



COMPETITION

South African Competition Commission’s Draft Guidelines on Minority Shareholder Protections: what businesses need to know

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The Competition Commission has published Draft Guidelines on Minority Shareholder Protections for public comment in December 2025. The stated aim is to clarify when rights typically enjoyed by minority investors cross the line into "control" for purposes of South African merger control, even where a transaction might not otherwise appear notifiable. In plain terms, the Commission is signalling closer scrutiny of veto-style rights and other levers of influence that can amount to control. Businesses should expect more predictable enforcement around minority stakes and structure deals accordingly.

Comments are due by 17 December 2025, with the final approach likely to shape transactions from 2026 onwards.

The draft is issued under section 79(1) of the Competition Act, which allows the Commission to set out its policy approach. It addresses transactions that do not obviously involve the acquisition of majority voting power but nevertheless give a minority shareholder the ability to determine or materially influence the commercial policy of a firm. The guidance complements the Commission's recent work on internal restructurings, which confirmed that changes in minority control rights within a group can trigger notification even if ultimate control does not change. Although non-binding, such guidelines typically reflect how the Commission will assess notifications and gun-jumping risks in practice.

What counts as "minority shareholder protections"?

A central theme is the distinction between ordinary investment protections and rights that confer negative control. Ordinary protections are the types of reserved matters aimed at safeguarding an investor from value dilution or unlawful conduct, such as changes to share capital, alterations to constitutional documents, or decisions to wind up the company. By contrast, negative control arises where a minority can veto strategic or operational decisions, for example annual budgets, business plans, or the appointment and removal of senior management. Consistent with the Commission's recent internal restructuring guidance, the draft indicates that ordinary protections do not concern the Commission unless they tip into control, whereas strategic vetoes may.

South African merger control is triggered by an acquisition or establishment of control as defined in section 12(2) of the Competition Act, which includes forms of de facto and negative control. The draft explains that acquiring strategic veto rights can amount to control, meaning a minority investment that introduces such rights may be notifiable if thresholds are met. It also highlights that changes to an external minority's control rights can be notifiable, including where a restructuring shifts joint control to sole control without changing the ultimate parent.

For investors and corporates, the practical impact is immediate. Transaction planning should include a merger control assessment into any minority investment or shareholder agreement refresh, focusing on whether proposed or amended vetoes touch strategic matters. Due diligence should map existing control rights across shareholder classes and identify whether a deal would create, transfer or extinguish negative control.

Consider a private equity fund acquiring 25% of a competitor that holds veto power over annual budgets and chief executive appointments. Those rights are capable of determining the target's commercial strategy and will likely be treated as control, requiring merger notification if thresholds are met. By contrast, a 10% investor that can veto only amendments to the memorandum of incorporation and the issuance of new shares typically holds ordinary protections that, standing alone, would not confer control. In an intra-group reorganisation, if an external minority's existing vetoes over business plans fall away so that another shareholder moves from joint to sole control, that change in control rights can render the step notifiable even though the group's ultimate parent remains the same.

The draft arrives alongside a broader modernisation of Commission guidance, including 2025 guidelines on internal restructurings and on price-cost margins in excessive pricing cases. Together, these documents show an intent to provide practical signposts in complex areas while reserving case-by-case discretion.



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