African Merger Control Update—A New Cross-Border Regime Takes Effect in East Africa

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Introduction

Recent years have seen significant developments in merger control regimes across Africa, with many national jurisdictions formalizing or tightening their rules, while regional authorities push forwards with ambitious harmonization projects. In this context, it is more important than ever for businesses and their advisors to carefully consider the applicability of African merger control rules when planning cross-border transactions.

In this Debevoise Update, we explore a key recent development in African merger control—the introduction of a mandatory notification regime in the East African Community ("EAC")—as well as highlighting a number of wider trends which have emerged in the African merger control landscape.

New Cross-Border Notification Regime in the East African Community

On 1 November 2025, a new cross-border notification regime will enter into force in the eight states which comprise the—EAC, namely, Burundi, the Democratic Republic of Congo, Kenya, Rwanda, Somalia, South Sudan, Tanzania, and Uganda (each a "Partner State"). The East African Community Competition Authority ("EACCA") has announced that transactions which fall within the scope of this regime will be subject to a suspensory pre-closing notification obligation.

The new regime applies to transactions involving parties which carry on business in two or more of the eight Partner States. A notification obligation will be triggered if the target company is active (i.e., has assets or sales) in at least one Partner State <u>and</u> the following thresholds are met:

- the combined turnover or assets of the merger parties in the EAC is equal to or in excess of USD 35 million; and

- at least two of the merger parties have combined turnover or assets of USD 20 million in the EAC, unless each of the merger parties achieves at least two-thirds of its aggregate turnover or assets in the EAC within one and the same Partner State. [1]

Importantly, the EACCA intends that their new notification regime will operate as a **one-stop shop** (i.e. once a transaction is notified to the EACCA, it will not need to be notified to the national authorities of individual Partner States).

However, this attempt to harmonize obligations and avoid dual notification will be complicated by the fact that six of the eight Partner States (Burundi, the Democratic Republic of Congo, Kenya, Rwanda, South Sudan, and Uganda) are *also* members of the Common Market for Eastern and Southern Africa ("COMESA") which operates its own regional merger control regime.

In June 2025, the EACCA and the COMESA Competition Commission signed a non-binding Memorandum of Understanding, in which they agreed to co-ordinate their operations and make efforts to avoid duplicative enforcement activities. However, the risk of having to make parallel filings persists.

Moreover, several Partner States (for example, Kenya and Tanzania) have active national competition regulators. It is yet to be seen whether these national regulators will fully accept the supremacy of the EACCA merger control regime or whether they will want to conduct their own review.

It is therefore important for businesses to factor this new regime into their transaction planning, especially when calculating review periods for potential transactions and timing from sign to close.

Wider Trends in African Merger Control

More widely, a number of unfavorable trends remain common across the African merger control landscape, and should be kept in mind by parties when considering notification obligations and deal planning:

Notification Thresholds Based on the Parties' Global Turnover/Assets

In an increasing number of African regimes, transactions can trigger mandatory merger control notifications on the basis of the parties' global turnover/assets, even where the target of the transaction has no (or nominal) connection to the jurisdiction itself. For

[1] Note: The new regime will **not** apply to transactions which would otherwise meet the thresholds but are either already pending before a national competition authority or will have closed before 1 November 2025.

example, under the Moroccan regime, a filing is triggered by an acquisition where the parties' combined worldwide turnover exceeds MAD 1.2 billion (approx. USD 121 million) and at least one party's Moroccan turnover exceeds MAD 50 billion (approx. USD 5 million), even if the target is not active in Morocco. While there is a local nexus criterion—the transaction must potentially impact competition in Morocco—how that is applied by the Morocco competition authority is open-ended and ambiguous. The authority has also become increasingly active in fining "gun jumping" in recent years and so businesses must carefully assess any potential links to the Moroccan market where the thresholds are met.

High Filing Fees and Lengthy Review Periods

Review periods remain comparatively long under many African merger control regimes and filing fees are often high. For example, the Central African Economic and Monetary Community ("CEMAC") has up to 6 months to review filings, and the parties are subject to an filing fee of 0.25% of their combined turnover generated across the six CEMAC member states. This fee is not capped and can therefore be prohibitively high. In light of significant pushback from businesses, the COMESA Competition Authority reduced its filing fee in 2015, however parties can still expect to pay up to USD 200,000 depending on their combined regional turnover.

Ongoing Disagreement on the Status of One-Stop Shops

As mentioned above, the EACCA is not the only regional authority seeking to operate a one-stop shop notification regime for cross-border transactions in Africa. Both the COMESA Competition Commission and the Economic Community of West African States ("ECOWAS") Regional Competition Authority have one-stop shop regimes. However, both regional regulators have faced pushback from their respective members' national regulators. In the case of ECOWAS, member states including Nigeria have refused to accept that a notification to the ECOWAS Regional Competition Authority negates the need to also notify the national regulator. Meanwhile, in COMESA, Egypt continues to accept dual notifications despite consistent pushback from the COMESA Competition Commission. The precedence of these regional regulators appears to be gaining momentum and the expectation is that more states will recognize them as one stop shops over time, particularly in order to benefit from fee sharing. However, in the meantime, it is important that businesses keep in mind the possibility of dual-notification when planning cross-border transactions.

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