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# MERGERS AND ACQUISITIONS

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"A Kenyan economy with globally efficient markets and enhanced consumer welfare for shared Prosperity"



ISO 9001:2015 CERTIFIED

# What is a Merger?

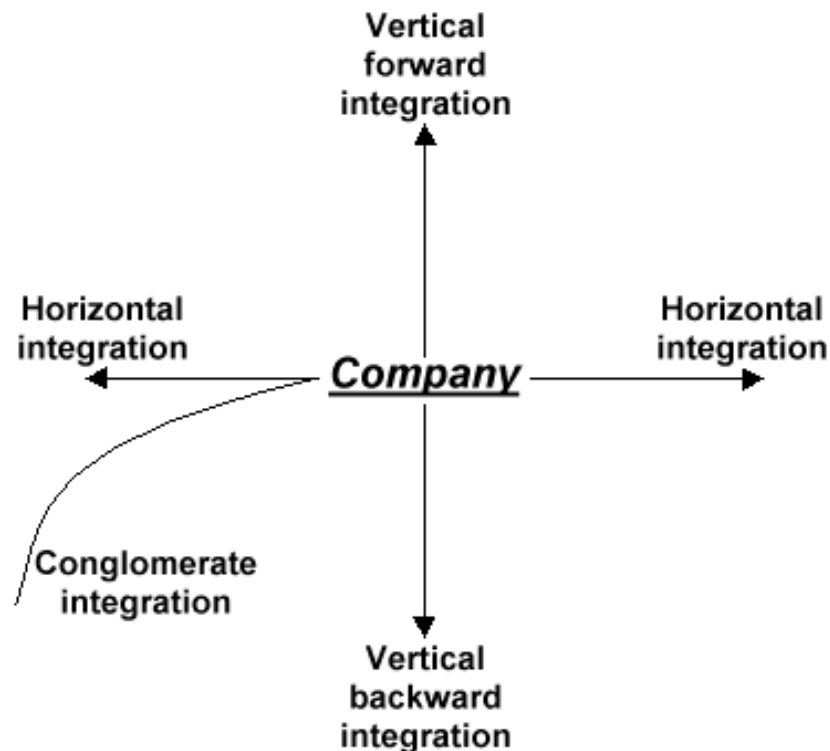
- ▶ This is a voluntary amalgamation of two firms on roughly equal terms into one new legal entity.



- Merger Defined in Sections 2&41 of the Competition Act, 2010

# TYPES OF MERGERS

- ▶ Horizontal Mergers
- ▶ Vertical mergers
- ▶ Conglomerate Mergers



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# Objective of Merger Control

- ▶ The goals of a merger regime is to:
  - i. ensure firms do not acquire, strengthen or preserve market power (dominance) that can be used to harm consumers and competitors.
  - ii. support the country's broader economic policy agenda.
- ▶ Mergers are enforced in terms of Part IV of the Competition Act, No. 12 of 2010 of the Laws of Kenya.
- ▶ Review is done in terms of sections 41-49 of the Act.

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# Enabling Legislation & Guidelines

- Competition Act No. 12 of 2010 – Section 42 & 46 (2)
  - <https://cak.go.ke/sites/default/files/Competition-Act-No-1-%20of%202010-Amended-as-at-2019.pdf>
- Competition (General) Rules – First Schedule (Merger Threshold Guidelines)
  - <https://cak.go.ke/sites/default/files/2020-03/The%20Competition%20%28General%29%20Rules%2C%202019.pdf>
- Consolidated Guidelines on the Substantive Assessment of Merger under the Competition Act
  - <https://cak.go.ke/sites/default/files/guidelines/Consolidated%20Merger%20Guidelines.pdf>
- Guidelines on Market Definition
  - [https://cak.go.ke/sites/default/files/Guidelines%20on%20Relevant%20Market%20Definition%20\(1\).pdf](https://cak.go.ke/sites/default/files/Guidelines%20on%20Relevant%20Market%20Definition%20(1).pdf)
- Joint Venture Guidelines
  - [https://cak.go.ke/sites/default/files/Competition Authority of Kenya Joint Venture Guidelines, 2021.pdf](https://cak.go.ke/sites/default/files/Competition%20Authority%20of%20Kenya%20Joint%20Venture%20Guidelines,%202021.pdf)

# Notification

- ▶ All mergers must be notified and authorized by the Authority.

## Documents

- Cover letter
- Merger Notification Form
- signed copy of Sale and Purchase Agreement
- Audited Financial Statements for the last three years
- Board/shareholder resolution authorizing the transaction.
- Any other document relevant to the transaction and likely to help the Authority in evaluating the merger.

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# Thresholds



## Merger Filing Fees Thresholds

Combined turnover/assets (KES)	Fees (KES)
0-500 million	0
500 million – 1 billion	0
1 billion < 10 billion	1 million
10 billion < 50 billion	2 million
<50 billion	4 million

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# Merger Assessment

## Competition Assessment



## Public Interest Test

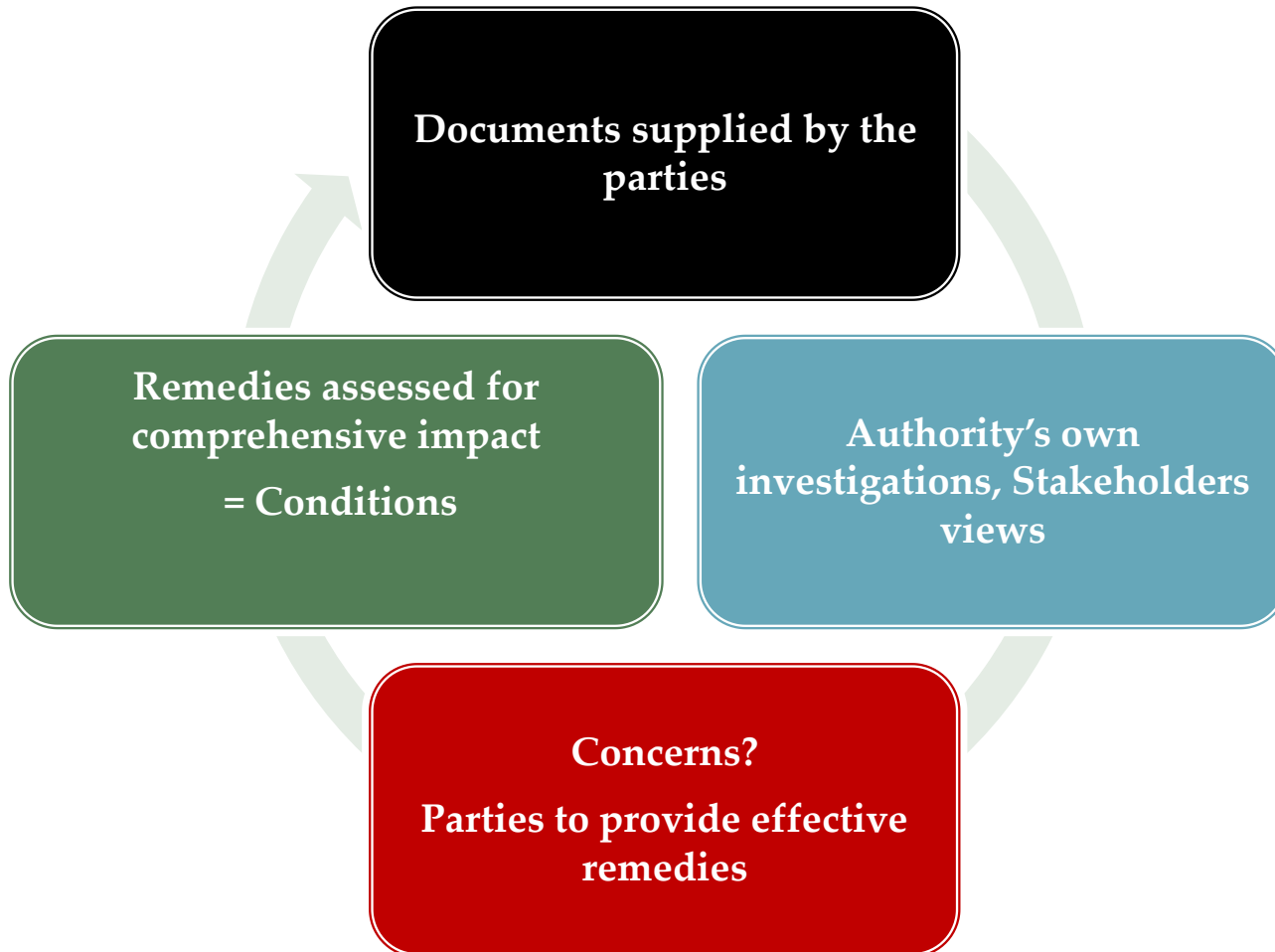
Guided by the Competition Act

Consolidated Guidelines on Merger  
Assessment

PIT is conducted regardless of the competition test but its conducted after the Latter  
Multiple public interest with different outcomes both positive and negative – each public  
interest ground will be assessed on its own accord and then a balanced approach is  
employed



# Evidence and Remedies



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Archives

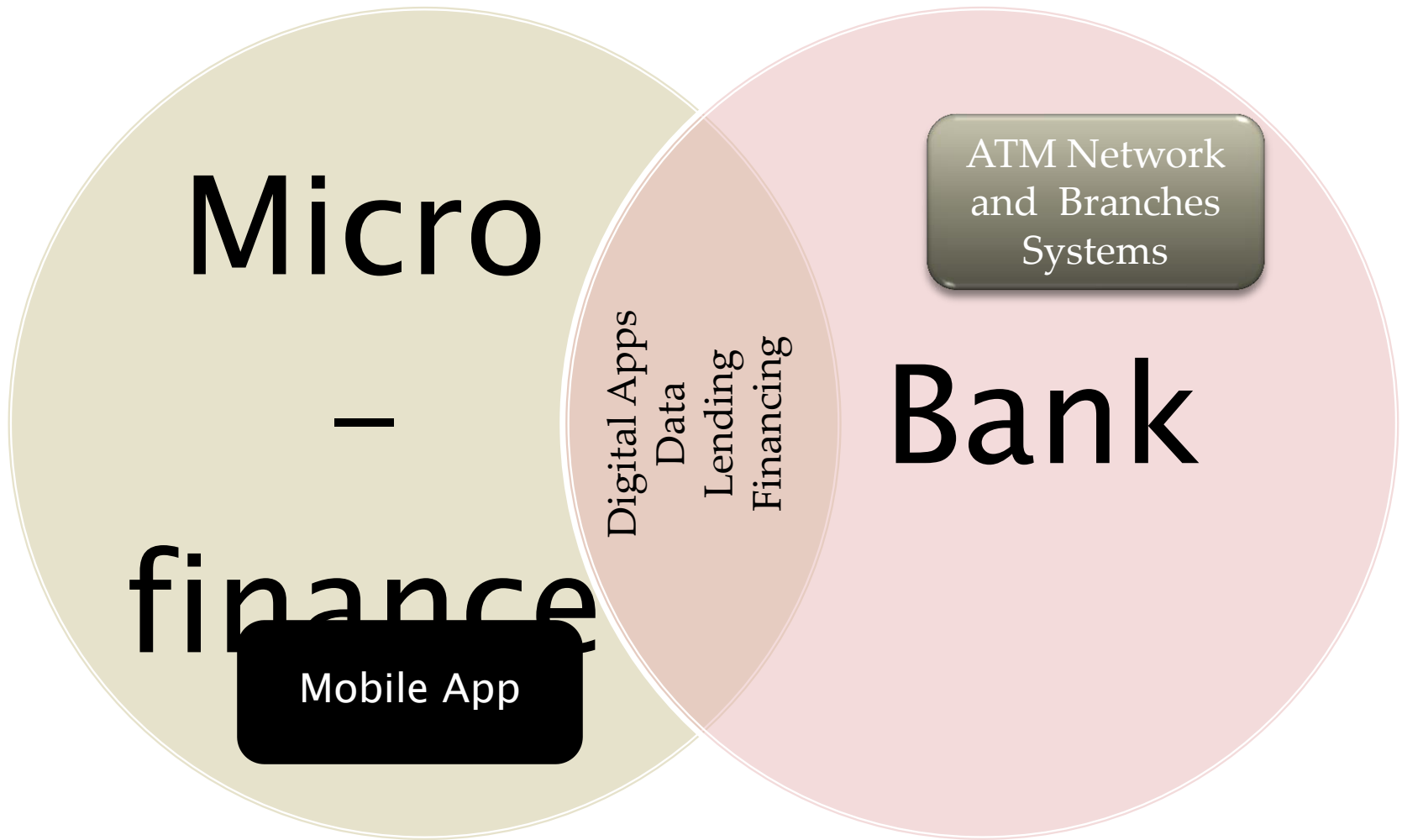


# Timelines and determination

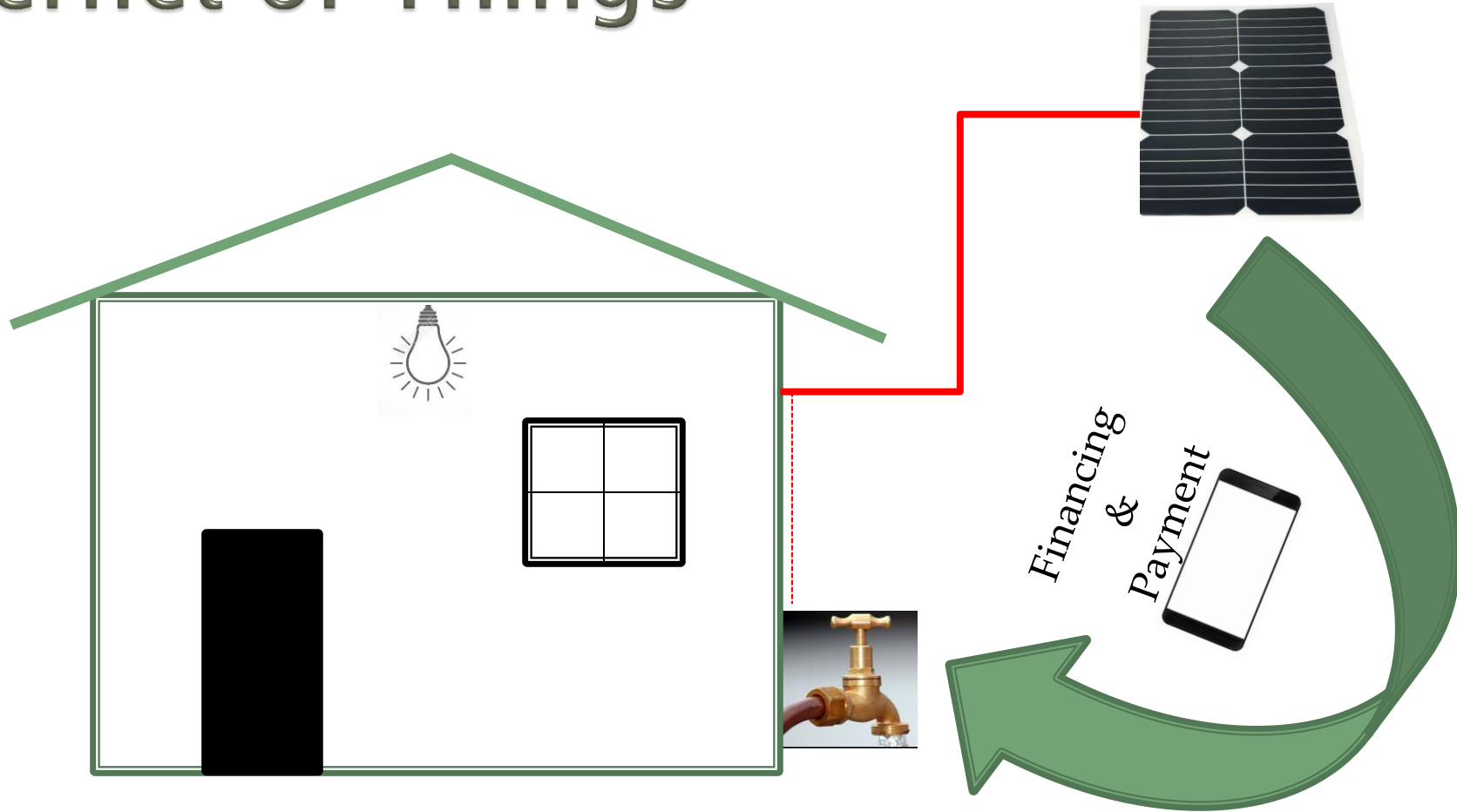
- ▶ Mergers are time bound
- ▶ Statutory timelines
- ▶ Mergers determinations are Gazetted in the Kenya Gazette.

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# New Trends



# Internet of Things



# Key Considerations in Digital Economy

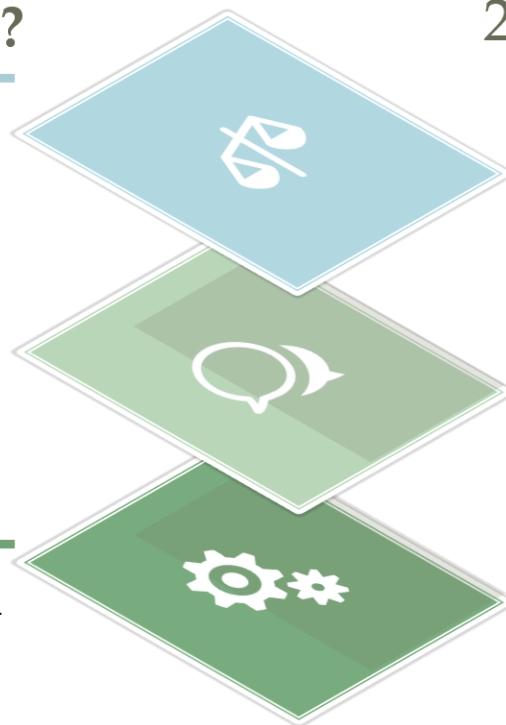
Can Data be considered as  
an essential facility?

Data Protection Act,  
2019

Digital Economy  
Blueprint

Digital Identity

Digital Economy



- ▶ Payments
- ▶ Data evolution and age
- ▶ Data as a service
- ▶ Compliance and ethics

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1/18/2022

# Case Examples

## CCBA

<https://cak.go.ke/sites/default/files/2019-10/CAK%20Decision%20on%20Proposed%20Acquisition%20of%20a%20Controlling%20Stake%20in%20Almasi%20Beverages%20Ltd%20by%20Coca-Cola%20Sabco%20%28East%20Africa%29%20Limited.pdf>

Simba Corporation Limited and Associated & AVA Pg. 77 No.5 Annual report 2017/2018

<https://cak.go.ke/sites/default/files/annual-reports/FY%202017-2018%20CAK%20Annual%20Report.pdf>

Total and GAPCO – Pg. 34 Annual Report 2016/2017

<https://cak.go.ke/sites/default/files/annual-reports/FY%202016-2017%20CAK%20Annual%20Report.pdf>



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