



# Competition Law

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## KENYA

- Key merger control changes in COMESA's 2025 competition regulatory overhaul



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## Key merger control changes in COMESA's 2025 competition regulatory overhaul



On 4 December 2025, the Common Market for Eastern and Southern Africa (COMESA) Council of Ministers adopted the new Competition and Consumer Protection Regulations, 2025 (2025 Regulations) and the COMESA Competition and Consumer Protection Rules, 2025 (2025 Rules) which came into force on 5 December 2025.

The overhaul establishes a suspensory merger control regime, introduces new notification thresholds, increases merger filing fees, and rebrands the regulator as the COMESA Competition and Consumer Commission (CCCC). Further, the CCCC has issued Practice Note No. 1 of 2026 (Practice Note) to clarify how the new merger control regime under the 2025 Regulations and Rules will be applied in practice. The Practice Note provides clarity on the suspensory regime and derogations, transitional arrangements, timelines and the treatment of digital transactions and joint ventures. This alert outlines the principal changes and what they mean for businesses operating across the COMESA region, particularly from a mergers and acquisitions (M&A) transaction perspective.

### **Introduction of a suspensory regime**

Under the 2004 regime, notifiable mergers had to be filed within 30 days of the decision to merge, but parties could still implement transactions before approval since there was no standstill obligation. The 2025 Regulations introduce a fully suspensory system whereby closing is prohibited until clearance or a derogation is granted in exceptional circumstances and upon compelling justification.

The Practice Note clarifies that exceptional circumstances and compelling justification includes cases specified by the 2025 Regulations, namely, public bids or securities transactions which would be subject to prior notification. Nevertheless, the acquirers in these transactions are prohibited from exercising their voting rights attached to the securities in question. Such derogations will be applied sparingly, pragmatically, and may carry conditions or prohibition. The 2025 Rules also empower the CCCC to investigate gun jumping, impose fines of up to 10% of the annual turnover of the concerned undertakings in COMESA, issue remedial orders, and identify early integration steps that may amount to unlawful implementation.

## Exclusive jurisdiction

The 2025 Regulations reinforce the 'one-stop-shop' nature of the CCCC with respect to cross-border mergers; they outline the superiority of the COMESA competition regime; and provide that where there is any conflict between national laws and the 2025 Regulations, the 2025 Regulations are to prevail.

## New notification thresholds

A merger is notifiable if the combined COMESA turnover or assets is at least USD 60 million and at least two parties each meet USD 10 million in turnover. Under the 2004 regime, the combined threshold test was USD 50 million for all undertakings to a merger and USD 10 million for at least two parties to a merger. The two thirds single state exception remains as under the 2004 regime.

Further, the 2025 Regulations and 2025 Rules introduce a digital transaction value test that requires parties to a merger in a digital market to notify the CCCC if the transaction value reaches USD 250 million and one party operates in two or more COMESA member states. This brings more digital and platform deals into scope, even where turnover is modest.

## New filing fees

The merger filing fee has been increased from 0.01% of combined turnover or value of assets (whichever is higher) capped at USD 200,000, to 0.1% of the combined turnover or value of assets (whichever is higher) with a higher cap of USD 300,000. Notifications for mergers in digital transactions are charged a fee of 0.05% of the transaction value, also capped at USD 300,000.

## Review timelines and approval process

The statutory approval period remains one 120 days; however, the 2025 framework introduces a formal "*stop-the-clock*" mechanism for information requests and clarifies that the review period only commences once a complete notification is submitted. Further, where substantive complexity is present and competition concerns require deeper inquiry, the CCCC must inform the parties and seek an extension from the panel responsible for determination. The Practice Note makes it clear that the CCCC will only seek an extension where the transaction raises competition concerns that warrant additional examination, investigation and

engagement with the parties or stakeholders. Combined with the suspensory obligation, this increases timing risk and heightens the importance of long-stop date management.

## Institutional and procedural framework

The Practice Note confirms that matters before the CCCC on or before 4 December 2025, the date of adoption, will continue under the repealed regulations, while any transaction not submitted by that date must comply with the new regime. To provide certainty, the CCCC has determined that any transaction not notified by 4 December 2025



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will fall under the new regulations regardless of signing date or the former 30-day rule; however, where prefilings engagement such as correspondence or calls indicating imminent filing had commenced, the matter will be treated as having been submitted to the CCCC and governed by the repealed regulations.

A panel of three to five commissioners will now make final determinations on competition and consumer protection matters replacing previous adjudicative structures. The CCCC has new powers to conduct market inquiries into consumer and competition issues and may issue urgent interim orders to halt practices that risk serious

harm. It can negotiate and conclude settlement agreements with or without either party admitting liability, provided concerns are addressed and fines included.

The timelines for payment of fines have been expanded from 30 days to 45 days and failure to pay attracts a daily penalty of 2%. Where, within 90 days from the date of commencement of payment of the fine, the parties fail to pay the fine imposed, the CCCC shall refer to the matter to the Court of Justice of the Common Market. Appeals against CCCC decisions now go directly to the Court of Justice of the Common Market within 45 days, removing the former Appeals Board.

Under the 2025 framework, cultural and linguistic diversity is also promoted through mandated geographical representation in commissioner appointments and the requirement for businesses to provide product and consumer information in appropriate languages for target markets.

## Conclusion

The 2025 Regulations and Rules represent a substantive reset of COMESA's merger control framework, moving from a largely permissive approach to a fully suspensory, enforcement-ready system. The shift demands early planning, tighter transaction controls, and proactive compliance. Businesses should immediately:

- Build suspensory controls into deal timetables by incorporating COMESA clearance as a closing condition where thresholds are met, identifying transactions potentially requiring a derogation and preparing supporting evidence early.

- Reassess notification analyses by rerunning assessments against the USD 60 million combined threshold with USD 10 million per at least two parties and the USD 250 million digital transaction value test, including minority or asset deals with significant data or platform implications.
- Budget for higher filing fees that reflect the new fee structure and caps in deal costings and governance approvals.
- Strengthen gun-jumping protocols by tightening clean-team arrangements, limiting pre-closing integration and documenting ordinary-course interactions.
- Align internal policies and training to update deal checklists and transaction playbooks, and deliver targeted training to M&A, legal, finance and senior commercial teams involved in transaction planning and execution.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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