



COMESA COMPETITION COMMISSION ANNUAL REPORT

2021

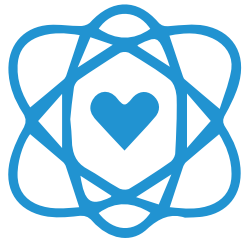


**Enhancing intra-COMESA
trade through the creation
of competitive markets**

To be a center of excellence for competition regulation and consumer protection by 2030.



To promote competitive markets and enhance consumer welfare within the Common Market by preventing and prohibiting anti-competitive business practices and protecting consumers, thereby deepening regional integration.



In carrying out this mission, the Board of Commissioners, management, and staff of the Commission are guided by the following values:

Integrity: We shall uphold integrity through operating in a manner that is fair, transparent, ethical, honest, and incorruptible.

Efficiency: We shall deliver services in a timely and cost-effective manner ensuring that every function that is executed contributes to the achievement of competitive markets, enhancement of consumer welfare, and ultimately regional integration within the Common Market.

Effectiveness: We shall exhibit the highest level of ability and willingness to do work. This shall be accompanied by a learning attitude and recognition that we are all stewards of public trust and as such have a higher calling to deliver public service.

Accountability: We shall ensure accountability to stakeholders in our operations and decision-making process.

Independence: We are independent in carrying out our mandate and reaching our decisions without undue influence.

Continuous improvement: We shall embrace and sustain a culture of innovation, responsiveness to change and best practices.

Cooperation: We shall work in close collaboration and mutual assistance with Member States and Stakeholders.

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Acronyms

ABA	American Bar Association
ACF	African Competition Forum
AU	African Union
CAK	Competition Authority of Kenya
CARICOM	Caribbean Community and Common Market
CBC	COMESA Business Council
CBE	Central Bank of Egypt
CC	Competition Commission (Mauritius)
CCPC	Competition and Consumer Protection Commission
CCRED	Centre for Competition Regulation and Economic Development
CFTC	Competition and Fair Trading Commission
CID	Committee Responsible for Initial Determinations
COMESA	Common Market for Eastern and Southern Africa
COMFWB	COMESA Federation of Women in Business
CTC	Competition and Tariff Commission
EAC	East African Community
EAEU	Eurasian Economic Union
EC	European Commission
ECA	Egyptian Competition Authority
EEC	Eurasian Economic Commission
ESCC	Eswatini Competition Commission
EU	European Union
ICN	International Competition Network
ICPEN	International Consumer Protection and Enforcement Network
OECD	Organisation for Economic Cooperation and Development
SADC	Southern African Development Community
TFTA	Tripartite Free Trade Area
UNCTAD	United Nations Conference for Trade and Development

Background

1. The Treaty establishing the Common Market for Eastern and Southern Africa (the Treaty) provides the legal foundation for regulating competition in the Common Market for Eastern and Southern Africa (the Common Market). Article 55 (1) of the Treaty provides that the Member States agree that any practice which negates the objective of free and liberalized trade shall be prohibited.
2. The aim of the Treaty is to strengthen and achieve convergence of national markets and economies through attainment of full market integration. However, this objective may be threatened by anti-competitive practices by companies operating in the Common Market which divide the Common Market. To this end, Member States agreed to prohibit any agreement between undertakings or concerted practices which have as their object or effect the prevention, restriction, or distortion of competition within the Common Market. The COMESA Competition Regulations (the Regulations) were subsequently promulgated pursuant to Article 55 (3) of the Treaty.
3. The COMESA Competition Commission (the Commission) is established under Article 6 of the Regulations as an international legal personality. The Commission has, in the territory of each Member State, the legal capacity required for the performance of its functions under the Treaty and powers to acquire or dispose of movable and immovable property in accordance with the laws and regulations in force in each Member State. The Commission is committed to achieve and maintain the highest standard of transparency and impartiality in order to preserve stakeholders' confidence in the organisation. The Commission pursues the objectives of promoting competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, enhancing the welfare of the consumers in the Common Market and protecting consumers against offensive conduct by market actors. The Commission is composed of two enforcement institutions namely the Commission's Secretariat and the Board of Commissioners.
4. The Commission's core focus areas under the Regulations include investigating anti-competitive business practices and conduct; investigating mergers and acquisitions; and investigating unfair, deceptive, and fraudulent business practices towards consumers and other businesses. The Commission implements its mandate by regularly engaging and cooperating with the Member States through sensitization and advocacy programmes.
5. Therefore, the Commission's enforcement activities contribute to the regional integration agenda by ensuring that trade between Member States is not frustrated by anti-competitive and unfair business practices occasioned by firms operating in the Common Market. This annual report gives a synopsis of the Commission's activities in 2021 that were aimed at ensuring that regional integration agenda is achieved and that the welfare of consumers are safeguarded.

Chairperson's Message



It is my honour to present to you the Commission 2021 Annual report. This report highlights the milestones that the Commission has achieved in 2021 as it continues to promote competition in the Common Market as well as enhancing the welfare of consumers. The year has recorded many successes even amid the COVID-19 pandemic and other challenges that affected our efforts to implement our mandate effectively.

In January 2021, the Commission bid farewell to the former first Director and Chief Executive Officer of the Commission, Dr. George Lipimile, who led the institution for the past ten (10) years and was instrumental in its establishment. Following Dr. George Lipimile's departure, the Board appointed Dr. Willard Mwemba to act as the Director and Chief Executive Officer of the Commission, the role he played until 9 November 2021. In July 2021, the Commission also bid farewell to four of its commissioners who included the former Chairperson, Commissioner Patrick Okilangole; former Vice Chairperson, Commissioner Amira Abdel Ghaffar; Commissioner Michael Teklu Beyene and Commissioner Charlotte Wezi Malonda. Further, in December 2021, the Commission faced the tragic demise of one of its Board members, Commissioner Trudon Kalala Nzembela.

On the other hand, the Commission welcomed four Commissioners namely Commissioner Mahmoud Momtaz, Commissioner Ambassador Mesganu Arga Moach, Commissioner Lloyds Vincent Nkhoma, and Commissioner Beatrice Uwumukiza whose term commenced on 15 July 2021 and consequently, on 22 September 2021, I was elected by the Board as its Chairperson and Commissioner Brian Lingela, as the Vice Chairperson. I thank my fellow Commissioners for entrusting me with this position and look forward to working with them as a team for the success of the Commission. On 9 November 2021, the COMESA Council of Ministers appointed Dr. Willard Mwemba, as the Director and Chief Executive Officer of the Commission following a very competitive selection process. The Commission's Board and management welcomed the well-deserved appointment of Dr. Willard Mwemba. Lastly but not least, the Commission's team increased with nine new recruits.

Just like any other institution, the Commission was not spared from the effects of the COVID-19 pandemic. The Commission faced some operational challenges especially those related to statutory time obligations such as the conclusion of investigations and notification of mergers, among others. This was largely occasioned by difficulties in collecting relevant information as most of our stakeholders were still experimenting with off-site operations. Nevertheless, the Commission was able to navigate through the storm and ensured that it continued to implement its mandate effectively and efficiently.

In the period under review, the Commission developed and operationalised its five year Strategic Plan (2021-2025) which was prepared following assessment of the performance of the Commission in the 2016-2020 Strategic Plan and the various developments in the operating environment. In this regard, the 2021 performance is the first and crucial year towards the execution of the 2021-2025 Strategic Plan which identified four key strategic issues namely: Determination of conduct harmful to competition and consumers in the market; Strengthening Enforcement; Advocacy and Strategic Collaboration; and Institutional Strengthening.

Unlike the previous years where the activities of the Commission focused on merger enforcement, the Commission has strengthened its enforcement in Part Three of the Regulations in investigating anti-competitive business practices and Part Five of the Regulations in consumer protection.

To enhance its legal framework, the Commission commenced the review of the Regulations and COMESA Competition Rules (the Rules) which were enacted in 2004. With the passage of time, specifically 17 years since the Regulations and Rules were enacted, it has been noted that there is need to amend the Regulations in order to address emerging matters such as those in the digital economy. The review is therefore expected to update the Regulations to be in line with current and best legislative frameworks. Further, the Commission in the period under review commenced the development of Guidelines on Determination of Fines and Penalties, Settlement Procedures and Hearing Procedures. The Guidelines are meant to provide clarity, transparency and predictability in investigations, adjudications, and decision-making process of the Commission.

We are also cognisant of the important role that National Competition Authorities play in the implementation of our mandate. As such our successes are also their successes. In our continuous liaisons with Member States, the Commission has managed to build lasting institutional relationships, and build capacity of case officers in the region, ensuring



the growth of competition law as a discipline. The Commission also owes its success to the legal fraternity and business community, which continues to cooperate in implementing our mandate. The Commission recognizes the importance of having the legal fraternity and business community understand our procedures and the expectations of the Regulations and Rules. The continuous engagement of all our stakeholders is critical for the building of a competition culture in the region.

Finally, I wish to thank the Board of Commissioners for their dedication and commitment to the service of the Commission. The Commissioners have lived up to the mammoth task of adjudicating complex cases. This could of course not have been possible without the exceptional work submitted by the Commission's Secretariat. I can confidently report that all parties have adequately lived up to the task having been faced with unique cases, and novel challenges.

**Commissioner Ellen Ruparanganda
Chairperson of the Commission**

Foreword from the Director



I was honoured to start 2021 as the Acting Director & Chief Executive Officer of the Commission and subsequently being appointed to the position by the COMESA Council of Ministers. The position was tightly contested by renowned competition and consumer law experts in the Common Market. Leading the regional competition and consumer law enforcement authority is a noble task and a privilege that I take seriously.

The year was also a challenging one for me because I served in an acting capacity as Director and Chief Executive Officer at the height of the global COVID-19 pandemic. The pandemic brought far reaching challenges with regard to efficient and effective operations of competition authorities the world over and the Commission was not an exception. In order to ensure the continuation of effective service delivery and compliance with our own Regulations and to assist undertakings cope with the pandemic, my team and I immediately implemented measures to alleviate these effects and risks that could have led to inadvertent non-compliance with the Regulations.

The Commission was cognizant that undertakings were finding it difficult to collect and submit the required information within the statutory periods as most critical staff retreated to working from home and operations of courier service companies became inefficient. In the case of regional mergers on which the Commission exercises its jurisdiction, this challenge was even more daunting due to the need to collect information from multiple jurisdictions. This notwithstanding, the Commission needed to find an expansive interpretation of the Regulations to

ensure that the parties comply with the statutory time obligations. Anything short of this would have resulted in the Commission's actions being *ultra vires* the Regulations and ultimately making the parties transgress the law. The Commission has since issued practice notes to guide the parties on its operations during the pandemic period.

Further, while many authorities resorted to working from home the Commission was mindful that although this was a great initiative given the risks posed by COVID-19, it could also present a challenge in the short run as institutions transform and get familiar with this working model. The Commission therefore took a bold approach and decision to continue working full time from the offices and at full capacity. This was important to ensure that our service delivery to businesses was not disrupted in any way. Our slogan is that whatever we do as a Competition authority ***"we do it to facilitate business and not to frustrate business"***.

The foregoing notwithstanding, we were not blind to the risks posed by the pandemic. We therefore ensured that we implemented strict measures to prevent COVID-19 infections at the workplace. Among these measures were:

- 1) Strict adherence to wearing masks
- 2) Frequent thorough disinfection of our offices
- 3) Expanding the workspace to decongest some offices
- 4) Regular testing and check-ups for COVID-19
- 5) Staying at home whenever someone had flu-like symptoms
- 6) Several sanitization points within the Commission's premises were erected
- 7) Transparency in disclosure of the symptoms one would develop
- 8) Regular temperature checks
- 9) Encouraging social distancing and frequent hand washing
- 10) Encouraged vaccination at the office and achieved 100% first dose vaccination within a month

I am glad to report that with the above measures among others, we were able to reduce the risks of contacting COVID-19 at the office as no case was reported at the office in the period under review.

Although COVID-19 had devastating effects for the operations of institutions and the global economy at large, one good that came out of the pandemic was the advance in technology, especially digital platforms. The Commission invested heavily in Information Technology to ensure that its adjudicative meetings, decisions and other operations were not disrupted and that it could still deliver efficient and effective services during the pandemic period. As I have stated above, COVID-19 disrupted the social and economic fabric of the entire globe. Supply chains were disrupted, economies shrunk as businesses that could not cope collapsed.

This situation threatened markets into plunging in concentrations of economic power, exploitation of consumers and indeed destruction of democratic markets, the pinnacle of competition laws. With these developments, inequality, unemployment, poverty, and other such consequences became imminent. In the case of COMESA, the durability of the regional integration agenda was threatened as undertakings' incentives to resort to foreclosure tendencies increased. With all these challenges, the Commission needed to work even extra hard to ensure that competitive and democratic markets were achieved even in these troubled and anxious times.

In the year under review, a total of forty-one (41) mergers were notified, representing 19.1% increase from 2020. The sectors in which most of these mergers occurred were the banking and financial services, Information and Communication Technology and agriculture. In the same year, the Commission handled eleven (11) cases on restrictive business practices. The sectors in which most of these restrictive business practices took place were beverages, sports and aviation. Thirteen (13) cases on consumer protection were handled, representing a 30% increase from 2020. Most of the consumer cases handled related to consumer product safety, misleading labelling and unconscionable conduct arising out of the use of e-commerce platforms.

In the same year, the Commission sent a clear message to businesses operating in the Common Market that it would not hesitate to fine companies that violated the provisions of the Regulations. This was the case when **ATC Heston B.V was fined USD 67,629.98** for failing to comply with commitments contained in a decision of the Commission that was issued following a merger on the acquisition of 100% shareholding in Eaton Towers Holding Limited. This was the second fine imposed by the Commission as the first one was imposed on **Helios Towers Limited, Madagascar Towers S.A and Malawi Towers Limited** for failing to notify a merger transaction within the stipulated time specified under Article 24(1) of the Regulations. The parties to the merger were fined **USD 102,101.75**.

Furthermore, in 2021 and for the first time, the Commission witnessed an appeal against the decision of the Committee Responsible for Initial Determinations. This is commendable as it is important that the Commission begins to develop jurisprudence on regional competition law enforcement.

I cannot be prouder of the Commission's Board and staff for this unwavering commitment to deliver and execute the Commission's mandate in a robust fashion even in times of great uncertainty- such as COVID-19 pandemic. The Commission is also grateful to the COMESA Secretariat through the Secretary General Ms. Chileshe Mpundu Kapwepwe which has continued to provide support to us.

To effectively execute its mandate, the Commission works closely with national competition authorities in the Member States. Therefore, in 2021, the Commission also forged great relationships with competition and consumer protection authorities/Member States and these included Comoros, the Democratic Republic of Congo ("DRC"),

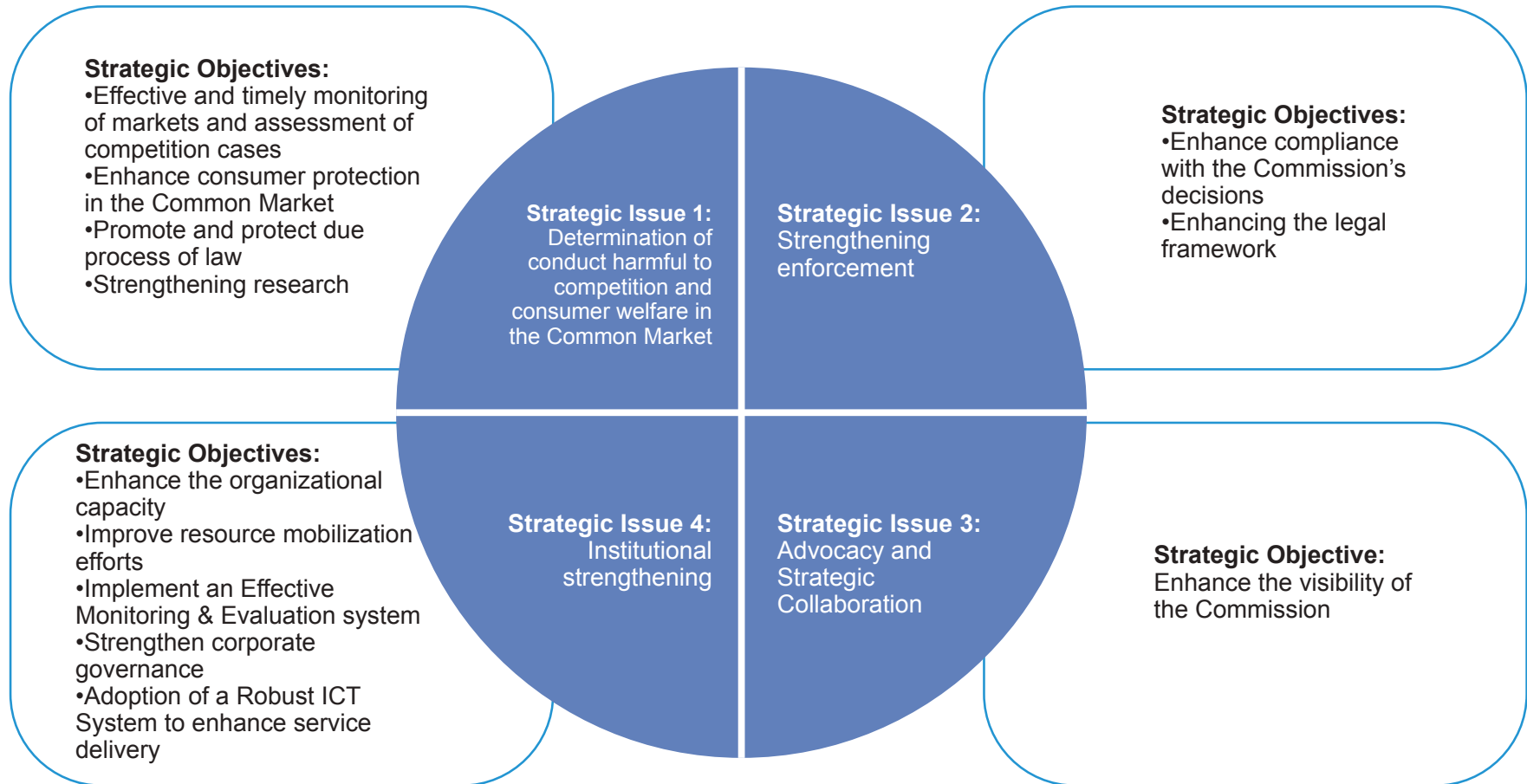
Djibouti, Egypt, Kenya, Malawi, Tunisia, Uganda, Burundi, and Zimbabwe. This was the first time that the Commission had direct ties with Comoros, Burundi and Tunisia, a great milestone in the enforcement of the Regulations for the benefit of consumers in the Common Market. For Uganda, the Commission, for the first time, concluded discussions that would lead to their Ministry of Trade, Industry and Cooperatives entering into a Memorandum of Understanding (MoU) with the Commission. For the DRC, the Commission strengthened and formalized the existing cooperation framework through signing of an MoU. Discussions for signing of an MoU with the Consumer Protection Commission of Zimbabwe are underway. At the same time, the Commission revised its MoU and the MoU Implementation Plan with the Competition and Fair-Trading Commission of Malawi. The amendments to the MoU are aimed at enhancing cooperation between the two institutions and addressing the enforcement challenges at both national and regional level.

At international level, the Commission established great relationships with the EEC and the OECD with whom the Commission jointly peer reviewed the EEC. The Commission took part in several activities spearheaded by UNCTAD; and these included being speaking on matters related to the Africa Continental Free Trade Area, consumer product safety and the Global Policy Dialogue on “Inter-agency cooperation between MSME agencies and competition authorities” and collaborations on assisting younger agencies. The Commission also collaborated with the United States Department of Justice; United States Federal Trade Commission; the European Commission Director General for Competition and Competition Commission of South Africa on several issues ranging from joint training workshops to bilateral interactions on cases. A great relationship has been established with CARICOM Competition Authority and there are discussions for the two institutions to sign an MoU in the year 2022, all things being equal.

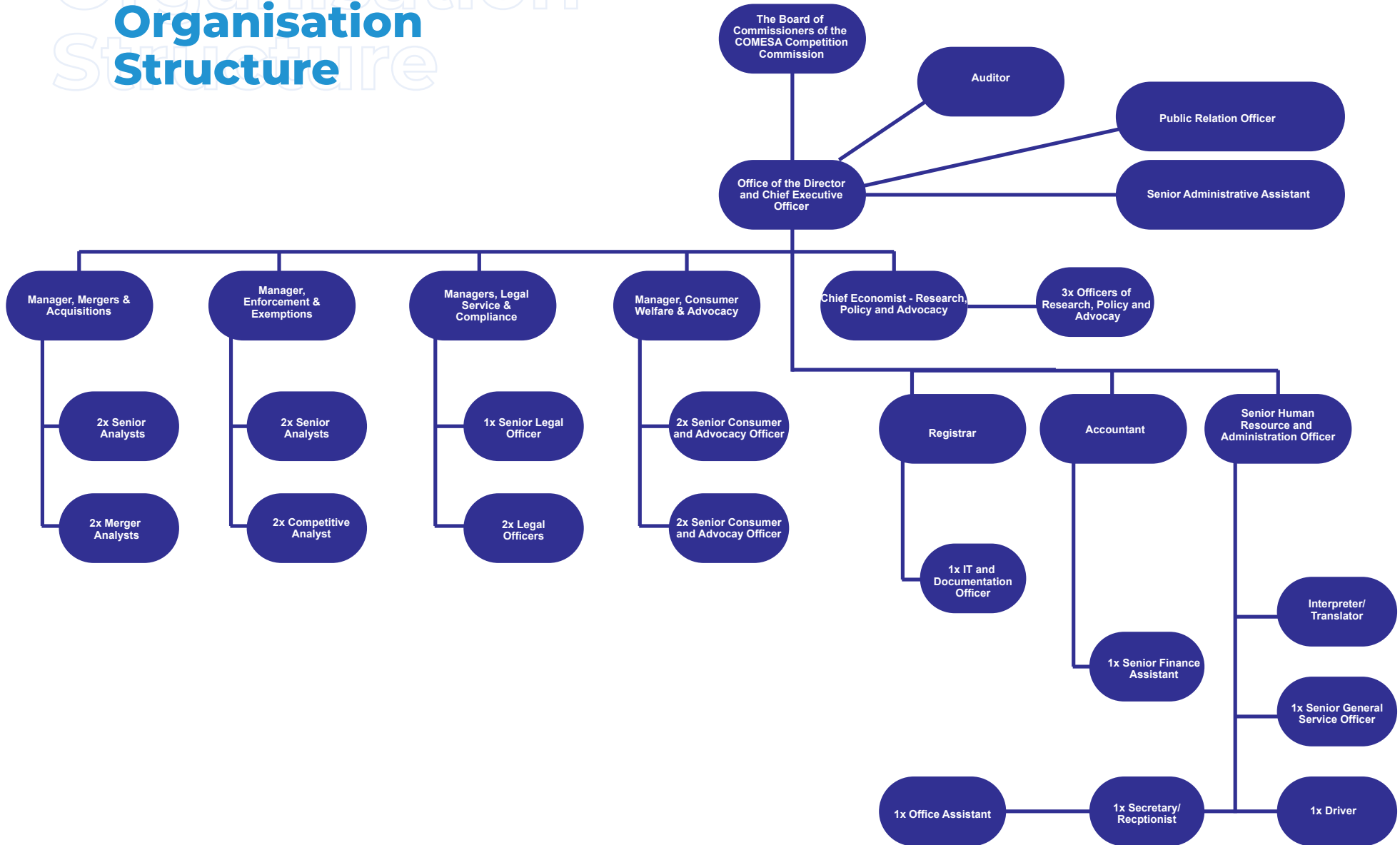
I hope this first annual report, since the Commission commenced its operations in January 2013, will give you greater insights about our operations and excite you to be part of the success story.



Dr Willard Mwemba
Director and Chief Executive Officer



Organisation Structure



The Board of Commissioners



The Board of Commissioners is the supreme policy body of the Commission mandated with issuing determinations, performing adjudicative functions, hearing appeals, and recommending Rules for approval of the Council. The Board of Commissioners are chosen for their ability and experience in competition law and policy, industry, commerce, public administration, law, consumer protection and small-scale business matters.

The COMESA Council of Ministers ('the Council') at its 41st meeting held on 26 November 2020 appointed four new Commissioners and reappointed six Commissioners pursuant to Article 13 of the Regulations. The Council appointed and re-appointed Commissioners for a three year term from 15 July 2021 to 14 July 2024. In the year under review, the Board also appointed the Chairperson and Vice Chairperson of the Commission at a meeting held on 22 to 23 September 2021.

From left to right, Commissioner Danson Mungatana, Commissioner Islam Tagelsir Ahmed Alhasan, Commissioner Ellen Ruparanganda (Chairperson of the Board), Commissioner Deshmuk Kowlessur, Commissioner Thembelihle Precious Dlamini, Commissioner Lloyds Vincent Nkhoma and Commissioner Brian M. Lingela (Vice Chairperson of the Board)





**BOARD CHAIRPERSON,
COMMISSIONER ELLEN RUPARANDANDA**

Commissioner Ellen Ruparandanda is the current Chairperson of the Commission effective from September 2021. She holds a Bachelor of Honours Degree in Economics and a Master's in Business Administration both from the University of Zimbabwe. She has vast experience in macro-economic analysis, public procurement, trade tariff analysis and competition policy and law.

As a trade and competition practitioner, she currently heads the Competition and Tariff Commission in Zimbabwe. During her tenure, she has enhanced the CTC's visibility and reviewed the Competition Act, 1996 aligning it to international best practices. Prior to joining the CTC, she worked in the Ministry of Finance and Economic Development and the State Procurement Board. She won a gold award for being an outstanding public service leader under the Megafest Business Awards held in November 2021, in recognition of her outstanding contribution, exceptional efforts and achievements in the public sector in Zimbabwe. She is also currently a board member of the National Competitiveness Commission and a member of the Audit Committee in the Ministry of Industry and Commerce. Outside work, she is an avid reader and enjoys life outdoors.



**THE VICE CHAIRPERSON,
COMMISSIONER BRIAN MULETAMBO LINGELA**

Commissioner Brian Muletambo Lingela serves as Director, Cartels and Restrictive Business Practices at CCPC in Zambia where he leads a team of competition experts in safeguarding Zambia's markets from Cartels and other Restrictive Business Practices. He has previously served as Director, Mergers and Monopolies, where he coordinated the investigation and assessment of mergers, acquisitions, and abuse of dominance to promote and safeguard Zambia's competitive market environment.

From June 2009 to July 2020, he served as the CCPC's Director, Consumer Protection and Public Relations where he was responsible for protecting Zambia's consumers from unfair trading practices during which he served as Zambia's alternate designate for Consumer Protection for the UNCTAD.

He has spoken widely locally, regionally, and globally on Competition and Consumer Protection issues under the auspices of the ICN, ICPEN, the Commission and the African Dialogue on Consumer Protection.

In 2015, he served as International Visiting Fellow at the United States Federal Trade Commission.

He is currently the Chairperson of the Building Committee and a member of the Technical and Strategy Committee. He has also served on the CID.



COMMISSIONER DR. MAHMOUD MOMTAZ

Commissioner Dr. Mahmoud Momtaz (PhD) is currently the Chairman of the Egyptian Competition Authority (ECA) since January 2021. Commissioner Momtaz serves as a board member of the Gas Regulatory Authority, the Supreme Council for Media Regulation, Egyptian Electric Utility and Consumer Protection Regulatory Agency. Further he is a member of the Advisory Committee of Anti-Dumping, Subsidy and Safeguard.

Prior to assuming his position at ECA, Commissioner Dr. Momtaz served as a Private Sector Development Specialist at the World Bank's headquarters in Washington D.C. where he was mainly responsible for several competition policy projects as well as private sector development in the Middle East and North Africa region and Southeast Asia. Additionally, Commissioner Momtaz has actively participated in the reformulation of the competition laws and enforcement regimes in a number of Middle Eastern countries and conducted several trainings to various stakeholders.

On the academic front, Commissioner Dr. Momtaz lectured Competition Law & Economics at both Hamburg University, Germany and Cairo University, Egypt. Commissioner Dr. Mahmoud holds a PhD in Competition Law and Economics from the University of Hamburg, Germany and a Master's degree in International Business from the German University in Cairo.

Commissioner Dr. Momtaz is the Chairperson of the CID and member of the Technical and Strategy Committee of the Board.



COMMISSIONER THEMBELIHLE PRECIOUS DLAMINI

Commissioner Thembelihle Dlamini is member of the Board and is an astute legal professional whose legal career has spanned over 14 years, 10 of which have been with the ESCC where she has transcended into different positions. Commissioner Thembelihle Dlamini is currently the Legal Adviser and Company Secretary at the ESCC. Commissioner Dlamini holds, *inter alia*, an LLB degree (University of Swaziland), MA in EU Competition Law and a Postgraduate Diploma, in EU Law from Kings' College in London. She was admitted as an Attorney of the High Court of Eswatini in February 2012 and has vast experience on competition and consumer law as well as other fields of the law. She has worked in private practice as well as public service at the Attorney General's office.

At the ESCC Commissioner Dlamini has for the last 10 years been reading and analysing various legal documents lodged by parties and drafting well researched legal opinions on broad competition and consumer law issues. This ultimately facilitates informed and sound decision making by case teams conducting various investigations. In addition, she drafts pleadings, represents the ESCC during hearing of cases, assists case teams in various investigations and the ESCC in various legal challenges arising from their work. As the Company Secretary she provides legal support and guidance to the Board and its Committees on Governance, Ethics, Conflicts, and duties.

She is currently the Chairperson of the Finance and Administration Committee and has served on the CID.



COMMISSIONER AMBASSADOR MESGANU ARG A MOACH

Commissioner Ambassador Mesganu Arga Moach is the Director General of the Ethio Engineering Group of Ethiopia. He has previously served as State Minister of the Ministry of Trade and Industry from October 2018 to November 2021 and State Minister of the Ministry of Labour and Social Affairs of Ethiopia from May – October 2018.

He has served as the Chief of Staff of the Prime Minister of Ethiopia, H.E Hailemariam Desalegn and H.E Abiy Ahmed. From December 2011 to November 2017, he served as Ambassador Extraordinary Plenipotentiary and Special Envoy for Qatar and United Arab Emirates. From July 2010 to September 2013, he was the Consul General of the Federal Democratic Republic of Ethiopia to Dubai and Northern Emirates.

He led the National Security Border and Trans Boundary Resource Affairs Directorate, Regional Good Governance, Justice and Human Rights Affairs and Policy, Information and Analysis Directorate. Ambassador Mesganu has also served as Deputy Mayor and Bureau Head of the Addis Ababa City Information and Culture City Cabinet Member and Addis Ababa Millennium Council Vice Chairperson from 2006 to May 2008.

Commissioner Ambassador Moach is currently a member of the Audit and Risk Committee of the Board.



COMMISSIONER DANSON MUNGATANA

Commissioner Danson Buya Mungatana is a senior consultant and founder of Mungatana & Co advocates. Currently, he is an external teacher of the Centre for Parliamentarian Studies and training and executive council member of the Council of Professionals of Kenya,

He has served as parliamentarian of the Republic of Kenya (MP) representing the Garsen constituency. From 2013-2014, he served as Chairman of Kenya Ports Authority.

He served as special assistant to the senior political advisor of the Office of the President in 2013. Commissioner Mungatana has gained experience in different disciplines as parliamentarian while serving as Assistant Minister of the Government of Kenya on medical services, Justice, National Cohesion & Constitutional Affairs, Foreign Affairs, Lands, Provincial Admin. & Internal Security, and Regional Development Authorities. Commissioner Mungatana has a Bsc degree in law and Masters of Trade and Investment law from the University of Nairobi.

Commissioner Mungatana is the Chairperson of the Technical and Strategy Committee of the Board and member of the Finance and Administration Committee. He further served as member of various Adhoc Committees of the Board.



COMMISSIONER LLOYDS VINCENT NKHOMA

Commissioner Lloyds Vincent Nkhoma is a professional expert in competition policy formulation, enforcement and application at national and regional level having worked for both CFTC and the Commission.

He has vast experience working on trade, investment and industrial development programmes having worked at the Ministry of Trade and Industry as well as at the Malawi Consulate General in Johannesburg as a Trade and Investment Attaché. He is currently working as an independent consultant.

He holds a Master's Degree and a Postgraduate Diploma in Economics for Competition Law from King's College London. He also holds a Bachelor's Degree in Social Sciences majoring in Economics from the University of Malawi.

Commissioner Nkhoma is a member of the CID, Building Committee, and the Finance and Administration Committee of the Board.



COMMISSIONER DESHMUK KOWLESSUR

Commissioner Deshmuk Kowlessur holds a 'Diplôme d'Études Universitaires Générales en Sciences Economiques' from the Université de la Reunion and a Master Grande Ecole from the Noema BS, France.

He is the Executive Director of the Competition Commission (CC), Mauritius . Before joining the CC, Commissioner Kowlessur was the Chief Operating Officer of Elytis, a member of Leal Group which is a distributor of major leading technology brands in the Indian Ocean. Prior to that, he occupied senior positions in institutions such as the Rogers Group among others. From June 2004 to July 2005, he was the Chairman of the State Investment Corporation.

Commissioner Kowlessur has served as Chairperson of the CID, as a member of Finance and Administration Committee and various Committees of the Commission.



COMMISSIONER BEATRICE UWUMUKIZA

Commissioner Beatrice Uwumukiza is currently the Acting Director General of the Rwanda Inspectorate, Competition and Consumer Protection Authority (RICA). Prior to that post, she was the Director General of the Rwanda Agriculture and Livestock Inspection and certification Services under the Ministry of Agriculture and Animal Resources whereby she coordinated the Sanitary and Phytosanitary activities as well as the functions of the National Plant Protection Organization.

She is the Focal Point for the International Plant Protection Convention for Rwanda. She holds a Master's Degree in Plant Sciences with specialization in Plant Pathology and Entomology obtained from Wageningen University, the Netherlands.

She also served as a Board Member of the National Agricultural Export Development Board 2012-2015 and as the Vice Chairperson of the Board of Directors for Rwanda Agriculture and animal Resources Development Board 2015-2018. She has vast experience in quality control as well as standards and regulations enforcement and actively participates in the development of several policies, regulations and standards.

Commissioner Uwumukiza is the Chairperson of the Audit and Risk Committee of the Board.



COMMISSIONER FRANCIS LEBON

Commissioner Francis Lebon has been the Chief Executive Officer of the Fair Trading Commission (FTC) of Seychelles since July 2017. He started his career at the Central Bank of Seychelles and held the post of Senior Domestic Debt Officer in the Public Debt Unit. Commissioner Lebon was the Trade and Sales Manager at Barclays Bank of Seychelles before joining the FTC in December 2010 as a Senior Competition Analyst and promoted to Director of Competition in January 2012. On 1 October 2015 the Fair Trading Act was amended to include a Deputy CEO and Commissioner Lebon was appointed to the post. He also currently serves as a member (reappointed) of the Financial Services Authority Appeal Board.

Commissioner Lebon graduated with a BSc (Hons) in Economics, Finance & Banking at the University of Portsmouth in 2007. In 2012, he enrolled in a Postgraduate Distance Learning Program with King's College London which he successfully completed and was awarded a Postgraduate Diploma in Economics for Competition Law in 2013. Commissioner Lebon also holds a Diploma in Accounting from the Association of Accounting Technicians in the UK and successfully completed ACCA Part 1. Commissioner Lebon further completed his MBA in Business Administration in 2019 with the University of West Scotland through the University of Seychelles. Commissioner Lebon intends to pursue his Doctorate in Business Administration in 2022.

Commissioner Lebon is a member of the Building Committee and Vice Chairperson of the Technical and Strategy Committee of the Board.



COMMISSIONER ISLAM TAGELSIR AHMED ALHASEN

Commissioner Islam Tagelsir Ahmed Alhasen is a lawyer, legal advisor and former public prosecutor with more than 15 years' experience, including 9 years of extensive work in trade remedies, regional integration, competition regulation and consumer protection. He obtained a Bachelor's Degree in Law and a Diploma in Legal Translation in Khartoum - Sudan in 2007 and 2015 respectively. In Sudan, he served in the Ministry of Justice, Public Prosecution and Humanitarian Aid Commission as the Registrar General for voluntary and humanitarian aid organisations.

Commissioner Alhasen is a member of the CID, Building Committee and Technical and Strategy Committee of the Board. He also served the Board in various Adhoc Committees.

TRIBUTE TO COMMISSIONER TRUDON KALALA NZEMBELA



On 4 December, 2021, one of the Commissioners, Mr. Trudon Kalala Nzembela, passed away. The Board, Management and staff of the Commission were filled with immense grief. Commissioner Nzembela left a good legacy of dedication to work, respect for others and was indeed an inspiration to those aspiring to be leaders in different capacities. Commissioner Nzembela was appointed as a Commissioner by the COMESA Council of Ministers on 9 December 2015 and was reappointed on 5 April 2019 for a further term of three years. Commissioner Nzembela served the Commission with diligence, ensuring that competition and consumer welfare were promoted in the Common Market. He served as member of the Finance and Administration Committee of the Board in the period 2015 to 2018 and later as member of the Audit and Risk Committee of the Board until his passing.

At national level, Commissioner Nzembela was serving as Deputy Coordinator of the Competition Authority of the Democratic Republic of Congo (DRC). Commissioner Nzembela worked tirelessly with the Commission to ensure that the DRC had a National Competition Law on which he was successful when it was finally enacted in 2016. Further, he worked closely with the Commission, in operationalising the National Competition Authority in DRC. In 2021, Commissioner Nzembela spearheaded the conclusion of the cooperation agreement between the DRC Competition Authority and the Commission which was signed on 19 April 2021.

Little did we know that just a few months after this historical event, Commissioner Nzembela would depart from us forever.

May the soul of Commissioner Nzembela continue resting in eternal peace.



The Secretariat

The Secretariat is the investigation organ of the Commission. It is responsible for the day-to-day operations of the Commission and makes recommendations to the Board on investigations conducted and also on other policy matters. The Secretariat is headed by a Director and Chief Executive Officer who is appointed by the COMESA Council of Ministers. Further, the Secretariat has four core Divisions; mergers and acquisitions, restrictive business practices, consumer protection and legal services and compliance. The Divisions are composed of lawyers and economists who are experts in competition and consumer protection. Further, the Secretariat has the Office of the Registrar and Units overseeing Finance; Administration; Research, Policy and Advocacy; and IT.

In the year under review, the Commission recruited a Manager for the Consumer Welfare and Advocacy Division, two Competition Analysts, two Merger Analysts, two Consumer Welfare and Advocacy Officers, an IT and Documentation Officer, a Legal Officer, an Accountant and an Office Assistant. Currently, the Commission is composed of twenty-six (26) staff members.

APPOINTMENT OF THE DIRECTOR AND CHIEF EXECUTIVE OFFICER

In the year under review, the COMESA Council of Ministers, at its 42nd Meeting held on 9 November 2021, appointed Dr. Willard Mwemba as its Director and Chief Executive Officer.

Dr. Mwemba has been with the Commission since January 2013 having been the first Head of the Mergers and Acquisitions Division until his appointment as the Acting Director and Chief Executive Officer on 1 February 2021.

He has been instrumental in the enforcement of competition and consumer laws both at national and regional level. At national level, he assisted in establishing and strengthening a number of national competition authorities. At regional level, he has been instrumental in implementing and reforming the COMESA Competition Law regime. He has written extensively on competition law and is widely consulted on the subject at global level.

Dr. Mwemba holds several qualifications among them Bachelor's degrees in Economics and Law from the University of Zambia. He also holds a Master's degree in Competition Law from King's College London. He further holds a PhD from the University of Cape Town specialising in competition law.



FAREWELL TO THE DIRECTOR AND CHIEF EXECUTIVE OFFICER OF THE COMMISSION, DR GEORGE LIPIMILE

On 6 February 2021, the Commission bid farewell to its former Director and Chief Executive Officer, Dr. George Lipimile, whose tenure of office ended on 31 January 2021.

Dr. Lipimile was appointed by the COMESA Council of Ministers as the first Director and Chief Executive Officer of the Commission in February 2011. He served in this capacity at the Commission for ten years during which time he played a pivotal role in the establishment of the Commission as the first fully operational regional competition authority in Africa and the second fully functional regional competition authority in the world after the European Commission Directorate-General for Competition.

Dr. Lipimile relentlessly worked towards the enforcement of the Regulations and Rules. He dedicated his time at the Commission towards strengthening the institution through various initiatives such as:

- Growing its staff complement;
- Spearheading the establishment of the Commission's legal framework;
- Developing procedures and processes for enforcement of the Regulations;
- Undertaking extensive advocacy and technical assistance to COMESA Member States; and
- Setting up the necessary corporate governance systems.

The Commission's Board of Commissioners, Management and Staff wish to thank him for his dedication and effort during his tenure of office and wish him success in his future endeavours.

Meet the Management Team



DR. WILLARD MWEMBA
DIRECTOR AND CHIEF
EXECUTIVE OFFICER



MARY GURURE
MANAGER LEGAL
SERVICES AND
COMPLIANCE



STELLAH ONYANCHA
MANAGER
ENFORCEMENT AND
EXEMPTIONS



STEVEN KAMUKAMA
MANAGER CONSUMER
WELFARE AND
ADVOCACY



**MANAGER, MERGERS
AND ACQUISITIONS**



METI DEMISSIE DISASA
REGISTRAR



ROLAND MHANGO
ACCOUNTANT

Note: In the year under review, the Commission had not filled the position of Manager, Mergers and Acquisitions, a position held by Dr Mwemba before he was appointed as Director and Chief Executive Officer.



2021 Highlights of the Commission's Interventions

The Commission's activities for the Year 2021 were implemented pursuant to the 2021 approved Annual Work Programme that was developed in line with the Commission's Strategic Plan. This section summarises the key achievements of the Commission under the four (4) Strategic Issues of the Commission

DETERMINATION OF CONDUCT HARMFUL TO COMPETITION IN THE MARKET

The core mandate of the Commission is to detect, prevent and prohibit anti-competitive practices including anti-competitive mergers and to protect consumers against offensive conduct by market players having operations in the Common Market.

This strategic issue entails the detection and elimination of anti-competitive conduct and consumer welfare violations in the Common Market so as to prevent any likely competition harm in the Common Market. The Commission also seeks to enhance consumer protection and strengthen market monitoring in the Common Market.

REGULATING MERGERS AND ACQUISITIONS

In the determination of conduct harmful to competition, the Commission attached significant importance to effective and timely assessment of mergers. The Regulations makes it mandatory for all notifiable mergers to be notified to the Commission and approved by the Committee Responsible for Initial Determinations (the "CID"). The CID which is composed pursuant to Article 13(4) of the Regulations, comprises three (3) Commissioners who are also members of the Board of Commissioners of the Commission. Its role is to adjudicate on competition and consumer cases before the Commission and issue Decisions. It does not issue decisions on behalf of the Board. It issues decisions in its own capacity which may be appealed to the Board. If parties are aggrieved with the decision of the CID they have the right to appeal to the Board. The three (3) CID members are not part of the Board Members who sit to hear the appeal.

A Notifiable merger means a merger or proposed merger with a regional dimension with a value at or above the thresholds prescribed in Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the “Rules on Merger Notification THresholds”). The proposed merger must satisfy the regional dimension test and the following cumulative conditions under Rule 4 of the Rules of Merger Notification Thresholds:

- a) the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds US\$ 50 million; and
- b) the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds US\$ 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.

Parties to any notifiable merger are required to notify the Commission within thirty (30) days of the parties’ decision to merge failing which sanctions may be imposed on the parties.

“On 3 September 2021, the Commission imposed a fine amounting to USD 102,101.76 in relation to the proposed acquisition by Helios Towers Limited of the shares of Madagascar Towers S.A and Malawi Towers Limited for failure to notify the transaction within the prescribed time period under Article 24 (1) of the Regulations”.

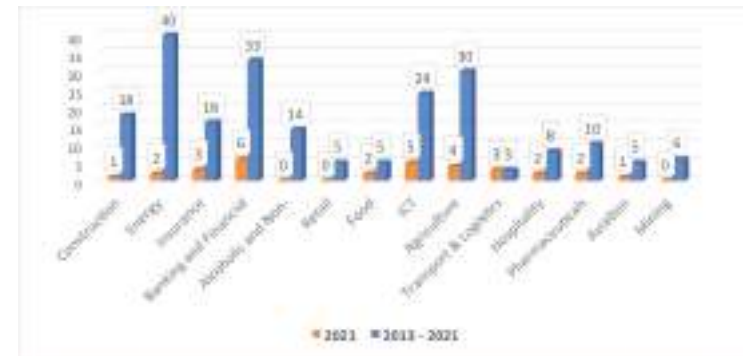
It should be noted that this was the first ever fine imposed by the Commission signaling a change in approach from soft enforcement of the Regulations to strict enforcement. The regulation of mergers and acquisitions is one of the cornerstones of competition law enforcement. It is even

more fundamental at regional level where the focus is not only the substantial lessening and/or prevention of competition but the effect of the merger on trade between Member States. A further consideration on inter-state merger control is the structural as opposed to transient changes that mergers can cause in the market. Such structural changes have significant impact on property rights and interests. Therefore, these matters have to be analysed carefully in order to come up with sound conclusions that do not threaten the fabric and durability of the single market which is the pinnacle of the Treaty establishing COMESA.

During the period under review, a total number of forty-one (41) merger transactions notified to the Commission were cleared by the CID within the statutory period of 120 days provided for under the Regulations . Among the mergers notified in 2021, five (5) mergers were carried forward to the year 2022 since the investigation did not complete in 2021. Decisions on these five (5) mergers shall be issued in 2022.

The mergers cleared in the period under review were mainly in banking and financial services (6), information and communication technology (5), agriculture (4), transport and logistics (3), hospitality (2), pharmaceutical (2), energy (2) as further illustrated in figure 1 below:

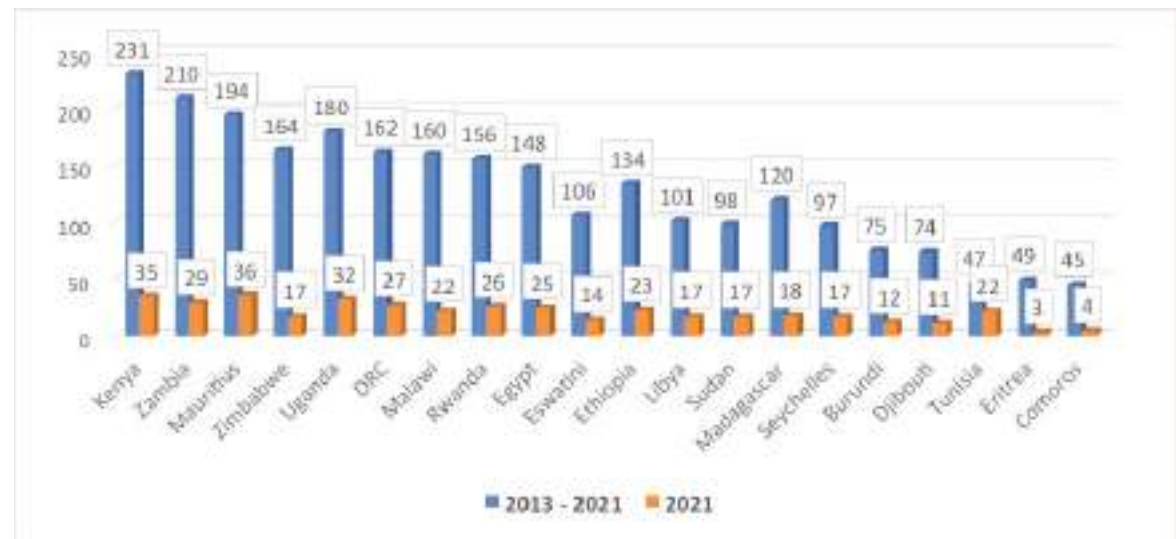
Figure 1: Mergers by Selected Economic Sector





The top five Member States affected by mergers cleared in 2021 were Mauritius (36), Kenya (35), Uganda (32), Zambia (29) and DRC (27). A summary of the number of mergers cleared in 2021 compared with mergers cleared from 2013 – 2021 is presented in figure 2 below.

Figure 2: Mergers by Affected Member States





The Commission has powers to approve or reject any notified merger based on the likely competition and public interest concerns the merger may raise in the Common Market. Approval of mergers can be conditional or unconditional.

***“On 23 December 2019, the Commission approved the merger between Eaton Towers Holdings Limited and ATC Heston B.V. on the basis of undertakings submitted by the parties since the transaction was likely to raise competition concerns in the Common Market particularly in Uganda. Among the undertakings was a requirement for the parties to submit an objective criterion for engagement with customers in Uganda. As part of its monitoring of the implementation of the CID Decision, the Commission established that the parties failed to submit an Objective Criteria within the stipulated time in the CID Decision.*”**

The Commission Secretariat therefore recommended to the CID a fine of USD 96,614.252. Upon review of the fine, the CID rejected the Secretariat recommendation on grounds that it was not proportionate to the infringement.

In its recommendation, the Commission submitted that among the aggravating circumstances was the passage of time, 10 months in which the parties should have submitted the objective criteria to the Commission for consideration.

The CID observed that this was not an aggravating circumstance as the Secretariat was aware of the non-compliance immediately it occurred and had to wait for 10 months before taking action. The CID therefore reduced the fine to USD 67,629.98.”





In order to facilitate commerce and offer guidance to parties, the Commission offers advisory opinions to parties who are not sure whether or not their transactions are notifiable. This is important as it saves the parties from potential litigation for failure to notify a notifiable transaction. Therefore, in such instances where the Commission concludes that the transaction is not notifiable, it issues a comfort letter to the concerned parties.

Comfort letters are granted on the basis of, inter alia, a transaction not satisfying the definition of a merger as provided under Article 23(1) of the Regulations or a transaction not meeting the merger notification thresholds under Rule 4 of the Rules on Merger Notification Thresholds. Among the comfort letters granted by the Commission in 2021 included the Proposed Amalgamation of KCB Bank Rwanda Plc and Banque Populaire du Rwanda Plc which was preceded by the acquisition by KCB Group Plc of Banque Populaire du Rwanda Plc . The Commission’s observation was that the transaction did not amount to a merger since it did not result in a change in control of Banque Populaire du Rwanda Plc which was already under the control of KCB Group Plc following the preceding transaction.

Where the Commission rejects a request for a comfort letter, the parties are required to complete merger notification procedures as required under Article 24(3) of the Regulations which includes payment of the related applicable merger notification fees. Once such a transaction is notified, the Commission proceeds to assess the merger in order to determine any competition and public interest concerns likely to result from the merger. Mergers notified to the Commission may be approved either unconditionally, with conditions or rejected entirely.

In the period under review, the Commission unconditionally approved twenty-nine (29) mergers. Further, two notified mergers, namely MTN Dubai/aYo and KCB Group/BPR were approved with conditions. With regards to comfort letters, six comfort letters were granted in the period under review while one comfort letter was rejected. Further, three merger transactions were construed as non-notifiable under the Regulations.

Table 1 and Figure 3 below provides a summary of the types of decisions issued by the Commission in 2021 compared with decisions issued since its inception in 2013.

Table 1: Mergers by Type of Decision

Number of Mergers Assessed, by type of decision	2013 - 2021	2021
Comfort Letter Granted	46	6
Comfort Letter Rejected	11	1
Mergers with unconditional clearance	221	29
Mergers with conditional clearance	25	2
Cases referred to Member States	3	0
Transaction construed as non-notifiable merger after assessment/ Merger Abandoned	15	3

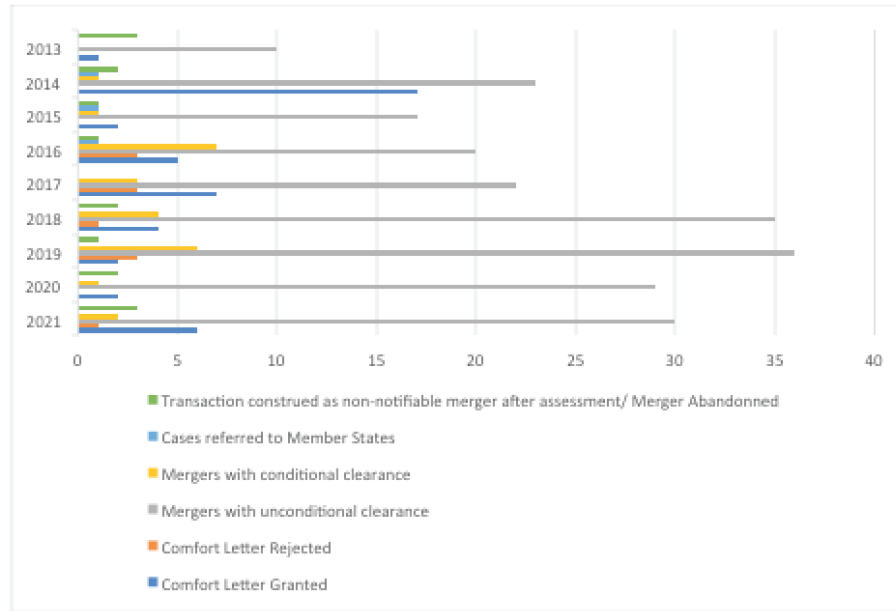
¹ <https://www.comesacompetition.org/merger-cases/>

² Article 23(1) of the Regulations defines a merger as, "...the direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person..."

³ See Case File No. CCC/MER/12/32/2020 accessible on https://www.comesacompetition.org/wp-content/uploads/2021/05/CID-decision-KCB_BPR-Decision102021.pdf

⁴ Case File No. CCC/MER/12/28/2020, <https://www.comesacompetition.org/wp-content/uploads/2021/07/Redacted-aYo-MTN-Decision-202111.pdf>

Figure 3: Trends in Mergers Assessed by Type of Decision



Some key merger transactions assessed since 2013 - 2021

Assessment of the Merger Involving the Acquisition of Assets of Careem Inc. by Uber Technologies, Inc

On 17 June 2019, the Commission received a merger notification concerning the acquisition of assets of Careem Inc. By Uber Technologies, Inc. The merger was initially categorised as non-notifiable under Rule 4 of the Rules on Merger Notification Thresholds and Method of Calculation given that despite the parties having operations in at least two COMESA Member States namely Egypt, Kenya, Sudan and Uganda, the parties achieved at least two-thirds of their turnover within one and the same Member States being Egypt. Thus, the transaction was likely to raise competition concerns in Egypt, hence it was a national merger. However, the Commission invoked Article 23(6) of the Regulations which obliges parties to non-notifiable mergers to notify the Commission if it appears to the Commission that the merger is likely to substantially prevent or lessen competition or is likely to be contrary to public interest. In this merger, the Commission’s competitive assessment confirmed that the merger was likely to raise competition concerns in the Egyptian market. Therefore, on 22 December 2019 the merger was approved on basis of comprehensive undertakings submitted by the parties.

Assessment of the Merger involving the Acquisition by Akzo Nobel Coatings International B.V. of Mauvilac Industries Limited

On 11 February 2020, the Commission received a merger notification concerning the acquisition by Akzo Nobel Coatings International B.V. of 100% of the share capital and voting rights of Mauvilac Industries Limited. The acquirer was active in the manufacturing and distributing of a wide range of paints and performances coatings while the target was active in the business of manufacturing and distributing decorative and specialty paints and

⁵ See Case File No. CCC/MER/6/22/2019, <https://www.comesacompetition.org/wp-content/uploads/2020/02/Uber-decision.pdf>
⁶ See Case File No. CCC/MER/12/43/2019, <https://www.comesacompetition.org/wp-content/uploads/2020/06/1a.-Revised-CID-Decision-Akzo-Nobel-and-Mauvilac.pdf>

coatings. Following its competitive assessment, the Commission concluded that the merger was likely to raise competition concerns as it may result in increased incentives for the acquirer to engage in anti-competitive tying and bundling strategies resulting from a strong market position of the target brand and the lower market share of the acquirer's brands. Further, the assessment identified a public interest concern in the event the acquirer were to shift production away from Mauritius. Therefore, based on the identified competition and public interest concerns, the transaction was approved based on, inter alia, the following commitments by the parties :

“...Akzo Nobel Coatings International B.V. commit that the sale of Mauvilac paints to retailers in Mauritius shall not be conditioned on a requirement or obligation for retailers to also purchase Dulux/International Paints Brands for a period of three (3) years from 1 April 2020;

“Akzo Nobel Coatings International B.V. commit that production of paint in Mauritius by Mauvilac is guaranteed to continue for a period of ten (10) years from the 1 April 2020...”

REGULATING RESTRICTIVE BUSINESS PRACTICES

The Regulations prohibit all agreements between undertakings, decisions by associations of undertakings and concerted practices which: may affect trade between Member States; and have as their object or effect the prevention, restriction or distortion of competition within the Common Market. The Commission's initiatives under this focus area entail investigating anti-competitive conduct under Articles 20, 21 and 22 of the Regulations under which the Commission is empowered to authorize agreements following an application for authorisation by the parties; commence investigations upon request by any person; and commence investigations on its own

initiative. The Commission is also empowered to prohibit abuse of dominance and other forms of anti-competitive practices such as price fixing, collusive tendering, market allocation, pursuant to Articles 18 and 19 of the Regulations respectively.

During the period under review, the Commission handled a total of eleven (11) cases as indicated in table 2 below (Detailed list of the RBP cases presented under Annex II):

Table 2: Restrictive Business Practices Cases Handled in 2021

Cases	No of Cases
Investigations conducted under Article 22 of the COMESA Competition Regulations	8
Investigations conducted under Article 21 of the COMESA Competition Regulations	1
Applications for Authorisation under Article 20 of the COMESA Competition Regulations	2
Total	11

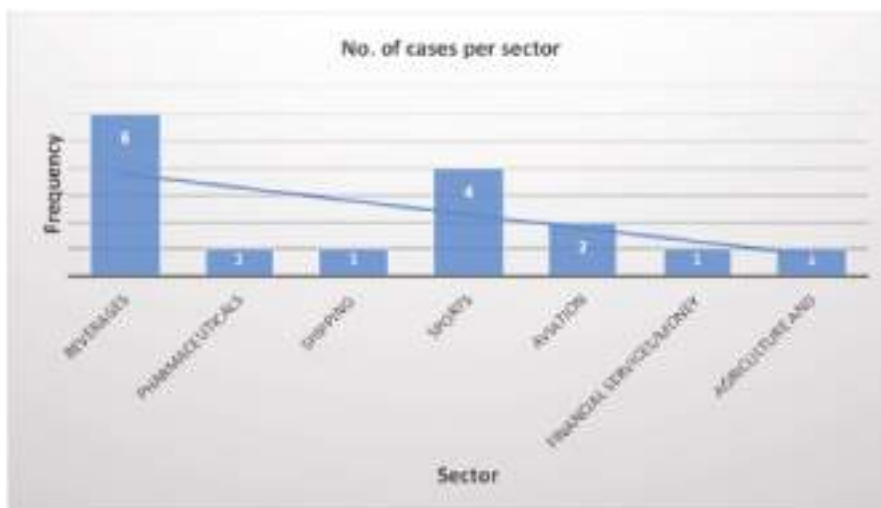
Out of the eleven (11) cases handled in the period under review, the Commission concluded four investigations out of which two cases were in the sports sector while the other two cases were in the beverages sector. A summary of the sectors and Member States affected by the cases assessed in 2021 is presented in table 3 and figure 4 and table 4 and figure 5 respectively.

Statistics showing the economic sectors for the cases assessed in 2021

Table 3: Number of RBP Cases per Sector

Economic Sector	Cases per sector
Beverages	6
Pharmaceuticals	1
Shipping	1
Sports	4
Aviation	2
Financial Services/Money Transfers	1
Agriculture and agribusiness	1

Figure 4: Number of RBP Cases per Sector

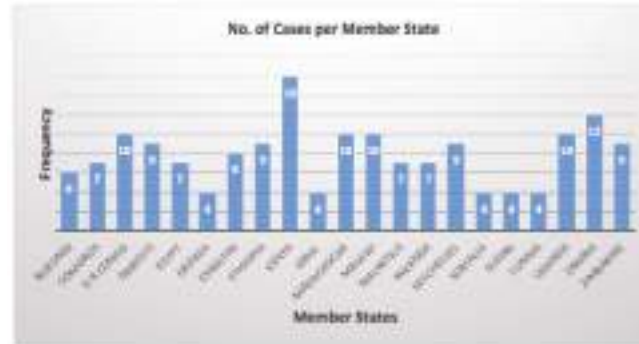


Statistics and a graph showing the Member States affected by the cases assessed in 2021

Table 4: Number of RBP Cases per Member State

Member State	Cases per Member State
Burundi	6
Comoros	7
Democratic Republic of Congo	10
Djibouti	9
Egypt	7
Eritrea	4
Eswatini	8
Ethiopia	9
Kenya	16
Libya	4
Madagascar	10
Malawi	10
Mauritius	7
Rwanda	7
Seychelles	9
Somalia	4
Sudan	4
Tunisia	4
Uganda	10
Zambia	12
Zimbabwe	9

Figure 5: Number of RBP Cases per Member State



Statistics and a graph showing the trends in enforcement and exemption cases assessed from 2013 to 2021

Table 5: Enforcement Activities of the Commission since Inception

Enforcement Activities Summary under Rules 18 and 42 of the COMESA Competition Rules (the "Rules")	No. of Actions
Investigations conducted under Article 22 of the COMESA Competition Regulations	14
Investigations conducted under Article 21 of the COMESA Competition Regulations	4
Applications for Authorisation under Article 20 of the COMESA Competition Regulations	13
Advisory opinions Issued by the Commission to Member States	6
Compliance Notices issued to the business community	2
Studies & Inquiries conducted	10

Figure 6: Enforcement Activities of the Commission since Inception



Sample of Restrictive Business Practices Cases Investigated

Investigation into Agreements between the Confédération Africaine de Football ("CAF"), represented by Lagardere Sports SAS, and each of Orange SA ("Orange") and Total SA ("Total") relating to the commercialization of marketing rights for CAF competitions

On 13 February 2017, the Commission commenced an investigation, pursuant to Article 22 of the Regulations, into possible violations of Article 16 and Article 18 of the Regulations by CAF regarding agreements relating to the commercialization of media and marketing rights for CAF competitions.

On 16 April 2019, following additional information gathered during the investigation, the Commission identified additional respondents, which led the Commission to issue Notices of Investigation to Lagardere Sports SAS, Orange and Total, respectively in relation to Sponsorship agreements for the Marketing of CAF competitions.

Marketing rights principally include the rights to create, install and operate on the sites of the competition all visual or audio elements through still boards, video systems, stadium signage (pitches, changing rooms, lounges and VIP areas, press rooms and interview areas). The Total Sponsorship agreement entailed the addition of the Total brand name to the CAF competitions. Orange was entitled to use the sponsorship rights on an exclusive basis from December 2016 up to 2024. Total was entitled to use the sponsorship rights from 2017 up to 2024, and would benefit from an option right to extend the duration of the agreement for a specified period of time.

The Commission investigated potential competition infringements arising from the:

- a. award of marketing rights for CAF competitions in the absence of an open and competitive tender process;**
- b. long-term duration of the contracts for the award of CAF marketing rights;**
- c. inclusion of a right of first refusal in the TOTAL Sponsorship Agreement.**

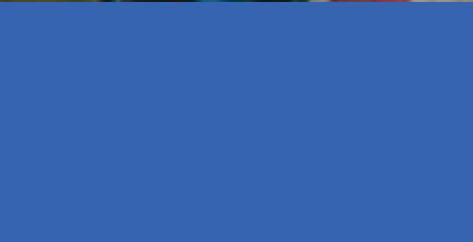
When investigating possible violations of abuse of dominance, the Commission uses the rule of reason approach. The precursor is to establish the existence of dominance of the parties in the relevant market.

The Commission's investigation established that neither Orange nor Total as sponsors, nor CAF as the rights owner would have a dominant position on the market for the acquisition of marketing rights for sporting events in

Africa. The evidence and facts gathered during the investigation led to the reasoned conclusion that neither the Orange Sponsorship nor the Total Sponsorship contravened Article 16(1) of the Regulations since:

- a. the duration of the agreement did not foreclose competitors of Orange or TOTAL from the market for acquisition of marketing rights for sporting events in Africa;**
- b. CAF marketing rights were not critical rights for general sponsors, who had the option of seeking sponsorship deals with other sporting rights holders; and,**
- c. CAF was not precluded from entering into agreements with other sponsors, outside the product category of the Sponsorship agreements.**
- d. Existence of numerous alternatives from a sponsoring perspective limited the potential restrictive effects of the right of first refusal clauses as competing players had other sponsoring options to which they could turn to.**
- e. The duration of the agreements remained broadly within the range of agreements entered by other sporting organisations.**

In accordance with Rule 23 of the Rules which states that should an investigation result in the relevant department finding that there has been no breach, the Director shall issue an order to the effect that the matter shall be closed, the investigations into the Total and Orange agreements were closed by the office of the Director on 10 March 2021 and submitted for the information of the CID on 29 June 2021. Investigations regarding the agreement between CAF, Lagardere Sports SAS and the broadcasters are still ongoing.



Assessment of the Distribution Agreements between Anheuser-Busch InBev SA/NV and third-party distributors in the Common Market

On 31 July, 2018 Anheuser-Busch InBev SA/NV (“AB InBev”) submitted an application for authorization of their distribution agreements with third party distributors pursuant to Article 20 of the Regulations.

Specifically, AB InBev sought authorization for the exclusivity provisions relating to brands or product types, and/or geographic regions or territories in the distribution agreements or arrangements for AB InBev products within COMESA. In accordance with Article 20 of the Regulations, the Commission launched an inquiry to determine whether there are any restrictive clauses in the agreement, and whether there are any public benefits which outweigh the anti-competitive detriment of the agreement.

The Commission observed that the distribution agreements dealt primarily with logistics partners where the products are moved from wholesalers, or manufacturers to retail or other market outlets. The Commission defined the relevant market as the market for the distribution of clear beer at national level in the respective Member States of COMESA.

The Commission observed that the beer market was concentrated with four of the biggest players holding about 90% of the African beer market share namely, Heineken, Castel, Diageo and AB InBev. The Commission noted that contracts with restrictive clauses entered into between AB InBev and distributors would contribute significantly to the overall foreclosure effect in the market. Thus, the Commission concluded that the nature of contracts in the market contributes to raising barriers to effective entry.

The Commission noted that the distribution agreements restricted the distributors from being engaged in distribution for competing products or in the territories of competing products. Furthermore, in certain Member States, the Commission established that AB InBev took deliberate steps in its pricing policy to ensure that it does not attract its distributors’ customers. The Commission engaged AB InBev on the likely harm of clauses in the distribution agreements and AB InBev submitted remedies to address the likely harm.

The Commission determined that the proposed Undertakings made by AB InBev were satisfactory to remedy the likely harm. Therefore, in accordance with Rule 62 of the COMESA Competition Rules, on 3 April, 2020, the Commission authorised the distribution agreements subject to the fulfilment of the agreed undertakings. On 23 June 2021, the Commission closed the matter, having been satisfied that AB InBev had complied with the Undertakings as per the Commission’s decision of 3 April 2020. The Commission however, reserves the right to review and monitor the market even after closure of the case to ensure compliance by the parties.

Assessment of the Distribution Agreements between Coca-Cola Beverages Africa and third-party distributors in the Common Market

On 23 July, 2018, Coca-Cola Beverages Africa (“CCBA”) submitted an application for authorization of their distribution agreements with third party distributors pursuant to Article 20 of the Regulations. CCBA is controlled by The Coca-Cola Company (“TCCC”), a publicly listed company incorporated under the laws of the United States.

Specifically, CCBA sought authorization for the

exclusivity provisions relating to brands or product types, and/or geographic regions or territories in the distribution agreements between themselves and its distributors or transporters. In accordance with Article 20 of the Regulations, the Commission launched an inquiry to determine whether there were any restrictive clauses in the agreement, and whether there were any public benefits which outweigh the anti-competitive detriment of the agreements.

The Commission defined the relevant markets as the national markets for the distribution of:

- a) **Carbonated non-alcoholic beverages;**
- b) **Non-carbonated non-alcoholic beverages;**
- c) **Carbonated water;**
- d) **Non-carbonated water.**

The Commission considered that the TCCC brands were dominant in the Common Market and at national level in COMESA Member States, by virtue of their global market power as a market leading brand and supported by the market shares obtained in the assessment.

The Commission observed that the markets were fairly concentrated with the TCCC brands taking up the lion's share, Pepsi coming a close second and numerous other beverages (typically local or national brands) making up the rest of the market players. The Commission noted that the markets had seen entry of products over time, especially entry of 'local' brands to provide competition to the international brands.

The Commission's assessment concluded that, based on TCCC's market position in the Common Market and the 'must-stock' nature of its products, the clauses restricting and further penalizing distributors from engaging in passive sales may have had an appreciable effect on trade between Member States, and that they could result in a substantial lessening or prevention of

competition. Furthermore, such clauses could result in consumer harm where consumers are not able to purchase products from where they choose.

The Commission engaged CCBA on the likely competition harm of the restrictive clauses in the distribution agreements and CCBA submitted remedies to address the likely harm. The Commission determined that the proposed Undertakings made by CCBA were satisfactory to remedy the likely harm. Therefore, in accordance with Rule 62 of the COMESA Competition Rules, on 3 April 2020, the Commission authorised the distribution agreements subject to the fulfilment of the agreed undertakings.

On 23 June 2021, the Commission closed the matter, having been satisfied that CCBA had complied with the Undertakings as per the Commission's decision of 3 April 2020. The Commission however, reserves the right to review and monitor the market even after closure of the case to ensure compliance by the parties.

Competition Remedies vs Penalties: Do Behavioural Remedies Outweigh Monetary Penalties

In January 2018, the Commission investigated distribution agreements between Coca-Cola Beverages Africa Proprietary Limited ("CCBA") and third-party distributors, which contained clauses stipulating the resale price for various non-alcoholic beverages under trademarks of The Coca-Cola Company ("TCCC"). The objective of the investigation was to determine whether the resale price maintenance clauses in the agreements were violating the Regulations.

The Commission noted that CCBA's pricing behaviour was not effectively constrained by that of its competitors. Further that the stipulation of prices by a market leader was likely to lead to an inflation of prices of competing brands in the market where the incumbents set their

prices in a similar fashion as that of the market leader. The overall effect of this would be higher prices for consumers.

To address the Commission's concerns, the CCBA undertook to amend its agreements in the market by removing the clauses which stipulated the prices and profit margins for the sale of its products. Furthermore, the CCBA undertook to implement a compliance programme designed to ensure that in future its employees, management and directors do not engage in conduct that contravenes the Regulations.

The Commission's prime objective is to restore competition in the market and not necessary to punish undertakings through fines. Fines are typically considered by the Commission in instances where the transgression is so blatant; the case involves recidivism by the offending parties; the respondents opt not to offer commitments; or the respondents reject the Commission's remedies thereby taking the case through the whole litigation process.

In this particular matter, the parties were agreeable to amending their ways through striking out the restrictive clauses from their agreements thereby restoring competition in the market. The Commission's objective was met in the most efficient manner and the Commission saw no compelling reason to fine parties which had demonstrated willingness to reform. The Commission shall continue to follow this approach in its investigations as appropriate.

Complaint by Comoros Against an Airline operating in the Common Market

In 2021, the Commission received a complaint on alleged price discrimination by one of the major Airlines operating in the Common Market. It was alleged that the Airline was discriminating prices according to the location of customers, which was identified through IP

addresses.

The Commission engaged three Member States namely: Kenya, Mauritius and Zambia, to screen the ticket prices for the airlines on the route on which the complaint was based. This was one of the Commission's numerous attempts at screening digital markets for possible anti-competitive conduct.

The team investigated the ticket prices for different dates over a period, with a view of determining whether there was a prima facie case that the Airline was indeed charging different prices to customers based on their location, or IP address. It was observed that algorithms and other artificial intelligence pose a threat to the Commission's screening activities given that the internet picks up traces of the Commission's activities.

Nonetheless, the Commission is improving its screening infrastructure and looks forward to finding innovative ways to screen digital markets for anti-competitive conduct. As at the end of 2021, the Commission's assessment into the complaint was on-going hence the activity is expected to be completed in 2022.

CONSUMER PROTECTION

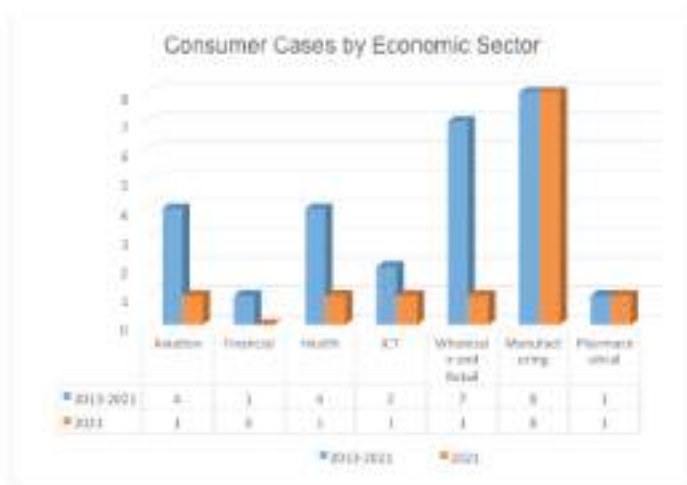
The Regulations empower the Commission to protect consumers in the Common Market against offensive conduct by market actors. The consumer protection mandate by the Commission extends, inter alia, to arresting false or misleading representation; unconscionable conduct and the sale of defective and unsafe goods within the Common Market.

In the period under review, the Commission investigated a total of thirteen (13) consumer cases against fourteen (14) handled from 2013 to 2020. 2021 saw more cases than the previous years, because it was in 2020 when the Consumer Division was fully established at the

Commission.

The cases dealt with in 2021 affected a cross section of economic sectors namely; manufacturing, aviation, health, information communication technology (ICT), wholesale and retail, and pharmaceutical sector. The manufacturing sector was the most affected sector in 2021 with a total of eight (8) cases. A graphical presentation on the number of cases per economic sector is presented in figure 7 below

Figure 7: Number of Consumer Cases per Economic Sector (2021 vs 2013-2021)



The top five (5) affected Member State in 2021 included Kenya (7 cases), Zambia (7 cases), Uganda (6 cases), Malawi (6 cases) and Egypt (4 cases).

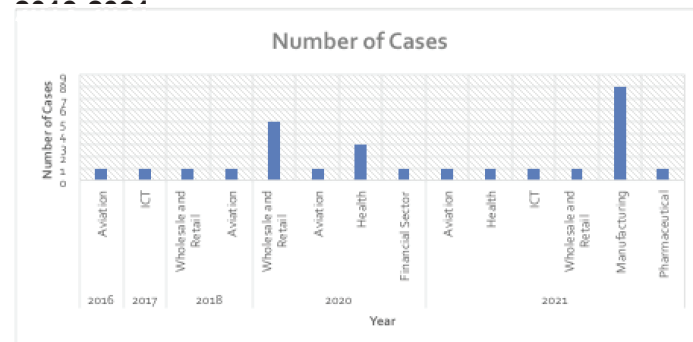
A graphical presentation on the distribution of cases is presented in figure 8 below

Figure 8: Number of Consumer Cases Per Member States (2021vs 2013-2021)



From inception in 2013 to 2021, the number of consumer protection cases handled by the Commission has continued to surge as presented in figure 9 below.

Figure 9: Number of Cases Assessed in the Period, 2016-2021





Key Consumer cases in 2021

The recall of Appletiser by the Cola-Cola South Africa

The Commission became aware through its market observatory that Coca-Cola South Africa (CCSA) initiated a voluntary recall of some batches of Appletiser from the market in South Africa in September 2021, as the products were found to contain mycotoxin ('patulin') above the permitted limit of 50 parts per billion (50ppb) for foodstuff. According to the World Health Organisation, patulin is a form of mycotoxin. Coca-cola South Africa however, did not recall Appletiser from some of the Member States of the Common Market.

The Commission issued a compulsory recall notice to Coca-cola South Africa requiring them to have the affected product removed from markets in all the Member States of the Common Market.

Coca-cola South Africa complied with the notice and informed the Commission that all the affected products



were removed from the shelves in the Common Market, with some of the products destroyed while others are yet to be destroyed pending approval by the local authorities.

Recall of Cevite Vitamin C by Shalina Pharmaceuticals Zambia Limited

Shalina Pharmaceuticals Zambia Limited recalled Cevite Vitamin C from Zambia without recalling the same products from other affected Member States of the Common Market such as Malawi.

The recalled Cevite Vitamin C had the effects of harming consumers in the Common Market as it was not safe for consumption. The product was changing colour from yellow to brown.

The Commission directed Shalina Pharmaceuticals Zambia Limited to recall the Cevite Vitamin C from Malawi and any other affected Member States of the





Common Market. The Commission also collaborated with the Competition and Fair Trading Commission of Malawi to ensure that the products were removed from the market.

Recall of certain Vegetables by Tiger Brands Consumer Limited

In 2021, Tiger Brands had recalled certain vegetables from the KOO brand in South Africa without doing the same in some Member States of the Common Market where they sold the products. The recalled KOO products had the effect of harming consumers as they had a can defect which could cause illness and injury to consumers.

The Commission engaged Tiger Brands Consumer



Limited and required them to recall the affected products from all the Member States of the Common Market where they were sold. Tiger Brands Consumer Limited complied.

Warning Notice to the public on the use of Caro Light and Bronz Toni Maxi Tone

The Commission became aware of a recall of Caro Light, Bronz Tone Maxi Tone in Europe due to high levels of hydroquinone and presences of clobetasol propionate. The Commission carried out an investigation on samples collected from some Member States of the Common Market, which confirmed that some of the products contained high levels of hydroquinone, above that recommended by World Health Organisation. Hydroquinone is classified as a toxic substance by the United Nations Committee of Experts on the Transport of Dangerous Goods.



In this regard, the Commission therefore issued a warning notice to Member States as provided for under Article 30 of the Regulations.

Sale and distribution of wrongly labelled masks manufactured by Marbon Daily and Chemical Company Limited

The Commission investigated some Dycrol face masks which were labelled as medical masks on the 50 pack box, while the 10 pack sachet inside was labelled as non-medical masks.

This conduct had the effect of misleading consumers who purchased the 50 pack boxes to believe that they were medical masks when in fact they were not.



The Commission engaged with the distributors that were selling the masks in the Common Market to ensure that they sold masks that complied with the provisions of the Regulations. The Distributors complied with the Commission's directive.

STRENGTHENING RESEARCH

The Commission recognizes the need for, and importance of, robust research to inform its investigations and decisions related to the enforcement of the Regulations in the Common Market. It is on this basis that the Commission partnered with the University of Johannesburg's Centre for Competition, Regulation and Economic Development ("CCRED") in July 2021 to undertake a Market Observatory. The objective of the Market Observatory was to track how markets are functioning for small-scale food producers and consumers in order to promote more inclusive and competitive markets across the continent.

The Market Observatory collated and analyzed relevant data from small scale producers of maize, maize meal, soya, soyabean meal, rice as well as urea- and DAP-based fertilizers across five Member States of the Common Market namely, Kenya, Malawi, Uganda, Zambia and Zimbabwe.

The Commission recognized the importance of national competition authorities as essential partners to the initiative and hence co-opted the authorities of the respective COMESA Member States and sought their assistance to obtain relevant information from national



stakeholders. The initiative obtained information from small scale producers by using a crowd sourcing application which was customized for this Market Observatory.

The information from small scale producers was then analyzed together with data on wholesale, producer and consumer prices (such as from statistics agencies and other public institutions) at national level.

The Market Observatory was intended to identify key trends in the region in real-time focusing on issues such as market access, border and transport related problems and other, potentially anti-competitive, considerations. As such, it was envisioned that the outcomes of the Market Observatory would support the development of appropriate policies for inclusive growth and market integration.

Further, the Commission continued to implement a two-part project in partnership with the World Bank which commenced in 2019. The project aimed at screening for cartel conduct in the Common Market and improving the legislative framework for effective cartel enforcement. The first component of the project involved screening markets for characteristics that could facilitate cartels in specified sectors in the Common Market. The review involved an analysis of market players and multi-market contact which could facilitate collusive behaviour in the Common Market.

The Member States which participated in the screening exercise were Kenya, Eswatini, Malawi, Mauritius, Seychelles, Zimbabwe and Zambia. The project developed a screening toolkit incorporating behavioural and structural screening which Competition Authorities use to screen for possible anti-competitive conduct in the market. The Commission followed up on this project by using the toolkit which was developed to screen for possible cartel conduct in certain sectors in the Common Market. Following the review, various national competition authorities in the Common Market initiated investigations into possible cartel behaviour in their respective markets.

The second component of the project involved strengthening the legal framework for anti-cartel enforcement and the development of a regional leniency program in the Common Market. The Member States which participated were DRC, Kenya, Eswatini, Malawi, Mauritius, Seychelles, Sudan, Zimbabwe and Zambia. The output of the project includes Regional Guidelines for Leniency and an accompanying Participation Agreement.

The Regional Guidelines for Leniency were validated by the participating Member States and further submitted to the Technical and Strategic Committee of the Commission's Board of Commissioners. A validation workshop for wider stakeholders and Leniency Policy simulation training workshop is scheduled for 2022.

STRENGTHENING ENFORCEMENT

The Commission's goal under this strategic issue is to build its capacity and that of the national competition authorities in Member States in order to effectively enforce both the Regulations and the national competition laws. The Commission intends to strengthen enforcement through comprehensive review of its competition legal framework and encouraging compliance with its decisions by Member States. The activities implemented in 2021 include:

Enhance the Legal Framework and Promote due process of the law

In 2021 the Commission finalised the drafting of Draft Guidelines on Determination of Fines and Penalties, Draft Guidelines on Hearing Procedures and Draft Guidelines on Settlement Procedures, and solicited comments on these three Guidelines from national competition authorities and other stakeholders. Further, the Commission prepared the draft Guidelines on the Regional Leniency Program and is yet to circulate them to stakeholders for comments, inputs and validation as the case maybe.



On 19 November 2021, the Commission and the Competition Authority of Kenya (CAK) met to review the Cooperation Framework of the two institutions

The Commission also commenced the process of reviewing and amending the Regulations and the Rules in order to align them with current trends in competition law legislations. Additionally, the Commission commenced the review and amendment process of its Executive Management Staff Rules, the Staff Rules, Procurement Rules and Financial Rules.

Enhance Compliance with the decisions of the Commission

In order to enhance compliance with its decisions, the Commission engaged in the provision of technical assistance activities to selected Member States and concluded enforcement cooperation agreements with Member States national competition authorities. The Commission engaged Member States on technical assistance and capacity building activities to enact and/or review national competition laws and policies in order to harmonise them with the regional competition law and/or set up and operationalise national competition authorities and implementation of national competition legislation. In this respect, the Commission engaged with the following Member States:

Uganda

The Commission conducted a fact-finding mission to Uganda on 14 -15 October 2021 which sought to establish the technical assistance needs towards development and implementation of the Uganda national competition and consumer protection law including engagement with high level government officials. Following this mission, a draft MOU has been developed by the Commission which is currently being negotiated with the Ministry of Trade, Industry and Cooperatives of Uganda. The MoU is expected to strengthen the existing cooperation between Uganda and the Commission in the enforcement of competition laws at regional and national levels.



On 26 October 2021, the COMESA Competition Commission, Director & CEO, Dr. Willard Mwemba, held a meeting with Chief of Cabinet at the Ministry of Trade and Export Development Tunisia, Mr. Khaled Ben Abdellah and other team members from the Ministry and discussed competition and consumer law and enforcement. On the immediate left of the Director and Chief Executive of the Commission is the Chief of Cabinet at the Ministry of Trade and Export Development.

Tunisia

On 2 March 2021, the Commission held a bilateral meeting with the Competition Council of Tunisia to discuss strategies for enhancing collaboration in the regulation of competition and consumer protection laws.

Consequently, the Commission conducted a fact-finding mission to Tunisia on 25 – 28 October 2021 which sought to understand the implementation status of competition and consumer protection law and policy in Tunisia. During this mission, the Commission discussed cooperation mechanisms between the Commission and the Competition Council of Tunisia as well as relevant agencies in Tunisia.

Djibouti

The Commission conducted a mission to Djibouti on 5-6 October 2021 to discuss the technical assistance request from Djibouti concerning the review of the national law and harmonisation with the Regulations. In this mission, the Commission met officials from the Ministry of Commerce, SMEs and Tourism; and agreed on the roadmap for engaging an international and local expert for the law review process. The Commission and the Ministry agreed to engage a consultant to review and harmonise the Djibouti law with the Commission's legal framework in 2022

Sudan

In the period under review, the Commission reviewed and provided comments on the proposed amendments to the Sudan Competition law response to the request of Sudan's Competition Council. The intention of the review was to harmonise and explicitly recognise the Regulations as having force of law in the territory of Sudan.

Engagement of Member States to Assist Operationalisation of National Competition Authorities

Democratic Republic of Congo (DRC)

The Commission conducted capacity building and sensitization workshops in the DRC during the period of 27 September – 2 October 2021. The capacity building sought to support operationalization of the DRC national competition authority and sensitize the business community, consumer



On 27 September -2 October 2021, the COMESA Competition Commission team in DRC training staff of the national competition authority of DRC (CONAC) and held workshops with other stakeholders including the business community and government officials



On 8 October 2021, the Commission led by Manager Legal Services and Compliance, Ms Mary Gurure, conducted a National Awareness Workshop on Consumer Protection Law and Enforcement in Burundi

associations, judiciary, and government officials on the enforcement of competition and consumer protection laws including the Regulations. The Commission also engaged high level senior government officials on the operationalization of the DRC national competition authority.

Burundi

The Commission conducted a fact-finding mission and awareness raising campaign in Burundi from 7 - 8 October 2021.

The main objectives of the mission included familiarization of the Commission with progress made by the government of Burundi in implementing and enforcing the national competition and consumer protection law; creating awareness to the competent authorities of Burundi, consumer associations, business organisations and other stakeholders on the mandate and activities of the Commission; and assessing the technical assistance needs of the country on competition and consumer related matters so that an appropriate strategy is devised.

The key stakeholders engaged for meetings were Government officials, representatives of sector regulators, national legislative office, professional bodies associations and the private sector among others. The Commission's delegation held a high-level meeting with the Ambassador Jeremie Banigwaninzigo, Permanent Secretary in the Ministry of Trade, Transport, Industry and Tourism. The Commission also paid a courtesy call to the Minister of Trade, Transport, Industry and Tourism prior to the workshop.

Comoros

The Commission conducted a mission on 11 – 12 October 2021 to follow-up on the action plan for the operationalization of the Comoros national competition authority that was agreed upon with the Ministry of Economy in 2018 and 2019.

The key stakeholders engaged during the mission included the Ministry responsible for COMESA matters, the Ministry of Economy, Chamber of Commerce, consumer protection association and the Law Society of Comoros. The key outcome of the mission was that the Director General in the Ministry of Economy, Mr. Abdou Nassur Madi, assured the Commission delegation that concerted efforts to operationalise the national competition authority were ongoing.

The main deliverables of the mission were, among others, that the Commission commence training on competition and technical matters once the relevant officers of the national competition authority are appointed and engaged.

Eswatini

In 2021, the Commission provided financial support to the ESCC on training of their management and leadership on Agency Efficiency on 18 November 2021.



On 11 October 2021 a team of the Commission led by the Manager Legal and Compliance, Ms Mary Gurure, met high level government officials from Comoros and discussed on operationalisation of the national competition authority

Such assistance is very important to ensure effective and efficient national competition authorities, a precursor to effective and efficient regional competition law enforcement.

Further, in 2021, following request for legal guidance received from the ESCC, the Commission provided the following four advisory opinions with respect to:

- The interpretation of Section 35 of Eswatini Competition Act in respect of merger provisions;
- The interpretation of the exemption's provisions under section 3 (2) of the Swaziland Competition Act of 2007;
- Adjournment procedures; and
- The scope of the powers conferred on the Chief Executive Officer and Secretariat of the ESCC.

Rwanda

A capacity building virtual training workshop was organized and held for the newly established Rwanda Inspectorate, RICA staff and other stakeholders on 26 – 30 April 2021 at which the Commission made presentations on the various aspects of competition and consumer protection law and enforcement.

Besides the Officials of RICA, the training was attended by various competition and consumer protection stakeholder from Rwanda Consumer Protection Organisation; Africa Centre for Competition, Consumer Protection and Intellectual Property Policy; National Bank of Rwanda; Rwanda Utilities Regulatory Authority; Rwanda Development Board; Ministry of Trade and Industry; and various law firms in Rwanda.

The training addressed the legal framework and enforcement of the Regulations including Member States' obligations under the Treaty and anti-competitive business practices, merger analysis, and consumer protection.

Zimbabwe

During the period under review the Commission undertook a mission to Zimbabwe on 15-16 November 2021 where it held a meeting with the Permanent Secretary of the Ministry of Industry and Commerce of Zimbabwe, Dr. Mavis Sibanda as well as the Director of Research and Consumer Affairs in the Ministry, Mrs. Constance Zhanje and Assistant Deputy Director for Trade Mrs. Petronella Masunda.

The Commission also held meetings with the Chairman of the Consumer Protection Commission of Zimbabwe, Dr. Mthokozisi Nkosi and other stakeholders the purpose of which was to enhance collaboration on competition and consumer issues. The meeting also aimed at the better enforcement of the Regulations in Zimbabwe.

The Commission used this opportunity to deliver its donation to the government of Zimbabwe for the Cyclone Idai victims through the Ministry of Foreign Affairs and International Trade.



On 15-16 October 2021, the Commission led by the Director and Chief Executive Officer, Dr. Willard Mwemba, had a national stakeholder workshop on competition and consumer protection law in Harare, Zimbabwe. Dr. Willard Mwemba, Sitting on the right and the Permanent Secretary of the Ministry of Industry and Commerce of Zimbabwe, Dr. Mavis Sibanda sitting on the left.

Engagement of Member States under the auspices of Conclusion of Enforcement Cooperation Agreements and Implementation of such Agreements

Democratic Republic of Congo (DRC)

On 19 April 2021, the Commission signed an Enforcement Cooperation Agreement with the DRC competition authority regarding cooperation in the application and enforcement of the Regulations.



During the signing of the Enforcement Cooperation Agreement between the Commission and the DRC competition authority



19 April 2021, MOU Signing between the Commission and competition authority of DRC. Looking on in the picture are Ms Mary Gurure, Manager Legal and Compliance and Ms Meti Disasa, Registrar.

Egypt

Under the auspices of the MoU, the Commission engaged the Egyptian Competition Authority (ECA), the Central Bank of Egypt (CBE), and the Ministry of Trade of Egypt from 10 to 13 November 2021. The Commission discussed with the CBE and ECA the cooperation mechanisms in the enforcement of the Regulations including the need for technical assistance.

The Commission learnt that the CBE has jurisdiction on competition and consumer matters in the banking sector in Egypt. In view of this, the Commission considered the CBE as a critical stakeholder in the enforcement of the regional competition and consumer law. The meeting was aimed at developing a tripartite working arrangement involving the CBE, the ECA and the Commission. It was agreed that the CBE will develop a tripartite working arrangement for the input of the Commission and ECA.



On 13 October 2021, the Commission met with the Egyptian Competition Authority to discuss common cases of interest that the two institutions should work on together. At the Centre is, Dr. Mahmoud Momtaz, Chairman of the ECA and Dr. Willard Mwemba.



On 12 October 2021, the Commission met with Minister of Trade and Industry of Egypt HE Nevine Gamae

Kenya

Under the auspices of the MoU, the Commission engaged the Competition Authority of Kenya (CAK) in a bilateral meeting from 15 to 20 November 2021 in Mombasa, Kenya during which the Cooperation Framework Agreement between the Commission and the CAK was reviewed together with the COMESA draft Leniency Guidelines.

The Commission and the CAK revised the MoU and developed the 2022 - 2023 MoU Implementation Plan.

A signing ceremony for the reviewed MOU is scheduled to take place in the Financial Year 2022. While the CAK was the second competition authority to enter into an MoU with the Commission, it was the first to commence such discussions with the Commission on 14 February 2013.



On 19 November 2021, the Commission & Competition Authority of Kenya (CAK) met to review the Cooperation Framework of the two institutions

Mauritius

The Commission finalized the procurement process of hiring an International Consultant to assist the Competition Commission (CC) in Mauritius to put in place the requisite legal and procedural framework underpinning a sound, effective and functional cooperation mechanism between the Authorities in cross-border enforcement, and in so doing, to assist the CC in fulfilling its obligations under the Regulations, including the enforcement of the Commission's decisions at national level. The project is expected to commence in the first quarter of 2022

Malawi

Under the auspices of the MoU with the Competition and Fair Trading Commission (CFTC), the Commission engaged the CFTC on the following activities:

- Participated in the CFTC Consultative Meeting on their Draft Guidelines on Restrictive Business Practices held from 5 to 6 October 2021 in Lilongwe, Malawi;
- Trained the Board Members of the CFTC on competition and consumer protection law enforcement at a meeting held on 24 - 25 November 2021 in Salima, Malawi. The training was conducted with the financial support from the Commission; and
- Participated in a validation workshop to consider the CFTC's consultant report on the Alignment of the Sectoral Laws in Conflict with the Consumer Protection Act and the Competition and Fair-Trading Act at a meeting held on 13 December 2021 in Lilongwe, Malawi.

On 24 to 25 November 2021, a team from the Commission led by the Director & CEO, Dr. Willard Mwemba, trained Board members of CFTC on Competition and Consumer Law.



First row left to right: Ms. Apoche Itimu, Acting Executive Director of CFTC; Rev Dr. Zacc Kawalala, Board member of CFTC; Dr. Jerry Jana, Board Chairperson of CFTC; Dr. Mwemba; and Ms. Christina Chatima PS Ministry of Trade and Industry

Further, the MOU between the Commission and CFTC Malawi which was initially signed in 2015, was reviewed and signed in May 2021. The CFTC was the first competition authority to enter into an MoU with the Commission.



Bilateral Cooperation Meeting between the Commission and Competition and Fair-Trading Commission held in Salima, Malawi from 12 to 13 April, 2021. The Commission delegation was led by Dr. Willard Mwemba while the CFTC Delegation was led by Mr. James Kaphale, the former Executive Director on the left of Dr. Willard Mwemba

Zimbabwe

On 15 April 2021, the Commission concluded an MoU with the Competition and Tariff Commission (CTC) of Zimbabwe virtually. The Commission and the CTC issued a joint press statement in which they stated that they mutually recognized the importance of sound and effective enforcement of competition laws to ensure the efficient operation of the Common Market, the national market in Zimbabwe and that trade between COMESA Member States is facilitated.

The purpose of the MoU is to encourage convergence in the approaches to the application of the respective competition laws of the Commission and the CTC. The MoU also seeks to encourage the sharing of knowledge and international best practices in competition law enforcement.

Engagement with stakeholders outside the Common Market for Eastern and Southern Africa

Eurasian Economic Commission (EEC)

The Commission and the EEC commenced discussions on the development of a cooperation framework between the two authorities. The EEC was established under the Treaty of the Eurasian economic union and vested with the role of detection and elimination of anti-competitive behaviour in the territories of the EAEU Member States.

The engagement between the EEC and the Commission commenced on 17 May, 2019 at the International Competition Network (ICN) conference in Cartagena, Columbia.

It is therefore gratifying that engagements that began informally at that ICN annual meeting have brought to fruition deeper discussions on how the two authorities may cooperate on various matters. The process of signing the cooperation agreement has reached an advanced stage and is expected to be finalized in 2022.



On 7 July 2021, Dr. Willard Mwemba, Director & CEO of the Commission met the delegates of the Eurasian Economic Commission, Department of Competition on the sideline of the UNCTAD IGE Competition 2021 meeting where they discussed areas of cooperation. Left to right: Ms. Aliya Jumabayeva, Director of Department of EEC; Mr. Arman Shakkaliyev, Member of the Board of the Minister in Charge of Competition and Antitrust Regulation; Dr. Mwemba and Ms. Armine Hakobyan, Deputy Director of Department of EEC



CARICOM Competition Commission

On 26 October 2021, the Commission had a meeting with CARICOM Competition Commission and discussed areas of potential collaboration areas of the two institutions. Among others, the meeting identified the areas of collaboration which included: holding consultations relating to the drafting of legal instruments, exchanging experiences in the area of regional integration, exchanging experiences in investigating violations of competition law, holding joint consultations, meetings and conferences on current competition related issues.

Particularly, the meeting identified that the Commission to collaborate with CARICOM Competition Commission on its ongoing initiative of an online competition course and online consumer protection and competition leadership courses developed. Further, the two institutions shared the experiences and challenges on enforcement of a regional competition authorities and cooperation with national competition authorities.

The two institutions agreed to formalize the intended collaboration through a cooperation agreement. The cooperation framework is expected to be finalized in 2022.

Regional Training for Case Handlers

Under the Strategic Issue, Strengthening Enforcement, the Commission schedules an annual regional programme for case handlers at national competition and consumer agencies in order to enhance and strengthen their capacity to enforce the Regulations and indeed their national competition laws. This is very important to ensure that the Commission and the national competition authorities have the right skills and tools to prevent, detect and prohibit anti-competitive conduct at both national and regional level thereby contributing to the regional integration imperative. In this respect the Commission had the following trainings for case handlers in the period under review:

- The Commission held a restrictive business practices case handlers' workshop on 20-21 July 2021. A total of 76 participants from national competition authorities of Member States participated during the workshop. The Commission engaged resource persons from the International Bar Association, the United States Federal Trade Commission and United States Department of Justice who delivered presentations and shared their experiences with the participants.



•The Commission further organized a mergers webinar under the theme, “COMESA Merger Notification Rules: Are they appropriate for capturing global digital mergers?” on 4 November 2021.

The Webinar attracted a total of 61 participants out of which 52 attendees were from national competition authorities and/or designated authorities responsible for merger review in Member States.

The speakers during the meeting included; Ms. Aude Barthelemy (European Commission); Mr. Raphael Mburu (Competition Authority of Kenya); Ms. Tamara Paremoer (Competition Commission South Africa); Mr. Mark Griffiths (Norton Rose Fulbright South Africa Inc), Ms. Anne Kiunuhe (Anjarwalla & Khanna LLP) and Mr. Jérémie Jourdan (White & Case LLP). The webinar discussed the suitability of the current Merger Notification Rules and procedures given the prominence of digital mergers.

Further, participants in the Webinar shared international best practices on how competition laws can capture digital mergers. The Commission noted the recommendations and intends to consider the recommendations as it reviews its Rules and Regulations.



Presentation delivered by Mr Mark Griffiths from Norton Rose Fulbright during the mergers webinar under the theme, “COMESA Merger Notification Rules: Are they appropriate for capturing global digital mergers?” held on 4 November 2021

A photograph of two Black women in professional attire sitting at a table. The woman on the left is wearing a black blazer, a white shirt, and a colorful headwrap. She is looking down at a document on the table. The woman on the right is wearing a black sleeveless top and has her hair styled in braids. She is pointing at a laptop screen. The background is blurred with bokeh lights. There are blue squares in the top-left and bottom-left corners of the image.

Advocacy and Strategic Collaboration

The aim of the Strategic Issue, Advocacy and Strategic Collaboration, is the creation a competition culture in the Common Market through enhancing the visibility of the Commission and increasing public awareness on the benefits of competition and competition law enforcement within the Common Market.

The Commission's approach is to engage various stakeholders within the Common Market which include national competition authorities, the business community, consumer groups, business reporters and the legal fraternity.

The Commission also engages stakeholders outside the Common Market such as international organisations dealing with competition and consumer matters. In 2021, the Commission implemented the following activities under this Strategic Issue:

World Consumer Rights Day

In commemoration of the World Consumer Rights day on 15 March, 2021, the Commission undertook the following activities:

- In the week of 15 to 19 March 2021, the Commission and CFTC of Malawi joined hands to lead consumers in commemorating the World Consumer Rights Day under the theme "Consumer Protection in the COVID-19 era" and to this effect issued a press release and had a live panel discussion on the national media of Malawi, Zodiak TV and Radio Station, on 17 March 2021.

- The Commission also collaborated with the CCPC and other national institutions within Zambia by co-sponsoring two videos under the theme "Tackling Plastic Pollution and Consumer Protection amidst the COVID-19 Global Pandemic". One of the videos highlighted the dangers of plastic pollution and the responsibilities of consumers in combatting it. The second video highlighted the role of various institutions in tackling plastic pollution, dangers of plastic pollution and some measures put in to tackle plastic pollution. The video also highlighted the challenges that consumers are facing during the COVID-19 Pandemic and what different institutions are doing to protect consumers from the rising challenges.

World Competition Day

On 5 December 2021, the Commission joined the rest of the world in commemorating World Competition Day under the theme "Competition Policy for an inclusive and resilient economy". On this day the Commission issued a press release which highlighted the activities it undertook under the theme of the day such as the cases handled regarding Resale Price Maintenance and Exclusive Agreements and its ongoing market observatory project done in partnership with CCRED on how markets are working for small scale food producers and consumers.

International Cooperation, Outreach and Networking

In 2021, the Commission implemented a number of advocacy and sensitization activities in the form of International

cooperation, outreach and networking which included following:

- The Commission had a bilateral meeting with the Africa Union Southern Africa Region (AU-SARO) Office Representation on 11 March 2021 where areas of future collaboration between AU-SARO and the Commission were discussed.

- On 23 to 26 March 2021, the Commission attended the virtual Conference of the ABA Antitrust Law Spring Meeting and was updated on recent legal developments on enforcement of Antitrust law.

- On 8 April 2021, the Commission attended the African Consumer Protection Dialogue Webinar on "Protecting Consumers from Corona Virus Scams and Misinformation; one year on" and exchanged information on emerging Consumer protection issues during COVID-19 Pandemic.

- On 13 April 2021, the Commission participated on the UNCTAD/ACF webinar on cross-border cartels where the Commission was able to learn and enhance its skills on best international practices relating to cross border cartels and the need for collaboration among the competition agencies and also coming up with a mechanism of sharing information.

- On 15 April 2021, the Commission collaborated with the EAC Competition Authority towards the development of EAC Competition Authority merger notification thresholds. In this meeting, the Commission discussed with a consultant recruited by EAC Competition Authority to develop the

EAC Merger Thresholds and provided its views on setting thresholds.

- The Commission participated at the UNCTAD Intergovernmental Group of Experts on Consumer Protection Policy and Law held on 5-6 July 2021 and IGE on Competition Policy and Law held on 7-9 July 2021. The Commission shared its experience in the session on “International experiences and best practices in competition law enforcement against cross border cartels”.

- The Commission participated in a Virtual ICN Promotion & Implementation workshop as facilitators in September 2021 which covered investigation techniques on mergers and unilateral conduct.

- The Commission participated in the 25th IBA Antitrust Section Annual Competition Conference on 10–11 September 2021 which featured debates on pressing issues including environment sustainability and the future of supply and distribution chains in a digital world.

- The Commission participated in various ICPEN webinars held in February and November 2021. The webinars discussed various topics including “The New Consumer Agenda” which focused on some of the challenges that consumers are facing in the wake of COVID-19 and the changes in the legal framework aimed at assisting consumers. The ICPEN Annual conference on the other hand was held under the theme “Surfing the wave of cooperation to protect

consumers”. Among the issues discussed were misleading environmental claims, enforcement during COVID-19, alternative dispute resolution, pyramid promotions schemes and digital platforms liability.

- The Commission attended the Joint EC - UNCTAD virtual workshop on Consumer Product Safety held on 9 November 2021 as a Member of the Panel and shared experiences in the area of legal framework for consumer product safety, benefits of cross border and regional cooperation and cross border coordination challenges.

- The Commission took part as one of the Lead Examiners in the Peer Review of the EAEU law under the OECD. A series of meetings interviewing various stakeholders of the EAEU were held from 19 to 22 October 2021 and the examination session took place on 8 November 2021. During the examination session, the Commission highlighted areas on which the EAEU could consider improving. These areas included the need for extraterritorial powers, developing a regional leniency programme and the inclusion of regional merger regulation in the Union. The Commission also took part in the presentation of the recommendations from the Peer Review to the OECD Global Forum on Competition held on 6 December 2021.

- The Commission also took part in UNCTAD’s Global Policy Dialogue which took place from 1 to 3 December 2021. The Commission was represented by the Director who was a speaker on the topic

“Interagency cooperation between MSME agencies and competition authorities”. During the session, the Commission shared the impact of its work with MSMEs in the Common Market with regard to competition and consumer law enforcement.

- Every Thursday of the month September 2021, the Commission participated in the ICN Practical training by senior investigators for case handlers using ICN work product and ICN Training On Demand video modules. The workshop introduced participants to Planning and Conducting Investigations, investigative processes, developing reliable evidence as well as international cooperation in investigations.

- As part of its strategic collaboration efforts, the Commission is a member of the Tripartite Task Force involving COMESA, SADC and EAC. Under this activity, the Commission participated in the fourth Tripartite Technical working Group on Competition Policy which was virtually held on 27-28 April 2021 and it contributed towards the drafting of the Second Draft Tripartite Protocol on Competition and State of Play on Competition in the TFTA. The Commission also serves as Secretariat for the Tripartite Technical Working Group.

Joint programs with COMESA Secretariat/COMESA Institutions

In accordance with Article 175 (1) of the Treaty the Commission, as one of COMESA institutions, is required to take into account the objectives, policies, programmes and

activities of the Common Market during implementation of the Regulations. As provided under Article 175 (2) of the Treaty, the Commission and the COMESA Secretariat are expected to maintain a continuous working relationship as it would further the implementation of the Treaty and make cooperation arrangements to this effect. Additionally, pursuant to Article 175 (3) of the Treaty, the Commission is required to submit annual progress reports to the COMESA Council of Ministers on its activities. In view of this, in 2021, the Commission undertook the following activities under the framework of joint COMESA and COMESA Institutions programs and as part of its Corporate Governance responsibility to report to the Council.

- Initiated collaboration with COMFWB by participating in the monthly business meetings of COMFWB National Chapters held on 30 April and 26 August 2021 to sensitise stakeholders on the Regulations and present on the mandate of the Commission. Further, COMFWB was a speaker for the COMESA Consumer Protection Committee held in June, 2021. This collaboration is important as it enables the Commission to educate Women in Business, who are mostly small and medium enterprises, on their rights and obligations under the Regulations so as to ensure that they comply with the law.

- Engaged CBC on 23 August 2021 based on the fact that they deal with the business community who are also the Commission's key stakeholders. The Commission shared a





concept note with CBC and agreed on conducting joint activities aimed at deepening regional integration.

•Further, the Commission virtually participated in the COMESA Meeting of the Sub-Committee on Budget and Administration and the 42nd Meeting of the Committee on Budget and Administration on 19 to 20 May 2021 and 23 to 24 June 2021 respectively and 42nd Council of Ministers meeting held on 9 to 10 November 2021.

These meetings among other considered the following:

- 2018 and 2019 Audited Financial Statements of the Commission;
- January to March 2021 Budget Performance of the Commission; and
- Recruitment of the Director of the Commission



Institutional Strengthening

In order to strengthen its operations, the Commission builds the capacity of both the Board of Commissioners and its staff. Further, the Commission's ultimate success in implementing its mandate significantly relies on the recruitment, training and retention of talented and competent staff. Therefore, in the period under review, the Commission undertook the following activities under institutional strengthening:

Organizational Capacity

The Commission implemented the following activities aimed at enhancing its capacity:

Strategic Plan Development

The Commission developed its Strategic Plan for the period 2021 – 2025. The development of the Strategic Plan was undertaken following assessment of the performance of the Strategic Plan for 2016-2020 through an independent consultant who undertook the assessment through consultation of stakeholders. The process of development of strategic plan also included extensive consultation with staff members and Board of the Commission and experts from COMESA Secretariat.

Performance Appraisal

On 14 July 2021, the Board approved the performance appraisal system which was developed by an independent consultant in 2020. The staff members of the Commission are expected to be trained on the new approved system in 2022.

Recruitment

•In March 2021, five new staff members commenced work, namely: Manager Consumer Welfare and Advocacy, Mr Steven Kamukama from Uganda; two Merger Analysts, Mr. Mengistu Molla Debessay from Ethiopia and Ms. Sunjida Devi Bundhun from Mauritius; one legal Officer, Ms. Alexia Waweru from Kenya; and one IT and Documentation Officer, Mr. Eyob Abraham from Eritrea.

•In November 2021, five new staff members commenced work, namely: an Accountant, Mr. Roland Mhango from Malawi; two Consumer and Advocacy Officers, Mr. Yonas Abebe Anteneh from Ethiopia and Ms. Nancy Otori from Kenya; two Competition Analysts, Mr. Joseph Kaumba from Zambia and Mr. Barnabas Andiva Indiazzi from Kenya.

•Further, in the period under review, the Commission commenced the recruitment of the Chief Economist and Senior Legal Researcher for the Research, Policy and Advocacy Unit and an Office Assistant, which shall be finalized in 2022.

Staff Training and Capacity Building

•On 12-14 March 2021, the Commission had a staff retreat to discuss the 2021-2025 Strategic Plan and held orientation for the new and existing staff on practices and operations of the Commission.

•On 29 May to 3 June 2021, the Commission had the first staff law retreat which was intended to train and refresh staff members on the provisions of the Regulations and their enforcement. This exercise was also an opportunity for the Commission to take stock of inventory of legal provisions that needed to be amended in the competition law regime. The 2nd Internal Law Review Retreat of the Regulations and Rules was held on 25 August to 1 September 2021 where the Commission's staff members continued and finalised the discussions on the comprehensive inventory of all the provisions of the Regulations and Rules that need to be amended.

Corporate Governance

In addition to the Commission's enforcement activities, its bedrock is corporate governance. The Commission is aware that the success of its mandate is largely dictated by its corporate governance and practices. The Commission's corporate governance involves various practices and policies that are critical in ensuring efficient decision making and management. At the helm of this corporate governance system is the Board of Commissioners (the Board) which is a non-executive organ. The Board ensures that there is accountability, transparency and due process in the Commission's decisions and other activities.

The Commission's Board meets regularly in order to provide the regulatory and administrative oversight on the Commission. The Board is governed by the Board Charter



Staff Recruited March 2021, Left to Right: Mr Steven Kamukama, Ms Sunjida Bundhun, Mr Eyob Abraham Ms Alexia Waweru, and Mr Mengistu Molla Debessay

and the Commission's Registrar is its Secretary. The Registrar has the responsibility of ensuring that Board procedures and rules are complied with. In order to provide effective and efficient oversight on the Commission, the Board may for the purposes of performing its functions establish committees and delegate to any such committee such of its functions as it considers necessary. To this end, the Board has established three committees to ensure effective oversight of the affairs of the Commission.

These Committees are:

- 1.The Audit and Risk Committee**
- 2.The Finance and Administration Committee**
- 3.The Technical and Strategy Committee**

The Audit and Risk Committee ensures that it identifies all the risks to which the Commission is exposed and recommends measures to prevent these risks or remedy the effects of the risks if they have already materialized. The Audit and Risk Committee is also responsible for the maintenance of sound internal control and risk management systems. The membership of the Audit and Risk Committee is comprised of three members.

The Finance and Administration Committee's remit includes development of the Commission's annual budget, overseeing its financial position, considering matters of human resource including recruitment, monitoring financial

performance and reporting to the Board as appropriate, reviewing and recommending investment policies to the Board among other things. It is generally responsible for efficiency, effectiveness and governance of the Commission. The membership of the Finance and Administration Committee is comprised of four members.

The Technical and Strategy Committee oversees the development of the processes and systems that relate to all technical functions of the Commission. It develops and recommends to the Board Rules that relate to the effective implementation of the Regulations. It also recommends to the Board various instruments like the Regulations and Rules in order to ensure effective and efficient promotion of competition in the Common Market through the prevention, detection and prohibition of anti-competitive practices.

Board and Committee Meetings

In the period under review, the Board of Commissioners ('the Board') had its Fourth (4th) Extra-ordinary Meeting of the Board on 29 January 2021 which considered and approved the shortlisting report of the position of the Director of the Commission. Further, the Board held its Fifth (5th) Extra-ordinary Board meeting on 4 March 2021, where it discussed the process of development of the Strategic Plan of the Commission.

The Board also held Joint Committee

meetings of the Finance and Administration and Technical Strategy Committee on 9 to 10 May 2021. The Joint Committee considered and provided inputs on the draft 2021 to 2025 Strategic Plan. In the period under review, the Commission held two (2) meetings of the Finance and Administration Committee on 11 to 12 July and 1-2 December 2021 and these meetings considered the financial performance of the Commission and other administrative issues and thereby made recommendations to the Board. Further, the Commission held two (2) meetings of the Technical and Strategy Committee held on 16 to 18 July and 3 to 4 December 2021. In these meetings, the Committee deliberated and recommended that the Board considers the following:

- Draft Code of Code of Conduct and Disciplinary Procedures;
- Draft Guidelines on Determination of Administrative Penalties;
- Draft Settlement Procedures;
- Draft Hearing Procedures; and
- Draft COMESA Guidelines for the Regional Leniency Program;

In 2021, the Board held two (2) Board Meetings on 13 to 14 July 2021 and 22 to 24 September 2021 which among others considered reports from Board Committees. Following these Board and Committee meetings, the Board considered and approved the following:

- The 2021-2025 Strategic Plan;
- Result Based Performance Management System
- Appointment of Commissioner Ellen



Staff Recruited in November 2021, left to right- Mr Roland Mhango, Mr Barnabas Andiva, Mr Joseph Kaumba, Mr Yonas Abebe Anteneh and Ms Nancy Otori

- Ruparanganda as its Chairperson and Commissioner Brian Lingela as its Vice-Chairperson;
- The 2022 Work Programme of the Commission;
 - Commencement of stakeholders consultation for the following Guidelines
 - Draft Guidelines on Determination of Fines and Penalties;
 - Draft Hearing Procedures
 - Draft Settlement Procedures
 - The Commission's Code of Conduct and Disciplinary Procedures;
 - The creation of a Research, Policy and Advocacy Unit and recruitment of officers for the Unit;
 - The recruitment of four Professional staff members; and
 - The organogram of the Commission and engagement of an expert to review it.

Committee Responsible for Initial Determination (CID)

The CID pursuant to Article 13(4) of the Regulations, comprises three Commissioners who are also members of the Board. Its role is to adjudicate on competition and consumer cases before the Commission and issue decisions. If parties are aggrieved with the decision of the CID they have the right to appeal to the Board. The three CID members are not part of the Board Members who sit to hear the appeal.

The CID held ten (10) meetings in the period under review which considered and issued decisions on 32 mergers and acquisitions. Improve the Record Keeping System of the Commission

The Commission works with the aim of having a robust ICT especially with the advent of the COVID-19 pandemic that showed us that such facilities are not just a fancy requirement but indispensable in the modern times we operate in. In order to ensure that we improve our ICT, the Commission implemented the following:

Installation and Implementation of Accounting Package

In the period under review, the Commission operationalised its server and configured the infor sunsystem software. Before that the Commission relied on the COMESA Secretariat Server in Lusaka. However, due to the sensitive and confidential nature of information it handles, the Commission embarked on hosting and operationalizing its own server.

Electronic Case Flow Management

In 2021, the Commission established its internal Digitalisation Committee which among other things was tasked to lead the process of development of its Electronic Case Flow Management. On 8-9 December 2021, the Digitalisation Committee undertook a benchmarking mission to the Competition Authority of Kenya to learn from their electronic Case Flow Management system. The Commission is expected to fully operationalize its case flow management system in 2024.

PROSPECTS FOR THE FUTURE

What a year 2021 was! The Commission made a number of accomplishments but also faced some challenges. It was also in 2021 that the Commission imposed its first ever fines for breaches of the COMESA Competition Regulations and non-compliance with the commitments made by firms in their matters before the Commission.

As per our motto "we exist to facilitate business and not to frustrate business", we do not take pride in fining firms. We always strive to reach an understanding with firms to resolve the anti-competitive concerns we raise. These are usually resolved through commitments and through cessation of the conduct that raises anti-competitive concerns. Our raison d'être is to clean the markets of anti-competitive practices and not penalization.

Nevertheless, where firms blatantly disregard compliance with the Regulations, the Commission going forward shall consider more penalization just like it considers remediation. Over the last 9 years the Commission has been operational, it has raised lots of awareness of its mandate and the do's and don'ts under the Regulations. The Commission focused more on soft enforcement in the last nine years. Firms and other stakeholders are now fully aware of the Regulations. Additionally, as the saying goes, ignorance of the law cannot be defense. Therefore, going forward, penalization shall be very much on the table.

Anti-competitive conduct result in devastating consequences on economies of the COMESA Member States and indeed the Common Market. Such conduct raises the cost of doing business and exacerbate poverty. The Commission shall therefore not take kindly conduct that result in the aforementioned consequences. Such conduct include cartels, recidivism any agreements (vertical or horizontal) that result in the compartmentalization of the Common Market.

To this effect, the Commission shall endeavour to finalise the leniency program it developed with the assistance of the world bank. The Commission has so far been working closely with the Member States to ensure that the leniency program that is approved is implementable in the Common Market.

The Commission has however been observing with keen interest the regressing effectiveness of the leniency program in jurisdictions like the United States of America, the European Union and close to home, the Republic of South Africa.

These jurisdictions are mentioned as arguably, they had the most robust and effective leniency programs at the peak of the utilization of the instrument. Over the years, this instrument has dwindled in its effectiveness. The Commission therefore will not place much reliance on the leniency program albeit it is an important tool. The Commission shall in the coming year establish a Research, Policy and Advocacy Unit. Among the mandates of this unit will

inter alia, undertake various market inquiries and research that will be aimed at identifying problematic markets prone to anti-competitive concerns.

The Research, Policy and Advocacy Unit shall work closely with the Commission's Enforcement and Exemption Division to ensure that the Common Market is free from cartels and other anti-competitive practices. In the year 2022, the Commission shall commence processes to construct its headquarters in Lilongwe, Malawi. Currently, the Commission's office premises are provided by the Government of the Republic of Malawi.

The Commission has been pursuing the desire to construct its headquarters in Malawi and in 2021, we were privileged to be granted title deeds by the Government of the Republic of Malawi to construct our headquarters. In addition to offices, it is our desire to construct the competition law centre in Malawi where students from various parts of Africa and indeed the world over shall come to obtain specialized qualifications in competition law and industrial organization.

This will be the first of its kind in Africa as these specialized qualifications are mostly obtained in Europe. The center shall also produce a cadre of competition law experts in Africa and remedy the insufficiency of this skill on our continent.

In the year under review, we faced a number of challenges occasioned mainly by the covid 19 pandemic. The challenges included the collection of information from parties

under investigation and those whose mergers were being reviewed by the Commission, the adherence to statutory timelines under the COMESA Competition Regulations, interaction with most of our stakeholders who resorted to working from home among others. In 2022, we shall commence the review and amendment of the COMESA Competition Regulations in order to strengthen them and address the weaknesses that were exposed during the pandemic period.

Further, the COMESA Competition Regulations were promulgated in 2004 and we believe a number of factors and dynamics have since evolved which may have rendered the Regulations archaic in some respects. In 2022, we shall aim to make the COMESA Competition Regulations consistent with contemporary practice. In 2022, the Commission shall aggressively continue with the digitization of its systems, the processes it commenced after being exposed to the risks of the COVID 19 pandemic.

Digitalisation of our systems will not only bring us at par with other competition authorities but shall make our administrative and technical operations more efficient and effective.

After all is done and said for 2021 and proclamations made for 2022, we invite you to watch the space and look forward to reading our 2022 annual report!

A glass filled with various coins, with a small green plant growing out of the top. The background is a blurred blue and white pattern. There are two solid blue rectangular shapes: one in the top-left corner and one in the bottom-left corner.

Financial Report

2021 Director and Chief Executive Officer's Commentary

1. The COMESA Competition Commission ("the Commission") is a regional body established under Article 6 of the COMESA Competition Regulations. The COMESA Competition Commission Financial Rules in Rule 6 (2) designates the Director and Chief Executive Officer as the Chief Accounting Officer of the Commission responsible to the Council through the Board for the proper administration of the funds of the Commission.

2. The Commission is implementing the External Audit framework as approved by the Council in 2016 in Madagascar where the Audit of the Commission is undertaken by Auditor Generals from Member States through the COMESA Board of External Auditors (COBEA). COBEA Audit Instruments including the Audit Charter and Audit Manuals were developed and approved by Council in 2020 to ensure that audits are undertaken in line with international best practices.

3. In the interim, I have the pleasure of presenting the Management Accounts for the financial year ended 31 December 2021 pending the audit of 2021 financial statements by COBEA. It should be noted that there was a delay in the commencement of the 2020 audit due to the challenges arising from the COVID 19 Pandemic and COBEA just finished the 2020 audit in June 2022. This has consequently led to the delay in the audit for the year 2021.

4. These Management Accounts combine, the results of activities carried out with funding from both Member States and the Commission's extra-budgetary resources as provided for in the Regulations and Rules. The Management Accounts provide a complete overview of the finances of the Commission for the financial year 2021. This includes information on the financial position of the Commission, its operations during the year, movements in the accumulated funds and reserves, its cash flows as well as the financial commitments and obligations of the Commission.

5. Some of the key highlights of 2021 management accounts are the strong financial position which has a strong cash position of COMESA Dollar⁷ 21.9 million backed by accumulated funds and reserves of COMESA Dollar 17.5 million. The operations of the Commission resulted in a surplus of COMESA Dollar 1.86 million.

The Management accounts are presented overleaf:

⁷ One COMESA Dollar is equivalent to one United States Dollar

**COMESA Competition Commission
2021 Management Accounts**

*Statement of Financial Position
As at 31 December 2021*

In COMESA Dollar	2021	2020
ASSETS		
Equipment	147,886	117,379
Amounts due from related parties	2,173,202	2,173,202
Total non-current assets	2,321,088	2,290,581
Receivables	3,639	3,144
Cash and cash equivalents	21,920,685	19,400,420
Total current assets	21,924,324	19,403,564
TOTAL ASSETS	24,245,412	21,694,145
ACCUMULATED FUNDS		
Accumulated funds	17,462,202	15,593,944
Capital reserves	36,420	20,802
Revaluation reserves	6,330	8,831
Total funds and reserves	17,504,952	15,623,577
LIABILITIES		
Amounts due to related parties	15,456	23,269
Payables	6,200,301	5,562,185
Deferred income	524,703	485,114
Total liabilities	6,740,460	6,070,568
TOTAL ACCUMULATED FUNDS AND LIABILITIES	24,245,412	21,694,145

**COMESA Competition Commission
2021 Management Accounts**

*Statement of Income and Expenditure
for the year ended 31 December 2021*

In COMESA Dollar		
	2021	2020
Total Income	3,969,009	3,213,444
Expenditure		
Merger fees expenses	(1,767,248)	(841,359)
Staff costs	(622,393)	(677,759)
Administrative costs	(53,015)	(57,217)
Operational costs	(99,805)	(80,994)
Depreciation	(37,590)	(24,820)
Total Expenditure	(2,580,051)	(1,682,149)
Net Finance income	476,799	243,597
SURPLUS FOR THE YEAR	1,865,757	1,774,892

**COMESA Competition Commission
2021 Management Accounts**

*Statement of Changes in Accumulated
Funds for the year ended 31 December
2021*

In COMESA Dollar	Capital Reserves	Revaluation Reserve	Accumulated Funds	TOTAL
Balance at 1 January 2020	3,641	-	13,816,108	13,816,108
Surplus for the year	-	-	1,774,892	1,774,892
Amortisation of grant	(5,806)	-	-	(5,806)
Amortisation of revaluation reserve	-	(2,944)	2,944	-
Capital grant received	22,967	-	-	22,967
Revaluation for the year	-	11,775	-	11,775
Balance at 31 December 2020	20,802	8,831	15,593,944	15,623,577
Balance at 1 January 2021	20,802	8,831	15,593,944	15,623,577
Surplus for the year	-	-	1,865,757	1,865,757
Amortisation of grant	(3,905)	-	-	(3,905)
Amortisation of revaluation reserve	-	(2,501)	2,501	-
Capital grant received	19,523	-	-	19,523
Revaluation for the year	-	-	-	-
Balance at 31 December 2021	36,420	6,330	17,462,202	17,504,952

Accumulated funds

Accumulated funds are the bought forward recognised income, net of expenses of the Commission, plus current period surplus.

Capital reserves

Capital reserves represents the value of assets acquired by the Commission. Capital grants are deferred and credited to the income and expenditure in equal annual instalments over the useful life of the related assets.

Revaluation reserves

The revaluation reserves arises from revaluation of motor vehicles in March 2020 2016 and represents the excess of the revalued amount over the carrying value of the motor vehicles at the date of revaluation. The revaluation was performed by an independent valuer.

**COMESA Competition Commission
2021 Management Accounts**

*Statement of Cash Flows
for the year ended 31 December 2021*

In COMESA Dollar	2021	2020
Surplus for the year	18,865,757	1,774,892
Adjustments		
Depreciation	37,590	24,820
Amortisation of Capital grants	(3,905)	(5,806)
Capital goods received	19,253	22,967
Disposal of Assets	4,078	-
Interest Income	(476,799)	(243,597)
	1,565,736	1,573,276
Charges In		
Amounts due from related parties	-	500,000
Amounts due to related parties	(7,813)	(343,592)
Receivables	(495)	(1,150)
Payables	638,116	1,356,577
Deferred income	39,589	58,009
	669,397	1,569,844
Net Cash generated from operations	2,155,641	3,143,120
Cashflows from investing activites		
Purchase of equipment	(72,175)	(99,025)
Interest received from banks and other deposits	472,332	144,572
Net Cash generated by Investing activites	404,624	144,572
Net increase in cash and cash equivalent	2,520,265	3,287,692
Cash and cash equivalent at the beginning of the year	19,400,420	16,112,728
Cash and cash equivalent at the end of the year	21,920,685	19,400,420



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