



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE COMESA COMPETITION COMMISSION

AND

**THE RWANDA INSPECTORATE, COMPETITION AND CONSUMER PROTECTION
AUTHORITY**

REGARDING

**COOPERATION IN THE APPLICATION AND ENFORCEMENT OF COMPETITION AND
CONSUMER PROTECTION LAWS**

DECEMBER 2022

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This Memorandum of Understanding is made on this.....day of 2022.

BETWEEN

- I. **COMESA Competition Commission**, a Regional Competition and Consumer Protection Agency established by the COMESA Competition Regulations ("the Regulations") which were issued in the *COMESA Official Gazette Vol. 9 No. 2 as Decision No. 43 of Notice No 2 of 2004* and whose address of service is care of Kang'ombe House, 5th Floor, P.O Box 30742 Lilongwe 3, Malawi, on one hand; (hereinafter referred to as "the CCC")

AND

- II. Rwanda Inspectorate, Competition and Consumer Protection Authority, a government agency established under Law No. 31/2017 of 25/07/2017 Establishing Rwanda Inspectorate, Competition and Consumer Protection Authority with a mandate to promote competition among enterprises as well as safeguarding consumer interests through implementing relevant laws and policies whose address service is P.O. Box: 375 Kigali-Rwanda, (hereinafter referred to as "the RICA").

PREAMBLE

RECOGNISING THAT:

The Parties share the view that the sound and effective enforcement of competition and consumer protection laws is a matter of importance to the efficient operation of their respective markets and the enhancement of consumer welfare;

The Parties' commitment to enhancing the sound and effective enforcement of their competition and consumer protection laws through cooperation and, in appropriate cases, coordination between them in the application of those laws;

Coordination of their enforcement activities may, in certain cases, result in a more effective resolution of the Parties' respective competition and consumer rights' concerns which would otherwise been attained through independent enforcement action by the Parties;

The Parties' commitment to giving careful consideration to each other's important interests in the application of their competition laws and to using their best efforts to arrive at an accommodation of those interests;

Rwanda is one of the Member States of COMESA, a regional economic block whose objective is to promote regional economic integration through trade and investment;

HAVING REGARD TO:

The provisions of Article 55(3) of the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA) under which the COMESA Competition Regulations (the "Regulations"), and the accompanying COMESA Competition Rules (the "Rules") are promulgated;

The provisions of Article 5 of the COMESA Treaty as read with Article 5 of the Regulations providing the obligations of Member States; to take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of the Regulations or resulting from action taken by the CCC under these Regulations, to facilitate the achievement of the objects of the Common Market and abstain from taking any measure which could jeopardize the attainment of the objectives of the Regulations;

The provisions of Article 2 of the Regulations dealing with the purpose of the Regulations which is to promote and encourage competition by preventing restrictive business practices and other restrictions that deter efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market and to protect consumers against offensive conduct by market actors;

The provisions of Article 6 of the Regulations establishing the CCC as a body corporate and Article 7(1) of the Regulations which mandates the CCC to apply the provisions of the Regulations with regard to trade between Member States and be responsible for promoting competition within the Common Market.

The provisions of Article 7(2) of the Regulations which empowers the CCC among others to initiate cooperation with competition authorities of Member States; help Member States promote national competition laws and institutions with the objective of harmonisation with the Regulations and ensure uniform application of the same; assist Member States in the implementation of its decisions; provide support to Member States in promoting and protecting consumer welfare; and facilitate the exchange of relevant information and expertise;

The provisions of Articles 24(8) and 26(6) of the Regulations which provides for the referral of a merger application for consideration under the Member State's national competition law, and for the CCC to work with the relevant Member States in conducting merger enquiries, respectively;

The provisions of Rule 40 of the COMESA Competition Rules ("the Rules") which provides for close and constant liaison between the CCC and the competition authorities of the Member States in establishing the existence of infringements of Articles 16 or 18 of the Regulations in the applications and notifications by undertakings;

The provisions of Rules 41(1), 43(1) and 44 of the Rules which mandates the CCC to: obtain all necessary information from the Governments and competition authorities of the Member States and from undertakings and association of undertakings; to request competition authorities of Member States to undertake investigations which the CCC deems to be necessary; and for officials of the CCC to carry out investigations in Member States in consultation with the competent authorities of Member States in whose territory the investigation is to be made, respectively;

The provisions of Articles 1 and 6 of Law No. 31/2017 of 25/07/2017 Establishing Rwanda Inspectorate, Competition and Consumer Protection Authority and giving it the mandate to oversee implementation of relevant laws aimed at promoting competition and ensuring that consumer's interests are protected;

Article 6 (9) of Law No. 31/2017 of 25/07/2017 Establishing Rwanda Inspectorate, Competition and Consumer Protection Authority gives the responsibilities to RICA to advise the Government on matters related to standardization, competition, and consumer protection;

ACKNOWLEDGING

The desirability of setting standards for procedures by which the CCC can act as a forum for the exchange of views, consultations, and conciliations on matters relating to anti-competitive practices and consumer protection practices affecting COMESA regional and international trade;

The desirability of Member States to cooperate at the regional level in the implementation of their respective national competition and consumer legislation in order to eliminate the harmful effects of anti-competitive practices and consumer protection;

The importance of coordinating and cooperating with Regional Economic Communities (RECs) such as the Tripartite Free Trade Area (TFTA), the African Continental Free Trade Area (AFCFTA) and the need for Member States to comply with the obligations of enforcing regional competition and consumer protection law including harmonization of national laws with the regional laws.

That it is imperative that COMESA Member States give effect to the principles of regional competition Regulations and Rules and to use moderation and self-restraint in the interest of co-operation in the field of anti-competitive business practices, mergers and consumer protection matters;

That closer cooperation between the CCC and competition authorities of COMESA Member States in the form of notification, exchange of information, coordination of actions, and consultation among Member States should be encouraged.

CONSCIOUS OF

Article 7(2)(d) of the Regulations which empowers the CCC to cooperate with competition and consumer protection authorities of Member States and Article 6 (21) of Law No. 31/2017 of 25/07/2017 Establishing Rwanda Inspectorate, Competition and Consumer Protection Authority which gives the mandate to establish cooperation and collaboration with other institutions at regional and international levels for the purpose of improving its functioning

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Article 1 Definitions

In this MoU:

1. **"COMESA Treaty"** means the Treaty establishing the Common Market for Eastern and Southern Africa.
2. **"Common Market"** means the Common Market for Eastern and Southern Africa established by Article 1 of the COMESA Treaty.
3. **"Competition and consumer protection authorities"** means:
 - a. the CCC established under Article 6 of the COMESA Competition Regulations; and
 - b. RICA, a government agency established to promote competition in the economy by prohibiting practices that undermine the normal and fair course of competition practices in commercial matters as well as ensuring consumers interests promotion and protection.
4. **"Competition and Consumer Protection law(s)"** means:
 - a. for the CCC, the COMESA Competition Regulations and the accompanying Competition Rules promulgated under Article 55 (3) of the Treaty establishing the Common Market;
 - b. for Rwanda, Law No. 36/2012 of 21/09/2012 Relating to Competition and Consumer Protection and Law No. 31/2017 of 25/07/2017 Establishing Rwanda Inspectorate, Competition and Consumer Protection Authority or any other Law that may be enacted to regulate competition and consumer protection in Rwanda and any subsidiary legislation made thereunder; and

- c. for both the CCC and RICA, any such other legislations as the Parties shall jointly agree to be "competition and consumer protection laws" for the purpose of this MoU.
- 5. **"Enforcement activities"** means any application of competition and consumer protection laws by way of investigation or proceedings conducted by a Party.
- 6. **"Member State"** means a Member State of the Common Market.
- 7. **"Parties"** Means the COMESA Competition Commission (CCC) and the Rwanda Inspectorate, Competition and Consumer Protection Authority (RICA).
- 8. **"Conduct having Regional Dimension"** means conduct or practice affecting two or more Member States or having an appreciable effect in the Common Market.
- 9. **"Territory"** means:
 - a. For the CCC, the Common Market; and
 - b. For the RICA, the Republic of Rwanda

Article 2

Purpose of this MoU

The Purpose of this MoU is to promote and facilitate cooperation and coordination between Parties in:

- a. Implementation of competition and consumer protection laws of the Parties in order to foster effective enforcement including the review of laws and designing of institutional arrangements;
- b. Development of capacity building and technical assistance for competent authorities of Rwanda to enhance effective enforcement of their laws;
- c. enforcement activities including, but not limited to, conducting joint investigations when the need arises;
- d. Discussion of emerging trends and sharing international best practices on competition and consumer protection;
- e. Elimination of duplicity and lessening the possibilities of divergence through harmonization of competition and consumer protection laws at national, regional and continental level; and
- f. Sharing of information for the purposes of enhancing matters related to competition and consumer right protection in the Common Market, and Rwanda.

Article 3

Notification

1. Each Party shall notify the other Party in writing whenever it becomes aware that its enforcement activities may affect important interests of the other Party.
2. Enforcement activities as to which notification will generally be appropriate include those that:
 - a. involve anticompetitive activities carried out wholly or in part in the territory of the other Party;
 - b. involve unfair trade practices and offensive conducts affecting consumers carried out wholly or in part in the territory of the other party;
 - c. involve conducts believed to have been required, encouraged or approved by the other Party;
 - d. involve the imposition of remedies, conditions, undertakings or commitments by a party that would require or prohibit conduct in the territory of the other Party;
3. With respect to mergers or acquisitions, each Party will notify the other Party with any significant information that comes to its attention regarding mergers that it believes is relevant to, or may warrant, enforcement activity by the other Party.
4. Each Party shall also notify the other Party whenever it intervenes or otherwise participates in a regulatory or judicial proceeding if the issues addressed in the intervention or participation may affect the important interests of the other Party.
5. Notifications shall be made as soon as possible and shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity on its own important interests. Notifications shall include the names and addresses of the natural and legal persons involved, the nature of the activities under investigation and the legal provisions concerned.

Article 4

Obligations of the Parties

1. The Parties shall take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of this MoU or resulting from action taken by the Parties under this MoU
2. The Parties shall facilitate the achievement of the objectives of the COMESA Treaty and the purpose of this MoU and, in so doing, shall abstain from taking any measure which could jeopardize the attainment of the objectives of this MoU.

3. The Parties shall be free to determine the appropriate method of implementing the provisions of this MoU within their legal system and practice, as long as such method of implementation enhances the efficient and effective attainment of the objectives of this MoU.
4. The Parties will make timely submissions of information including information related to mergers and acquisitions, restrictive business practices and consumer protection matters.

Article 5 **Sharing of Information**

1. Each Party agrees to provide to the other Party, upon request and to the extent compatible with their respective competition and consumer protection laws, such information within its possession as the requesting Party may describe that is relevant to an enforcement activity that is being contemplated or conducted by the requesting Party's competition and consumer authority.
2. Each Party agrees to provide the other Party any information that comes to its attention regarding anti-competitive business practices, mergers transactions and consumer protection violations that the Party believes is relevant to, or may warrant, enforcement activity by the other Party.
3. The information shared between the Parties shall be used solely for the purpose of implementing this MoU.

Article 6 **Coordination and Cooperation in Market Inquiries and Enforcement Activities**

1. The Parties shall render assistance to each other in their enforcement activities, to the extent compatible with their respective competition and consumer protection laws and their respective interests, and within the reasonably available resources.
2. The Parties shall cooperate in the enforcement of the competition and consumer protection laws and share information which will facilitate effective implementation of the respective laws.
3. The Parties may make proposals or participate in the review of their competition and consumers protection laws where necessary to facilitate cooperation and collaboration.
4. The Parties may coordinate in undertaking research and/or market inquiries in identified sectors and to ascertain any competition concerns in those sectors.
5. The Parties will cooperate in the enforcement of their respective competition and consumer protection laws.

6. The Parties shall, in this regard, assist each other in the enforcement of the competition and consumer laws through:
 - a. collecting, locating and securing evidence and enforce voluntary compliance with requests for information from undertakings or natural persons,
 - b. sharing of information within the other Party's possession as the requesting Party may specify as relevant to the enforcement of the Regulations.
 - c. sharing of information that comes to the attention of the other Party about anti-competitive activities and merger transactions and consumer protection violations that may be relevant to or may warrant enforcement activity of the beneficiary Party.
 - d. implementation and enforcement of sanctions and remedies issued to any undertaking by the requesting Party in the other Party's territory., and
 - e. Conducting joint investigations, where possible.
7. A Party may notify the other Party about, mergers, and anti-competitive practices in its territory, and consumer protection violations and may request that the other Party to initiate appropriate enforcement activities. The notification shall be as specific as possible about the nature of the conduct taking place in its territory and its likely effects and if enforcement has already taken place, it shall state the measures or remedies (if any) is imposed.
8. Upon receipt of a notification, the notified Party shall advise the notifying Party of its decision. If enforcement activities are initiated, the notified Party shall advise the notifying Party of their outcome and, to the extent possible, of interim developments.
9. The requested Party shall assist in the investigations that the requesting Party considers to be necessary. Such investigations shall be carried out with the assistance of officials of the requesting Party, upon request, in accordance with the respective Party's laws.
10. In cases where the Parties have an interest in pursuing enforcement activities with regard to related situations, they may agree that it is in their mutual interest to coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, the Parties shall take account of the following factors, among others:
 - a. the opportunity to make more efficient use of their resources devoted to the enforcement activities;
 - b. the relative abilities of the Parties to obtain information necessary to conduct the enforcement activities;
 - c. the effect of such coordination on the ability of both Parties to achieve the objectives of their enforcement activities; and

- d. the possibility of reducing costs incurred by persons subject to the enforcement activities.
11. In any coordination arrangement, each Party shall conduct its enforcement activities expeditiously and, insofar as possible, consistently with the enforcement objectives of their respective competition laws.
12. The Parties shall carry out the investigations expeditiously and consistent with their relevant laws and shall take into account the enforcement objectives of the respective laws and the deadlines stipulated in their respective competition laws.
13. Nothing in this Article limits the discretion of the notified Party under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the notified anti-competitive activities or precludes the notifying Party from undertaking enforcement activities with respect to such anticompetitive activities, mergers and consumer protection activities.

Article 7 **Avoidance of Conflicts**

1. The Parties agree that it is in their common interest to minimize any potentially adverse effects of their enforcement activities in as far as the application of the respective competition and consumer protection laws are concerned.
2. Each Party shall seek, at all stages in its enforcement activities, to take into account the important interests of the other Party in decisions as to whether or not to initiate an investigation or proceeding, the scope of an investigation or proceeding, the nature of the remedies or penalties sought, and in other ways, as appropriate.
3. Any divergent views arising out of the enforcement of the respective competition and consumer protection laws will be addressed in a timely and practicable manner as circumstances may permit.

Article 8 **Consultation**

1. Either Party agrees to consult promptly with the other Party in response to a request by the other party for consultations regarding any matter related to this MoU and to attempt to conclude consultations expeditiously with a view to reaching mutually satisfactory conclusions.
2. Any request for consultations shall indicate the reasons thereof and shall state whether any procedural time limits or other constraints require that consultations be expedited.

Such consultations shall take place at the appropriate level, which may include consultations between the heads of the Parties.

3. During consultations, each Party shall take into account the principles of cooperation set forth in this MoU and shall be prepared to explain to the other Party the specific results of its application of those principles to the matter under discussion.
4. A Party shall as soon as it is practical, inform the other Party of any amendment made to its competition laws as well as any change in the enforcement practice of its competition authority that may affect the operation of this MoU. Upon request of either Party, the Parties shall hold consultations in order to assess the specific implications of such amendments or changes for this MoU, and in particular to determine whether this MoU should be amended.

Article 9 Meetings

1. The Parties will endeavor, in case of need or at the request of the either Party to, *inter alia*:
 - a. discuss current issues, experiences and new developments of mutual interest with respect to competition and consumer policy development, legislation and enforcement or the operation of the present MoU;
 - b. exchange non-confidential information on the competition environment in economic sectors of common interest; and
 - c. discuss other matters of mutual interest relating to the application of the competition and consumer protection laws of each Party.
2. The Parties may schedule meetings every 6 months and from time to time, as may be necessary.

Article 10 Technical Assistance and Capacity Building

1. The Parties shall pursue technical assistance and capacity-building programs through integrated strategies that incorporate economic, social, cultural, environmental and institutional elements that are unique to each Party. In this context and within the framework of development policies and reforms pursued by the Parties; the Parties' cooperation framework and orientation shall take into account the different levels of development as well as the economic needs of each Party and the difficulties faced in meeting their obligations under this MoU.

2. The technical assistance and capacity-building programs shall pay systematic attention to institutional aspects and in this context shall support the efforts of either Party to develop and strengthen structures, institutions including the Ministry of Justice and procedures that help to enhance the effective enforcement of the competition laws and policies in their respective territories. In this context, the Parties shall:
 - a. jointly mobilize resources for capacity building aimed at assisting the Parties in the establishment and/or strengthening of the respective competition laws and enforcement agencies.
 - b. jointly facilitate and develop competition and consumer protection advocacy programs involving the sensitization of policymakers, parliamentarians, the judiciary, the business community, and the general public about the role of competition and consumer laws and policies;
 - c. jointly facilitate the establishment of a mechanism to enable the Parties to take the necessary steps to adopt, strengthen and implement the necessary competition and consumer protection laws in their respective territories.

Article 11 **Communication under this MoU**

1. Communications under this MoU shall be made in writing and in English.
2. Communications under this MoU shall be carried out in writing electronically to the relevant address of the other party as indicated below to

For the CCC: The Director and Chief Executive Officer
COMESA Competition Commission
P.O.Box 30742
Lilongwe 3
Malawi

For the RICA: The Director General
Rwanda Inspectorate, Competition and Consumer Protection
Authority
PO. Box: 375 Kigali-Rwanda
Safari Centre House

Plot Number 436 | Kicukiro District|
Kigali, Rwanda

3. Each Party shall designate a Desk Officer for the purpose of liaison with each other in the enforcement of the respective competition laws

Article 12

Confidentiality and use of information

1. Notwithstanding any other provision of this MoU, neither Party is required to disclose information to the other Party where such disclosure is prohibited by the laws of the Party possessing the information or would be incompatible with the important interests of the Party possessing the information.
2. Each Party agrees to maintain, to the fullest extent possible, the confidentiality of information provided to it in confidence by the other Party under this MoU and to oppose, to the fullest extent possible, any application for disclosure of such information by a third party that is not authorized to obtain the confidential information by the Party that supplied the information.

Article 13

Existing Law

Nothing in this MoU shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the competition laws of the Parties.

Article 14

Dispute Resolution

Any disputes that may arise from this MoU will be amicably resolved through consultations.

Article 15

Entry into Force, Duration and Implementation

1. This MoU shall enter into force upon signature by the Parties.
2. This MoU will remain in force unless terminated by either Party.
3. The Parties will agree on the mechanism and mode of implementation of this MoU.

Article 16
Review, Amendment and Termination

1. The Parties will, at any time, review this MoU with a view to adopting such further arrangements as may be feasible and desirable to enhance cooperation in the enforcement of their respective competition and consumer protection laws.
2. The Parties may, at any time, by consensus, amend this MoU.
3. Either Party may terminate this MoU by giving the other Party sixty (60) days written notice of intention to terminate this MoU.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this MoU.

DONE in two original texts on the 13th Day of December 2022 at KIGALI, RWANDA

The COMESA Competition Commission

Dr Willard Mwemba


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Director & Chief Executive Officer

Rwanda Inspectorate, Competition and Consumer Protection Authority

Beatrice UWUMUKIZA


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Ag. Director General