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The monetary thresholds for compulsory notification of mergers in South Africa have increased from April 1, 2009.

The South African Competition Act requires a wide range of transactions that have an effect in South Africa to be notified to the competition authorities. 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. Mergers are classified as “large,” “intermediate,” or “small” with reference to the annual turnover and/or asset value of the merging parties. Only mergers which amount to intermediate or large mergers are subject to compulsory notification (although the Commission can require parties to a small merger to notify the transaction if it is concerned that the merger will have anticompetitive effects or have an impact on the public interest—for example, by resulting in substantial job losses).

The merger review workload of the South African competition authorities has increased steadily over the past few years. Merger thresholds have not been raised since 2001, and so the number of mergers notified to the Commission has risen dramatically since the Act came in to effect. The Competition Commission’s 2007/08 annual report

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records that it received 513 merger notifications in the 2007/8 financial year (100 more than in the previous financial year and an increase of 143 percent since 2002/3).

Regulations published on March 6, 2009 will significantly increase the monetary thresholds for compulsory notification. From April 1, 2009 onwards, an intermediate merger will only have to be notified if the turnover or asset value of the target firm is R80 million (previously R30 million), and the assets or turnover of the target and acquiring firms together amounts to more than R560 million (previously R200 million). A large merger will only be notifiable if the turnover or assets of the target firm exceed R190 million (previously R100 million) and the "combined figure" is R6,6 billion or more (previously R3,5 billion).

Unfortunately, filing fees have also increased—the filing fee for an intermediate merger will now be R100 000 (up from R75 000) and for a large merger, R350 000 (up from R250 000).

Lengthy and costly merger review procedures frustrate foreign investors, stifle local deal-making, and strain the Commission's resources. It is hoped that raising the thresholds for compulsory notification of mergers will significantly reduce the workload of the South African competition authorities. This will enable the Competition Commission to process merger filings more swiftly, and to focus on more complex transactions which require more sophisticated analysis.