control, 40% of a market in the Seychelles.

Pre-implementation

A merger may not be implemented without the prior approval of the Fair Trading Commission.

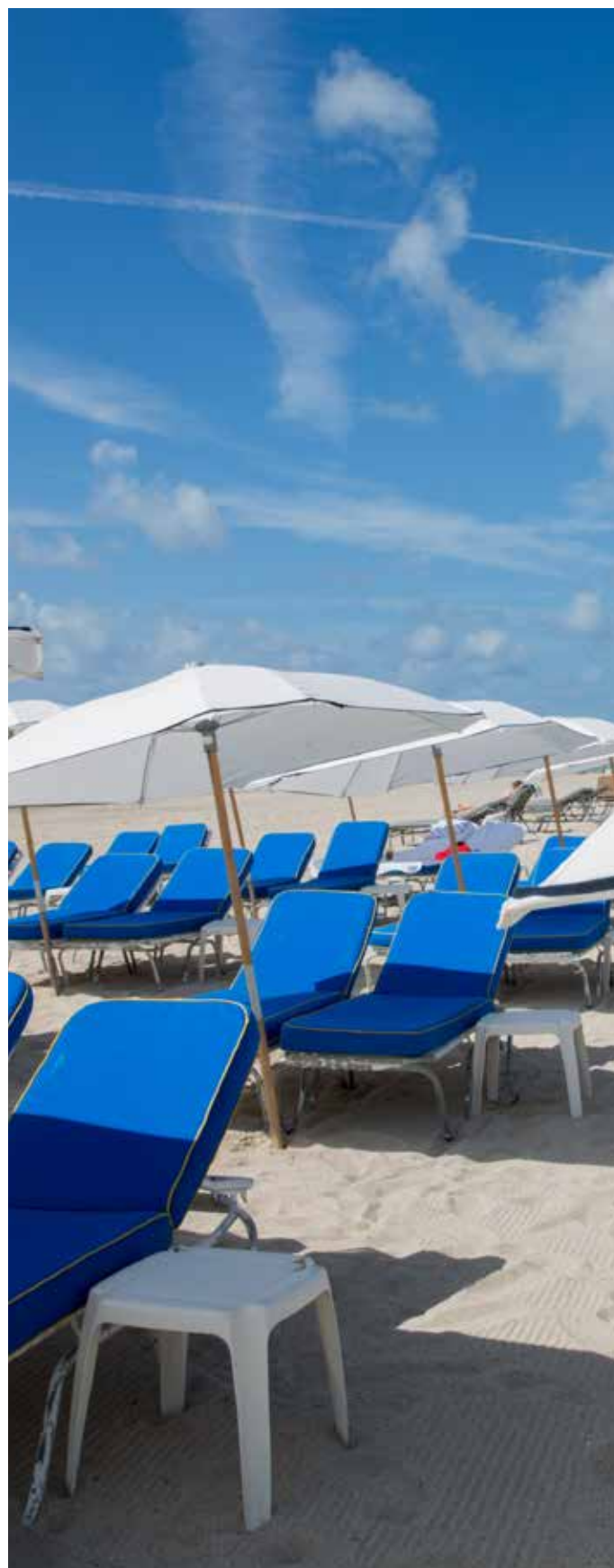
Timing

Although the Seychelles Competition Act does not prescribe any timelines within which the Fair Trading Commission must conclude its investigation and make a determination, the Fair Trading Commission usually endeavours to conclude investigation and make a determination within a period of 60 business days.

Filing fee

A non-refundable fee of SCR1 500 is payable on submission of a completed merger filing.

If the combined turnover or asset value of the merging parties in the Seychelles is SCR500 000 or less, the filing fee will be 0.1% of the combined turnover or asset value of the merging parties. If the combined turnover or asset value of the merging parties in Seychelles is SCR501 000 or more, the filing fee will be 0.5% of the combined turnover or asset value of the merging parties.



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South Africa

Relevant legislation and enforcement agency

The relevant legislation is the Competition Act 89 of 1998 ('the Competition Act'), which is enforced by the South African Competition Commission (the 'SA Commission').

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 transaction constitutes a notifiable merger when if –

- the transaction has an economic effect in South Africa;
- the transaction meets the definition of a merger; and
- the transaction meets the below financial thresholds.

Thresholds

Both intermediate and large mergers are notifiable. A small merger may be implemented without the approval of the competition authorities, unless the SA Commission specifically requires such notification. A table setting out the threshold calculations is set out below.

	Aggregate of acquiring firms and target firm/s		Target firm/s
Small merger	Gross assets / turnover (in any combination) in last financial year < R600 million	and	Gross assets / turnover in last financial year < R100 million
Intermediate Merger	Gross assets / turnover in last financial year ≥ R600 million and < R6,6 billion	and	Gross assets / turnover in last financial year ≥ R100 million and < R190 million
Large merger	Gross assets / turnover in last financial year ≥ R6,6 billion	and	Gross assets / turnover in last financial year ≥ R190 million

Pre-implementation

Notifiable mergers may not be implemented unless and until approved by the SA Commission. If a notifiable merger is implemented without the prior approval of the SA Commission, the Competition Tribunal may (i) impose an administrative penalty of up to 10% of the merging parties' combined turnover derived in South Africa during their previous financial year, (ii) declare the merger void, and/or (iii) order the merging parties to divest of assets, interests or shares acquired pursuant to such merger.

Timing

If the transaction is an intermediate merger, the SA Commission will have an initial 20 business days to approve (with or without conditions) or prohibit the merger, a period which the SA Commission may extend by a further 40 business days. The period within which to determine an intermediate merger may not be extended any further, and, accordingly, the SA Commission has a maximum of 60 business days to determine an intermediate merger.

Although large mergers are investigated by the SA Commission, large mergers are approved (with or without conditions) or prohibited by the Competition Tribunal. If the merger is a large merger, the SA Commission will have an initial 40 business days to conclude its investigation and make a recommendation. The SA Commission may, however, apply to the Competition Tribunal to extend the period by further periods of up to 15 business days. Given that large mergers can be approved only by the Competition Tribunal, the SA Commission may only recommend that a large merger be approved (with or without conditions) or prohibited. Once the SA Commission has concluded its investigation, it must provide its recommendation to the Competition Tribunal and apply for a hearing date before the Competition Tribunal.

If the SA Commission does not make a decision within the relevant time period in respect of intermediate mergers, the merger will be deemed approved.

Filing fee

The filing fee payable for an intermediate merger is R165 000 and for a large merger is R550 000.

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Tanzania

Relevant legislation and enforcement agency

The relevant legislation is the Fair Competition Act of 2003, which is enforced by the Fair Competition Commission (the 'Tanzanian Commission').

Tanzania is also member of the East African Community. Kindly refer to page 44 for more information in this regard.

Definition of a merger

A merger is 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.

Thresholds

A merger is notifiable if the merging parties' combined annual turnover, or asset value, during the previous financial year is equal to, or greater than, TZS3,5 billion.

Pre-implementation

Notifiable mergers may not be implemented before obtaining the approval of the Tanzanian Commission. If a notifiable merger is implemented without the prior approval of the Tanzanian Commission, the Tanzanian Commission may impose an administrative penalty of up to 10% of the merging parties' combined turnover derived during their previous financial year.

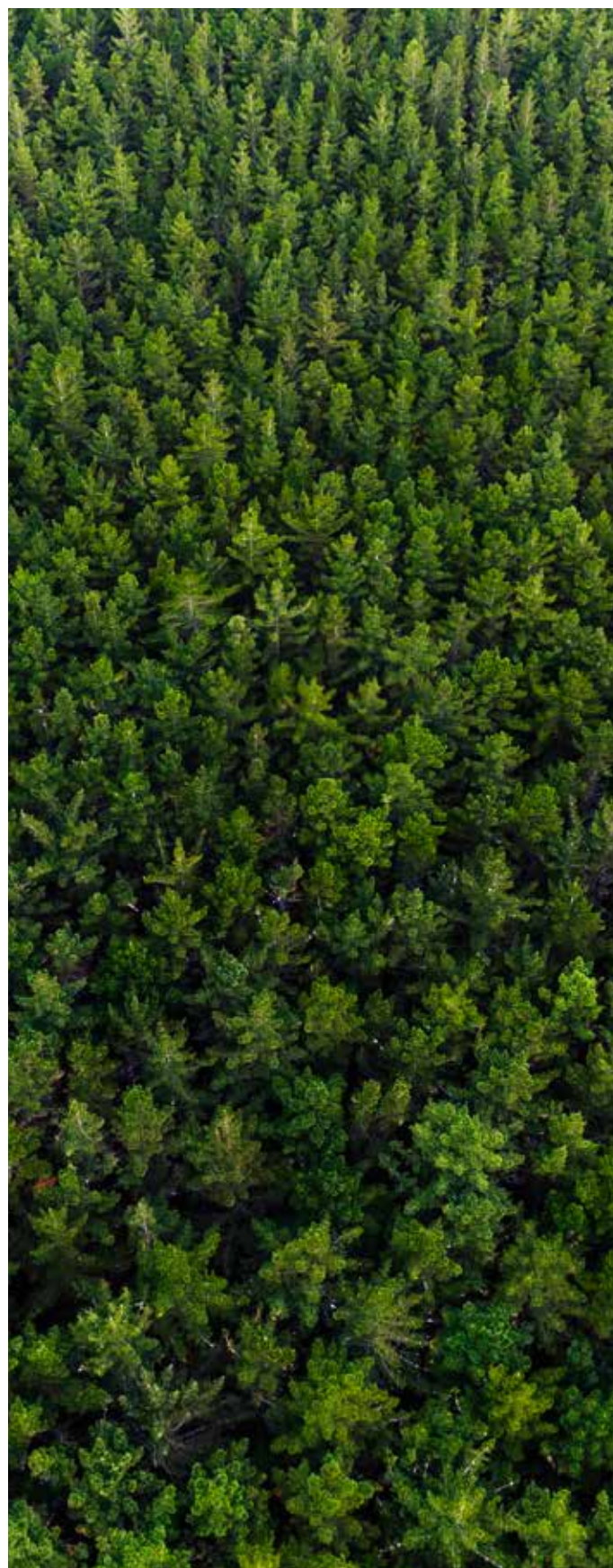
Timing

The Tanzanian Commission has an initial 14 days to determine whether the merger will be investigated. If the Tanzanian Commission determines to investigate the proposed merger, it will have a period of 90 days to conduct its investigation and make a determination, which period may be extended by a period of 30 days.

Filing fee

The fee is calculated based on the combined global turnover of the merging parties as set out in their latest audited accounts, as follows –

- if the combined turnover is between TZS800 million and TZS25 billion, the filing fee will be TZS25 million;
- if the combined turnover is between TZS25 billion and TZS100 billion the filing fee will be TZS50 million; and
- if the combined turnover over is more than TZS100 billion, the filing fee will be TZS100 million.



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Tunisia

Relevant laws

The relevant legislation is Law No. 91-64 of July 29, 1991, as amended, and Law No. 93-83 of July 26, 1993, Law No. 95-42 of April 24, 1995, Law No. 99-41 of May 10, 1999, Law No. 2003-74 of November 11, 2003, Law No. 2005-60 of July 18, 2005, and Decree No. 1215 of July 10, 1995, which is enforced by the Competition Council.

Definition of a merger

A merger occurs from any act which enables a company or group of companies to exert decisive influence directly or indirectly over one or more other companies. This can be achieved in any manner, including by transferring property, or use of the entirety or part of properties, or the rights or liabilities of a company.

Thresholds

A merger is notifiable to the Minister of Trade if either of the parties to the proposed merger has a market share in Tunisia which exceeds 30%, or the aggregate worldwide turnover of the parties exceeds DT20 million. There should also be an effect on local Tunisian markets for a merger to be notifiable.

Pre-implementation

Notifiable mergers may not be implemented before obtaining the approval of the Minister of Trade.

Timing

The Minister of Trade has a period of six months within which to conclude its investigation and make a determination in respect of a merger.

Filing fee

No filing fee is payable.



Abderrahmen Fendri

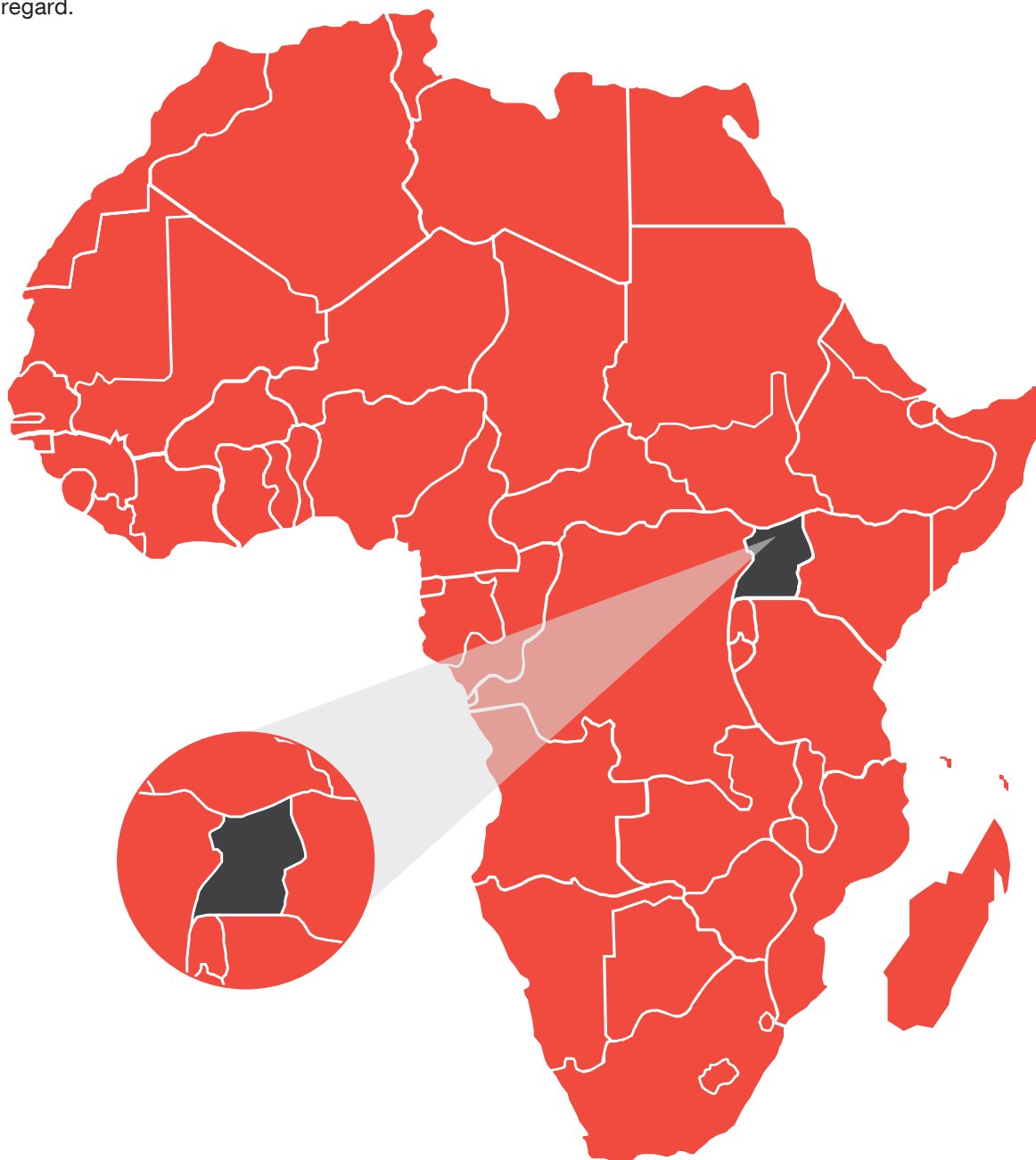
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Uganda

Uganda has no domestic competition law merger control regime.

Uganda is a member of the Common Market for Eastern and Southern Africa and the East African Community. Please refer to pages 43 and 44 for further information in this regard.



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Zambia

Relevant legislation and enforcement agency

The relevant legislation is the Competition and Consumer Protection Act 24 of 2010 (the 'ZCCPA'), which is enforced by the Competition and Consumer Protection Commission (the 'Zambian Commission').

Zambia is also a member of the Common Market for Eastern and Southern Africa. Kindly refer to page 43 for more information in this regard

Definition of a merger

A merger occurs when an enterprise, directly or indirectly, acquires or establishes, direct or indirect control over the whole or 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.

Thresholds

A merger is notifiable if the combined turnover or asset value (whichever is higher) of the merging parties in Zambia during the last financial year is 50 million fee units (ZMW15 million).

Pre-implementation

A notifiable merger may not be implemented without the prior approval of the Zambian Commission. If a notifiable merger is implemented without the prior approval of the Zambian Commission, the merger will be deemed void.

Timing

The Zambian Commission has an initial period of 90 days to conduct its investigation and make a decision. This period may be extended by a period of 30 days. If the Zambian Commission does not make a decision in respect of the proposed merger within the prescribed periods, the proposed merger will be deemed approved.

Filing fee

A filing fee equal to 0.1% of the combined asset value or turnover (whichever is greater) is payable to the Zambian Commission. The notification fee is capped at 16 666 667 fee units (ZMW5 million).



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Zimbabwe

Relevant legislation and enforcement agency

The relevant legislation is the Competition Act 7 of 1996 (the 'Zimbabwean Competition Act'), which is enforced by the Competition and Tariff Commission of Zimbabwe (the 'Zimbabwean Commission').

Zimbabwe is also a member of the Common Market for Eastern and Southern Africa. Kindly refer to page 44 for more information in this regard.

Definition of a merger

A merger is defined as a 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.

Thresholds

Merger notification is mandatory if, in the last fiscal year, the merging parties' combined annual turnover or net asset value in Zimbabwe (whichever is higher) exceeded US\$1.2 million.

Pre-implementation

A merger which has been notified to the Zimbabwean Commission may be implemented before it is approved by the Zimbabwean Commission. However, if the merger is prohibited, the merger will have to be unravelled. If a notifiable merger is implemented without the prior approval of the Zimbabwean Commission, the Zimbabwean Commission may impose an administrative penalty of up to 10% of the merging parties' combined turnover derived during their previous financial year.

Timing

The Zimbabwean Commission has 90 days from either (i) the receipt of a merger notification, or (ii) if the Zimbabwean Commission requests additional information from the merging parties, receipt of that information, to finalise its investigation and approve or prohibit the merger.

Filing fee

The filing fee is an amount equal to 0.5% of the merging parties' combined annual turnover or assets in Zimbabwe (whichever is the greater). The minimum fee is US\$10 000 and the maximum fee is US\$50 000.



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Communauté Economique et Monétaire de l'Afrique Centrale

Communauté Economique et Monétaire de l'Afrique Centrale ('CEMAC') is an economic community of the African Union for the promotion of regional economic co-operation in central Africa. The members of CEMAC are Cameroon, Chad, Republic of Congo, Gabon, Equatorial Guinea and Central African Republic.

Relevant legislation and enforcement agency

The relevant legislation is CEMAC Regulation of 1999 (the 'CEMAC Regulation'), which is enforced by the CEMAC Organe de Surveillance de la Concurrence (the 'OSC').

Definition of a merger

A merger, referred to as a 'concentration' in the CEMAC Regulation, occurs if –

- two or more companies, previously independent, merge; or
- one or more companies acquire, directly or indirectly (whether by acquisition of equity, contract or any other means), control over the whole or part of another or several other companies.

Thresholds

The CEMAC Regulation provides that concentrations of a community dimension are subject to prior notification to, and review by, the OSC. For a concentration to be of a community dimension it has to meet one of the following thresholds –

- at least two of the companies involved in the concentration have a turnover in the common market of more than XAF1 billion each;
- the companies have a combined market share in the common market of 30% or more.

Pre-implementation

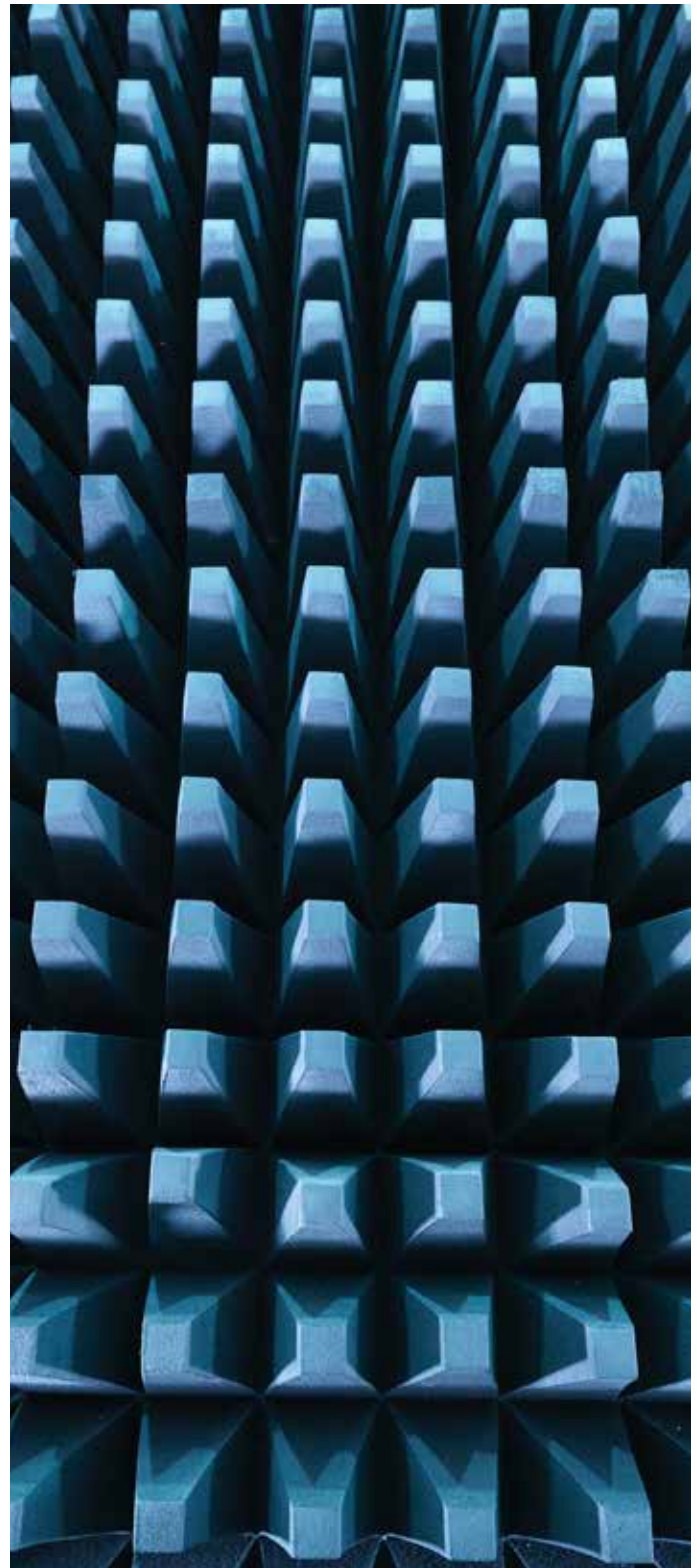
Notifiable mergers may not be implemented unless and until finally approved by the OSC.

Timing

The OSC must conclude its investigation and make a determination within five months from the date of receiving a merger filing, failing which the merger will be deemed approved.

Filing fee

No filing fees are payable.



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Common Market for Eastern and Southern Africa

The Common Market for Eastern and Southern Africa ('COMESA') is a free-trade area comprising Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, eSwatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Somalia, Tunisia, Uganda, Zambia and Zimbabwe.

Relevant legislation and enforcement agency

The relevant legislation is the COMESA Competition Regulations, read with the COMESA Competition Rules (the 'COMESA Competition Regulations'). The COMESA Competition Commission (the 'COMESA Commission') enforces the COMESA Competition Regulations.

Definition of a merger

A merger occurs if there is a 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.

Thresholds

A merger is notifiable if –

- the acquiring and target firms to a merger, or either the acquiring or the target firm, operate in two or more member states;
- the combined turnover or assets (whichever is higher) of the merging parties in the common market area are US\$50 million or more; and
- each of the merging parties has a turnover or assets in the common market of at least US\$10 million.

If the merging parties generate two thirds or more of their annual turnover in one and the same member state, the merging parties are not required to notify the COMESA Commission, but are required to file the merger in the relevant member state if it is notifiable in that member state in terms of that member state's domestic merger control regime.

Pre-implementation

A merger which has been notified to the COMESA Commission may be implemented before it is approved by the COMESA Commission. However, if the merger is prohibited, the merger will have to be unravelled. If a notifiable merger is implemented without the prior approval of the COMESA Commission, the COMESA Commission may impose an administrative penalty of up to 10% of the merging parties' combined turnover derived in COMESA during their previous financial year.

Timing

A merger must be notified within 30 days of the decision of the parties to merge. The COMESA Commission has 120 days within which to conduct the merger investigation and make its determination. This period may be extended upon application by the COMESA Commission to the COMESA Board. If the COMESA Commission does not make a determination within the relevant period, the merger will be deemed approved.

Filing fee

The filing fee is 0.1% of the combined annual turnover or combined value of assets in COMESA of the merging parties, whichever is higher, subject to a maximum of US\$200 000.



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East African Community

The East African Community (the 'EAC') is a regional inter-governmental organisation comprising Burundi, Kenya, Rwanda, Tanzania, Uganda and South Sudan.

Relevant legislation and enforcement agency

The relevant legislation is the East African Community Competition Act of 2006 (the 'EAC Competition Act') and the East African Community Regulations of 2010, which is enforced by the EAC Competition Authority.

Definition of a merger

The EAC Competition Act defines a merger as an amalgamation or joining of two or more firms into an existing firm, or to form a new firm. It furthermore defines an 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, contracts or by any other means. Both mergers and amalgamations fall within the jurisdiction of the EAC Competition Authority.

Thresholds

The EAC Competition Act and its regulations do not provide for any thresholds.

Pre-implementation

Notifiable mergers and acquisitions may not be implemented unless and until approved by the EAC Competition Authority. If a notifiable merger or acquisition is implemented without the prior approval of the EAC Competition Authority, the merger will be deemed void.

Timing

The EAC Competition Authority has 45 days to conduct its investigation and make a determination. If the EAC Competition Authority fails to make a determination within the prescribed period, the merger will be deemed approved.

Filing fee

Whilst the East African Community Regulations of 2010 provides for filing fees, filing fees have not yet been promulgated.



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Union Economique et Monétaire Ouest Africaine

The members of Union Economique et Monétaire Ouest Africaine ('UEMOA') comprise Benin, Burkina Faso, Ivory Coast, Guinea Bissau, Mali, Niger, Senegal and Togo.

Relevant legislation and enforcement agency

The UEMOA Regulation of 2002 ('UEMOA Regulation'), which is enforced by the UEMOA Commission.

Definition of a merger

A merger is defined as –

- a merger between two or more previously independent enterprises;
- where one or more enterprises directly or indirectly acquire, either through acquisition of a stake in the capital or through the purchase of assets or through a contract or any other means, control of all or part of one or more other enterprises;
- the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

Thresholds and pre-implementation

The UEMOA Regulation does not provide for any thresholds and parties may generally implement a merger without the prior approval of the UEMOA Commission. However, the UEMOA Regulation provides that a merger will be regarded as an abuse of a dominance where it creates or reinforces a dominant position leading to a significant hindrance of competition within the common market. When such a merger comes to the UEMOA Commission's attention, the UEMOA Commission may (i) order the parties involved not to proceed with the merger if it has not been completed, (ii) order the parties to reverse the transaction if it has been implemented, or (iii) impose structural behavioural conditions on the transaction.

Timing

The UEMOA Commission must respond within six months after the filing of the merger, either by granting the requested clearance or by communicating objections to the parties if the transaction raises serious competition concerns. In the latter case, the UEMOA Commission must issue a final decision on the merger within 12 months.



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