

A practical perspective on the Pakistani merger regime

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Essential Elements which trigger compliance

- Does a transaction fall within the ambit of a ‘merger’
- Is there nexus to Pakistan
- Does the ‘merger’ meet the financial or control thresholds
- Is the ‘merger’ exempted

Merger is defined in the Act as follows:

“Merger means the merger, acquisition, amalgamation, combination or joining of two or more undertakings or part thereof into an existing undertaking or to form a new undertaking...”

Undertaking includes *inter alia* legal person, natural person, local entity, foreign entity, body corporate, regulatory authority, trust and so forth

Does it meet the financial or control thresholds?

- Financial and control thresholds of transactions (**Merger Thresholds**) are contained in Regulation 4 of the Competition (Merger Control) Regulations, 2016 (**Merger Regulations**). Either of the following will trigger the Merger Thresholds

Financial Thresholds:

- ❖ Turnover of Acquirer: ! US\$ 8,000,000/-
- ❖ Gross Assets of Acquirer: ! US\$ 8,000,000/-
- ❖ Transaction Value: ! US\$ 800,000/-


Control Threshold:

- ❖ Turnover of Acquirer: ! US\$ 8,000,000/-
- ❖ Gross Assets of Acquirer: ! US\$ 8,000,000/-
- ❖ Ownership of shares (including existing) ! 10 %

The Merger Thresholds are very low by international standards and almost every mid-size deal will potentially be captured

Is there a nexus to Pakistan?

- The scope of the Act states that: “It shall apply to all *undertakings and all actions or matters that take place in Pakistan and distort competition in Pakistan*”
- However, Regulation 1(3) of the Merger Regulations (formed pursuant to the Act) states that “these regulations shall apply to all the undertakings which are party to merger or intended merger, *whether incorporated in Pakistan or not and all or any of such undertakings doing business in Pakistan*”
- Due to the extra-territorial application of the Act, the merger regime, in addition to local mergers, regulates **“Foreign Mergers”** i.e. where the underlying transaction is effected outside Pakistan
- Broadly stated, if parties to a Foreign Merger: (i) either have a presence in Pakistan in the form of a branch or a subsidiary; or (ii) remotely generate revenue from Pakistan, such transaction is very likely to require pre-merger clearance of the CCP due to the low bar set by the Merger Thresholds
- The application of the Merger Thresholds to Foreign Mergers is not clear

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- Exemptions for pre-merger clearance under the Merger Regulations in-principle cover the same type of transactions as other competition regimes. However, the narrowly worded provisions can yield absurd scenarios.
 - By way of example, while transactions between holding companies and subsidiaries are exempted, the following transactions do not fall within the same exemption:
 - (i) transaction inter se companies wholly owned by the same natural person;
 - (ii) transactions inter se companies with identical shareholding patterns; and
 - (iii) transactions inter se companies with identical shareholding patterns.
 - Capital market

