

**Twenty-First Intergovernmental Group of Experts on
Competition Law and Policy
Room XIX, Palais des Nations, Geneva
5-7 July 2023**

**Competition and Regional Economic
Organizations**

Presentation

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Competition and Regional Economic Organisations – Recent Developments at COMESA

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Presentation at the 21st Session of the IGE on Competition Law and Policy

6 July 2023

Outline

1. The COMESA Regulatory Framework
2. Improving the Regulatory Framework
3. Enhancing Cooperation among African RECs
4. Developments in Enforcement Activities
5. Commemoration of the 10th Anniversary of the COMESA Competition Commission

A brief on the COMESA Regulatory Framework

- The COMESA Competition Commission (CCC) is the regional competition regulator in COMESA as it is empowered to regulate the 21 COMESA Member States who are drawn from the Northern, Eastern and Southern Africa.
- The COMESA Treaty is the multilateral agreement to which the Governments of the COMESA Member States committed to prohibit anti-competitive practices in the COMESA Region.
- The legal power which is basis for the regulation of competition by the CCC is the COMESA Competition Regulations which Regulations are enacted under the COMESA Treaty and whose provisions are mirrored in some of the laws of the COMESA Member States.
- Some of the COMESA Member States have domesticated either the COMESA Treaty or the Regulations while others have incorporated some of the provisions of the Regulations into their laws or Regulations.
- Where the provisions are not in harmony or domesticated in the COMESA Member States, the CCC provides assistance to the Member States in an effort to achieve this.

Improving the Regulatory Framework

- The CCC has embarked on a major review of the COMESA Competition Regulations and Rules – identifying areas for improvement to keep up with emerging issues such as digital ecosystems and climate change, learning from past mistakes, incorporating cooperation mechanisms/ platforms within the processes
- Cooperation is among key instruments for sustainability of the CCC as a credible regulator
- Cooperation frameworks have extended beyond the national competition authorities in COMESA – cooperation agreements with the Eurasian Economic Commission and the CARICOM Competition Commission
- Focus on increasing cooperation on the African continent - Signing of MOU with East African Community Competition Authority to take place in July 2023
 - Discussions to cover practical aspects of how to deal with overlapping membership of COMESA Member States and thus overlapping jurisdiction
 - Main goal of cooperation is identification of thresholds to clearly delineate COMESA and EAC jurisdiction on competition matters, and provide clarity and legal certainty to the market

Improving Cooperation among RECs on the Continent

- The Constitutive Act of the African Union and the Abuja Treaty recognize the need for:
 - a) integration of African economies;
 - b) coordination and harmonization of the policies and activities of RECs in all fields or sectors with the goal of closer cooperation and also to achieve the objectives of the Community, the community being the African Union. This includes the concluding of agreements in order to achieve this; and
 - c) strengthening of RECs.
- With the African Continental Competition Protocol looming at large, it is critical that the various African RECs establish a platform to facilitate exchange of information, views, and experience
- Need for RECs to combine efforts to achieve convergence in their activities with respect to competition and consumer protection regulations – a difficult task without cooperation considering the overlapping memberships of the COMESA Member States in different RECs and the possibility of overlapping jurisdiction as more and more RECs become operational and active in competition enforcement.

Improving Cooperation among RECs on the Continent

- In order for the Regional Economic Communities (RECs) to be successful in regulating competition and consumer protection following the establishment of a continental competition body, it will be important for there to be a combined effort at four levels:
 - a) RECs and their Member States;
 - b) RECs and other RECs;
 - c) RECs and the continental body to be established under the AfCFTA; and
 - d) The continental body and the State Parties.
- The CCC has initiated discussions which will see for the first time all the RECs dealing with competition matters in Africa coming together, this include ECOWAS, CEMAC, EAC, WAEMU
- The goal is to kickstart discussions on the coordination and harmonization of policies and activities of the RECs and how to best fit feed into the AfCFTA legal and enforcement matters.

Development in Enforcement Activities

- The CCC has seen more complicated regional merger cases over the last two years, which are raise serious competition concerns - particularly in relation to increasing concentration in already concentrated markets and increasing vertical consolidation leading to serious fears of foreclosure, which are necessitating more complex remedies.
- The CCC has also imposed conditions in merger approvals in connection to non-compete and non-solicitation clauses which in the CCC's views were disproportionate in scope and duration, in recognition of the role of effective labour markets for competitive products markets.
- Have also seen an increase in conduct cases at regional level – this could also be a result of enhanced capacity and experience gained by the Commission over time in detecting such conduct.
- Cartel investigations underway at regional level.

Capacity Building

- Capacity Building for CCC Staff a result of strong cooperation with the European Commission and the US FTC and US DOJ – activities include secondment programmes, training programmes
- The CCC has active collaborations with the Commonwealth to provide technical assistance to Commonwealth countries.
- A recent collaboration is with respect to the development of operational manuals and guidelines for the Rwanda Inspectorate, Competition and Consumer Protection Authority (RICA).
- Other projects have been identified to enable the two institutions to extend support to other Commonwealth countries.

Commemoration of the 10th Year Anniversary

The CCC recently commemorated its 10th anniversary – celebrated a number of milestones:

- a. The Regulations are now enforceable in all Member States thanks to the work done by the CCC
- b. Cooperations agreements entered into with majority of the national competition authorities of the Member States, and beyond COMESA
- c. Assisted Member States to enact and implement competition laws, and establish competition authorities
- d. Contributions made to the Common Market, by ensuring markets are competitive through enforcement action (significant cross border cases include MSC/Ignazio Messina, KNSL/KPA, and Heineken/Distell (which is the first substantive divestiture case).
- e. Through conduct cases, the Commission has contributed to amending dominant firms' way of doing business in the Common Market through the removal of anti-competitive clauses from their agreements, to ensure inclusiveness of smaller businesses and consumer welfare.

Commemoration of the 10th Year Anniversary

The CCC recently commemorated its 10th anniversary – celebrated a number of milestones:

- f. Achievement in terms of the staff complement from 6 at inception in 2013 to over 30 currently, with a fully fledged unit of research policy and advocacy.
- g. Conducting a Market Observatory Project in joint collaboration with the University of Johannesburg's Centre for Competition, Regulation and Economic Development (CCRED) which resulted in price tracker for staple foods such as maize, maize meal, soybean, soybean meal, rice, and fertilisers (urea, and DAP) in countries in Eastern and Southern Africa. Study has helped to identify competition issues that small holder farmers and food producers may be facing, and recommendations are expected to result in real impact on enforcement and policy change.

Thank You



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