

Introduction

- COMESA is the only REC on the continent with an operational regional competition law and regional competition body.
 - Whilst EAC and ECOWAS have recently set up their respective regional authorities, enforcement activities have yet to commence.
- COMESA Competition Regulations were ratified in December 2004 (pursuant to Article 55 of the COMESA Treaty) and the COMESA Competition Commission began operations in January 2013 (operational for almost eight years now).
- Unlike national competition laws, the COMESA Competition Regulations fulfil an additional function, that is the overriding goal of achieving **single market integration**.

Contribution of the COMESA Competition Regulations to Regional Integration



- Introduction of a “**one stop shop**” for cross border transactions:
 - Eased **cost of doing business** in the Common Market by eliminating double or multiple notifications for transactions of regional dimension;
 - Eases **compliance requirements** with centralised regulatory system;
 - Provides for the “**rule-based regulatory system**” - the Regulations provides for a dispute resolution mechanism and a respectable appellate system;
 - Reduces **legal uncertainty** as a result of inconsistent and different decision outcomes across jurisdictions.
- Consumer welfare escalated to a regional level protection through regional rules
- Unlike the national competition authorities whose jurisdiction is limited by national boundaries, Article 6 of the Regulations provides extra-territorial jurisdictional powers on the Commission who has the power to investigate cases with effects in any Member State’s jurisdiction, provided the cross-border dimension is satisfied.

Challenges faced in the implementation of the Regulations

1. **PROTECTIONISM (ENEMY TO REGIONAL INTEGRATION):** Member States have continued to erect national barriers to the free movement of goods, services, people, and capital through tariffs and non-tariffs measures.
2. **SOVEREIGNTY OF MEMBER STATES:** Member States have continued to resist to cede their sovereignty to the regional law and to accept the supremacy of the Regulations.
3. **WEAK COMPLIANCE WITH TREATY PROVISIONS:** due to lack of effective sanctions in the Treaty, compliance commitments to the Treaty have continued to be low.
4. **DOMESTICATION OF THE TREATY:** Member States have not put in place internal instruments for ease of enforcement of the Regulations in their territories.
5. **LACK OF RESOURCES AT NATIONAL LEVEL:** Lack of Government support, financial and human resources to effectively implement competition laws at national levels.
6. **OVERLAPPING MEMBERSHIP:** Existence of various regional competition laws and overlapping memberships across RECs creates complex regulatory framework for doing business on the continent - becomes counterproductive to the goal of regional and continental integration.
7. **COMPETITION CULTURE:** Lack of sustainable competition culture at Member State level.

WAY FORWARD



- With coming into play of the Africa Continental Free Trade Area, the work and experience achieved by the RECs in the area of competition law enforcement presents positive lessons for the continental body.
- Regional integration efforts are likely to be enhanced under the following circumstances:
 - Increased coordination and cooperation between national and regional competition authorities; and among the regional competition bodies of the various RECs;
 - Harmonisation of competition rules at national, regional, and continental levels while respecting the economic and social peculiarities of the various Member States;
 - Increased efforts by Member States to invest in capacity building and advocacy activities to develop and strengthen national and regional enforcement regimes.
- Effective enforcement of competition law at national level will in turn contribute to an effective regional and continental regime.