



CAK DECISION ON THE MATTER REGARDING THE ACQUISITION OF LSF11 SKYSCRAPER BY SIKA INTERNATIONAL

1. The Competition Authority of Kenya ('the Authority') has approved the regularization of a merger between LSF11 Skyscraper Holdco S.a.r.l and SIKA International after the parties self-reported implementation of the transaction without the Authority's authorization.
2. Sika International AG (Sika AG) is a company incorporated in Switzerland and listed on the Zurich-based SIX Swiss Exchange. Sika AG controls Sika Kenya Limited (Sika Kenya), a company incorporated in Kenya. The firm supplies chemical admixtures, concrete, sealants and bonding, building finishing, refurbishment, industrial flooring as well as roofing and waterproofing systems.
3. LSF11 Skyscraper Holdco S.a.r.l (Skyscraper Holdco) is a holding company incorporated in Luxembourg. In Kenya, the target group controls Master Builders Solutions Kenya Limited (MBS Kenya), a limited liability company incorporated in Kenya. MBS Kenya manufactures construction chemicals categorized under two business lines – concrete production/application and performance flooring.
4. The transaction, which was of a global nature, involved Sika International AG (the global acquirer) acquiring direct control of LSF11 Skyscraper Holdco S.a.r.l. (the global target) and indirect control of Master Builders Solutions Kenya Ltd (the Kenyan target). Locally, the merger was implemented in May 2023 following closure of the global transaction.
5. Therefore, the transaction qualified as a merger within the meaning of section 2 and 41 of the [Competition Act CAP 504 of the Laws of Kenya](#). The Competition Act stipulates that a merger, or takeover, may occur when an undertaking directly or indirectly acquires control over another business within Kenya. This may happen through, among others, purchase/lease of shares, exchange of shares, or vertical integration.
6. Further, merging parties whose combined turnover or assets, whichever is higher, is over Ksh. 1 Billion are required to seek approval from the Authority prior to implementing the proposed transaction. The transaction met the threshold for mandatory notification.

7. However, whereas the parties' combined turnover was above Ksh. 1 Billion, the target's turnover/assets was below Ksh. 500 Million. Therefore, the transaction met the threshold for exclusion from full analysis by the Authority since the merger was unlikely to impact competition in the market negatively.
8. Upon receipt of full information relating to a proposed merger, the Authority may determine that the transaction should be excluded from full analysis or subjected to full analysis. The outcome of either process is communicated to the parties officially.
9. The Competition Act provides that *"any person who implements a merger without approval commits an offense and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings, or both."*
10. In the alternative, the Authority may *"impose a financial penalty in an amount not exceeding ten percent (10%) of the preceding year's gross annual turnover in Kenya of the undertaking or undertakings in question."*
11. **In October 2023, the parties to the proposed transaction self-reported that the merger in Kenya was implemented following the close of the global deal in May 2023, while noting that the transaction had not been cleared by the Authority.**
12. The parties indicated that they were desirous to settle the matter administratively and, in compliance with section 46 of the Competition Act, pay a financial penalty, and thereafter regularize the transaction.
13. The Authority's penalization and settlement process is guided by the [Consolidated Competition Administrative Remedies and Settlement Guidelines](#) that are publicly accessible to all stakeholders.
14. As earlier noted, the Authority may impose a penalty of up to 10% of a business' preceding year's gross annual turnover. This is the highest allowable penalty under the Competition Act and is in line with international best practice among competition agencies.
15. **For most penalties under the Competition Act, the applicable year is the one preceding the Authority's determination. However, in the case of Mergers Implemented Without Approval, the applicable year is the one before the transaction was actualized. In this case, the unapproved merger was implemented in 2023 and, therefore, the applicable turnover was generated in 2022.**
16. Having determined the applicable gross annual revenue, the Authority considers the **mitigating and aggravating factors** specific to the case. Mitigating factors support an undertaking's case to have their penalty reduced as much possible from the permissible 10%. Aggravating factors shore up the penalty amount.

17. When assessing the aggravating factors, the Authority noted that whereas the products of the merged party are available nationwide, the transaction qualified as an exclusion and, therefore, it was unlikely to negatively lessen or prevent competition in the various markets listed under paragraph 3. In addition, the conduct was ongoing for less than one year and the parties were not repeat offenders. **These factors minimally increased the parties' applicable penalty.**
18. With regard to mitigating factors, one major main consideration was cooperation. The Authority took note that the parties proactively reported the nonconformance, furnished the Authority with all information regarding the acquisition, and cooperated to reach a settlement on the matter. The Authority also took note that the parties have not been subject to previous enforcement action on similar conduct and that the transaction did not negatively impact competition.
19. Other key mitigation factors were that transaction contributed to foreign direct investment, ensured job retention, and increased consumer choice through enhancement of the merged entity's international and regional competitiveness. **These mitigating factors significantly reduced the parties' applicable penalty.**
20. Based on the foregoing, the Authority ordered that the merged entity pay a penalty of Ksh. **17,492,795.23** for contravening section 42(2) of the Competition Act and regularize the transaction based on the applicable thresholds.
21. Upon payment of the penalty, the parties filed a merger application with the Authority and, based on the aforementioned thresholds, the transaction was excluded from full analysis and, subsequently, approved.
22. **As a general guidance, businesses that are uncertain whether a proposed transaction may trigger a merger notification in Kenya, particularly when being implemented at the global level, are encouraged to engage the Authority prior to implementing the transaction.**
23. **Such engagements can be through requests for advisory opinions - which the Authority offers free of charge.** Advisory opinions also offer clarity regarding, among others, the online merger filing process, applicable filing fees and payment modes.
24. **Advisory opinions can be sought from the Authority by writing an E-mail to info@cak.go.ke or lodging the request through our E-Filing Portal <https://competition.cak.go.ke:444/>**