



SERIES I

MERGERS & ACQUISITIONS: LEGAL FRAMEWORKS, REGULATORY COMPLIANCE, AND KEY TRANSACTION CONSIDERATIONS.



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Ethiopia's journey toward establishing a robust competition law framework has evolved significantly over the decades. Prior to 1960, the country lacked comprehensive legislation in this area. The 1960 Civil Code and the Old Commercial Code introduced limited protections against unfair trade practices, primarily addressing issues like false statements and misleading customers. Similarly, the 1957 Penal Code criminalized actions such as discrediting competitors and misusing trade secrets. However, these laws did not provide a unified regulatory framework for competition or consumer protection. These laws did not also have merger control provisions.



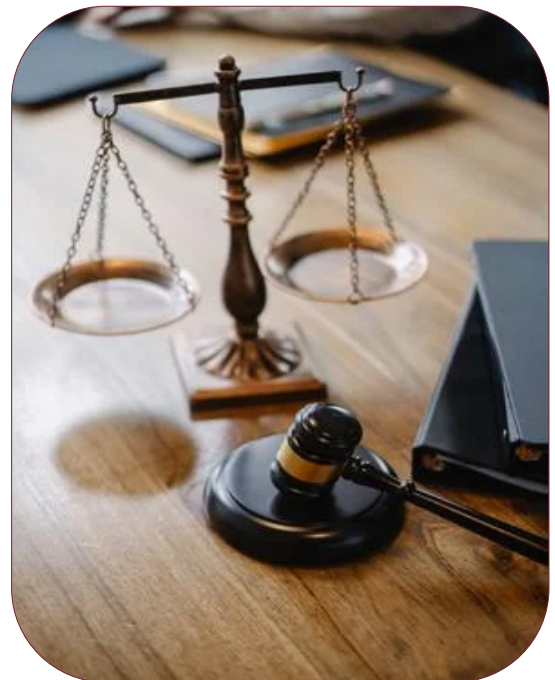
The shift toward a market-based economy in 1991 underscored the necessity for formal competition and consumer protection laws. The Ethiopian Constitution laid the groundwork by guaranteeing the right to engage freely in economic activities and own private property, while also mandating the government to promote equitable wealth distribution.

In 2003, the Trade Practices Proclamation No. 329/2003 was enacted as Ethiopia's inaugural competition law, aiming to regulate anti-competitive and unfair trade practices and safeguard consumer interests. Despite its intentions, the Proclamation faced criticism again for lacking provisions on merger control and effective enforcement mechanisms. To address these shortcomings, the Trade Practice and Consumers' Protection Proclamation No. 685/2010 was introduced, offering broader consumer protection and addressing unfair market practices. It included merger control rules, and the Trade Competition and Consumer Protection Authority (TCCPA) has been established with limited authority to regulate the merger control aspects. In 2013, the law was replaced with the Trade Competition and Consumer Protection Proclamation No. 813/2013, which introduced comprehensive rules on competition and merger control.

Since then, the landscape of mergers and acquisitions (M&A) in Ethiopia has been gradually evolving, driven by economic reforms, sector liberalization, and the creation of regulatory frameworks to support business transactions. With the anticipated launch of the Ethiopian Securities Exchange (ESX), M&A activities are expected to play a growing role in shaping the country's business environment. While M&A transactions can offer significant economic benefits, they also carry the potential for anti-competitive effects, particularly in markets like Ethiopia, where competition may be concentrated.

I. THE LEGAL AND REGULATORY ENVIRONMENT FOR M & A

In Ethiopia, M&A are regulated by a multifaceted legal framework. One of the key legal frameworks governing M&A in Ethiopia is the Trade Competition and Consumer Protection Proclamation No. 813/2013 (Competition Proclamation), which is designed to prevent anti-competitive practices within the marketplace. This is supplemented by the Merger Directive No. 1/2016, which outlines various types of mergers and specifies the thresholds for notification and approval required for M&A activities. Another significant law governing M&A is the Commercial Code Proclamation No. 1243/2021, which establishes a framework for M&A within corporate governance. Additionally, the Commercial Registration and Business Licensing Proclamation No. 980/2016, along with its amendments in Proclamation No. 1150/2017 and Directive No. 935/2022, clarify the registration and licensing requirements for businesses involved in these activities. The other laws that are relevant for M&A transactions are the Investment Proclamation No. 1180/2020 and its regulation, the Incentive Regulation No. 517/2022, which govern the investment areas that are restricted for foreign investors looking to participate in M&A activities.



In parallel with the legal framework, various regulatory bodies oversee M&A. Each institution has specific responsibilities that ensure effective oversight and compliance throughout the process. The principal regulatory body in M&A is the Ministry of Trade and Regional Integration (MOTRI). This Ministry is responsible for approving notified M&A transactions that meet the required thresholds and evaluating merger plans to ensure they do not negatively impact market competition. Another important institution is the Ethiopian Investment Commission, which assesses whether the relevant investment sectors are open to foreign participation in M&A. The Ministry of Revenue facilitates tax clearance for these transactions, while the Document Authentication and Registration Service (DARS) is responsible for authenticating legal documents associated with M&A activities.



Additionally, the newly established Ethiopian Capital Market Authority oversees transactions involving public companies. It is responsible for monitoring public tender offers and ensuring compliance with the law. Certain M&A transactions may also require additional scrutiny from sector-specific regulatory bodies. For example, the National Bank of Ethiopia oversees mergers within the financial sector, while the Ethiopian Communications Authority reviews mergers and acquisitions related to telecommunications operators. Beyond the national regulatory bodies, cross-border M&A transactions may require notification and approval from the COMESA Competition Commission. As a member of COMESA, any merger in which both the acquiring firm and the target operate in Ethiopia and another member state of COMESA, and which meets the stipulated thresholds, is subject to regulatory review by COMESA.

II. TYPES OF MERGERS

Mergers occur in various ways, such as purchasing and absorbing another company outright, merging to create a new company, acquiring some or all of its major assets, making a tender offer for its stock, or staging a hostile takeover. Based on the manner in which a merger occurs, various types of mergers exist. In Ethiopia according to the Competition Proclamation, merger is done when companies amalgamate, when business organizations pool the whole or part of their resources for the purpose of carrying on a certain commercial activity, directly or indirectly acquiring shares, securities or assets of a business organization and taking control of the management of the business of another person. Merger Directive No. 1/2016 categorizes mergers into two major classifications:

1. BASED ON ECONOMIC CHAIN

1.1 Horizontal Mergers: occur between businesses operating in the same sector and at the same stage of production, aiming to boost market share and cut competition. This merger allows companies to reduce the number of competitors and increases the capacity (market share) of the new entity. This type of merger is known to have significant implications for trade competition, as it can lead to monopolistic or oligopolistic market structures.

1.2 Vertical Mergers: involve companies in the same sector but at different stages of the supply line. Vertical mergers often made to help businesses gain more control over their production processes and distributions and result in cost reduction, improved efficiency, and a competitive advantage in the marketplace.

1.3 Conglomerate mergers: happen with companies that operate an entirely different sector. This occurs when an entity seeks diversification to reduce its overall risk.



2. BASED ON MARKET TRANSACTION

Mergers can also be classified based on the type of transaction undertaken by businesses or individuals. These include:

- **Share Ownership**
- **Asset Ownership**
- **Joint Ventures**
- **Securities Ownership**
- **Control of Management**



Additionally, there is a specific type of merger known as Market Extension Mergers, which occurs when companies in the same sector but operate in different geographic markets combine to expand their reach. This allows companies to grow their customer base by entering new regions without having to build infrastructure from scratch.

III. TRANSACTION DOCUMENTS REQUIRED FOR M&A

Transaction Documents for companies engaging in M&A are:

- **Share Purchase Agreement (SPA)/ Asset Purchase Agreement (APA)** – is a legally binding agreement between the buyer and seller for the purchase and sale of shares and or assets in the target company.
- **Merger Agreement** – is a legally binding agreement between the merging companies outlining the terms of the merger, including the exchange ratio, treatment of shares, and post-merger structure.
- **Due Diligence Documents** - These documents are provided to the buyer during the due diligence process to assess the target company's financial, legal, and operational status.
- **Merger Notification Forms** – is a Forms required for notifying regulatory authorities (e.g., MOTRI in Ethiopia or COMESA for cross-border transactions).
- **Non- Disclosure Agreement (NDA)** - is a legally binding contract that establishes a confidential relationship between parties involved.

When should parties notify the merger?

Under the Competition Proclamation, any businessperson intending to merge must seek prior approval from MOTRI if the transaction meets the required threshold.

What is the notification threshold?

Before 2016, all mergers, regardless of their size or economic value, required notification to MOTRI. However, with the introduction of Merger Directive No. 1/2016, a threshold system was established to prioritize mergers that are more likely to impact competition.

The threshold criteria categorize mergers based on the turnover, assets, or capital of the merging parties or the target company, as follows:

- **Small Mergers:** Turnover, assets, or share capital is **less than ETB 30 million**.
- **Intermediate Mergers:** Turnover, assets, or share capital is **ETB 30 million or more, but less than ETB 300 million**.
- **Large Mergers:** Turnover, assets, or share capital is **ETB 300 million or more**.

This threshold system helps streamline the review process, focusing on mergers with significant competitive implications.

Offshore Mergers

Ethiopia's Competition Proclamation also applies to certain offshore mergers—mergers occurring outside the country but with a potential impact on the Ethiopian market. There are two key considerations:

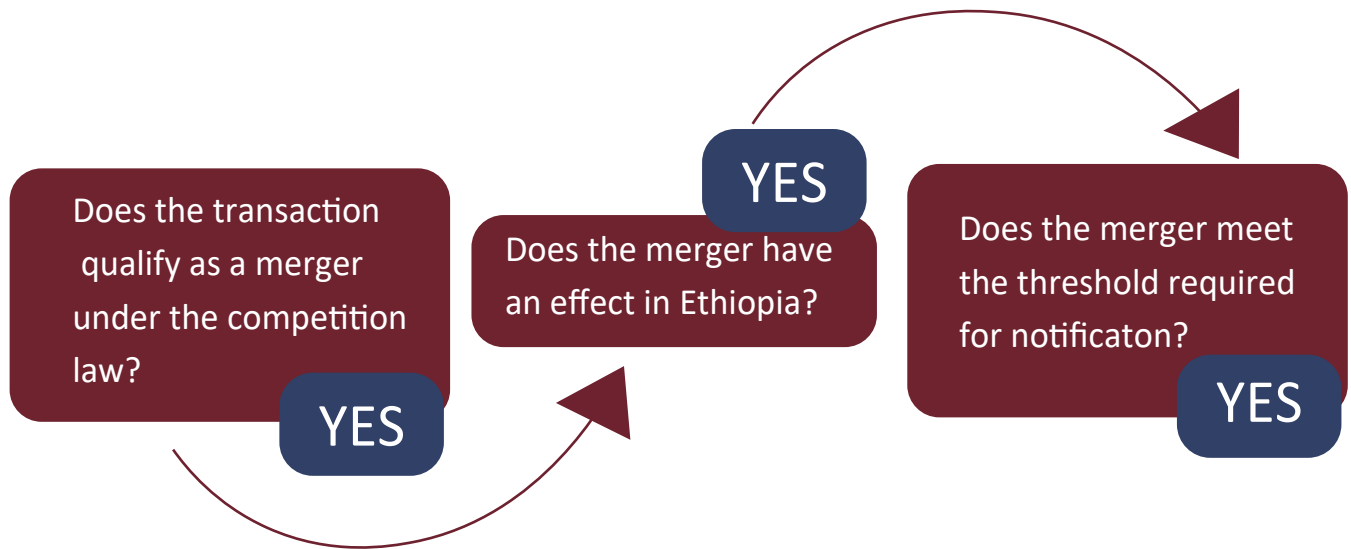
COMESA Notifiable Mergers:

Ethiopia is a member of the Common Market for Eastern and Southern Africa (COMESA). If an offshore merger falls within COMESA's jurisdiction and requires notification, it generally pre-empts the need for separate notification in Ethiopia.

Non-COMESA Offshore Mergers:

If the merging parties are located in non-COMESA countries, they must notify MOTRI if the transaction meets the local thresholds and has a nexus to Ethiopia—such as affecting competition or consumer welfare within the country. This means that even if the merger takes place abroad, pre-approval from MOTRI is required before completing the transaction.

The three main questions to be answered to determine if a merger notification is required:



What kind of Documents are Required for Merger Notification?

The required documents vary depending on whether the applicant is a business organization or an individual:

No.	Business Organizations	Individuals
1	Renewed commercial registration or business license	Renewed identification card or passport.
2	Constitutive documents	_____
3	A corporate resolution approving the transaction and expressing the intention to merge.	A valid Power of Attorney (if the transaction is handled by an agent).
4	A completed notification form.	If the individual is a foreigner, all other documents specified under the Investment Proclamation required for owning shares, securities, or assets.
5	Approved financial statements.	_____
6	An application letter from the target company requesting MOTRI's approval.	_____

During its investigation, MOTRI may request additional information from the parties involved or invite third-party businesspersons who object to the merger to submit their concerns.

Decision Timeline for Merger Approvals by MOTRI

1. Intermediate Mergers:

- **Initial Decision Period:** 15 working days.
- **Extension:** An additional 10 working days if deemed necessary by MOTRI.

2. Large Mergers:

- **Initial Decision Period:** 30 working days
- **Extension:** An additional 15 working days if MOTRI finds it appropriate.

MOTRI reserves the right to extend the review period if further examination is required.

Is there a publication requirement?

A merger transaction requiring approval of MOTRI must be publicized in a newspaper with nationwide circulation for fifteen days. This notice must provide information regarding the transaction, as well as a deadline by which creditors may raise objections. This aims to ensure transparency in the merger process and give creditors the opportunity to object if necessary



Approval of Mergers

After conducting an investigation, MOTRI may either approve, prohibit, or conditionally approve a proposed merger. Conditional approval may be granted if MOTRI finds that any potential adverse effects of the merger could be mitigated through specific conditions to be adhered to by the merging parties. The approval of a merger depends on whether it will have a significant negative impact on trade competition or if the benefits, such as technological, efficiency, or other gains, outweigh the potential negative effects.



MOTRI assesses the potential adverse impact on trade competition based on several factors, including the effect on the market and public interest. Key considerations in the decision-making process include: (a) the fairness and sustainability of market competition; (b) market dominance; (c) economic efficiency; (d) influence on customers; and (e) public interest, including national security, the involvement of foreign investors in critical sectors, and job creation.

MOTRI can revoke merger approvals under certain circumstances, such as when approval was obtained through false or fraudulent evidence, or when the parties fail to meet the conditions outlined in a conditional approval.

Any party aggrieved by MOTRI's decision regarding a merger can appeal the decision to the Ministry of Justice.



What are the consequences of infringement of the law?

The consequences of infringing the merger provisions under Ethiopian law can result in both administrative and criminal penalties.

(a) Administrative Penalty

A businessperson who completes a merger without notifying and obtaining approval from MOTRI may be fined between 5% and 10% of their annual turnover. Additionally, any person who participates directly or indirectly in an unlawful merger, but is not a direct business party, may be fined between ETB 10,000 and ETB 100,000.

(b) Criminal Penalty

Violations of the merger provisions can also result in criminal penalties. A businessperson or any other individual who violates the provisions of the Competition Proclamation can be fined between ETB 5,000 and ETB 50,000 and sentenced to simple imprisonment, which ranges from 10 days to 3 years.

If misleading information is provided in the merger application, the parties may be criminally liable for fraud. Under the Ethiopian Criminal Code, fraud is punishable with rigorous imprisonment of up to 15 years and a fine not exceeding ETB 50,000. Fraud is defined as any action undertaken with the intent to unlawfully enrich oneself or a third party by misleading others or misrepresenting facts, thereby causing harm to the rights of individuals or entities involved.

