Subject to wordings of Section 2 the Fair Competitions, Merger is provided to mean an acquisition of shares, a business or other assets, resulting in the change of control of a business, part of a business or an asset of a business. Therefore, according to FCA, the term merger is defined to include acquisitions. In the eyes of law Merger involves the process of combining two (or more) companies into a new or existing legal entity. There are two basic types of merger;

1. The acquisition by one company of all the shares in another, with one of the companies (not necessarily the acquirer) surviving as the legal entity and
2. A new legal entity is created to combine the assets and operations of two companies, with shareholders of both companies offered shares in that new entity.

It is the Fair Competition commission (FCC) which is responsible for monitoring Mergers and Acquisitions in Tanzania and the applicable laws are; the **Fair Competition Act No. 8 of 2003**, **Fair Competition Commission Procedure Guidelines 2013** and the **Fair Competition (Threshold for the Notification of a Merger) Order, 2017.**
The Order amends the Fair Competition (threshold for Notification of a Merger) Order, 2006 which sets out the thresholds for a merger that are notifiable to the Fair Competition Commission (the FCC) as well as the mechanics of calculation of that threshold.

In line with the Order, the merger notification threshold has been changed from TZS 800 million (approx. USD 360,000) to TZS 3.5 billion (approx. USD 1.6 million). Furthermore the calculation of the said threshold is to be based on the combined market value of the assets or turnover of the merging firms.
It is promotion and protection of competition and consumer welfare in the economy which guide the FCC in the Administration and enforcement of the provisions of the FCA on mergers and acquisitions.

The control of mergers and acquisitions play an important role in ensuring that markets in different ventures of the economy remain competitive. It is one of the responsibilities of the FCC to examining merger applications and exemptions with the view to establish their likely effects to competition.

Merger and Acquisition is guided by the Dominance test, whereby section 11(1) of the Act prohibits a merger where it “creates or strengthens a position of dominance in a market” Thus, The notifying parties have to provide the FCC with sufficient reasons on whether there are any barriers to market entry which could lead to the merging parties being able to act independently to a significant degree from their customers and/or competitors.

Driving forces/Reasons for Mergers and Acquisitions

Bargain Purchase – It may be cheaper to acquire another company then to invest internally. For example, suppose a company is considering expansion of fabrication facilities. Another company has very similar facilities that are idle. It may be cheaper to just acquire the company with the unused facilities then to go out and build new facilities on your own.

Diversification – It may be necessary to smooth-out earnings and achieve more consistent long-term growth and profitability. This is particularly true for companies in very mature industries where future growth is unlikely. It should be noted that traditional financial management does not always support diversification through mergers and acquisitions. It is widely held that investors are in the best position to diversify, not the management of companies since managing a steel company is not the same as running a software company.

Short Term Growth – Management may be under pressure to turnaround sluggish growth and profitability. Consequently, a merger and acquisition is made to boost poor performance.

Undervalued Target – The Target Company may be undervalued and thus, it represents a good investment. Some mergers are executed for “financial” reasons and not strategic reasons. For example, certain well developed corporation acquires poor performing companies and replaces the management team in hopes of increasing depressed values.

Procedures for Registering Merger & Acquisition

The procedures are extensively provided under Part V of the Fair Competition Commission Procedure Guidelines 2013, as herein provided;

1. **Notification**

A firm/company intends to acquire control through a merger shall notify the Commission of that intended merger by filing a notification under section 11(2) of the Act (Rule 33 (1)). An application shall be in Form FCC.8 set out in the First Schedule to the Rules accompanied by application fees prescribed under the Rules. Notification shall contain the information, including all documents requested in the applicable forms set out in the First Schedule of the Rules. After submission of the notification, the commission will review the notification (Rule 35). Whereby, subject to Rule 36 the commission may examine the Merger and decide whether to permit or prohibit but subject to notification to the applicant.

1. **Investigation**

The Commission is vestsed with powers to investigate the prospected Merger on whether it adheres various legal and commercial requirements with a view to establishing whether it has any major economic impact . After ascertaining various prerequisites and aspects, the commission may either permit or prohibit. (Rule 38,39)

Also the commission may carry out an assessment as to decide whether the relevant merger is likely to harm competition.

- **Approval and Revocation**

After the investigation has been duly conducted, the commission will have to approve that particular Merger also may later on revoke it.