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**Review of Capacity Building in and Technical Assistance on
Competition Law and Policy**

Contribution

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**Common Market for Eastern
and Southern Africa**

**COMESA COMPETITION COMMISSION WRITTEN CONTRIBUTION ON
THE REVIEW OF CAPACITY-BUILDING IN AND TECHNICAL
ASSISTANCE ON COMPETITION LAW AND POLICY**

**PAPER SUBMITTED TO THE UNITED NATIONAL CONFERENCE FOR
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INTRODUCTION

1. The COMESA Competition Commission (“CCC”) is a regional body established under Article 6 of the COMESA Competition Regulations (“the Regulations”). The Regulations were promulgated pursuant to Article 55 of the COMESA Treaty (“Treaty”) establishing the Common Market for Eastern and Southern Africa (“COMESA”).
2. The CCC is mandated to enforce the Regulations in order to promote and encourage competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market as well as to protect consumers against offensive conduct by market actors.
3. The CCC is mandated to enforce the Regulations in the Common Market for Eastern and Southern Africa (the Common Market) which is composed of 21 Member States and these are: Burundi, Comoros, Djibouti, Democratic Republic of Congo (DRC), Egypt, Eswatini, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Seychelles, Sudan, Rwanda, Somalia, Tunisia, Uganda, Zambia and Zimbabwe.
4. The CCC enforces the Regulations on competition and consumer protection matters that are cross border in nature, that is matters affecting two or more Member States of the Common Market. In this regard, the Regulations have primary jurisdiction over an industry or a sector of an industry which is subject to the jurisdiction of a separate regulatory entity (whether domestic or regional) if such a regulator regulates conduct relating to restrictive business practices and mergers.
5. To effectively enforce the Regulations, the CCC provides technical assistance and capacity building to the Member States. This is important because Member States are at different levels in their enforcement of competition and consumer protection law. Out of the 21 Member States, 17 have competition laws in place while others such as Eritrea, Libya, Somalia and Uganda do not yet have the law in place. The 17 Member States with competition laws, are all at different levels in terms of enforcement, with some more advanced than others, while others have competition laws in place but do not yet have institutions to enforce the laws.
6. With these varying degrees in the existence and enforcement of competition laws, the provision of technical assistance and capacity building is very important if the regional law is to be effectively enforced. It is very obvious that the effectiveness of the CCC as a regional competition authority depends on the effectiveness of

national competition laws and authorities as they are an integral part of the regional competition law enforcement.

Provision of Technical Assistance to Member States

7. Technical assistance and capacity building are provided based on the needs and priorities of the Member States. Member States identify the areas where they need technical assistance and request the CCC for such assistance. This also applies to capacity building if required. Sometimes the CCC may initiate technical assistance and capacity building initiatives for a Member State *ex proprio motu* depending on the gaps observed.
8. The CCC has a dedicated budget for technical assistance and capacity building activities. The budget is informed by the previous needs of Member States as well as the possible areas requiring attention identified by the CCC based on interactions with Member States.
9. In the provision of technical assistance for purposes of building capacity in Member States, the CCC also makes use of the existing expertise within the institution as well as expertise from more advanced competition authorities within the Common Market and beyond. In this regard, the CCC sponsors study tours for those competition authorities that are in the process of setting up or have just set up to learn from more advanced authorities. This is important as it enables the young competition authorities to learn from experiences of other countries that are more advanced in enforcing competition laws in the Common Market.
10. It should be noted that the CCC has deliberate training programmes planned every year aimed at training members of staff of the national competition authorities and coordinating ministries in countries where there are no competition authorities in the enforcement of competition laws generally and more specifically in mergers and acquisitions and restrictive business practices. The training programmes cover different areas including the emerging trends in enforcement of merger laws as well as restrictive business practices, national competition authorities learning from experiences within the Common Market or from experiences of more advanced competition authorities like the US Department of Justice and the Federal Trade Commission, and regional authorities such as the European Commission. More dedicated trainings are also held on investigative tools relevant for the effective enforcement of laws on mergers and restrictive business practices. The trainings have been provided by CCC every year from 2013 to date and have been offered to all the Member States with an exception of Somalia and Libya.

However, the aim of the CCC is to provide such trainings to all the Member States. Suffice to state that invitations are always sent to all Member States.

11. Capacity building trainings have not only been provided for the members of staff of the national competition authorities or the coordinating ministries but have been extended to other stakeholders important in the enforcement of competition law. These stakeholders include the judiciary, legal practitioners, the business community and business reporters.
12. In addition to training aimed at building the capacity of Member States, the CCC provides technical assistance to its Member States aimed at addressing enforcement gaps. Technical assistance is also provided for purposes of harmonizing the national competition laws with the regional Regulations. Such technical assistance is highlighted for each country below:

BURUNDI

13. The CCC has provided technical assistance and capacity building to Burundi on competition law matters for members of staff from the Ministry in charge of COMESA matters, the judiciary and business reporters. Representatives from Burundi have taken part in trainings conducted by the CCC from 2013 to date.
14. In October 2021, the CCC conducted sensitization and awareness meetings with representatives of Ministries, national legislative offices, sector regulators, professional bodies and the private sector to raise awareness on the enforcement of competition and consumer protections laws in Burundi. In June, 2022, the CCC conducted training for the officials from government on the application of competition and consumer protection laws. This was done to prepare for the establishment and operationalization of the competition and consumer protection authority in Burundi.

COMOROS

15. Representatives of the COMESA coordinating ministry and the judiciary in Comoros have been taken part in training meetings for purposes of capacity building. In 2021, the CCC conducted a sensitization workshop for different stakeholders in Comoros on competition and consumer protection law enforcement. The CCC also held meetings with the Ministry responsible for COMESA matters, chambers of commerce, consumer protection association and the Law Society of Comoros since 2021 to discuss the operationalization of the Comoros National Competition Authority.

DEMOCRATIC REPUBLIC OF CONGO

11. The CCC has been supporting DRC and through such support, the national competition authority in DRC has been operationalized. In 2017, the head of the competition authority of DRC was sponsored on a study tour to the Competition Commission of Mauritius and

other members of staff have been taking part in various trainings on competition law enforcement. The CCC has also conducted sensitization on competition and consumer matters among the stakeholders including the business community, consumer associations, judiciary, and other government officials on the enforcement of competition and consumer protection law. The aim of the trainings and sensitization has been to assist in the establishment and operationalization of the DRC competition authority. The institution is now operational and the CCC has started conducting extensive joint investigations with the authority.

DJIBOUTI

12. The CCC facilitated the attachment of an official in charge of the competition law unit in the Ministry of Commerce to the Competition and Consumer Protection Commission of Zambia (CCPC) in 2016. The country has also benefited from trainings in other competition law matters organised by the CCC. Since 2021, the CCC is facilitating the review and harmonization of the competition and consumer protection law in Djibouti with the Regulations. The review is also expected to bring the Djibouti competition law in line with modern competition laws.

EGYPT

13. The CCC has been partnering with the Egyptian Competition Authority (ECA) on hosting joint training programmes for members of staff from other Member States. The CCC has also been sponsoring some members of staff to take part in trainings on mergers, abuse of dominance and restrictive business practices. Other stakeholders such as the judiciary, legal practitioners and business reporters have benefited from trainings organised by the CCC.

ERITREA

14. The CCC sponsored delegates from Eritrea to take part in meetings targeting business reporters. The delegates from Eritrea took part in the meetings from 2014 to 2017.

ETHIOPIA

15. Members of staff from the Trade Competition and Consumer Protection Authority (TCCPA) have been sponsored to attend trainings on mergers and restrictive business practices from 2014 to date.
16. In 2015, the Head of the Mergers and Acquisitions Division of CCC was attached to the TCCPA for a month to assist in training officers and in the development of procedures for the effective operation of Ethiopia's merger control regime. Two members of staff of TCCPA were attached to the CCPC for three months while two others were attached at the Competition Authority of Kenya (CAK) for three months to train them on competition and consumer protection law enforcement. These attachments were facilitated and sponsored by the CCC

KENYA

17. The CCC has sponsored members of staff of the CAK to take part in trainings on mergers, abuse of dominance and restrictive business practices from 2013 to date. Business reporters from Kenya have also been trained on competition and consumer protection matters. It should be reported that as a result of this business training, business reporters in Kenya have emerged as among the most robust business journalists in the Common Market.

MADAGASCAR

18. The CCC has also sponsored members of staff and other stakeholders of the Madagascar Competition Council to take part in trainings on mergers, abuse of dominance and restrictive business practices. In 2016 the CCC sponsored members of staff of the Madagascar Competition Council for a study tour to the Competition Commission of Mauritius for one week. The study tour was aimed at providing training on institutional structure and operating procedures to the Madagascar Competition Council.

MALAWI

19. Members of staff of the Competition and Fair Trading Commission (CFTC) of Malawi and other stakeholders have been sponsored to take part in trainings organised by the CCC. In 2021, the CCC provided financial support to assist CFTC to conduct a training for its Board Members as well as for it to hold a consultative meeting with relevant stakeholders on the guidelines on restrictive business practices. Additionally, since 2021, the CCC is providing financial support to CFTC on the amendments to their competition and consumer protection laws. The CCC has also been providing technical assistance to the CFTC through provision of its staff members as resource persons to train the Board Members of the CFTC.

MAURITIUS

20. The CCC is providing technical assistance to the Competition Commission of Mauritius (CC) on the drafting of legal and procedural framework on the cooperation mechanism between the CC and the CCC. This project is expected to produce a sound and water tight legal cooperation mechanism facilitating effective joint investigations between the CC and the CCC. The CCC has also sponsored members of staff of the CC and other stakeholders to take part in training on mergers, abuse of dominance and restrictive business practices

RWANDA

21. In 2021 the CCC provided technical assistance to Rwanda through a workshop held from 26th – 30th April 2021 by training the members of staff of the national competition authority on the enforcement of competition and consumer protection laws and the interactions with other sector regulators. Previous trainings to Members of Staff of the Ministry of Trade

and Industry which was responsible for competition matters has been provided as well as to other stakeholders.

SUDAN

22. The CCC sponsored a study tour of three members of the Competition Antitrust Council of Sudan and the head of the COMESA Competition Desk in the Ministry of Trade to the Egyptian Competition Authority in 2016. In 2018, four members of staff of the Competition Antitrust Council were sponsored for a study tour to Zambia with the Competition and Consumer Protection Commission while four other members of staff were sponsored for a study tour to Malawi with the Competition and Fair Trading Commission and four with the Competition Authority of Kenya.
23. The CCC has also sponsored members of staff from the Sudan Ministry of Trade and other stakeholders to take part in the trainings on competition law.

ESWATINI

24. The CCC assisted the Eswatini Competition Commission (ESCC) on the review of the national competition law aimed at harmonizing the national competition law with the COMESA Competition Regulations. The CCC also co-sponsored with the COMESA-RISM, activities leading to the domestication of the Regulations in Eswatini in 2017. The CCC in 2021 also provided financial support to ESCC towards the training of its Members of Staff on competition and consumer protection law. In 2022, financial support has been provided to go towards the development of the ESCC strategic plan for 2022 to 2027. Other trainings have also been provided for members of staff of ESCC and other stakeholders. The CCC has also provided direct technical assistance in providing legal and economic guidance to the Board of the Eswatini Competition Commission in adjudicating some cases before it.

SEYCHELLES

25. The CCC facilitated the engagement of a consultant on the formulation of the competition and consumer protection policy of Seychelles in 2015. Other forms of technical assistance have included the CCC advising Committees of the Seychelles National Assembly on competition law, policy in 2017, advising on the formulation of guidelines aimed at giving guidance to the business community on the application of the law. The CCC has provided various advisory opinions to the Seychelles Fair Trade Commission on some of the competition matters having an effect in Seychelles.
26. The CCC has sponsored training for members of staff of the Fair Trading Commission (FTC) and other stakeholders.

UGANDA

27. The CCC in 2016, provided technical assistance to the Government of Uganda through the Ministry of Industry, Trade and Cooperatives towards the domestication of the

COMESA Treaty to facilitate the smooth implementation of the COMESA Laws and Regulations. The assistance provided included paying for a consultant, printing of brochures on the COMESA treaty for distribution to Parliament. This resulted in the domestication of the COMESA Treaty by Uganda in 2017. Trainings have also been provided for members of staff of the Ministry of Industry, Trade and Cooperatives who are also responsible for COMESA as well as other stakeholders on competition law matters. The CCC has also been instrumental in ensuring that Uganda has its own competition law and authority. This work is on-going.

ZAMBIA

28. In 2022, the CCC sponsored the training of the Board Members of the CCPC. This is important in ensuring that the decision makers who are key in the enforcement of competition law are trained on such matters to enhance their understanding on the subject matters as well as other matters such as those on corporate governance. The CCC has also been sponsoring members of staff of the CCPC and other stakeholders on trainings in competition law matters.

ZIMBABWE

29. The CCC has been providing training for members of members of staff of the Competition and Tariff Commission (CTC) and other stakeholders on competition law matters. In the last quarter of 2022, the CCC is expected to conduct an extensive training on competition and consumer law matters to the Members of the Judiciary of Zimbabwe.
30. Generally, the CCC has been providing annual technical assistance and capacity building to all the Member States in one way or the other.

CONCLUSION

31. Provision of technical assistance to Member States is important for a regional competition authority such as the CCC if the regional law is to be enforced effectively. Through the technical assistance provided by CCC, Member States such as DRC have been able to operationalize the national competition authority, other countries such as Uganda and Eswatini have been able to domesticate the regional competition law, training has been provided to various stakeholders such as the judiciary, legal practitioners and business reported who are all very key in the enforcement of competition law. The CCC has continued to provide technical assistance to its Member States as it wants to ensure that all the Member States have competition laws and institutions to enforce the laws in place. As one of its functions, the CCC also wants to ensure that the national competition authorities harmonise their laws with the regional competition law. Harmonised competition laws with the COMESA competition laws will indirectly result in harmonized national competition laws. Ultimately, this should lead uniformity of application and interpretation of competition laws in the Common Market. Such tenets are important for certainty on businesses resulting not only in easy detection, prevention and prohibition of anti-competitive conduct but also reduction in the cost of doing business in the Common

Market. This is essential in ultimately bringing business investments in the Common Market.