The Legal 500 & The In-House Lawyer
Comparative Legal Guide
South Africa: Merger Control

This country-specific Q&A provides an overview to merger control laws and regulations that may occur in South Africa.

It will cover jurisdictional thresholds, the substantive test, process, remedies, penalties, appeals as well as the author's view on planned future reforms of the merger control regime.

This Q&A is part of the global guide to Merger Control. For a full list of jurisdictional Q&As visit http://www.inhouselawyer.co.uk/index.php/practice-areas/merger-control

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1. ## Overview

The Competition Act, 1998 regulates mergers having an effect in South Africa. It applies to all economic activity within, or having an effect within, South Africa. Accordingly, transactions between parties in a foreign jurisdiction, which has an effect in South Africa (eg by way of sales into the country) is subject to the merger control provisions of the Act.

The Competition Commission (Commission) is the primary interface with the public. It is responsible for the investigation and evaluation of mergers. It has the power to approve, prohibit or impose conditions in the case of small and intermediate mergers and is obliged to make recommendations to the Competition Tribunal (Tribunal) in relation to large mergers.

The Tribunal is the primary adjudicative body. It is responsible for the approval of large mergers. It is the entity that adjudicates on conduct prohibited in terms of the Competition Act and is responsible for the imposition of penalties under the Act. Appeals and reviews in respect of decisions of the Commission are referred to the Tribunal.

The Competition Appeal Court consists of three High Court judges and shares exclusive appellate jurisdiction with the Tribunal in relation to most aspects of the Competition Act, although there is a right of appeal, with special leave, to the Constitutional Court.

No party may implement an intermediate or large merger without the prior approval of the competition authorities.

The South African authority is well regarded on the continent as an effective and sophisticated regulator. Its approach to substantive competition issues and formal notification requirements is generally in line with international best practice. From a timing perspective, mergers are generally approved within three months or less. However, complex, large mergers can take significantly longer.

On factor that distinguishes the South African regulator from many others is the specific requirement to consider public interest effects alongside competition effects. This has led to particular challenges where mergers are likely to result in job losses or other negative public interest outcomes.

2. Is mandatory notification compulsory or voluntary?

Notification is mandatory.

The parties to a merger which has an effect in South Africa and which exceeds certain combined asset and/or turnover thresholds (see below) must notify the Commission of that merger, in a prescribed manner and form.

For mergers that do not meet the prescribed thresholds, the Commission may call for a notification within 6 months of implementation of the merger if it is of the opinion that the merger may substantially prevent or lessen competition or if it raises public interest concerns.

3. Is there a prohibition on completion or closing prior to clearance by the relevant authority? Are there possibilities for derogation or carve out?

Mergers in South Africa are classified as either small, intermediate or large, based on the South African turnover and assets of the acquiring and target firms.

Parties to an intermediate or large merger may not implement the merger in South Africa until it has been approved, with or without conditions.

The scope of the prohibition on prior implementation is absolute, and there is no carve out for public bids or other derogations.

For multi-jurisdictional mergers, ring-fencing or "carving out" the South African leg of the transaction pending approval is in principle allowed, provided that this can be done in such a way as to ensure that there is no establishment or acquisition of control (see 3.1 below for instances of control) over the business or assets of the target company in South Africa.

However, it is important to note that the Commission in South Africa is known to be conservative in its approach and such "ring-fencing" is not readily applied in South Africa.

4. What are the conditions of the test for control?

A merger occurs when one or more firms directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another firm. The term "firm" includes a person, partnership or trust.

The Competition Act provides that merger may be achieved in any manner, including through:

- purchase or lease of shares, an interest or assets of the other firm in question; or
- amalgamation or other combination with that other firm.

The Competition Act lists the following examples control:

- the beneficial ownership of more than one half of the issues share capital;
- the entitlement to vote a majority of the votes that may be cast at a general meeting, or the ability to control the voting of a majority of those votes;
- the ability to appoint or veto the appointment of a majority of the directors;
- for registered holding companies, over a subsidiary as defined in the Companies Act;
- for trusts, the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or change the majority of the beneficiaries of the trust;
- for close corporations, owning the majority of the members' interest or control of the majority of members' votes in the close corporation; or
- the ability to materially influence policy in a manner comparable, in ordinary commercial practice, to the forms of control listed above.

The above list is non-exhaustive and the Competition Appeal Court has given the term "control" the widest possible meaning so as to allow the relevant competition authorities to examine a wide range of transactions which could result in an alteration of the market structure.

In case law, the Competition Authorities distinguish between so called "sole control" and "joint control". In this regard, "sole control" refers to *de jure* control as contemplated in a) to f) above (also referred to as "bright line" control) while "joint control" is most often a reference to "material influence" as contemplated in g) above (also referred to as "negative" control – see also 3.2 below). Worth noting is the fact that South African merger control recognizes the fact that a firm may be subject to both "sole control" and "joint" (or "negative") control at the same time – as a result, the acquisition of sole control (so called "crossing a bright line") in circumstances where negative control by another party still applies will require notification. By the same token, removal of negative control (leaving only a sole controller unfettered by negative control) also requires notification, unless the acquisition of sole control was previously notified and approved. It should be noted that the distinction between sole and joint control is the product of developing case law and advice should be sought when dealing with more than one form of control and changes thereto.

5. What are the conditions on minority interest in your jurisdiction?

The control test is a question of fact with regard to relevant circumstances and there is no percentage shareholding below which it is safe to assume that control will not arise Minority interests are caught by the merger control rules in the following circumstances:

- where shareholdings are diffuse and historical voter turnout at general meetings indicates that the minority interest is likely to amount to a majority of votes typically cast;
- where minorities have entered into a voting pool or similar arrangement, or where there is evidence of structural links or a clear alignment of interests and the combined shareholdings constitutes a controlling interest; or
- where the holder has "material influence" arising out of rights attaching to the shareholdings. The question of material influence is one of fact taking all circumstances into account. However, a convention has developed based on the application of the EU Competition Law Merger Control Guidelines in terms of which certain minority protections (veto rights) are treated as a form of material influence. In particular, the ability to veto the approval of the budget and business plan, appointment or dismissal of senior management or key investment decisions in the ordinary course of business would typically confer control. More generally, veto rights that go beyond those purely designed to protect the financial investment of the minority shareholder will need to be analysed in context to determine whether material influence is conferred.

Currently, the Commission does not require notification of acquisitions of interests that do not amount to control (although it should be noted that the acquisition of a non-controlling interest in a competitor raises competition law risks under the prohibited practices provisions of the Competition Act).

6. What are the jurisdictional thresholds (turnover, assets, market share and/or local presence)?

The Competition Act establishes three categories of mergers which are determined with reference to the total South African turnover or assets (whichever is the higher) of the acquiring firm and target firms. The financial position of the seller is not relevant.

The thresholds are determined with reference to:

- the combined asset value or annual turnover of the target and acquiring firms, and, separately;
- the asset value or annual turnover (whichever is higher) of the target firm.

Accordingly, it is possible for the thresholds to be met with reference only to the turnover or assets of the target firm (if high enough to meet the combined threshold) but a merger that does not meet the required target firm threshold is not subject to compulsory notification, even if the combined threshold is met.

A **small merger** occurs where the combined assets or annual turnover of the acquiring firm and the target firm are below R560 million or the target firm's assets or annual turnover are below R80 million.

An **intermediate merger** occurs where the combined assets or annual turnover of the acquiring firm and the target firm equal or exceed R560 million and the target firm's assets or annual turnover equal or exceed R80 million.

A **large merger** occurs where the combined assets or annual turnover of the acquiring firm and the target firm equal or exceed R6,600 million and the target firm's assets or annual turnover equal or exceed R190 million.

For purposes of calculating the thresholds, the entire acquiring group is taken into account. In relation to the target the firm over which control is transferred, that firm, together with all firms controlled by such transferred firm (i.e., the target group), is taken into account.
Worth noting is that turnover is with reference to turnover in, into or from South Africa.

Accordingly, a physical presence (such as local subsidiary or sales office) is not required.

7. How are turnover, assets and/or market shares valued or determined for the purposes of jurisdictional thresholds?

For the purposes of the jurisdictional thresholds:

- Asset value relates to the gross value of the firm's assets in South Africa, as recorded on the firm's balance sheet for the end of the immediately previous financial year.
- Annual turnover relates to the gross revenue of the firm from income in, into or from South Africa as recorded on the firm's income statement for the immediately previous financial year, arising from the sale of goods; the rendering of services; and the use by others of the firm's assets yielding interest, royalties and dividends. In particular, turnover should include sales into South Africa from another country; and/or sales to another country from South Africa.

If audited financial statements are not available, these should be prepared in accordance with Generally Accepted Accounting Practice (G.A.A.P.). In general, the Commission will accept management accounts prepared in accordance with G.A.A.P. Where the relevant financial statements are for more or less than 12 months, the turnover recorded must be pro-rated for a 12 month period.

If between the date of the most recent financial statements being used to calculate the thresholds and the date on which the calculation is being made (i.e. immediately before implementation of the transaction) the firm concerned has acquired any new business not shown on those financial statements, then the asset value and annual turnover of that business must be added to the calculation. Where a business shown on the financial statements has been divested, the annual turnover and asset value associated with that business can be deducted.

The detailed regulations published under General Notice 216 in Government Gazette 31957 of 6 March 2009 can be referred to for further details.

Is there a particular exchange rate required to be used for turnover thresholds and asset values?

For the purposes of the both the turnover and asset value calculations, the Commission in a 2010 Practice Note has recommended in the case of an international merger, that the parties use an average exchange rate based on their audited financial statements for the most recent accounting period.

For the 2015 calendar years, the average Rand/Euro and Rand/USD exchange rates were:

- 1 Euro = 12.74834 ZAR
- 1 USD = 14.15144 ZAR

9. Do merger control rules apply to joint ventures (both new joint ventures and acquisitions of joint control over an existing business?

The merger control rules apply to joint ventures where:

- a new JV is formed and one or more parties to the JV contribute existing business assets; or
- one or more parties acquire joint control over an existing business;

The concept of a "full function" joint venture does not find specific application in South Africa and the simple test is whether control is established over an existing business.

Note that the relevant thresholds described in 3.1 above apply. Identifying the target and acquiring firms will depend on transaction structure.

The mere formation of greenfields JVs do not require notification.

10. In relation to “foreign-to-foreign” mergers, do the jurisdictional

thresholds vary?

"Foreign-to-foreign" mergers are captured by South African merger control provided that there is an effect in South Africa. Such an effect will be manifest where the target has assets or turnover in or into South Africa. If the target business has no assets and turnover in or into South Africa, there is no need to notify.

The same thresholds described in 3.1 above apply to foreign-to-foreign mergers.

11. For voluntary filing regimes (only), are there any factors not related to competition that might influence the decision as to whether or not notify?

Small mergers are not subject to mandatory notification. However, the parties to a small merger may notify voluntarily prior to implementation. This might be done for the sake of certainty where it is anticipated that the Commission may invoke its right to call for a small merger notification within 6 (six) months of implementation.

The Commission has published a guideline on small merger notification in terms of which parties to small mergers are advised to inform the Commission of a proposed transaction in circumstances where either party (or a part of its group of companies) are being investigated by the Commission or are a party to any Tribunal proceedings in regard to prohibited practices. The Commission will then advise the parties as to whether the transaction should be notified as a small merger.

12. Additional information: Jurisdictional Test

Not applicable.

13. What is the substantive test applied by the relevant authority to assess whether or not to clear the merger, or to clear it subject to remedies?

In evaluating a merger, the Commission first considers whether the merger is likely to substantially prevent or lessen competition. Factors considered by the Commission include:

- the level of actual and potential import competition in the market;
- the ease of entry into the market, including tariff and regulatory barriers;
- the level and trends of concentration, and history of collusion, in the market;
- the degree of countervailing power in the market;
- the dynamic characteristics of the market, including growth, innovation, and product differentiation;
- the nature and extent of vertical integration in the market;
- whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and
- whether the merger will result in the removal of an effective competitor.

More generally, the Commission considers the potential horizontal, vertical, unilateral and coordinated effects of the merger. It is worth noting that, given a relatively concentrated economy, vertical mergers have typically received a more conservative reception than in larger economies such as the EU and US.

If the Commission finds that a merger is likely to have an anti-competitive effect, it may still find the merger to be justifiable on the basis of efficiency, technology or other pro-competitive gains that are shown to outweigh any anti-competitive effect.

14. Are non-competitive factors relevant?

In considering all mergers, including pro-competitive mergers, the Commission considers the effect the merger will have on the public interest, with specific reference to its effect on :

- a particular industrial sector or region;
- employment;
- the ability of small and black business to become competitive; and
- the ability of national industries to compete internationally.

A merger with no anticompetitive effect could in principle be prohibited if, for instance, it will result in substantial job losses or an impact on local procurement. However, to date any public interest concerns have been dealt with by way of remedies.

Public interest issues are often championed by the Minister of Economic Development, who has a statutory right to participate in proceedings from a public interest perspective.

15. Are there different tests that apply to particular sectors?

None. The Competition Act does have concurrent jurisdiction and has concluded MOUs with certain sector regulators, including:

- The Independent Communications Authority of South Africa;
- The National Electricity Regulator;
- The National and Provincial Gambling Boards;
- The Counsel for Medical Schemes;
- The Ports Regulator
- ITAC
- The Department of Agriculture, Forestry and Fisheries
- The Construction Industry Development Board

16. Are ancillary restraints covered by the authority's clearance decision?

Ancillary restraints can be taken into account in assessing the impact of the transaction. Parties are not required to expressly disclose ancillary restraints, but copies of sale agreements and related merger agreements are required to be submitted as part of the filing obligations. Failure to disclose restraints that are relevant to the analysis may be seen as false and misleading.

Typically, a restraint on a seller from competing with the target business for a limited period (three years or less) and pertaining only to the business being sold is permitted in order to protect the goodwill of the target business. However, restraints of long duration or which cover business outside of the business being transferred may be treated as instances of prohibited market division.

17. For mandatory filing regimes, is there a statutory deadline for notification of the transaction?

There is no statutory deadline for filing.

18. What is the earliest time or stage in the transaction at which a notification can be made?

Parties are entitled to file based on an intention to merge. Parties do not need to wait for signature of a binding transaction agreement. If any documents evidencing such an intention exist (such as offer letters) they must be submitted as part of the merger filing obligations.

19. What is the basic timetable for the authority's review?

For small and intermediate mergers:

- The Commission has an initial period of 20 business days to consider the merger.
- That period may be extended by formal notice (but without good cause shown) for a further 40 business days.
- On expiry of the initial period (if not extended) or the extended period, the Commission must render a decision to approve (with or without conditions) or prohibit the merger, failing which the merger is deemed to have been approved.
- Accordingly, the maximum period for consideration of a small or intermediate merger is 60 business days.

For large mergers:

- The Commission has an initial period of 40 business days to consider and refer a large merger to the Tribunal.
- The Tribunal may, on application by the Commission, extend this period by no more than 15 business days at a time.
- Within 10 business days of the referral of a large merger, the Tribunal must

schedule a pre-hearing or hearing. This period may be extended on application to the chairperson of the Tribunal.

- Within 10 business days of the hearing, the Tribunal must approve or prohibit the merger.

20. Under what circumstances the basic timetable may be extended, reset or frozen?

Save for the extensions permitted as set out above, the time period may be affected in the following circumstances:

- If the Commission issues a notice of incomplete filing within 5 business days of receiving notice of a large merger, or within 10 business days of receiving notice of a small or intermediate merger, the initial periods only commence on the business day after receipt of the requisite complete filing (unless the notice is set aside by the Tribunal on Appeal).
- If the Commission believes a merger filing contains false or misleading information, it may issue a Demand for Corrected Information. Unless the Demand is set aside by the Tribunal on appeal, the initial periods begin anew on the business day following submission of corrected information to the satisfaction of the Commission.

Outside of the above circumstances, the Commission is entitled to call for additional information during its investigation. However, such a request or demand does not affect the time periods.

- In the case of larger mergers, a contested hearing (whether contested by the Commission or by way of third party intervention) can result in a protracted hearing before the Tribunal.

21. Are there any circumstances in which the review timetable can be shortened?

There are no specific provisions for shortened time periods and the Commission typically relies on the timing set out in the statute.

However, in exceptional circumstances (such as a failing firm) the Commission may be willing informally to "fast track" an investigation based on representations made at or shortly before filing, provided that the merger raises no substantive competition or public interest concerns.

22. Which party is responsible for submitting the filing? Who is responsible for filing in cases of acquisitions of joint control and the creation of new joint ventures?

The obligation to file falls jointly on the "parties to the merger". In practice, typically a single filing is submitted jointly by the primary acquiring and primary target firms. However, depending on transaction structure additional acquiring or target firms may also submit filing documents. Provision is also made for separate filing in the case of hostile takeovers.

In the case of joint control, each acquirer is entitled to submit filing documents; but where the merger is achieved through a special purpose vehicle, it is possible to submit information on behalf of each controlling member of the acquiring vehicle through the vehicle itself.

While the seller of target assets is not required to submit filing documents, the law is not clear on whether the seller may be liable with the target and acquirer for a failure to notify and on occasion the authorities have sought to impose penalties on sellers for a failure to notify.

23. What information is required in the filing form?

In form, the filing consists of:

1) A merger notice (form CC4(1)) disclosing: the details of the acquiring and target firms; a list of trade unions or employee representatives; and a summary of the effect of the merger on employment.

2) A statement of merger information (form CC4(2)) for each of the primary acquiring and primary target firm. The statement must inter alia include the following detail:

- A description of the entire group (control structure)
- Financial information
- Description of the transaction
- Relevant market information (which may be submitted in a separate report on competition) including a list of top 5 competitors and customers
- Descriptions of the products and services offered by the merging parties
- Explanation of any existing business relationships between the parties

3) Confidentiality claim (form CC7) setting out information over which confidentiality is claimed

No provision is made for a short-form filing. In practice, mergers that introduce no overlaps in products and services are more streamlined as detailed market information is not required.

The required statutory forms must be signed by a representative of the filing party, as confirmation of accuracy.

24. Which supporting documents, if any, must be filed with the authority?

The following supporting documents must be filed with the authority.

- A competitiveness report (in the event of any substantive competition analysis required due to overlaps between the merging parties)
- The most recent versions of all documents constituting the merger agreements
- Any report or other document assessing the transaction with respect to competitive conditions
- Any documents including minutes, reports, presentations and summaries prepared for the board of directors regarding the transaction from both the acquiring and target firms (strategic documents)
- The most recent annual report for the primary acquiring and primary target firm

- The most recent business plan for the primary acquiring firm and primary target firm
- The most recent report submitted by either party to the South African Securities Regulation Panel during the past year

If any of the above required information is unavailable, an affidavit must be filed by the relevant party explaining that fact.

As indicated in above, the filing is accompanied by statutory forms signed by a representative of each merging party to confirm the accuracy of the filing.

25. Is there a filing fee? If so, please specify the amount in local currency.

- Large mergers: ZAR 350,000
- Intermediate mergers: ZAR 100,000
- Small mergers: ZAR Nil

26. Is there a public announcement that a notification has been filed?

Merger filings are a matter of public record (save for confidential information) and the investigatory process is public as market participants are typically contacted. However, receipt of merger notifications generally are not publicly announced.

27. Does the authority seek or invite the views of third parties?

The authority typically solicits the views of third parties. In particular:

- customers
- competitors
- trade unions
- any other stake-holders considered relevant by the authorities.

This may be informal or by way of formal, written requests for information. If circumstances warrant, the authority may conduct market surveys.

28. What information may be published by the authority or made available to third parties?

Any information submitted to the authority may be claimed as confidential if it meets the following definition: "*trade business or industrial information that belongs to a firm, has particular economic value, and is not generally available to or known by others*".

A confidentially claim must be formally made by way of a form CC7. Upon receipt of such a claim, the Commission is obliged to treat the information as confidential unless the parties waive confidentiality or the Tribunal determines that the information falls outside of the above definition. The Commission will consider whether a confidentially claim is legitimate and push back if required.

Confidential information may not be disclosed to any third party without the consent of the party claiming confidentiality or pursuant to an order of the Tribunal.

Upon completion of an investigation, a non-confidential version of the Commission's decision is published. All information (including non-confidential information) obtained by the Commission is generally treated as restricted information while the investigation is underway. However, this restriction (save for confidential information) falls away after the investigation is complete. Although the Commission's full investigatory record is generally not made publicly available in the ordinary course, a non-confidential version can be requested by any interested party.

29. Does the authority cooperate with antitrust authorities in other jurisdictions?

The Commission will cooperate with antitrust authorities in other jurisdictions. Currently, the Commission has entered into memoranda of understanding with the following regulators:

- Federal Antimonopoly Service of the Russian Federation

- Competition Authority of Kenya
- Directorate-General Competition of the European Commission
- BRICS Competition Authorities (Brazil, Russia, India and China)
- Namibian Competition Commission

None of these MOUs expressly provide for the exchange of information and parties are not obliged to grant a waiver allowing its confidential information to be provided to another authority.

30. What kind of remedies are acceptable to the authority? How often are behavioural remedies accepted in comparison with major merger control jurisdictions, such as the EU or US?

Both structural and behavioural remedies have been entered into. Structural remedies are preferred to cure competition issues while behavioural remedies are most often reserved for public interest concerns.

For divestment remedies:

- the Commission has not generally required an up-front buyer. It is anticipated that "fix it first" remedies may become a preferred mechanism in the future.
- the Commission will generally require that third party purchasers of divestment businesses are approved by the Commission. The parties will need to satisfy the Commission that the buyer will be able to maintain the competitive position of the business in the market, and that no substantial competition or public interest concerns are introduced.

31. What procedure applies in the event that remedies are required in order to secure clearance?

The procedure for negotiating remedies is informal. They may be proposed at any time by the Commission or the parties as the case may be. The Commission may test a remedies package with other stakeholders.

If parties are unhappy with any remedies imposed by the Commission, they can be contested before the Tribunal and ultimately, the Competition Appeal Court.

32. What are the penalties for failure to notify, late notification and breaches of a prohibition on closing?

(i) failure to notify at all – a penalty of up to 10% of annual South African turnover payable by each of the parties to the merger (target, acquirer and seller). In practice, parties are generally jointly and severally liable for the imposed penalty.

(ii) late notification – not applicable

(iii) breach of any applicable prohibition on closing – up to 10% of annual South African turnover payable by each of the parties to the merger.

Any penalties must be confirmed by the Tribunal. The Tribunal may also order divestiture or declare void any provision of an agreement to which the merger was subject.

33. What are the penalties for incomplete or misleading information in the notification or in response to the authority’s questions?

- Suspending and restarting the time periods for approval
- Revocation of merger approval if based on incorrect information for which a party to the merger is responsible
- It is an offence to knowingly provide false information to the Commission – punishable by a fine not exceeding ZAR 2,000, imprisonment not exceeding 6 months or both.

34. Can the authority’s decision be appealed to a court? In particular, can third parties who are not involved in the transaction appeal the decision?

In the case of an intermediate or small merger, the decision of the Commission may be referred to the Tribunal for consideration by any party to the merger within 10 business days of the Commission's decision. In the case of an intermediate merger, any registered trade union or employee that formally participated in the Commission's investigation also has right to request the Tribunal to consider the Commission's decision.

Decisions of the Tribunal can be appealed to the Competition Appeal Court by any party to the merger, or by a registered trade union or employee which formally participated in the Tribunal hearing, within 20 business days of the Tribunal decision.

Where a decision of the Appeal Court raises constitutional issues, an appeal to the Constitutional Court may be brought.

Other than trade unions and employees, third parties have no right of appeal, but can bring a review application (as soon as reasonably possible in the case of a review of a Commission decision and within 15 business days in the case of a Tribunal decision).

The length of time for an appeal or review to be heard and decided depends on the circumstances of the case. As a rule of thumb, approximately 3 months is typical.

35. What are the recent trends in the approach of the relevant authority to enforcement, procedure and substantive assessment?

The Competition Act's preoccupation with public interest considerations has had a material impact on enforcement. Merger-related job losses receive particular scrutiny (and are often remedied by way of moratorium) as does as any potential impact on domestic procurement (particularly where a large multinational is an acquirer). Increasingly, Black-Economic Empowerment objectives are also being considered. Some commentators make the point that from a policy perspective, the acquisition of domestic champions by multinationals may be targeted for remedies related to developing the local economy (such as supplier development funds).

Regarding substantive competition matters, the concentrated nature of the local economy means that acquisitions by dominant firms as well as vertical mergers are carefully considered.

36. Are there any future developments or planned reforms of the merger control regime in your jurisdiction?

The Minister of Economic Development has signaled an intention to amend the Competition Act. Proposed amendments have not yet been published but it is anticipated that these may include provisions relevant to merger control – possibly to strengthen the Minister's power to appeal decisions in the public interest.