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# Navigating Merger Control in Kenya and the East African Community

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The Competition Authority of Kenya (CAK) took steps to harmonize their merger control regime with that of the COMESA. The CAK retains a residual "call-in" power. It can require notification of otherwise excluded transactions where the merger may substantially lessen competition, restrict trade, or adversely affect the public interest. This power has been exercised only once since its introduction. The Kenyan rules also clarify that turnover and asset thresholds are assessed based on Kenyan turnover or assets. They contain specific calculation rules for financial institutions, joint ventures and investment funds. The current thresholds were introduced in 2019, primarily to eliminate overlap with the COMESA merger control regime, and have not been revised since then. Similar harmonization steps have not been taken towards the EAC regime. This leaves room for conflicting jurisdiction, which in turn introduces additional complexity to deals in East Africa.

*Interaction with the COMESA regime*

The Kenyan merger control framework expressly addresses the interaction between the domestic, Kenyan and COMESA merger control regimes. A transaction is excluded from mandatory notification before the CAK if it satisfies the COMESA merger notification thresholds and less than two-thirds of the parties' turnover or assets are generated or located in Kenya. In these circumstances, the parties only need to inform the CAK that a notification has been submitted to the COMESA Competition Commission.

Accordingly, Kenyan legislation expressly recognizes the COMESA one-stop-shop principle. It prevents duplicate merger notifications for transactions falling primarily within the jurisdiction of the COMESA Competition Commission.

*East African Community merger control regime*

The East African Community Competition Act, 2006 establishes the East African Community Competition Authority (EACCA) as the institution responsible for implementing and enforcing competition law in relation to cross-border conduct within the EAC.

Following the publication of the Notice of Commencement of Receipt of Notifications of Mergers and Acquisitions with Cross-Border Effect, the EACCA began receiving merger notifications from 1 November 2025. The EAC regime applies to mergers having a cross-border effect within the Community.

*Notification thresholds*

A merger is notifiable to the EACCA where both jurisdictional thresholds are satisfied. First, the combined turnover or assets of the merging undertakings within the East African Community, whichever is higher, must equal or exceed USD 35 million. Second , at least two undertakings participating in the transaction must each have turnover or assets within the Community equal to or exceeding USD 20 million.

The EAC regime also contains a jurisdictional exclusion. It applies where each party to the transaction generates at least two-thirds of its aggregate turnover or assets within one and the same Partner State. Where this condition is met, the transaction does not constitute a cross-border merger for the EAC regime, and therefore falls outside the EACCA’s jurisdiction.

*The One-Stop-Shop principle and its limits in Kenya*

The Notice expressly provides that, once a transaction with a cross-border effect has been notified to the EACCA, it needs not be notified to the national competition authorities of the EAC Partner States.

Despite this stated one-stop-shop principle, Kenya has not amended its domestic merger control framework to give effect to the EAC regime. While the EAC framework contemplates that qualifying transactions should be reviewed exclusively by the EACCA, the Kenyan Rules continue to impose notification obligations whenever the applicable Kenyan thresholds are met. They contain no exemption for transactions falling within the EACCA's jurisdiction.

This contrasts with Kenya's treatment of the COMESA merger control regime. The Kenyan Rules expressly exempt qualifying COMESA-notifiable transactions from domestic notification. They require only that the CAK be informed of the COMESA filing. This shows that, where the Kenyan legislature intends to defer merger review to a regional authority, it does so through explicit domestic legislative provisions.
As a result, the EACCA's assertion of exclusive jurisdiction over qualifying cross-border mergers has not been reflected in Kenyan domestic law.

Transactions meeting both the Kenyan and EAC notification thresholds may therefore simultaneously fall within the jurisdiction of the EACCA and the CAK. This gives rise to concurrent notification obligations until Kenya formally implements the EAC one-stop-shop mechanism.

Although the EACCA entered into a Memorandum of Understanding (MoU) with the COMESA Competition Commission in June 2025, and had previously concluded a similar MoU with the CAK in May 2023, neither agreement resolves the allocation of jurisdiction between the respective authorities. Both MoUs are procedural and intended to facilitate institutional cooperation. They do not establish exclusive jurisdiction, priority rules or referral mechanisms capable of preventing parallel merger reviews.

The current framework does not provide legal certainty as to whether transactions meeting the EACCA notification thresholds must also be notified to the CAK or, where applicable, to the COMESA Competition Commission. This uncertainty exposes merging parties to the risk of duplicate filings, increased administrative and financial burdens, and potentially inconsistent regulatory outcomes, including divergent substantive assessments or remedies.

The Organisation for Economic Co-operation and Development (OECD) has also recognised this jurisdictional overlap. In its Peer Reviews of Competition Law and Policy: Kenya (17 March 2026), the OECD reported that stakeholders had expressed significant concerns regarding the interaction between the EAC and national merger control regimes, as well as between the EAC and COMESA systems. The OECD further noted that officials from both the EACCA and the COMESA Competition Commission acknowledged these challenges. They were working to improve coordination between their respective regimes, including through a review of the COMESA competition framework in light of the operationalisation of the EAC merger control regime. Regarding Kenya, the OECD observed that discussions on harmonising the Kenyan and EAC merger control regimes had primarily taken place at the regional level, with limited involvement from the CAK.

*Memorandum of Understanding between the EACCA and the CAK*

The MoU entered into between the EACCA and the CAK on 16 May 2023 aimed to promote cooperation and coordination in applying and enforcing their respective competition laws. The MoU establishes a framework for cooperation in a broad range of areas, including information sharing, consultations, joint investigations, market inquiries, technical assistance, capacity building and institutional coordination.

In 2023, Lilian Mukoronia, head of the EACCA, observed that Kenya, accounting for nearly 43% of the value of transactions concluded within the EAC, had been selected as the Authority's "maiden collaboration". She further indicated that the MoU would serve as a benchmark for future engagements with national competition agencies across the EAC. She also noted it represented a tangible step towards strengthening cooperation between the CAK and the EACCA in support of the EAC's broader economic integration agenda.

The MoU proceeds on the assumption that both authorities may conduct enforcement activities under their respective legal frameworks. It focuses on facilitating cooperation where those activities overlap.

This conclusion is reinforced by the provisions governing coordination and consultation. The MoU requires each authority to notify the other when its enforcement activities may affect the other authority's interests. It encourages cooperation in concurrent enforcement activities and provides for consultation where matters of mutual interest arise. These mechanisms are procedural and intended to facilitate cooperation between the authorities. They do not resolve questions relating to the existence or exercise of jurisdiction over merger notifications.

Most importantly, the MoU expressly provides that it "does not have legal effect". It further clarifies that nothing contained in the MoU shall be interpreted in a manner inconsistent with the existing laws or as requiring any amendment to the competition laws of either authority.

The MoU nevertheless recognises that further legislative and institutional harmonisation may be necessary. It establishes a Joint Working Committee to facilitate cooperation between the authorities, monitor the implementation of the MoU and propose amendments or supplements to the MoU.

The Committee may also propose amendments to the relevant legislation where necessary. This shows that, at the time of its conclusion, both authorities acknowledged that additional legal and regulatory measures would be required to achieve effective harmonisation of their respective competition regimes.

*Practical implications*

Until Kenya formally amends its domestic merger control framework or another legally binding instrument allocates jurisdiction between two authorities, partis contemplating mergers involving Kenyan activities should assess notification obligations independently under both legal regimes. The possibility of concurrent merger notification obligations remains.

Where a transaction satisfies both the Kenyan notification thresholds and the EACCA thresholds, reliance solely on the EACCA Notice carries legal risk. Kenyan legislation continues to impose notification obligations before the CAK.
In the absence of legislative harmonisation or formal guidance from the CAK recognising the EAC one-stop-shop mechanism, the prudent approach is to evaluate whether to submit parallel notifications. This mitigates the risk of non-compliance with Kenyan merger control requirements.

*Key takeaways*

The EACCA has introduced an operational regional merger control regime and expressly declared that qualifying cross-border mergers should be notified exclusively to the EACCA. However, this regional objective has not yet been fully implemented in Kenya's domestic legal framework. Unlike the COMESA regime, which has been expressly integrated into Kenyan merger control legislation, no corresponding amendments have been made to the Kenyan Rules for the EAC regime.

Kenya, therefore, continues to apply its domestic merger notification thresholds independently of the EAC framework. Mergers satisfying both the Kenyan and EAC jurisdictional thresholds may currently be subject to concurrent notification obligations before both the CAK and the EACCA.

Until Kenya formally transposes the EAC one-stop-shop mechanism into its domestic legal framework or otherwise clarifies how the two regimes interact, parties should proceed on the basis that dual filing obligations may arise where both sets of notification thresholds are met.

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