



# East African Community; Change of Control Test

Enforcement of the East African Community (EAC) merger control regime commenced effective November 2025. The concept of control is a key element in determining whether a transaction is subject to notification and prior approval. The EAC regime is clear that for a transaction to require notification, it must result in a change of control over an undertaking, in whole or in part, or over business assets located within the EAC, as reflected in the definition of a merger under the EAC Competition Act. Moreover, the EAC Competition Act provides a broad definition of control. This clarity, however, does not fully extend to transactions involving a change of control over an undertaking, or part of an undertaking, in the EAC.

#### *Determining control or material influence*

Control is defined under the EAC Competition Act (the Act) as the right to exercise restraint or direction over another undertaking. This includes situations where a party acquires more than half of the issued share capital, business, or assets of another undertaking, or where it can appoint or veto the appointment of more than half of board members or equivalent decision-makers. The definition also extends to cases where a party has the actual or potential ability to materially influence the business policy or operations of another undertaking, regardless of the size of the ownership interest.

The Act further explains that control is not limited to formal ownership structures. It may arise through contractual rights that allow an acquirer to determine strategic commercial decisions or to exercise decisive influence over management or policy. However, while the concept of material influence is included, the Act does not set out specific thresholds or detailed criteria for identifying when material influence exists.

#### *Practical Assessment*

In practice, this means that the East African Community Competition Authority (EACCA) must look beyond formal ownership levels and consider whether a party could shape strategic commercial decisions. Factors or situations where other shareholders are widely dispersed or passive, where voting patterns consistently align with the acquirer, or where the target is economically dependent on a particular party are relevant not as independent legal tests, but as practical indicators that give substance to the statutory concept of material influence. References to *de facto* influence or joint control therefore do not import external standards into the EAC regime; instead, they illustrate how the Authority is likely to interpret and apply its own definition of control in the absence of clear criteria, particularly given that the Act expressly captures potential influence, and not only influence that is exercised.

What remains uncertain is the nature of the connection to the EAC required for a change of control over an undertaking to fall within the scope of the regime. The Act does not clarify whether the target must have a formal presence in the region such as subsidiaries, branches, or other registered entities. Nor does it specify whether economic activity alone, such as sales into the EAC through exports, distributors, or agents, could be sufficient to establish the required local nexus. Given that the EAC merger control regime has only recently come into force, the EACCA has not yet developed decisional practice or issued interpretative guidance on this point. As enforcement evolves, further clarification may develop.

Furthermore, once a transaction is found to be notifiable, the EACCA will assess whether the merger is likely to result in a substantial lessening of competition in any relevant market within the EAC. In carrying out this assessment, the EACCA may consider all relevant competitive factors.

Particularly, it will consider the position of the undertakings in the affected markets, including their degree of market power, any control over essential facilities, their level of integration across upstream and downstream markets, and their financial resources. These factors are examined to determine whether the change of control resulting from the transaction could enable the parties to foreclose competitors, restrict access to key inputs or infrastructure, or otherwise distort competitive conditions in the EAC.

The EAC merger control regime adopts a broad and flexible concept of control that extends beyond formal ownership to include contractual rights and the actual or potential ability to materially influence an undertaking's strategic decisions. While the statutory definition of control is clear in scope, uncertainty remains regarding the local nexus required for undertaking-based transactions to fall within the EAC merger control regime.

Particularly where targets lack a formal presence in the region but engage in meaningful EAC-facing activities. In the absence of established guidance or decisional practice, transactions involving such features may carry risk. As the EACA begins to apply the regime in practice and develops a body of decisions, further clarification may emerge.



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