

LEGAL UPDATE

Part 1: The “One-Shot” Pre-Merger Consultation in South Africa. What it means for your Deal

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A new procedural reality

On 13 February 2026, the Competition Commission published its final pre-merger filing consultation guidelines. The headline is straightforward: if your transaction is classified as Phase II (complex) or Phase III (very complex), you now have a formal channel to engage the Commission before you file, but you should expect, in all likelihood, only one meeting per query.

That single meeting changes the calculus for deal planning in ways that merit serious attention. The guidelines establish a structured process:

- Parties must submit a written request setting out the transaction, a self-assessment of its complexity, the specific questions they want addressed, proposed attendees, and available dates within a ten business day window.
- The Commission assigns a query number for tracking purposes and recommends that at least one commercial representative or business rescue practitioner attend.

The message is clear: the Commission wants people in the room who can speak to the commercial realities, not just the legal architecture.

Critically, the consultation is non-binding. Nothing said in the meeting constrains the Commission’s subsequent investigation or decision. And hypothetical transactions are excluded entirely, your deal needs to be sufficiently developed before you pick up the phone.

Why this matters more than it might first appear

The temptation is to treat this as a procedural footnote, another administrative step in an already layered process. That would be a mistake.

In practice, most deal teams have historically relied on a series of informal, iterative discussions with the Commission to scope issues, test market definition approaches, and get a sense of the authority’s priorities. The one-shot default compresses all of that into a single interaction. If you walk in unprepared, or with the wrong questions, you have likely spent your only opportunity to shape the Commission’s early thinking on your transaction.

This places a premium on preparation that is qualitatively different from what many practitioners are accustomed to. You need to arrive with an evidence-based market narrative, a clear view of data availability, and where the transaction warrants it draft remedy constructs that are aligned to plausible theories of harm and public-interest concerns. The session should be treated as a calibration exercise: the objective is to narrow issues and clarify the Commission’s expectations around information requirements, not to make a merits argument or seek informal clearance signals.

The non-binding character of the process cuts both ways. On one hand, it means the Commission retains full flexibility, nothing it says in the consultation binds its hands during the formal review. On the other hand, it means parties cannot rely on anything said in the room as a commitment or assurance. Practitioners who mistake a nod for a green light will find themselves exposed later in the process.

The interaction with statutory timelines

It bears emphasis that the one-shot consultation does not alter filing thresholds, statutory deadlines, or the completeness requirements that determine when review clocks begin to run. Intermediate mergers remain notifiable at or above a combined ZAR 600 million and target ZAR 100 million. Large mergers are triggered at or above a combined ZAR 6.6 billion and target ZAR 190 million. Review periods commence only upon a complete filing, with completeness determined through the Commission’s CC13 process after notification.

What the consultation can do, if used well, is reduce the risk of late-stage iterations that often extend complex reviews beyond indicative service standards. If you can align with the Commission on data scope and remedy contours before you file, you stand a materially better chance of avoiding the information request cycles that drag out timelines. Conversely, a diffuse or unfocused session squanders the opportunity to narrow issues, leaving you exposed to broader requests and longer timelines once clocks start.

Getting the multi-jurisdictional piece right

In cross-border transactions, the one-shot default magnifies the need for coherence between positions taken before other authorities and the narrative advanced in South Africa. The Commission routinely liaises with peer agencies in global matters, and inconsistencies between jurisdictions can undermine credibility in ways that are difficult to repair.

Practically, this means the South African consultation should be timed to follow initial scoping with other key agencies, while reserving enough flexibility to accommodate South Africa’s distinctive public-interest framework. Because the consultation is non-binding, the safer approach is to align on method and scope, market definition approaches, data characterisations, the broad shape of remedy thinking, rather than committing to definitive positions that subsequent evidential developments elsewhere might render untenable.

Foreign-to-foreign transactions remain within scope if they have effects in South Africa. Global deal teams should not assume that a lack of local corporate presence reduces the need for careful planning. In many cases, the single consultation will be the primary opportunity to explain local supply chains, customer dynamics, and competitive conditions unique to the South African market, and these may differ materially from the narratives advanced elsewhere.



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