

New guidelines aim to expand records of notifiable mergers

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On 23 September 2022, the Competition Commission published final [Guidelines on Small Merger Notification](#) (Small Merger Guidelines) which significantly expand the scope of potentially notifiable mergers. Small mergers are transactions that do not meet the prescribed intermediate or large merger thresholds. The Small Merger Guidelines propose that, if certain criteria are met, the Commission must be informed of all small mergers and acquisitions.



Image source: kritchanut – [123RF.com](#)

The previous draft of these guidelines was specifically aimed at capturing small mergers where the merger parties operate in digital or technology markets due to concerns that acquisitions in this space often escape regulatory scrutiny. However, the final version of the Small Merger Guidelines places an obligation on merger parties to inform the Commission of all small mergers that meet the requisite criteria, not just those in the digital space.

When will firms need to inform the Commission about small mergers?

- The Small Merger Guidelines still state that, if at the time of entering into the transaction, any of the firms (or firms within their groups) are subject to a prohibited practice investigation by the Commission, or are respondents to pending proceedings following a referral by the Commission to the Competition Tribunal, then the Commission must be informed in writing before implementation of the small merger.
- However, the Commission will require that it also be informed of all small mergers and share acquisitions where the acquiring firm's turnover or asset value alone exceeds the large merger combined asset/turnover threshold (currently R6.6bn) and at least one of the following criteria must be met for the target firm:
 - the consideration for the acquisition or investment exceeds the combined asset/turnover threshold for intermediate mergers (currently R190m) *[Note: this amount is an error, which the Commission has undertaken to correct – we will let you know once a revised version of the Small Merger Guidelines correcting this]*

amount has been published]

- the consideration for the acquisition of a part of the target firm is less than R190m threshold but effectively values the target firm at R190m or more.

What is the procedure for informing the Commission?

- Parties to small mergers which meet the above criteria are advised to inform the Commission in writing, of their intention to enter into the transaction. The parties should provide sufficient detail on the acquiring and target firms, the proposed transaction, and the relevant markets in which the firms compete.

There are many aspects of the Small Merger Guidelines that raise concerns. There is uncertainty as to how the thresholds should be interpreted, and it remains to be seen if there will be any consequences for firms involved in mergers that meet the relevant criteria and fail to inform the Commission. This additional administrative obligation also adds a layer of regulatory red tape that may be seen to hinder, instead of facilitate, investment into the country.

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