



Licensing Agreements under the Moroccan and Saudi Merger Control Regimes

Licensing agreements occupy a structurally ambiguous position in merger control. They sit between asset acquisitions and ordinary commercial contracts. Licensing agreements differ in structure and intent from M&A and joint venture transactions. Nonetheless, they may lead to change of control over a commercial activity related to the license. Where such transfer is not just provisional, it may raise competition concerns that merit merger control review. No national regulator or other institution in the MENA region issued specific guidelines clarifying how licensing agreements should be treated in a merger control context and precedence is limited. Hence, when dealing with licensing agreement in the MENA region, parties have limited means to assess their obligations. Consulting other merger control regime that have further developed merger review of licensing agreements may provide guidance. Considering competition regulators across the MENA region being open to taking inspiration from the European Commission a review of their treatment of license agreements promises some guidance. This client brief considers how European Commission precedence may educate treatment of license agreements under the merger control regimes of Morocco and Saudi Arabia.

Licensing agreements as concentrations under EU law

Control under the EU Merger Regulation may be acquired not only through shares or assets, but also through contracts, including license agreements, where they confer the possibility of exercising decisive influence on a lasting basis (Art. 3(2) EUMR; Art. 3.1 Jurisdictional Notice). The key question is whether the transaction gives rise to a lasting structural change in the market, namely through the transfer of the ability to operate a business on an autonomous basis. As clarified in the EC Consolidated Jurisdictional

Notice, this requires that the licensed assets constitute a "business" with a market presence, to which turnover can be clearly attributed. Hence, license agreements only qualify as concentrations where the license is (i) exclusive, at least within a defined territory; (ii) granted for a sufficient duration to bring about a lasting change in market structure, and (iii) confers decisive influence, thus, allowing the licensee to operate the related business independently, including determining its commercial strategy, production, and market conduct.

The relevant license currently producing turnover is not necessarily required. In several decisions concerning licensing agreements in the pharmaceutical sector, the European Commission accepted the capacity to generate turnover in the foreseeable future is sufficiently substantiated (see e.g. Novartis/GlaxoSmithKline, Case M.7872). More broadly, while not directly applicable to merger control, the revised Technology Transfer Block Exemption Regulation (that took effect few days ago, 1 May 2026) reflects a similar forward-looking logic. It recognises that technologies with no current sales remain competitively relevant (and are treated as having a 0% market share under Article 101 TFEU). Thence, the regulation confirms that the absence of turnover does not preclude competitive significance. Although this does not modify the legal test under the EU merger control regime, it supports a more dynamic understanding of economic activity in certain sectors, like for example in the technology sector. Here licenses may amount to concentrations where they effectively transfer a business but not where they merely grant access to technology or infrastructure without transferring strategic autonomy (see e.g. Microsoft/Yahoo! Search Business, Case COMP/M.5727).

Licensing agreements and the Moroccan merger control regime

Under the Moroccan merger control regime, control may be acquired not only through the

transfer of shares or assets, but also by contract or any other means which, alone or in combination, confer the ability to exercise decisive influence over an undertaking's activity (Art. 11, Law No. 104-12). Notably this includes acquisition of control through the transfer of rights of ownership or use over assets, or through contractual arrangements affecting an undertaking's governance and decision-making. The Moroccan Competition Council (MCC) Merger Control Guidelines (MCC Guidelines) confirm that rights of use over assets and contractual arrangements may confer control where they enable the acquirer to control the management and resources of an undertaking and produce a structural market change (Para. 29 MCC Guidelines).

The MCC Guidelines do not expressly refer to license agreements or intellectual property rights. Still, the relevant provisions require a functional and effects-based assessment. The qualification of a transaction as a concentration depends on whether it confers decisive influence over an economic activity, irrespective of the legal form of the underlying arrangements. Contractual arrangements can confer control only in exceptional circumstances—namely where they grant control over the management and resources of an undertaking equivalent to that obtained through the acquisition of shares or assets and are of sufficiently long duration to result in a structural change in the market (para. 28 MCC Guidelines). This approach is largely similar to that taken under EU law in respect to licensing agreements in merger control.

Recent MCC practice supports a substance-over-form approach consistent with EU law. For instance, in the Billions Europe/Venator Materials UK case, and the Indorama Holdings/Venator P&A Spain case the MCC treated the acquisition of bundles of tangible and intangible assets, including IP, contracts, and licenses, as acquisitions of undertakings constituting autonomous economic activities.

The MCC has not issued specific guidelines on the treatment of license agreements under the Moroccan merger control regime. Still, the MCC's practice suggests that they take an approach similar to EU law, including its forward-looking assessment where the capacity to generate future revenues is sufficiently substantiated.

Licensing agreements and the Saudi merger control regime

The Saudi General Authority for Competition (GAC) has to date not issued any formal guidance addressing the treatment of licensing agreements under the Saudi merger control regime. In practice, the Saudi authority has taken a position similar to that of the European Commission.

The Saudi Competition Law defines a concentration as any act resulting in the transfer of ownership, usufruct, or control—whether in whole or in part—over an undertaking or its assets, by any means (Art. 1 Royal Decree No. M/75 of 2019). The possibility of acquiring control through “any means” on the face of it allows the inclusion of license agreements. In practice, the GAC has assumed jurisdiction to review license agreements under the Saudi merger control regime, where these are exclusive, granted on a lasting basis, and confer control over a business.

As under EU law exclusivity does not have to be granted globally. In line with Saudi decisional practice in several cases concerning licensing agreements in the pharma and tech industry, exclusivity for a specific territory would suffice. The GAC has considered exclusivity for a specific country—e.g. Saudi Arabia—or region—e.g. the GCC—as sufficient.

On the second criterion—the license being granted on a lasting basis—practice is less clear. While the GAC has considered a temporal element, they have not provided clear guidance on what would be deemed sufficient duration. In

practice, parties have relied on the EU standard requiring a duration sufficient duration to bring about a lasting change in market structure. While the GAC has not explicitly accepted this approach, they have so far not pushed back on it in practice.

For the final criterion—the license conferring control over a business—the GAC has applied their general standard of decisive influence, which is largely the same as the concept of decisive influence under EU law. However, there is some debate on whether the business must currently produce revenue. Initially, the GAC appeared to not require current turnover associated with the license and the undertaking taken over. However, with the 4th edition of the GAC Merger Guidelines issued in November 2023 a minimum worldwide turnover requirement was introduced for acquisitions (p. 39 GAC Merger Guidelines, 4th edition). Still, practice since the 4th edition of the GAC Merger Guidelines were introduced suggests that the GAC still considers current sales not being necessary to establish a filing obligation for license agreements. This approach is not inconsistent with the general approach of the GAC in their Merger Guidelines. While the Guidelines require target turnover for acquisitions, other transactions—such as joint ventures—require filing even where the target has currently no turnover.

Key takeaways

Unlike in the EU treatment of license agreements in the merger control context is not regulated in Saudi Arabia or Morocco. Still, practice of both the MCC and the GAC suggest that their approach is largely aligned with European Commission practice in this regard. Saudi guidelines and regulations provide little codified support for this approach. Still, while some differences may exist in detail, the GAC ultimately treats license agreements overall in the same manner as the European Commission. Moroccan law and guidelines themselves more

readily support the approach taken by the European Commission being adopted by the MCC. This also is supported in practice. In their decisions the MCC overall takes a position that reflects that of the European Commission.

Hence, in both jurisdictions working from principles of EU law concerning treatment of licensing agreements in a merger control context is an appropriate approach initially. Still, parties must keep in mind that EU law and European Commission precedence—while potentially persuasive as basis for their assessment—is not binding to the MCC or the GAC. Hence, parties may present European Commission precedence to the MCC or GAC as examples of how concepts not yet extensively tested under the Moroccan or Saudi merger control regime may be approached. However, ultimately the MCC and GAC will formulate their own position on such concepts that may differ from the approach taken by the European Commission. Still, past practice of both the MCC and the GAC suggests that they are willing to consider approaches of other, sophisticated regulators and the European Commission specifically when assessing matters not finally resolved in their practice.



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