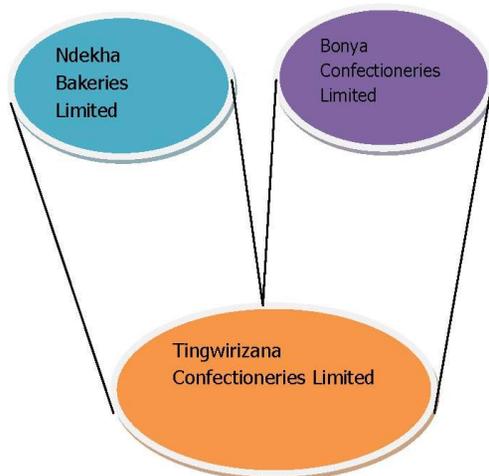




COMPETITION AND FAIR TRADING COMMISSION

FREQUENTLY ASKED QUESTIONS ABOUT MERGERS AND ACQUISITIONS



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Why Mergers are Regulated?

Mergers and acquisitions are important for the efficient functioning of the economy. They allow firms to achieve efficiencies, such as economies of scale or economies of scope and diversify risk across a range of activities. They also provide a mechanism to resuscitate underperforming firms.

However, mergers have anti-competitive effects. They alter the structure of markets and incentives for firms to behave in a competitive manner. This can result in significant consumer detriment. Therefore, the Competition and Fair Trading Act regulates mergers and acquisitions through a notification application process.

The Competition and Fair Trading Commission assesses the impact of the merger on competition and the economy. On the basis of the analysis, the Commission is granted powers to approve or reject mergers and acquisitions.

What is a Merger?

The Act defines a merger as:

(a) The acquisition of **controlling interest** in a business or in an asset used for production or distribution of any commodity or service by a person who is also involved in production or distribution of the same goods or services as the acquired business or asset – technically known as **horizontal merger**.

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(b) The acquisition of a **controlling interest** in any trade whose business consists wholly or substantially in supply of goods or services to a person who acquires the controlling interest or distribution of goods or services produced by the person who acquires the controlling interest – technically known as **vertical merger**.

Which mergers are subject to the Commission's authorisation?

The Act does not provide for a minimum threshold that qualifies a merger to be notified to the Commission for authorisation. This essentially, means that all mergers, as long as they meet the definition of a merger as set out in the Act, have to be notified to the Commission in writing.

When is a notification for a merger supposed to be made?

The Act does not provide for a timeframe for parties involved in a merger to file a notification to the Commission. However, a merger should be notified to the Commission at an earliest possible time. This could be after the parties have reached an agreement but before completion of the transaction. When notification is to be made after completion of the transaction, it is advisable that it should be done without undue delays otherwise the merger will have been consummated in contravention of the Act.

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Who should submit an application for authorisation of a merger?

Any person may apply to the Commission for authorisation of a merger. Therefore, it could be either:-

- Any one of the parties;
- Both parties submitting a joint notification; or
- Legal practitioners/agents appointed by the parties involved in the merger.

Before submitting a written application, parties to a merger are encouraged to contact the Commission for advice on how to submit the application.

On the basis of information provided during pre-notification meetings, the Commission advises the parties to submit their application either under **Negative Clearance** or as a **Full Merger Application**.

Negative clearance is granted to mergers which, upon preliminary assessment of the information provided by the parties, are deemed to less likely raise competition concerns.

The parties are advised to fill the merger application forms and submit to the Commission together with the merger application fees as set out in the Competition and Fair Trading Regulations.

How are Mergers Assessed?

Upon receipt of an application for authorisation of a merger, the Commission

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assesses the impact of the merger on competition and the economy. The Commission's decision to approve or reject a merger is based on whether the positive effects of a merger supersede its negative effects and vice versa.

What are Penalties for failure to seek Commission's authorisation for a merger?

Anybody who consummates a merger without authority of the Commission commits an offence. Therefore, the following shall follow:

- The merger shall not have any legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger or takeover shall be legally enforceable.
- The parties shall be liable to pay penalty of MK 500,000 or an amount equivalent to the financial gain generated by the offence, if such an amount is greater, and imprisonment for five years.

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