

# 10 YEARS

of Excellence in Promoting Competitive  
Markets and Enhancing the Welfare of  
Consumers in the Common Market

**2013 - 2023**





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# OUR VISION, MISSION, AND VALUES

## VISION

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

## MISSION

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.

## CORE VALUES

In carrying out this mission, the Board of Commissioners, Management, and staff of CCC 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
AfCFTA	African Continental Free Trade Area
ACF	African Competition Forum
AU	African Union
CAK	Competition Authority of Kenya
CARICOM	Caribbean Community
CBC	COMESA Business Council
CC	Competition Commission (Mauritius)
CCPC	Competition and Consumer Protection Commission of Zambia
CCRED	Centre for Competition Regulation and Economic Development
CFTC	Competition and Fair Trading Commission of Malawi
COMESA	Common Market for Eastern and Southern Africa
COMFWB	COMESA Federation of Women in Business
CTC	Competition and Tariff Commission
CBE	Central Bank of Egypt
CID	Committee Responsible for Initial Determinations
EAC	East African Community
ECA	Egyptian Competition Authority
EC	European Commission
ESCC	Eswatini Competition Commission
EAEU	Eurasian Economic Union
EEC	Eurasian Economic Commission
EU	European Union
FTC	Fair Trade Commission of Seychelles
ICN	International Competition Network
ICPEN	International Consumer Protection and Enforcement Network
OECD	Organisation for Economic Cooperation and Development
RICA	Rwanda Inspectorate, Competition and Consumer Protection Authority
SADC	Southern Africa Development Community
TFTA	Tripartite Free Trade Area
UNCTAD	United Nations Conference for Trade and Development
USFTC	United States Federal Trade Commission

## CHAIRPERSON'S MESSAGE



It gives me great pleasure to be commemorating 10 years of the COMESA Competition Commission's (the "CCC") enforcement operations. Ten years ago, it appeared impossible to have a regional competition authority. Several examples of regional competition authorities that were established but faltered along the way could be cited. Similarly, several scholars writing on the challenges of enforcing a regional

competition authority could be cited. The European Commission is seen as a unique project and success. The situation and prospects were even more gloomy for regional competition enforcement in less developed countries where various challenges were observed.

However, the CCC defied all the prejudices and clichés and established an effective regional competition authority with many achievements to point to. Special recognition is given to the CCC's staff whose dedication and commitment has made the CCC one of the most effective and respected competition authorities globally. Worth mentioning is that this success is a product of robust leadership of all Commissioners – previous and current, who have served on the CCC Board of Commissioners since 2008 when its administrative operations commenced.

Competition enforcement in the Common Market is undertaken to achieve two main objectives. The first objective is to ensure that all agreements between Undertakings, decisions by associations of Undertakings and concerted practices which have as their object or effect the prevention, restriction, or distortion of competition are prohibited as they are incompatible with the goals of the Common Market. This objective is important as anti-competitive conduct by Undertakings operating in the market stifles innovation, economic growth, consumer choice, robs both governments and citizens of the Common Market millions of dollars and exacerbates poverty. This view has been long supported by one of the most renowned economists who ever lived; Adam Smith when he stated in 1776 in his book titled the wealth of nations that:

“

In general, if any branch of trade, or any division of labour be advantageous to the public, the freer and more general the competition, it will always be the more so.

”

The second objective is the pinnacle of the Treaty establishing the Common Market for Eastern and

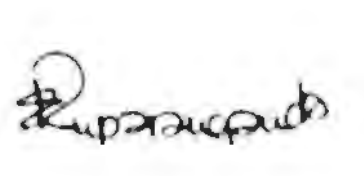
Southern Africa (the "COMESA Treaty") which does contribute to the single market imperative. Pursu-

ant to the COMESA Treaty, Member States have resolved to strengthen and achieve convergence of their economies through the attainment of full market integration. Therefore, the Treaty and the COMESA Competition Regulations (the "Regulations") prohibit conduct by Undertakings or associations of Undertakings likely to negate the objectives of free and liberalized trade. This is done by prohibiting anti-competitive practices that create barriers to trade ensuring that the single market imperative is realized.

Significantly notable, is the fast rate at which the CCC has facilitated the establishment and strengthening of national competition authorities in the Member States. With effective and efficient national competition authorities, competitive markets are guaranteed in the Common Market, a precursor to the establishment of competitive Undertakings in international markets beyond the Common Market. Coupled with this, the CCC has developed commendable competences over the ten years such that it provides valuable advisory opinions on competition matters not only to Member States' national competition authorities but to competition authorities beyond the Common Market.

The Board will continue to provide policy guidance to ensure that implementation of the Regulations is enhanced and that all anti-competitive business practices, including anti-competitive mergers and acquisitions, are detected and prohibited. It will further continue propagating and strictly adhering to the principles of corporate governance that guarantee the separation and independence of the Management and Staff of the CCC from its Board especially where investigations are concerned. May I take this opportunity to assure our stakeholders that due process and separation of investigation and adjudicative functions is taken seriously and guaranteed in the CCC. CCC shall continue to observe these high levels of impartiality and independence to enhance the credibility and integrity of its processes thereby instilling confidence in the market.

In the next phase of its journey, the CCC is working on amending its Regulations and Rules which were promulgated in 2004, close to 20 years ago. The Regulations have to be updated as they cannot effectively handle new and emerging issues like competition concerns in digital markets, matters pertaining to the green environment or climate change and public interest, among other issues. In its quest to ensure that competition and consumer law is well comprehended, and its benefits understood, the CCC is planning to construct a competition and consumer law center in Lilongwe, Malawi which shall attract participation from not just COMESA but beyond the Common Market. We hope to witness an exciting 20<sup>th</sup> anniversary when it comes.



**Commissioner Ellen Ruparanganda**  
**Chairperson of CCC**



# FOREWORD OF THE DIRECTOR & CHIEF EXECUTIVE OFFICER



The past ten years have been exciting times for the competition regulation landscape in the Common Market. While competition policy has been an integral part of COMESA's regional integration agenda since its very beginning as can be attested from the inclusion of competition provisions in the COMESA Treaty, and the promulgation of the Regulations and COMESA Competition Rules (the "Rules") in 2004, the last 10 years have underscored COMESA's commitment to promoting competitive markets, thereby working towards the full realization of the single market imperative through a series of landmark events, notably:

- the establishment and swift operationalization of the CCC, the first fully operational regional competition authority in Africa and the second the world-over, to enforce the Regulations;
- the adoption of supplementary rules and guidelines, as well as various advocacy projects to facilitate stakeholders' understanding and acceptance of the new competition standard that would prevail;
- the enforcement of the Regulations to ensure competitive markets, enhance the welfare of consumers and overall, contribute to the regional integration agenda for the benefit of the Common Market;
- assisting Member States to establish and operationalize effective national competition authorities;
- Forging relationships with other competition authorities and stakeholders both within and outside the Common Market; and
- Conclusion of landmark cases relating to mergers, restrictive business practices and consumer protection.

Competition enables markets to work more efficiently, and in so doing brings tangible benefits both to consumers and business Undertakings operating in the Common Market, in terms of lower prices, increased innovation incentives, efficient/cost-reducing production methods, and wider variety of products, among others. Of material relevance to our region, is the ability of competitive markets to fight poverty of varying degrees, a sad reality in most of our Member States.

“

In the next ten years, the CCC shall continue to work tirelessly to sharpen its tools to capture anti-competitive practices which are becoming ever sophisticated as Undertakings invest millions of dollars to devise ways of remaining undetected and evading the law.

”

By ensuring that national and regional markets operate effectively, the CCC is contributing to the objective of a genuine Common Market, the overall goal of jobs and growth, for the ultimate benefit of COMESA citizens. The one-stop-shop merger control regime introduced by the Regulations has been particularly active, with more than 367 merger cases reviewed and determined since inception. The review of merger transactions is one of the most significant activities of the CCC in combating anti-competitive practices, especially considering the increasingly globalized transactions involving the coming together of dominant enterprises that have the capacity of entirely reshaping the competition dynamics of national and regional industries. In line with its mandate not only to review mergers and acquisitions but also other forms of anti-competitive conduct and consumer protection cases, the CCC has since inception handled more than 40 restrictive business practices cases (both horizontal and vertical restraints) and 45 consumer protection cases. Worth noting is that in the last one year, the CCC has focused attention and efforts on detecting and investigating cartels. The CCC realizes that companies involved in cartels are simply broad day light criminals stealing millions of dollars from our resource dwarfed governments and our consumers thereby exacerbating poverty which we all want to eliminate. The CCC is therefore dedicated to being part of the solution to eradicate extreme poverty and ensure prosperity for all the inhabitants of COMESA, which is one of the objectives of the COMESA Treaty.

In the next ten years, the CCC shall continue to work tirelessly to sharpen its tools to capture anti-competitive practices which are becoming ever sophisticated as Undertakings invest millions of dollars to devise ways of remaining undetected and evading the law. The tool used for engaging in anti-competitive business practices is becoming technology. The CCC

cannot therefore afford to remain behind and will continue investing in technology that will enable it to detect anti-competitive conduct effectively. To law abiding Undertakings, we promise to continue working with yourselves, taking you through the dos and don'ts of the law so that you are always on the right side of the law. Our slogan at the CCC is that we exist not to frustrate business but to create a favourable environment for business. For those that infringe the law and plan clandestinely to do so, we assure you that the CCC shall relentlessly continue to detect and end all such anti-competitive conduct. Competitive markets are what we desire to see.

Finally, may I take this opportunity to thank all our stakeholders who have assisted in developing and shaping the COMESA Competition and Consumer Law regime. These include among others:

- Governments of Member States;
- National Competition and Consumer Authorities;
- European Commission;
- The Commonwealth;
- United States Federal Trade Commission;
- United States Department of Justice;
- The World Bank;
- International Bar Association;
- The American Bar Association; and
- Various law firms



**Dr. Willard Mwemba**  
**Director and Chief Executive Officer**

# CCC AT A GLANCE

2004	The COMESA Competition Regulations and Rules adopted by the COMESA Council of Ministers
2008	First Board of Commissioners appointed First Board Chairperson of the CCC appointed
2011	First Director and Chief Executive Officer of the CCC appointed and commencement of administrative operations
2012	Amendments to the COMESA Competition Rules of 2004 on the Merger Notification Fees, fees for applications for authorizations and exemptions and fines for violations on Part 3, 4 and 5
2013	Offices of the CCC opened to the public and commenced its enforcement operations
2013	First Mergers Application Received and First Decision by the Committee of Initial Determinations on Mergers
2014	COMESA Merger Assessment Guidelines Published
2015	Amendments to the COMESA Competition Rules of 2012 reducing the merger notification fees and setting merger notification thresholds
2016	First restrictive business practices case initiated by the CCC
2016	First consumer protection case assessed
2019	The COMESA Guidelines on restrictive business practices and abuse of dominance published
2020	Practice Note of CCC issued with regards to the filling of Mergers due to the COVID-19 Pandemic
2021	First Administrative Fine imposed by the CCC for failure to notify a merger transaction within 30 days of the Parties' decision to merge pursuant to Article 24(1) of the Regulations  First Administrative fine imposed by the CCC for non-compliance with Merger Conditions  Appointment of the Second Director and Chief Executive Officer
2022	First Appeals Board Decision made on restrictive business practices. Creation of the Research, Policy, and Advocacy Division
2023	First Approval of a Merger subject to divestiture

# ESTABLISHMENT OF CCC

The CCC is established under Article 6 of the Regulations which were adopted by the Council of Ministers ('the Council') in 2004 pursuant to Article 55(3) of the COMESA Treaty. Despite the Regulations having been enacted in 2004, the CCC only commenced its administrative operations in February 2011 when its first Director and Chief Executive Officer, Dr. George K. Lipimile was recruited and only commenced the enforcement of the Regulations on 14 January 2013. The period of inactivity between 2004 and 2013 was due to several challenges among them inadequate financial and human resources and lack of knowledge and awareness of the existence of the Regulations by the stakeholders including the Member States. Dr Lipimile, the Director and Chief Executive Officer at the time, had a mammoth task of operationalizing the CCC from establishing systems of operation, drafting subsidiary legislation, drafting practice notes, raising awareness about the existence of the CCC, and recruiting staff as provided for under the Regulations.

The enforcement and implementation of the Regulations introduced a **'One Stop Shop'** for the notification of cross border mergers transactions, thereby reducing the cost of doing business in the COMESA region and ensuring certainty and predictability to the business community. The CCC's own analysis in

2014 revealed that with the operationalization of the **'One Stop Shop'** the cost of merging in the Common Market had significantly reduced considering merger notification fees, legal fees, administrative convenience among other issues. This is because such transactions no longer needed to be examined in two or more jurisdictions, as was the case before the establishment of the CCC. The **'One Stop Shop'** also means that cross-border anti-competitive conduct and consumer violations are handled and reviewed by the CCC. This fundamental principle of the **'One Stop Shop'** ensures that Undertakings operating in the Common Market cannot escape legal liability on account that their conduct in individual Member States may not be caught by the law of that Member State.

Through the enforcement of the Regulations, there has been heightened efficiency in maintaining competitive markets and ensuring consumer redress in the Common Market. The CCC also provides the only and most extensive network of national competition authorities in Africa. Therefore, the enactment of the Regulations and the establishment of The CCC has been a landmark achievement for COMESA given that cross-border competition law infractions, which could not be addressed by National Competition Authorities, can no longer escape scrutiny of the law.

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## MANDATE AND FUNCTIONS

The CCC has the mandate to promote and encourage competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of consumers in the Common Market, and to protect consumers against offensive conduct by market actors. The CCC is mandated to apply the provisions of the Regulations to monitor and investigate cross-border anti-competitive conduct, mergers, and

consumer protection violations within the Common Market.

This mandate is in line with Article 7 of the Regulations, which stipulates the functions of the CCC in applying the provisions of the Regulations regarding trade between Member States as well as promoting competition and consumer protection within the Common Market. The functions of the CCC pursuant to Article 7 of the Regulations, include the following:

- monitor and investigate anti-competitive practices of Undertakings within the Common Market, and mediate disputes between Member States concerning anti-competitive conduct;
- regularly review regional competition policy to advise and make representations to the COMESA Council with a view to improving on the effectiveness of the Regulations;
- help Member States promote national competition laws and institutions, with the objective of the harmonization of those national laws with the regional regulations to achieve uniformity of interpretation and application of competition law and policy within the Common Market;
- co-operate with competition authorities in Member States;
- provide support to Member States in promoting and protecting consumer welfare;
- Facilitate the exchange of relevant information and expertise;
- develop and disseminate information about competition policy and consumer protection policy.

## GOVERNANCE STRUCTURE

The governance structure is composed of two institutions namely the CCC and the Board of Commissioners (“the Board”) established under Articles 6 and 12 of the Regulations respectively. To ensure transparency, fairness, accountability and due process, there is a clear and robust separation of responsibilities between the CCC and the Board. The Regulations stipulate that no Member of the Board should take part in the day to day running of the CCC. This is intended to safeguard independence between the CCC and its Board. The CCC is headed by a Director and Chief Executive Officer, supported by his/her staff, and is responsible for investigating breaches of the Regulations, recommending remedial actions, authorisations, exemptions, and sanctions under the Regulations to the Board for determination and recommending policy and legal reform to the Board. The Director and Chief Executive Officer is appointed by the COMESA Council.

The Board is the Supreme Policy Body of the CCC. It is appointed by the Council and is responsible for the determination of cases investigated by the CCC, setting policy and recommendation of legislation to the Council. The Board consists of a minimum of 9 non-executive Commissioners and a maximum of 13 Commissioners appointed by the Council from COMESA Member States. Three of the Commissioners are assigned as members of the Committee Responsible for Initial Determination (CID). The CID is composed pursuant to Article 13(4) of the Regulations and its role is to adjudicate on competition and consumer cases before CCC and issue Decisions. It does not issue decisions on behalf of the Board but in its own capacity and such decisions may be

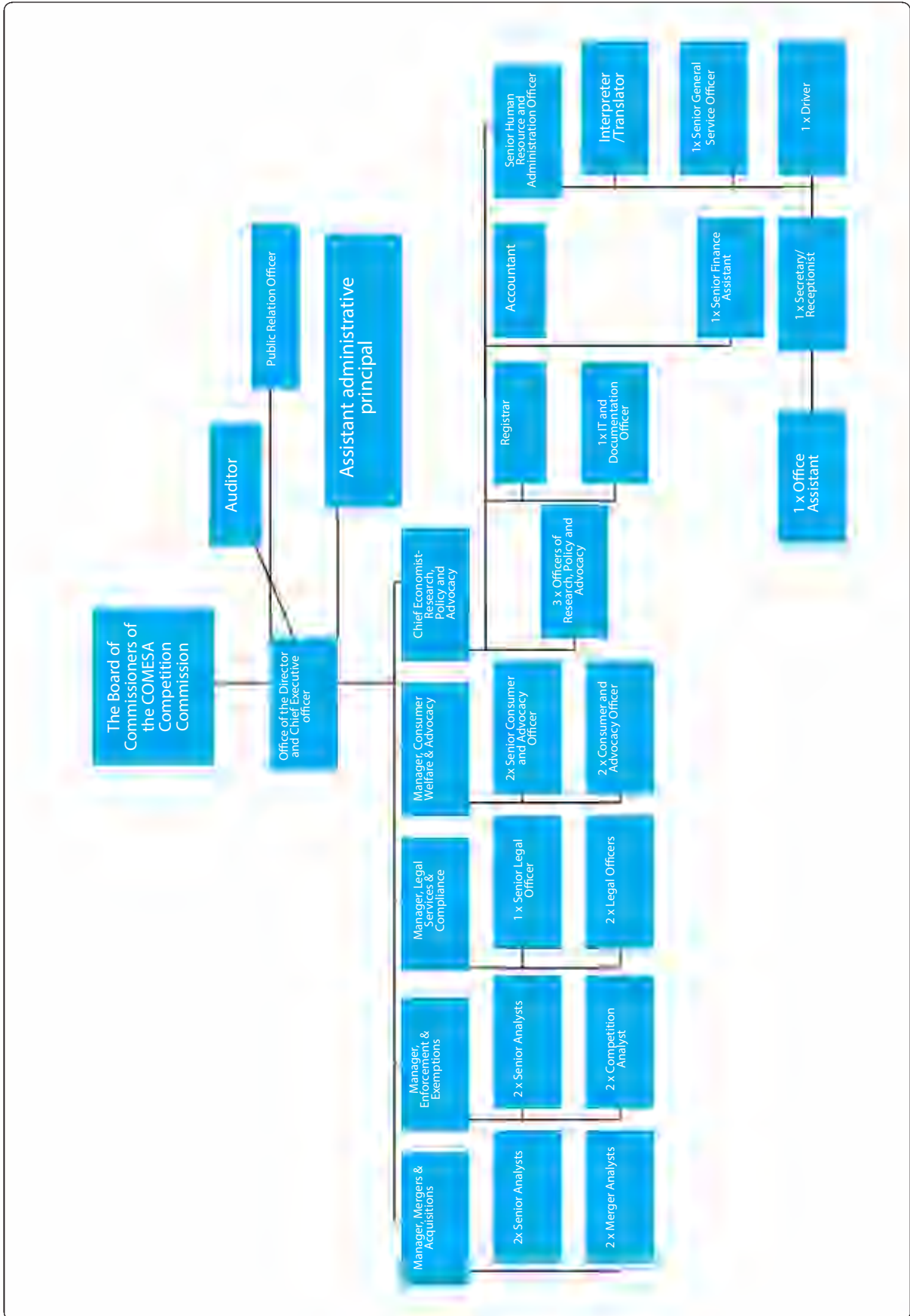
appealed to the Appeals Board. If parties are aggrieved with the decision of the CID, they have the right to appeal to the Appeals Board which consists of five (5) Members drawn from the Board. The three (3) CID members are not part of the Appeals Board which sits to hear the appeal. Therefore, the Board’s responsibility through the Appeals Board extends to hearing appeals on determinations of the CID. To further secure accountability and due process, decisions of the Appeals Board are appealable to the COMESA Court of Justice.

The CCC enjoys an independent legal personality, and it may acquire, hold, and dispose of property and assets and may sue and be sued in its corporate name thereby establishing its operational autonomy. Further, the CCC has in the territory of each Member State:

- a) the legal capacity required for the performance of its functions under the Treaty; and
- b) the power to acquire or dispose of movable and immovable property in accordance with the laws and regulations in force in each Member State.

Decisions rendered by the Board and the CCC are binding on Undertakings, Governments of Member States and State Courts. Being a COMESA institution, the CCC falls under the overall oversight of the COMESA Council of Ministers whose role is to provide policy guidance and oversight through, among others, follow up on the implementation of its approved annual work programmes, adoption of the regional competition legal framework and appointment of the Board of Commissioners and the Director & Chief Executive Officer.

# ORGANISATIONAL STRUCTURE



# BOARD MEMBERS OF CCC OVER THE YEARS

## BOARD MEMBERS FOR THE PERIOD 2021 TO DATE



*From left to right Commissioner Beatrice Uwumukiza, Commissioner Sam Kuloba Watasa, Commissioner Thembelihle Precious Dlamini, Commissioner Adelbert Emmanuel Booto Nkaimana, Commissioner Vipin Naugah, Commissioner Danson Buya Mungatana, Commissioner Brian Muletambo Lingela (Vice Chairperson) , Commissioner Ellen Ruparanganda (Chairperson) , Commissioner Islam Tagelsir Ahmed Alhasen and Commissioner Mahmoud Momtaz;*

## BOARD MEMBERS FOR THE PERIOD 2018-2021



*From left to right, Commissioner Patrick Okilangole (Board Chairperson), the late Commissioner Trudon Kalala Nzembela, Commissioner Danson Mungatana, Commissioner Amira Abdel Ghaffar Mohammed, Commissioner Thembelihle Precious Dlamini, Commissioner Ellen Ruparanganda , Commissioner Ali Hamadou Ali; Back Row from left to right, Commissioner. Michael Teklu Beyene, Commissioner Islam Tagelsir Ahmed Alhasan, Commissioner Justice Charlotte Wezi Malonda, Commissioner Brian M. Lingela, Commissioner Deshmuk Kowlessur and Commissioner Francis Lebon*

## BOARD MEMBERS FOR THE PERIOD 2015-2018



*From left to right Commissioner Merkebu Zeleke Sime; the late Commissioner Ali Mohamed Afkada; Commissioner Daniel Gappy; Commissioner Thabisile Langa, Commissioner Amira Abdel Ghaffar; Back row (Left to Right): Commissioner Deshmuk Kowlessur; Commissioner Patrick Okilangole; Commissioner Chilufya Sampa; Commissioner Mathews Chikankheni (Board Chairperson); the late Commissioner Trudon Nzembela Kalala and Dr. George Lipimile, Director, and Chief Executive Officer of the CCC at the time.*

## BOARD MEMBERS FOR THE PERIOD 2011-2014



*Board Members Appointed in 2011 from left to right the late Commissioner Ali Mohamed Afkada; Commissioner Daniel Gappy; Commissioner Thabisile Langa; Commissioner Chilufya Sampa; Commissioner Rajeev Hasnah, Commissioner Rostom Omar Rostom; at the back of Commissioner Thabisile Langa is Commissioner Alexander Kububa, next to Dr. George Lipimile, former Director, and Chief Executive Officer of the CCC is Commissioner Mathews Chikankheni. In the picture are also some of the first recruited staff members namely Mrs. Mary Gurure, Mrs. Lucy Dziko, Mr. Vincent Lloyds Nkhoma and Mr. Willard Mwemba.*



# HIGHLIGHT OF ACHIEVEMENTS

**OVER 367**  
Mergers and  
Acquisitions  
assessed

**Over 44**  
Consumer  
Protection  
Matters handled

**OVER 40**  
Restrictive  
Business  
Practices  
assessed

**More than 12**  
Market Studies  
and Market  
Screening  
exercises  
undertaken

**3 businesses**  
fined for  
non-compliance  
with the  
Regulations

**19 Member  
States provided  
with Capacity  
Building and  
Technical  
Assistance**

**14 MoUs Signed  
with Member  
States and 3 MoUs  
signed with the  
Eurasian  
Economic  
Commission, LAZ  
and CARICOM**

**Various Advocacy  
and Capacity  
Building Meetings  
conducted with  
different  
stakeholders**

# ENFORCEMENT SYNOPSIS

The CCC's enforcement mandate is drawn from Parts 3, 4 and 5 of the Regulations. Part 3 addresses Anti-Competitive Business Practices, Part 4 addresses Mergers and Acquisitions and Part 5 addresses Con-

sumer Protection. This section provides a synopsis of the enforcement activities of the CCC in the last ten years.

## ANTI-COMPETITIVE BUSINESS PRACTICES

Under Part 3 of the Regulations, the CCC is charged with the mandate to monitor the market against agreements which have, or may have, as their object or effect the prevention, restriction, and distortion of competition within the Common Market and which may affect trade between Member States. Agreements having such anti-competitive effects are declared incompatible with the Common Market. The CCC is further mandated to monitor the behaviour of dominant firms in the Common Market and prevent the abuse of that dominance.

To facilitate for the enforcement and implementation of Part 3 of the Regulations, the CCC developed guidelines whose main purpose are to inform key stakeholders of the CCC's approach to implementing anti-competitive practice provisions in the Regulations. To this end, the CCC developed the following guidelines:

a) **COMESA Guidelines on Restrictive Business Practices**

The Guidelines' aim to provide clarity, predictability, and transparency as regards the CCC's general analytical framework in determining cases of vertical and horizontal agreements. They also assist Undertakings to make their own assessments regarding their vertical and horizontal agreements/practices *vis-à-vis* the provisions of Articles 16 (1) and 16(4) of the Regulations.

These Guidelines set out on a case-by-case basis how the CCC will exercise its powers when assessing agreements between Undertakings, decisions of

association of Undertakings and concerted practice which may affect trade between Member States, and which restrict competition by object or effect.

b) **COMESA Guidelines on Abuse of Dominance Guidelines**

The aim of these Guidelines is to provide clarity, predictability and transparency as regards the general analytical framework of the CCC in determining cases of abuse of dominance and to help Undertakings better assess whether their behavior is likely to constitute an infringement of Article 18 (1) of the Regulations. The Guidelines apply to Undertakings which hold a dominant position on one or more relevant markets with emphasis on conduct that have an appreciable effect on trade between Member States.

The Guidelines are applied on a case-by-case basis and put emphasis on preventing dominant Undertakings from excluding their rivals by means other than competition that is fair or exploiting consumers in case of exploitative conduct.



*Stakeholder consultation meeting on restrictive business practices and abuse of dominance guidelines held in Cairo, Egypt in 2016*

## **RESTRICTIVE BUSINESS PRACTICES CASES HANDLED BY CCC FROM 2013- 2023**

The CCC, in its enforcement of Part 3 of the Regulations, can initiate its own investigations pursuant to Article 22 or can receive complaints pursuant to Article 21 of the Regulations. Part 3 provides for a timeframe within which investigations should be concluded by the CCC but also allows for the CCC to apply for extension of time from the Board of Commissioners. The Regulations also give the CCC powers to impose remedies and penalties for violation of the law. In the last ten years, the CCC has handled over 40 cases under Part 3 of the Regulations, including applications for authorization received under Article 20 of the Regulations. In some of these cases, the CCC has struck out offending clauses in agreements between companies in addition to imposing sweeping commitments to maintain and/or restore competition in the Common Market. Under Article 20 of the Regulations, parties to an agreement may apply to the CCC for authorization and review of their agreements to determine whether they are anti-competitive and where the latter is the case determine whether or not the anti-competitive agreements

have public benefits that outweigh their anti-competitive effects. Under Article 21, any person may request for an investigation where he or she has a reason to believe that the activity by an undertaking located in a Member State has the effect or is likely to have the effect of restricting competition in the Common Market. On the other hand, proceedings under Article 22 entail that the CCC may institute an investigation of an anti-competitive conduct on its own motion if it believes that the conduct has, or is likely to have, the effect of restricting competition within the Common Market. Considering the above, since its inception in 2013 the CCC has conducted the following investigations:

Figure 1: Anti-Competitive Business Practices by Relevant Provisions under Part 3 2013-2023

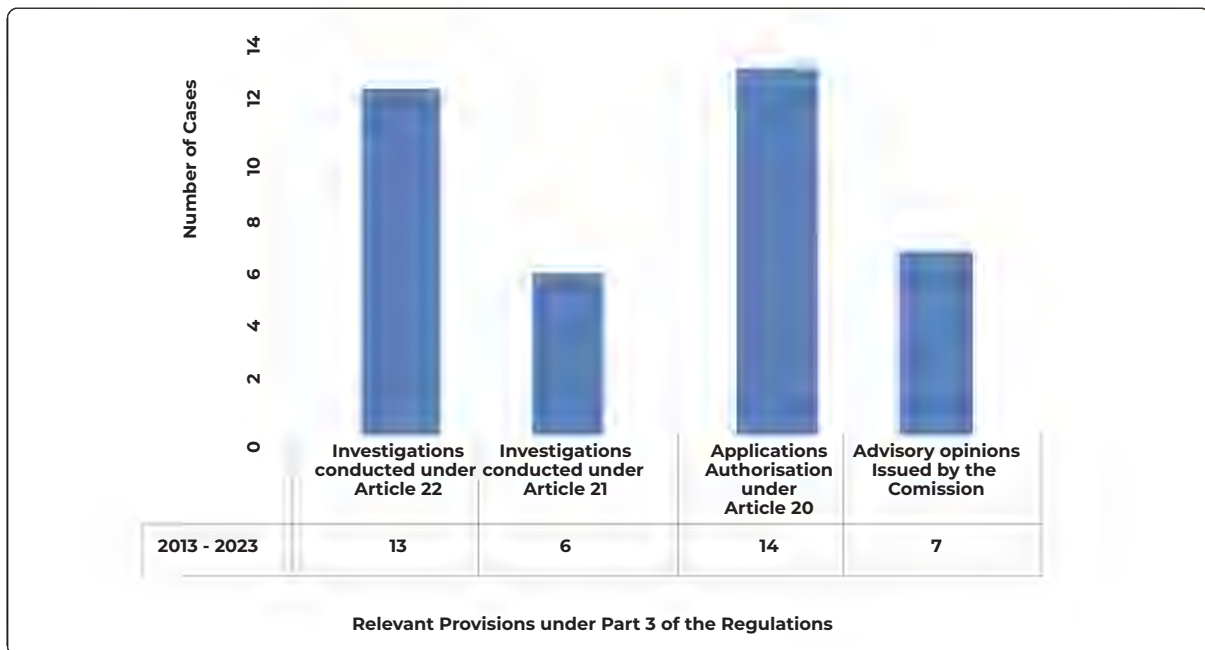


Figure 1 above shows that the CCC initiated thirteen (13) investigations pursuant to Article 22, six (6) investigations pursuant to Article 21, 14 applications for authorization of agreements pursuant to Article 20 of the Regulations. Further, CCC has provided seven (7) advisory opinions to Member States on competition matters.

The enforcement cases presented above covered several economic sub-sectors namely: Banking and Financial Services, Information Communication Technologies, Manufacturing, Pharmaceuticals, Beverag-

es, Transport, Storage & Logistics and wholesale & retail, Sport and Other subsectors as indicated in the pie-chart below:

Figure 2: Anti-Competition Business Practices by Economic Sector 2013-2023

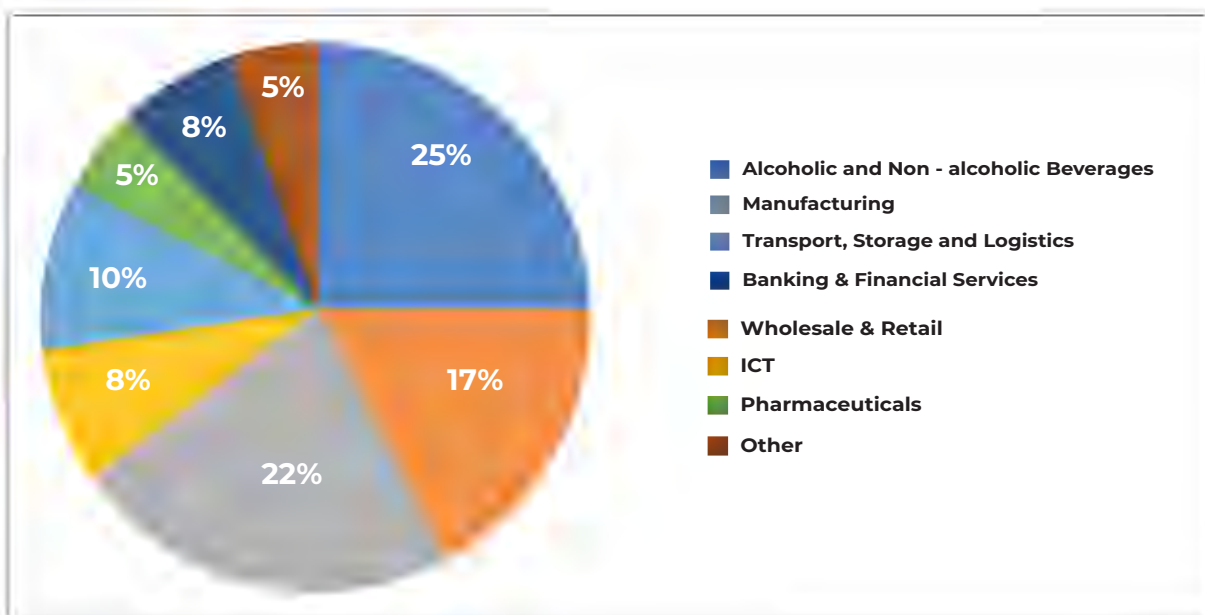


Figure 2 above shows that most restrictive business practices cases handled were in the beverages sector (25%), followed by manufacturing and wholesale & retail with 22% and 17% respectively.

Further, the investigations conducted affected the following Member States as represented in the bar chart below:

Figure 3: Member States affected by the Anti-Competitive Business Practices

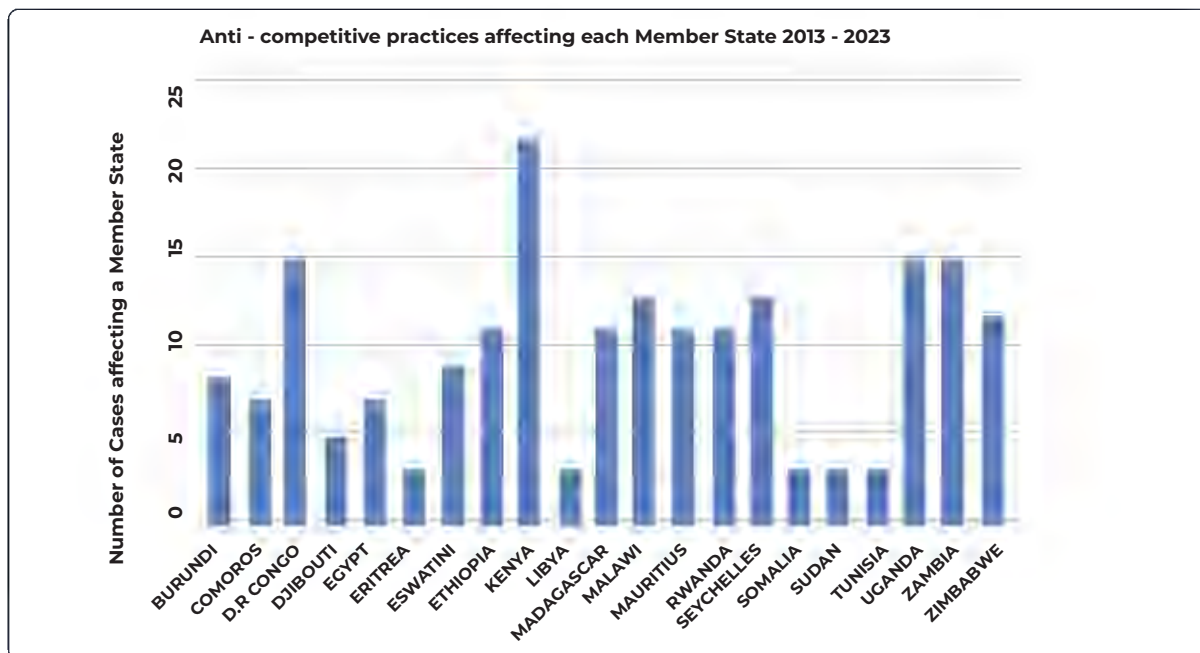


Figure 3 above shows that most of the investigations affected Kenya (22 cases) followed by Zambia, Uganda, and DRC with 15 cases each, Seychelles, and Malawi with 13 each, Zimbabwe (12) and Ethiopia, Madagascar, Mauritius, Rwanda with 11 cases each. Figure 3 further indicates that each Member State was affected by at least three investigations over the period of assessment.

## HIGHLIGHTS OF SOME OF THE CASES HANDLED UNDER RESTRICTIVE BUSINESS PRACTICES

### RESALE PRICE MAINTENANCE CONDUCT BY COCA COLA BEVERAGES AFRICA PROPRIETARY LIMITED

The CCC investigated Resale Price Maintenance (“RPM”) by Coca Cola Beverages Africa Proprietary Limited (CCBA). The investigation was to determine the effects of the RPM clauses identified in the distribution agreements concluded between CCBA and independent distributors in the Common Market. The investigation reviewed that the agreements stipulated the profit margins that could be enjoyed by distributors as well as the commission at different

levels of the market. The agreements also contained other vertical restraints which constrained the distributors’ conduct in the relevant markets.

The CCC was concerned that the stipulation of prices, margins, and commission to be implemented by the distributors amounted to RPM and may have anti-competitive effects in the market. The CCBA undertook to amend the respective agreements by removing the clauses which stipulated the prices and profit margins and to implement a compliance program designed to ensure that its employees, directors, and management did not engage in conduct that contravened the Regulations.



INVESTIGATION INTO AGREEMENTS BETWEEN THE CONFÉDÉRATION AFRICAINE DE FOOTBALL ("CAF"), LAGARDERE SPORTS SAS, ORANGE SA ("ORANGE") AND TOTAL SA ("TOTAL") RELATING TO THE COMMERCIALIZATION OF MARKETING RIGHTS FOR CAF COMPETITIONS

On 13<sup>th</sup> February 2017, the CCC commenced an investigation, pursuant to Article 22 of the Regulations, into possible violations of Article 16 and Article 18 of the Regulations by CAF. The case related to agreements pertaining to the commercialization of media and marketing rights for CAF competitions. On the 16<sup>th</sup> April 2019, following additional information gathered during the investigation, the CCC identified additional respondents, which led the CCC to issue Notices of Investigation to Lagardere Sports SAS (now called Sportfive), Orange and TOTAL in relation to Sponsorship agreements for the Marketing of CAF Football Events.

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, in addition TOTAL would benefit from an option right to

extend the duration of the agreement for a specified period.

The CCC 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.

Investigations under Article 22 of the Regulations do not follow the per se approach but rule of reason. Therefore, to prove an infringement in this matter, the precursor was to establish the existence of dominance in the defined relevant market either by CAF or Orange and/or Total.

The investigation established that neither Orange nor TOTAL as sponsors nor CAF as the rights owner would have a dominant position on the market for 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.

Investigations into the TOTAL and Orange agreements were closed on 10<sup>th</sup> March 2021.



INVESTIGATION INTO AGREEMENTS BETWEEN THE CONFÉDÉRATION AFRICAINE DE FOOTBALL ("CAF") AND LAGARDERE SPORTS SAS RELATING TO THE COMMERCIALIZATION OF MARKETING RIGHTS FOR CAF COMPETITIONS.

With regards to the case involving CAF and Lagardere Sports SAS (now called Sportfive EMEA), CCC was concerned with:

- a) Long Form Contract between CAF and Sportfive relating to the Marketing and Media Rights for CAF Competition, of 3<sup>rd</sup> October 2007 (the 2007 Agreement).
- b) Full Form Agreement between CAF and Sportfive relating to the Commercialisation of Commercial Rights of CAF competitions signed on 28<sup>th</sup> September 2016 but took effect retrospectively on 11<sup>th</sup> June 2015 (the 2015 Agreement).

The 2007 Agreement granted Sportfive the exclusive rights to commercialise media and marketing rights of the CAF competitions from 2008 to 2016 and covered: Africa Cup of Nations 2010, 2012, 2014 & 2016; CAF Champions' League from 2009 to 2016; Confederation Cup from 2008 to 2016 and the African Youth Championship 2009, 2011, 2013 & 2015. Through the 2015 Agreement, CAF appointed Sportfive exclusively and on a worldwide basis for purposes of commercialising all the commercial rights from 2015 to 2023 edition of the last phase of the CAF Confederation Cup.

The CCC's concerns with the agreements were as follows:

- a) Awarding of intermediation rights for CAF competitions in the absence of an open and competitive tender process;

- b) The long-term duration of the exclusive contracts for intermediation rights for CAF competitions; and
- c) The inclusion of the right of first refusal clause in the Agreements.

CAF submitted undertakings/commitments to the CCC to address the competition concerns. The CCC was satisfied that these undertakings/remedies addressed its concerns especially the agreement of interest which was worth over a billion United States Dollars was already terminated because of the CCC's investigations. The CCC therefore submitted these undertakings/remedies to the CID on 29<sup>th</sup> June 2021. In this matter, Sportfive was satisfied with the undertakings/commitments but on a no-admission of guilt basis. However, the CID rejected the submission that the matter be considered on a no-admission of guilt basis. The CID determined that the case should be heard on the merits as it was not convinced that the Regulations were not breached. The CID therefore decided that the parties to the Agreement should be afforded an opportunity to be heard within 30 days of receipt of the decision.

In July 2021, Sportfive and CAF submitted applications to the CID to reconsider its decision that the matter could not be heard on a no-admission of guilt basis and therefore, requested the CID to reconsider their decision. However, the CID rejected both applications stating that the applicants had not submitted any new information or evidence that would justify reconsidering its earlier decision. On 22 November 2021, CAF lodged an appeal against the decisions of the CID rejecting the commitments negotiated between CAF and Secretariat.

On 16 December 2022, the Appeals Board issued its ruling on the various grounds raised by CAF including; the rejection of the commitments, admission of guilt, assessment of the market test and proportion-

ality, absence of reasoning and quorum of the CID. The ruling was made by the Appeals Board as follows:-

- d) **With regards to the rejection of the undertakings**, the Appeals Board observed that there was no evidence that the CID carefully considered the CAF commitments, availed the parties an opportunity to be heard or provided guidance to the CCC on any possible variations to be made to the commitments as should have been the case pursuant to the Practice Note issued by the CID on 23 April 2021. The Appeals Board was of the view that the CID's decision to reject the commitments without hearing the parties or examining the sufficiency or proportionality of the undertakings, may set an undesirable precedent and compromises the CCC's ability to engage with parties in finding rapid resolution in future cases.
- e) **With regards to the CID's requirement for an admission of guilt by CAF**, the Appeals Board observed that the Regulations and international best practices did not require admission of guilt for the approval of commitments. The Appeals Board ruled that the CID committed an error of fact and law in rejecting the commitments on the basis that they were made in the absence of an admission of guilt.
- f) **With regards to the proportionality of the commitments**, the Appeals Board observed that the competition concerns and proposed recommendations were guided by interviews and research carried out by the CCC with various market players. Further, that the undertakings were the product of extensive negotiations between the CCC and CAF, and specifically addressed each alleged competition infringement identified in the report and that the 2015 Agreement was terminated by CAF upon, amongst others, the CCC's recommendations.
- g) **With regards to CAF's arguments on the absence of reasoning by the CID**, the Appeals Board concluded that the Decisions of the CID were not well reasoned and directed that going forward all CID decisions must contain the reasons for the decision and must substantially; set out the facts of the matter and the issue of determination including the historical background, the issues of determination, make reference to legal authorities and case reference where necessary and provide reasons/rationale on the findings or determination on each issue.

- h) **With regards to the Quorum for the September Hearing**: The Appeals Board ruled that the September decision was not invalid as it was issued in accordance with the terms of reference approved by the Board with regards to the constitution of the CID.

The Appeals Board concluded that the commitments were aligned with the information gathered by the CCC during its investigations and were the result of extensive consultations between the CCC and CAF to ensure effectiveness and feasibility of the implementation of the Commitments. The Appeals Board found that the Commitments by CAF were sufficient and proportionately addressed the identified competition concerns. With the ruling of the Appeals Board, the matter was concluded, and the Commitments were upheld as follows:

- a) To the alleged infringement that the intermediation rights for CAF competitions were awarded in the absence of an open and competitive tender process, CAF undertook to award all future exclusive agreements relating to the intermediation of commercial rights of CAF competitions within the Common Market based on an open, transparent, and non-discriminatory tender process, based on a set of objective criteria which shall be shared with the CCC prior to launching the tender. CAF shall continue to publish the results of all tender exercises conducted on its website, subject to redaction of confidential information.
- b) To the alleged infringement that the long-term duration of the exclusive contract for the award of intermediation rights for CAF competitions led to a significant lessening of competition, CAF undertook not to enter into new exclusive agreements for the intermediation of commercial rights of CAF competitions within the Common Market for a duration that exceeds four (4) years. Where CAF has justifiable grounds to enter into a future exclusive agreement for the intermediation of commercial rights of CAF competitions within the Common Market or a duration which exceeds a duration of four (4) years, CAF shall notify the CCC for authorisation of such agreement pursuant to Article 20 of the Regulations.
- c) To the alleged infringement that the inclusion of rights of first refusal in the agreements between CAF and Sportfive led to a significant lessening of competition, CAF undertook to eliminate all right of first refusal clauses, or similar preferential renewal clauses, from its existing and future exclusive agreements relating to the intermedi-



ation of commercial rights of CAF competition within the Common Market.

- d) With respect to monitoring compliance with the undertakings, CAF undertook to submit an annual compliance report to the CCC for a period of three years.

**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”) applied 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 CCC launched an inquiry to determine whether there are any restrictive clauses in the agreement, and whether there were any public benefits which outweigh the anti-competitive detriment of the agreement.

The CCC observed that the distribution agreements dealt primarily with logistics partners where the products were moved from wholesalers, or manufacturers to retail or other market outlets. The CCC defined the relevant market as that relating to distribution of clear beer at national level in the respective Member States of COMESA. It was observed that the beer market in Africa was monopolised by four (4) of the biggest players who held about 90% of the African beer market share namely, Heineken, Castel, Diageo, and AB InBev. The picture was the same in COMESA Member States. The CCC noted that contracts with restrictive clauses entered between AB InBev and distributors would contribute significantly to the overall foreclosure effect in the market. Thus, the CCC concluded that the nature of contracts in the market contributes to raising barriers to effective entry.

It was 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 CCC established that AB InBev took deliberate steps in its pricing policy to ensure that it

did not attract its distributors’ customers. The CCC engaged AB InBev on the likely harm of clauses in the distribution agreements and AB InBev submitted remedies to address the likely harm.

The CCC determined that the proposed undertakings made by AB InBev were satisfactory to remedy the likely harm. Therefore, the CCC authorised the distribution agreements subject to the fulfillment of the agreed undertakings. On 23<sup>rd</sup> June 2021, the CCC closed the matter, having been satisfied that AB InBev had complied with the undertakings as per the CCC’s decision of 03 April 2020. CCC, 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<sup>rd</sup> July 2018, Coca-Cola Beverages Africa (“CCBA”) applied 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 CCC 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 CCC defined the relevant markets as the national markets for the distribution of: Carbonated non-alcoholic beverages; non-carbonated non-alcoholic beverages; Carbonated water and non-carbonated water.

The CCC 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 CCC observed that the markets were fairly monopolised 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 CCC noted that the markets had seen entry of products over time, especially entry of 'local' brands to provide competition to the international brands.

The CCC'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 CCC engaged CCBA on the likely competition harm of the restrictive clauses in the distribution agreements; in response, CCBA submitted remedies to address the harm. The CCC determined that the proposed undertakings were satisfactory to remedy the likely harm. Therefore, on 3<sup>rd</sup> April 2020, CCC authorised the distribution agreements subject to the fulfillment of the agreed undertakings. On 23<sup>rd</sup> June 2021, the CCC closed the matter, having been satisfied that CCBA had complied with the undertakings as per the CCC's decision of 03 April 2020. The CCC, however, reserves the right to review and monitor the market even after closure of the case to ensure compliance by the parties.



## MERGERS AND ACQUISITIONS

Mergers and acquisitions are enforced pursuant to Part 4 of the Regulations. Parties to a notifiable merger must notify the CCC in writing of the proposed merger as soon as it is practicable but in no event later than 30 days of the parties' decision to merge. If merging parties do not comply with this requirement, the transaction will not have legal effect and no rights or obligations imposed on the participating parties can have legal effect in the Common Market. Parties to such transactions can also be fined up to 10% of their annual turnover generated in the Common Market. The CCC can also call for the notification of mergers that do not qualify as 'notifiable mergers' if it has reasons to believe that the transaction is likely to harm competition. The CCC assesses mergers within 120 days with a possibility of extending by another 30 days. Decisions made by the CCC include rejection, approval without conditions or approval with conditions. The Regulations also provide for a referral system where the whole or part of the merger transaction can be referred to the Member State/s if the circumstances at hand indicate that the merger if carried out, is likely to disproportionately reduce competition to a material extent in the Member State/s or any part of the Member State/s.

The CCC has been active in the assessment of cross-border mergers and acquisitions. From inception to date, it has assessed more than 367 merger cases. In the last ten years, the CCC has developed several instruments to ensure the effective assessment and review of mergers and acquisitions. The most important instruments developed by CCC include:

### a) **Rules on the Determination of Merger Notification Thresholds and Method of Calculation**

The CCC commenced operations with a zero-merger notification threshold regime. This was largely the case to enable the CCC to learn through actual enforcement and finally determine the optimal merger notification thresholds. Therefore, in March 2015, after two years of enforcement, the CCC amended the Rules on Merger Notification Thresholds and Method of Calculation. The Rules introduced comprehensive and meaningful merger notification thresholds which do not only state the thresholds but also provide precise guidance with regards to the calculation of merger notification thresholds.

### b) **Rules on Merger Filing Fees**

At Commencement, the merger filing fees were at 0.5% of the parties' combined turnover or asset value in the Common Market with a ceiling of US\$500,000. The merger filing fees were considered too high and a burden on the merging parties. The CCC after considering the complaints and the essence of merger filing fees, revised the merger filing fees downwards to 0.1% of the parties' combined turnover or value of assets in the Common Market with a cap of US\$200,000, only two years after commencement of operations. The CCC's assessment also revealed that the reduction in merger filing fees led to reduction in the costs associated with merging in the Common Market. This also made the CCC compare well with jurisdictions that charged merger filing fees the world over.

### c) **Rules on the Sharing of Merger Filing Fees with the Member States**

The merger filing fees paid to the CCC are shared with the Member States such that the CCC retains 50% while the remaining 50% is shared among the affected Member States on a pro-rata basis, i.e., based on the amount of turnover or asset value held in a particular Member State by the merging parties. The amended Rules on the Sharing of merger filing fees introduced two important additions. The first addition was that the Rules obliged Member States to use their share of the merger filing fees to develop and enhance the capacity of their national competition authorities. This is important to ensure that Member States have robust and effective competition authorities. A regional competition authority can only be effective if national competition authorities are effective as they work closely with the CCC in ensuring competitive markets in the Common Market. The second addition ensured that where national competition authorities were calling for the notification of regional mergers and charged filing fees, they would not be eligible to receive part of the merger fee paid to the CCC.

### d) **COMESA Merger Assessment Guidelines**

The Guidelines were promulgated in October 2014 over a year after the CCC commenced its operations. The Guidelines were meant to provide certainty to businesses on the CCC's interpretation of the merger provisions as stipulated under part 4 of the Regulations. The Guidelines also guide businesses on

the factors that the CCC considers when assessing merger transactions. In addition, the Guidelines give a guide on how the CCC interacts with the National Competition Authorities.

e) **Various Practice Notes and Advisory Opinions**

In addition to the Rules and Guidelines, the CCC from time- to- time issues various practice notes and advisory opinions to the stakeholders whenever a unique situation arises which needs clarification. For example, the CCC issued a practice note regarding its enforcement approach during the COVID 19 pandemic to ensure that parties were guided on the

procedures that it was following to assist the parties meet notification requirements. This relieved the parties of potential fines for failing to comply with certain obligations due to circumstances beyond their control and ensured CCC remained efficient as it adjusted to new conditions.

**OVERVIEW OF MERGER ENFORCEMENT OF CCC FROM 2013 TO 2023**

Below are graphical presentations of the merger cases the CCC has handled from 2013 – 2023.

Figure 4: Number of Mergers Assessed by Type from 2013-2023

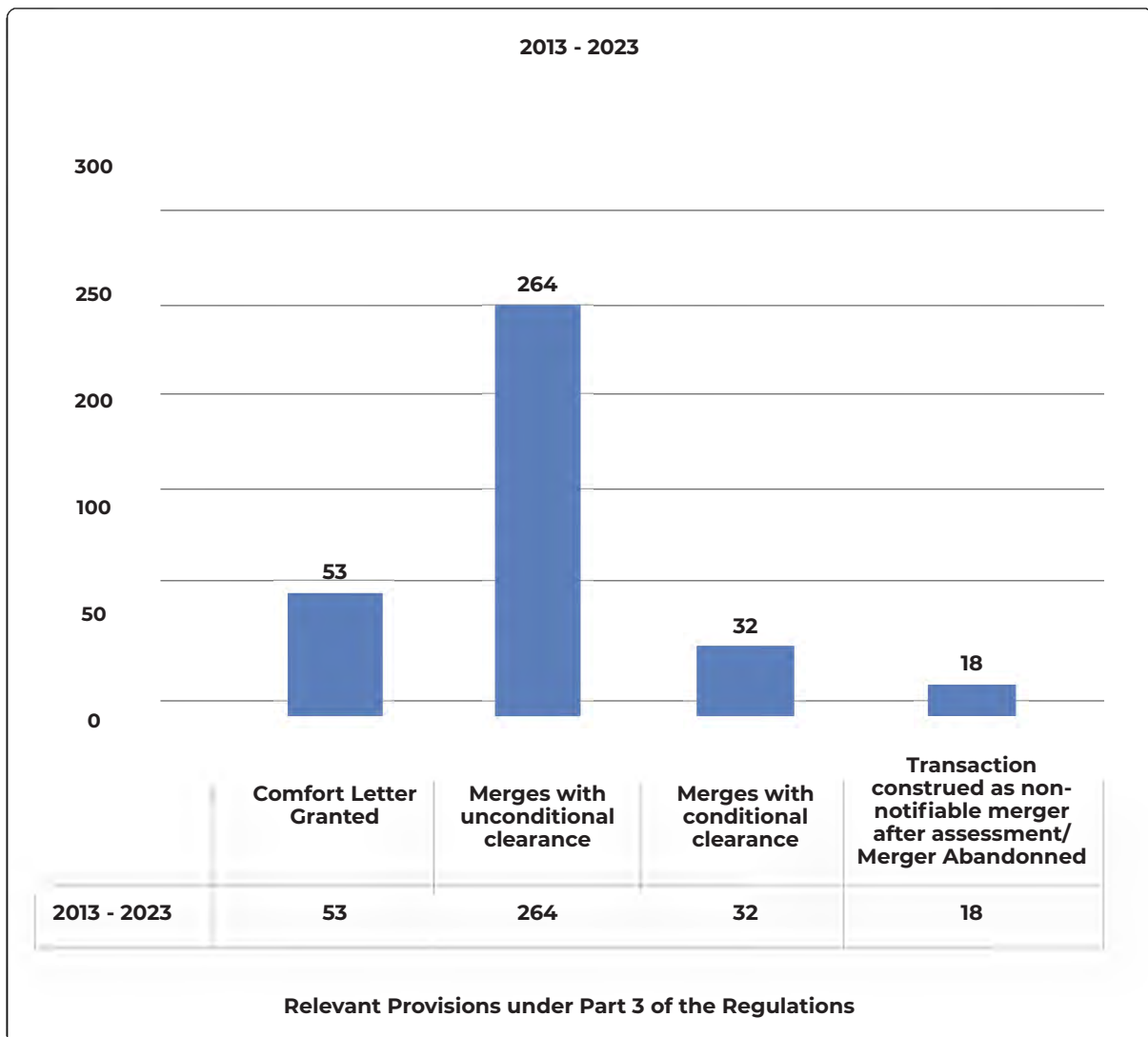


Figure 4 above shows that the CCC has handled about 367 mergers cases from 2013 to the first quarter of 2023. It can be noted from the figure that the CCC has approved 32 merger transactions subject to parties' compliance with set conditions while 264 were approved without conditions.

## MERGER ASSESSMENT OVER THE YEARS UP TO THE FIRST QUARTER OF 2023 (2013 – 2023)

Figure 5: Merger Cases assessed by CCC on a yearly basis.

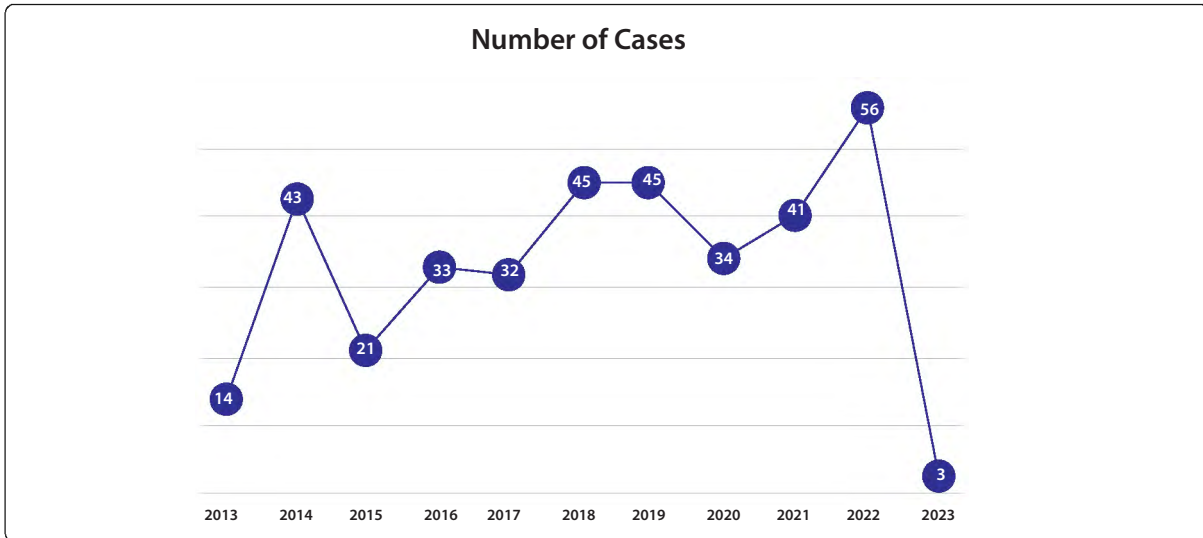


Figure 5 above shows mergers and acquisitions cases assessed by the CCC yearly from 2013 to the first quarter of 2023. From the figure, the lowest number of cases were received in 2013 the year CCC started enforcing the law. There was also a notable reduction in the number of merger cases in 2020 due to COVID-19 and the cases have been on the rise after that with the highest number being in 2022 over the period of assessment.

## MERGER ASSESSMENT BY ECONOMIC SECTOR

Figure 6: Mergers Assessed by Economic Sector from 2013 -2023

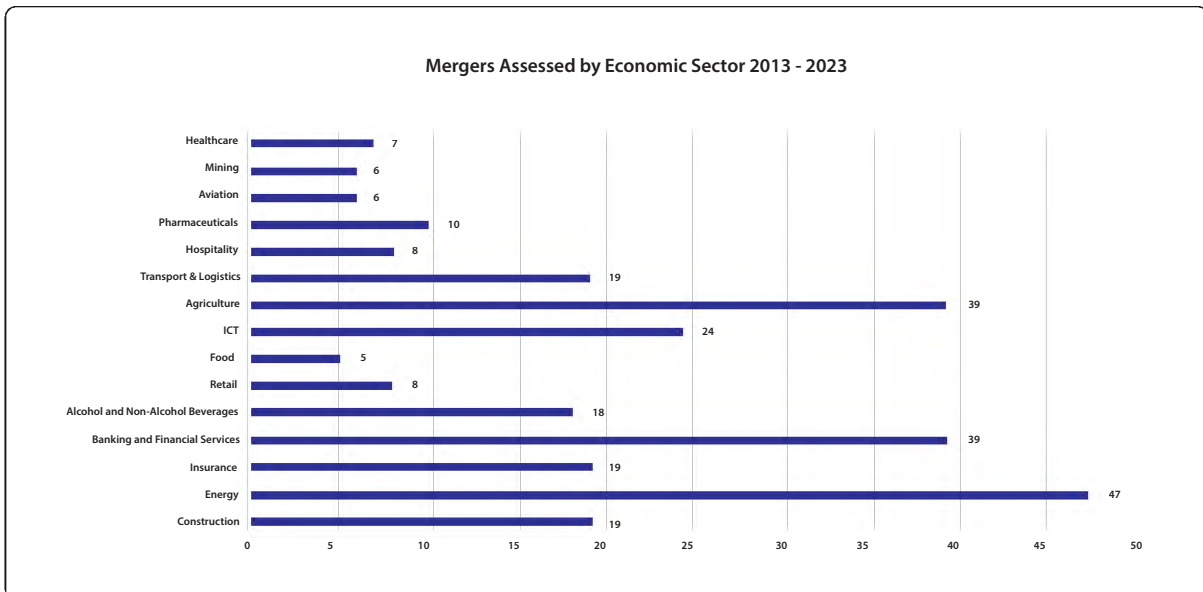


Figure 6 above shows the mergers and acquisitions assessed by the CCC by selected Economic Sector from 2013 to 2023. The largest number of mergers were in the energy sector (47) followed by banking and financial services and the agriculture sector with 39 cases each while the least number of mergers were received in the food sector (5).

## MERGER ASSESSMENT PER MEMBER STATE (2013 – 2023)

Figure 7: Number Of Mergers By Affected Member State, 2013-2023

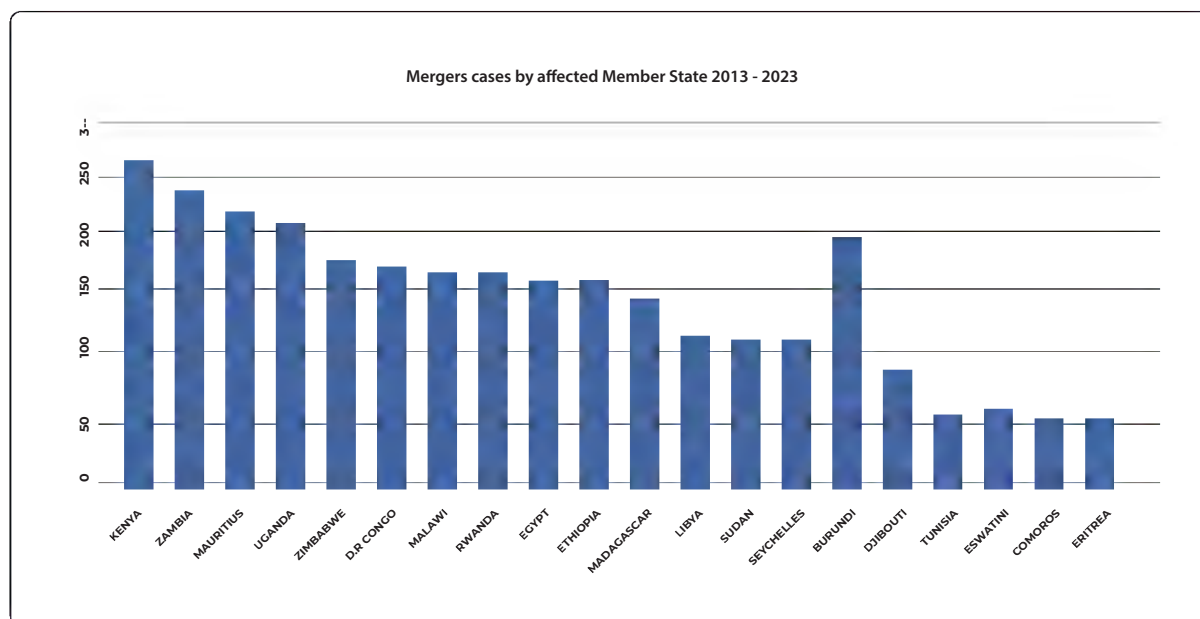


Figure 7 above shows the mergers by affected Member State. Kenya was the most affected among the Member States with 268 mergers, followed by Zambia and Mauritius with 242 and 229 mergers respectively while Eritrea was the least affected with 52 mergers.

## HIGHLIGHTS OF SOME OF THE MERGER CASES

Below are some of the merger cases investigated by the CCC in the period under review:

MERGER INVOLVING HEINEKEN INTERNATIONAL B.V., NAMIBIA BREWERIES LIMITED AND DISTELL GROUP HOLDINGS LIMITED

On 8 July 2022, the CCC received notification of the merger involving Heineken International B.V. (“Heineken”), and Namibia Breweries Limited (“NBL”) and Distell Group Holdings Limited (“Distell”). The transaction pertained to the acquisition by Heineken of a further interest in NBL and the combination of Heineken’s current South African business (along with its increased interest in NBL)

and Distell’s flavoured alcoholic beverages, wine, and spirits businesses.

Assessment focused on the clear beer and ciders markets. Specifically, in Eswatini, Zambia, and Zimbabwe, the transaction would have resulted in complete elimination of competition in the ciders market, as the merging parties (Heineken and Distell) were the only two suppliers of ciders. Whilst in Zambia and Zimbabwe, Heineken’s brand accounted for a relatively small share of the market, its presence on the market did offer some alternative to consumers to the Distell brands. There was thus need to prevent any further concentration or complete elimination of competition in markets which are heavily concentrated. In Eswatini, the merging parties were both effective rivals in the ciders markets and the transaction would thus eliminate all effective competition, to the detriment of consumers. The CID approved the merger subject to a divestiture of Heineken’s Strong-

bow brand that would return competition in the market to the level prevailing pre-merger in the ciders market. For the divestiture to be effective, the parties will need to demonstrate that the identified buyer is capable of ensuring continued sales of the brand in Eswatini, Zambia and Zimbabwe for the foreseeable future and do not have any structural relationship with the merging parties.

Having regard to the high market strength of the Distell brands, there was also a concern that the merged entity could have had the incentive and the ability to condition the purchase of Distell's best-selling cider brands upon the purchase of Heineken's less popular brands in the beer market in Eswatini, Zambia and Zimbabwe through their distributors. In this regard, the CID approved the commitment provided by the merging parties that for a period of five years from the approval of the transaction, there would be no requirement on distributors seeking to purchase Distell's cider brands to also purchase Heineken's beers in Eswatini, Zambia and Zimbabwe.

In the beer markets, the CID was concerned about a potential negative impact of the transaction on the sustainability of the local distribution system in Zimbabwe, but was also concerned about that an obligation on the parties to retain existing distributors, without any further criteria, could result in ineffective competition between distributors, inefficient distribution services which may impact consumers and may impede entry by new local competitors into the existing distribution markets. The CID recognised the need to balance the public interest considerations against the competition effects. Having regard to the above, the CID approved the commitments provided by the parties, inter alia, that they would comply with their obligations under the existing distribution agreements, and that they will submit a list of objective criteria pursuant to which they shall renew contracts with existing local distributors and/or appoint new local distributors.

The assessment also revealed potential coordinated concerns in Zimbabwe between Heineken and local beer manufacturer Delta, however the CID was satisfied that the risk was remote and thus a behavioural remedy regulating the participation of the Heineken director on the board of Afdis was approved as part of the merger clearance for it was deemed to proportionately address the potential risk of collusion.



MERGER INVOLVING B.G.I ETHIOPIA PRIVATE LIMITED ("BGI ETHIOPIA") AS THE ACQUIRING UNDERTAKING AND META ABO BREWERY SHARE COMPANY ("META ABO")

In March 2022, the CCC considered the merger between BGI Ethiopia a subsidiary of Brasseries Internationales Holdings ("**BIH**"), the holding company of the Castel Group and Meta Abo Brewery Share Company. The Castel Group developed its activities in two main directions, the wine business, and the beer, soft drink, and water business on the other hand. The products supplied by BGI Ethiopia in the alcoholic segment is beer and in the non-alcoholic segment is malt-based beverages, sold under the brand name of Sen'q. Meta Abo was a subsidiary of Diageo Plc ("**Diageo**"), a UK-headquartered global manufacturer and supplier of alcoholic beverages across spirits and beer. Meta Abo was established in Ethiopia in 2013 and operated a brewery business that produces and sells beer and non-alcoholic refreshment beverages (i.e., Malta) in Ethiopia only.

While the CCC concluded that the transaction would not raise significant competition concerns, having regard to the small market position of the acquirer, it was concerned that there is a risk that post-merger, the products of the target may be discontinued by the acquirer. Further, there was a risk that post-merger, the quality, and variety of the products may be negatively affected. Further, the CCC also took into consideration concerns raised by stakeholders in Ethiopia on the risk of job losses post-merger.

The CID therefore approved this transaction subject to the following commitments by the Merged Entity:

- The Merged Entity will continue to build capacity of the current employees of Meta Abo Brewery business in key operations of the company.
- For a period of 24 months, from the date of approval of the transaction by the CID, the Merged Entity will not terminate any employment contract of Meta Abo Brewery business because of the merger, except for positions at Senior Management Level. Termination of contract does not include:
  - a) voluntary retrenchment and/or voluntary separation arrangements;
  - b) separation upon the agreement with employees;
  - c) voluntary early retirement offers;
  - d) termination for unreasonable refusals to be redeployed;
  - e) termination lawfully effected for operational requirements unrelated to the Transaction; and
  - f) terminations in the ordinary course of business, including but not limited to, dismissals because of misconduct or poor performance.
  - g) There shall be no merger-specific termination of contracts for suppliers of the Meta Abo Brewery business, unless for commercial reasons it is unwarranted or reasonably unjustifiable to maintain such contracts.
  - h) The Meta brand or the Malta Guinness brand of the Meta Abo Brewery business should not, as a direct result of this transaction, be discontinued and that the quality of the products should remain the same, unless (i) a significant deterioration in the market conditions occurs, or (ii) if the volume of, or demand for, the Meta brand or the Malta Guinness brand declines or remains unduly low or (iii) for commercial reasons that are warranted or reasonably justifiable.

MERGER INVOLVING COCA-COLA SABCO (EAST AFRICA) LIMITED ("CCSEA") AS THE ACQUIRING UNDERTAKING AND CASTEL MALAWI LIMITED ("CASTEL MALAWI") AS THE TARGET UNDERTAKING.

On 14 March 2022, the CCC received a merger application involving Coca-Cola Sabco (East Africa) Limited ("CCSEA") as the acquiring undertaking and

Castel Malawi Limited ("Castel Malawi") as the target undertaking. CCSEA is a wholly owned subsidiary of Coca-Cola Beverages Africa Proprietary Limited ("**CCBA**"), in turn controlled by The Coca-Cola Company (TCCC). CCBA operates Coca-Cola bottling operations throughout Africa. CCBA bottles and distributes, *inter alia*, the following TCCC-branded NARTD products: Coca-Cola, Sprite, Fanta, Stoney, Sparletta, Schweppes, Powerade, Bonaqua, Play and Monster, Appletiser, Minute Maid, and Fuze Tea. The Acquiring Group also supplied Coca-Cola concentrates to all TCCC authorized bottlers in all COMESA Member States. The Target Business was part of the TCCC system and produces bottles, and distributed TCCC products. In addition to TCCC products, the Target Business also produced and supplied Castel Malawi Sobo brand range, which included the Sobo carbonated soft-drinks range, as well as cordial, and its Quench bottled water brand.

The CCC noted that both CCBA and the Target business were engaged in the supply of ready to drink non-alcoholic products. The CCC established that the relevant market was replete with a vast number of players and thus concluded that the merged entity would still be constrained by the other players which would thwart any attempt on its part to engage in unilateral conduct.

However, the CCC established that the transaction was likely to negatively affect public interest. CCC noted the importance of the products under consideration in maintaining competition on the Malawian Market and their historical value to Malawian consumers and was concerned there was a risk that post-merger, the Sobo Squash brand, and the carbonated soft drinks under the Sobo brands that the Target Business manufactured and supplied could be discontinued by the Acquiring Group. Such a development may negatively affect the interest of consumers regarding the variety of such products.

The CID therefore approved this transaction on 9 July 2022 based on the following undertakings submitted by the parties:

- CCSEA commits that the Sobo branded carbonated soft-drinks and cordials sold under the Sobo Squash brand should not be discontinued as a direct result of the merger and that the quality should remain the same or even be improved. This undertaking shall be effective for a period of five (5) years from the date of approval of the transaction by the Committee Responsible for Initial Determinations, unless (i) a significant deterioration in the market conditions occur or (ii) if



the volume of, or demand for, a Sobo product or brand declines or remains unduly low such that it is unwarranted or reasonably unjustifiable to continue with this undertaking with respect to a particular Sobo product before the expiration of 5 years;

- After 5 years, CCC shall review the relevance of agreeing the continuation of the relevant brands and products in line with these undertakings and CCSEA shall engage with CCC in good faith in that regard.

THE ACQUISITION OF 100% SHAREHOLDING IN EATON TOWERS HOLDINGS LIMITED BY ATC HESTON B.V.

The transaction was approved with undertakings in December 2020 and both parties to the merger were active in the telecommunication sector in particular, the leasing of antenna space on towers and provision of ancillary services and were active in Kenya and Uganda. In its investigation, CCC found that that the merger was horizontal and would lead to the increase in market concentration in both Kenya and Uganda with the merged entity emerging as a dominant player in Uganda holding a market share of 80%. The CCC therefore concluded that the merger would lead to market foreclosure through unilateral conduct in the market for the leasing of antenna space and provision of ancillary services. The investigation further noted ATC had equity interests in Mobile Telephone Networks (Netherlands) B.V. which was also operation in Uganda in the provision of telecommunications services as such, a customer to the parties. The CCC's concern was that the merged entity, being the provider of upstream tower services, would have incentive to discriminate between its affiliated companies and third-party customers.

In order to resolve the identified concerns, the CID approved the transaction in December 2020 with undertakings/commitments submitted by the parties. Among the undertakings/commitments included a divestiture whereby ATC committed to acquire a 49% shareholding held by MTN in ATC Uganda. The undertaking removed the structural links causing the foreclosure concerns while ensuring that the downstream market participants could benefit from the efficiencies to be brought about by the merger, and promoting a fair investment climate that would continue to encourage players to invest and expand

beyond borders. Further, there was a requirement for the parties to submit an objective criterion for engagement with customers in Uganda.



THE ACQUISITION OF ORANGE/MTN WHICH INVOLVED THE CREATION OF A JOINT VENTURE PLATFORM BETWEEN ORANGE S.A. AND MTN GROUP LIMITED

The transaction occurred in the telecommunication sector and was approved with conditions on 19<sup>th</sup> June 2019. The joint venture was aimed at creating and developing a technical platform to provide technical interoperability services for mobile money services in Africa in the short to medium term, but with the objective to extend its geographic reach in the long term. An expected benefit of the joint venture was the enabling of massive digitization of payments in Africa thus allowing customers to pay or transfer money to other customers or merchants in Africa, without borders. The parties to the transaction had operations in the Democratic Republic of Congo, Egypt, Eswatini, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Tunisia, Uganda, and Zambia. In its investigation, the CCC concluded that the merger was likely to lead to foreclosure in the upstream market for provision of interoperability services to mobile financial service providers, given both Orange and MTN's presence at downstream level in the provision of mobile financial services.

The CCC concluded that the parties could have an incentive to offer preferential terms and conditions to their affiliate companies compared to third party mobile financial services providers. The CCC also identified concerns that since Orange and MTN would have their representatives in the Board of the joint venture, there would be a risk of collusion in the sharing of sensitive information of competitors. Given the potential benefits that were going to be realized from

the merger in accelerating digitalization of financial transactions across borders, the CID approved the merger based on behavioural undertakings from the parties aimed at imposing a commitment on the parties to act in a manner that would prevent the occurrence of the competitive harm identified.

THE PROPOSED MERGER BETWEEN AUGUSTA ACQUISITION B.V. AND CAREEM INC. (THE UBER/CAREEM MERGER)

The merger involved the market for the provision of app-hailed passenger vehicles services on the rider and driver sides in Egypt which was approved on 22nd December 2019. The parties to the merger had operations in Egypt, Kenya, and Sudan. In its investigation, the CCC concluded that the merger would result into a concentration of the relevant market leading to the parties being the only effective players. It was also observed that pre-merger, the merging parties were the market leaders in the relevant market such that the merger would result in a strengthening of their dominant positions. In order to address the identified concerns, the merger was approved with undertakings submitted by the parties.



THE ACQUISITION BY MARINVEST S.R.L. ("MARINVEST") OF A 49% STAKE IN IGNAZIO MESSINA & C. S.P.A. ("IM") AND 52% STAKE IN RORO ITALIA S.R.L.

The transaction involved parties that were involved in the provision of container-liner services within several trade routes and was approved with conditions on 22 December 2019. The CCC observed that the relevant markets were moderately to highly concentrated and the merging parties enjoyed significant market shares on some of the relevant trade routes, notably the East Africa to South Africa (EAF – SAF) and South Africa to East Africa (SAF – EAF) routes where the merging parties were the two largest players pre-merger. CCC was concerned that due to the market share accretion, the transaction would lead to unilateral effects on the SAF-EAF and EAF-SAF routes. The CCC determined that a divestment of IM trade on selected routes affecting the Common Market would not be a practical remedy as the affected routes were mostly trans-shipment routes and thus the assets (vessels) used by IM on these routes were used on other connecting routes outside the Common Market and it would not be commercially viable for the merging parties to allocate separate vessels for the affected route. The CCC accepted behavioural undertakings from the merging parties as a viable alternative, which included commitments that IM would continue to operate on these routes independently of the acquiring group post-merger, through ring-fencing of their East African operations. The undertaking ensured that trade between Member States would not be restricted as it requires the parties to continue making independent competitive decisions on the markets. Absent the undertaking, it was possible that the merger could have been prohibited by the CCC. The CCC however considered that it was necessary to find a solution to allow the merger to go through as it would bring about benefits for regional integration in terms of consolidation in a sector characterised by overcapacity and high shipping costs.



THE ACQUISITION BY RUBIS CARIBBEAN HOLDINGS INC. ("RUBIS") OF 100% OF THE ISSUED SHARE CAPITAL OF PROGAL PETROLEUM LIMITED AND GALANA MADAGASCAR HOLDING LIMITED ("GALANA").

The transaction which involved acquisition of a retail distributor of LPG in Madagascar, Galana, by the sole importer and wholesaler of LPG in Madagascar, Rubis, was approved on 18 March 2018. The merging parties had significant market shares in their respective relevant markets which were the wholesale supply of bulk and cylinder LPG in Madagascar as well as the retail supply of bulk and cylinder LPG in Madagascar. Other affected Member States were Djibouti, Eswatini and Comoros. The CCC had concerns that post-merger, Rubis and Galana would be able to behave to an appreciable extent independently on the markets and could have an incentive to foreclose other customers of LPG. The merging parties committed to continue to supply LPG to its existing customers on a non-discriminatory basis and on similar terms and conditions as it did pre-merger (subject to any changes in economic circumstances unrelated to the transaction), for a period of four years starting from the date of the merger decision. The CCC therefore approved the merger based on the undertakings provided by the merging parties. While this undertaking pertained solely to the Malagasy market, it is important to recognize that the regional integration agenda can only be realized to its fullest when competitive conditions prevail in all Member States. Regional integration is concerned not only with the free flow of goods, services, and people, but also capital. It is therefore necessary to ensure that markets at national level remain competitive, particularly in sectors like petroleum which attract significant foreign investment.



MERGER INVOLVING HOLCIM LIMITED ("HOLCIM") AND LAFARGE S.A. ("LAFARGE").

The transaction involved parties that were both active in the manufacture and distribution of cement and was approved without conditions in the affected countries except for Mauritius on 18 November 2014. Holcim had operations in the Democratic Republic of Congo, Egypt, Eritrea, Madagascar, and Mauritius while Lafarge had operations in Djibouti, Egypt, Kenya, Libya, Madagascar, Mauritius, Malawi, Rwanda, Seychelles, Uganda, Zambia, and Zimbabwe. CCC established that cement is a product that is costly to transport over land. Consequently, the radius within which a typical cement plant is competitive extends for no more than 300 kilometres for the most common types of cement. The location of a cement plant and the cement transportation cost through the distribution networks significantly affects the plant's competitiveness. The CCC's assessment

therefore was that the markets for cement were national and in certain cases narrower, considering the distances of transportation. In its assessment of the market structure, the CCC established that in Mauritius, the merger would lead to market accretion and strengthen the position of dominance held by the two merging parties. After the transaction, Lafarge and Holcim held a market share of 100%. This implicitly meant that the merged entity would have complete control of the market.

With high barriers to entry and erratic import competition (at less than 1%), the likelihood of the merged entity engaging in anti-competitive practices like excessive pricing was high. The CCC's position therefore was that this merger should be rejected in this relevant geographical market unless the parties provide verifiable undertakings to address the CCC's concerns. The Competition Commission of Mauritius raised similar concerns and requested for a referral on 1<sup>st</sup> September 2014. The referral was granted on 22<sup>nd</sup> September 2014, having met the criteria established under the Regulations and the Merger Assessment Guidelines. Notably, (i) the affected markets were national in scope and the transaction would disproportionately affect competition in the Mauritian territory relative to the rest of the Common Market; and (ii) the national competition authority of Mauritius was adequately equipped to address the competition concerns that would arise in the Mauritian market. CCC issued an unconditional clearance for the merger in the Common Market except for Mauritius. The national competition authority in Mauritius granted clearance following divestiture commitments from the merging parties for the Mauritian markets.



#### JOINT VENTURE INVOLVING SAS SHIPPING AGENCIES SERVICES SÀRL, KENYA PORTS AUTHORITY AND KENYA NATIONAL SHIPPING LINES LIMITED

The transaction involved the joint venture involving SAS Shipping Agencies Sarl (SAS) a wholly owned subsidiary of MSC Mediterranean Shipping Company SA (MSC), Kenya Ports Authority (KPA) and Kenya National Shipping Lines Limited (KNSL) in the markets for container terminal operation and freight forwarding services as well as container liner shipping services in the Common Market which was considered by the CID on 10 May 2022. The Transaction would create vertical links between the parties' operations in the upstream markets for container terminal services, downstream market for container liner shipping services; and the downstream market for inland transportation services and freight forwarding services.

The CCC identified concerns in terms of (i) foreclosure access to the port, given that Container Terminal 2 (CT2) which would be operated by KNSL is an important facility providing access to the East African market; (ii) access to confidential information which would lead to substantial lessening of competition on the markets; (iii) the vertical links would increase the risk of discrimination in the access to container terminal services by KNSL in favour of itself and its shareholders which would likely result in foreclosure concerns i.e., limiting the establishment or expansion of other container shipping liners.

However, the parties were granted conditional clearance, following several undertakings submitted by the merging parties in relation to their post-merger market behaviour which included that the KNSL Shipping Lines would not exclusively allocate the capacity of CT2 to one container liner shipping company and shall operate it under a common user facility principle. This undertaking would apply on condition that:

- the operation under a common user facility principle remains compatible with the stated public policy objectives of the joint venture namely, increasing gateway and trans-shipment traffic to and productivity of CT2.
- KNSL shall develop and/or establish objective, fair, and transparent procedures for accessing the CT2. Post-merger, where the CCC upon review of the market situation concludes that such procedures are not objective, fair, and transpar-

- ent, it reserves the right to use other provisions under the Regulations to resolve the matter.
- The tariffs to be applied by KNSL for container terminal services in CT2 would be the tariffs reflected in the KPA Tariff Book, to the extent required by the applicable Kenyan law or otherwise on non-discriminatory terms. Where KNSL is providing discounts and rebates to its customers on its tariffs or on any other charges for its services, this should be done on non-discriminatory terms. KNSL shall develop and/or establish objective, fair, and transparent procedures for providing discounts and rebates.
  - Employees of KNSL shall not have dual roles within KNSL and MSC simultaneously.
  - The Senior Positions at KNSL such as General Managers, Sales Managers, General Counsel, Chief Financial Officer, and Chief Operations Officer shall not be held by someone who has held that position in MSC during a 1-year period preceding the CCC's approval of the merger.
  - No director serving on the board of directors of MSC shall simultaneously serve as a director on the board of directors of KNSL. No existing director of MSC can serve the Board of KNSL prior to three years after the end of expiry of his directorship at MSC.
  - Commercially sensitive information of KNSL's customers, other than MSC, such as competing container liner shipping companies, freight forwarders and providers of inland transportation (which shall include recent past, current, and future price information, cost information, information about future product offerings, and non-public information of such customers of KNSL) will not be exchanged under any circumstances between KNSL and its shareholders. The exchange of non-commercially sensitive information by KNSL with its shareholders shall be solely for purposes of monitoring the performance and operational efficiency of KNSL.
  - The IT operating system to be used by KNSL post transaction should be distinct, separate, and not connected to the IT systems of MSC or any of its subsidiaries, such that the computer systems of KNSL cannot have any shared information exchange interface, except in MSC's capacity as a customer of KNSL to enable data transfers of MSC cargo only.
  - There will be no merger-specific retrenchments at KNSL.
  - Contracts of service providers engaged by KPA at Container Terminal 2 will be maintained by KNSL, subject to compliance with the public procurement laws of Kenya.

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## IMPOSITION OF FINES BY CCC WITH REGARD TO MERGER VIOLATIONS UNDER MERGERS AND ACQUISITIONS

### PROPOSED ACQUISITION OF HELIOS TOWERS LTD OF SHARES OF MADAGASCAR TOWERS S.A AND MALAWI TOWERS LIMITED

On 3<sup>rd</sup> September 2021, the CCC 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 30 days of the parties' decision to merge pursuant to Article 24 (1) of the Regulations. The CCC specifically noted that the parties to the merger signed the Sale

and Purchase Agreement on 23 March 2021 but only notified the transaction on 2 July 2021 after CCC intervened on 4 May 2021. Therefore, the parties to the merger were fined USD 102, 101.765.

### MERGER INVOLVING EATON TOWERS HOLDINGS LIMITED AND ATC HESTON B.V

The acquisition of 100% shareholding in Eaton Towers Holdings Limited by ATC Heston B.V was approved with undertakings submitted by the par-

ties 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 develop an objective criterion to use when determining the Mobile Network Operators, it leases space to. The criterion was to be submitted to the CCC for consideration by 22 January 2020 but was only submitted on 29 October 2020. The CCC noted that ATC apologised for not submitting the objective criteria in time, however, it was also noted that they did not request for an extension of time.

The CCC noted that ATC's failure to comply with the CID decision was a disregard to the law and therefore recommended for them to be fined by the CID an amount of USD 96,614.252. Upon review of the fine, the CID rejected the Secretariat's recommendation on grounds that it was not proportionate to the infringement and that it had exhibited procrastination and negligence in addressing the matter. In its recommendation, the CCC 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 CCC for consideration. The CID observed that this was not an aggravating circumstance as the CCC was aware of the non-compliance immediately it occurred and had to wait for 10 months before acting. The CID therefore reduced the fine to USD 67,629.98. The fine was imposed by the CID in December 2021.

### MERGER INVOLVING THE PROPOSED ACQUISITION OF 49% SHARES BY SABIC AGRI-NUTRIENTS COMPANY IN ETG INPUTS HOLDCO LIMITED

On 7 September 2022, the CCC received notification of the merger involving SABIC Agri-Nutrients Company and ETG Inputs Holdco Limited. No competition concerns were identified, and the merger was approved unconditionally. However, the parties were fined USD 314,913.56 for failure to notify the merger within the period provided for in the Regulations. The Regulations provide that the parties to a notifiable merger (defined by prescribed thresholds) are required to notify their transaction to the CCC within 30 days of a decision to merge. In practice, the CCC has relaxed this obligation by requiring parties to inform the CCC within the 30 days period, whilst the merger filing can be subsequently completed. In this case, the parties failed to inform and notify the CCC of the transaction. The merger was discovered through the CCC's internal intelligence. The parties contended that a decision to merge was not made in view of a condition precedent required for the transaction to proceed. The CID's decision confirmed that the existence of condition precedent do not affect the decision to merge and do not relieve parties' obligation to notify CCC within the prescribed timelines.

## CONSUMER PROTECTION

Under Part 5 of the Regulations, the CCC is mandated to protect consumers against offensive conduct by market actors and therefore enhance the welfare of consumers in the Common Market. Since inception, the CCC has dealt with at least 44 consumer cases. To facilitate for the effective enforcement of consumer protection under the Regulations and to guarantee smooth implementation, the CCC in the first quarter of 2020 initiated a mapping of the state of consumer protection in the Common Market. The exercise was aimed at identifying the existing laws, institutions enforcing them and the relevant consumer protection associations in the Member States.

Following the exercise, the CCC took steps to operationalize the COMESA Consumer Protection Committee in 2021. The Committee comprises of

Consumer Agencies from all the Member States and some Consumer Associations. The key focus and deliverables of the Committee is sharing information and experiences on topical consumer issues including those relating to product safety and information standards in the Common Market. The Committee is also expected to set up a regional early warning system and recall network for dangerous goods.

In addition, the CCC recognizes the need to strengthen enforcement of the consumer protection provisions of the Regulations and align them with international best practices. Therefore, the CCC initiated the process of reviewing Part 5 of the Regulations to identify and review gaps in consumer protection provisions. The CCC is also in the process of drafting consumer protection guidelines which are bench-

marked against international best practice guidelines whose aim is to provide transparency and consistency on how part 5 of the Regulations is enforced in the Common Market.

Below is a breakdown of the consumer cases handled by the CCC from 2013-2023.

**Figure 8: Consumer cases handled by CCC from 2013-2023**

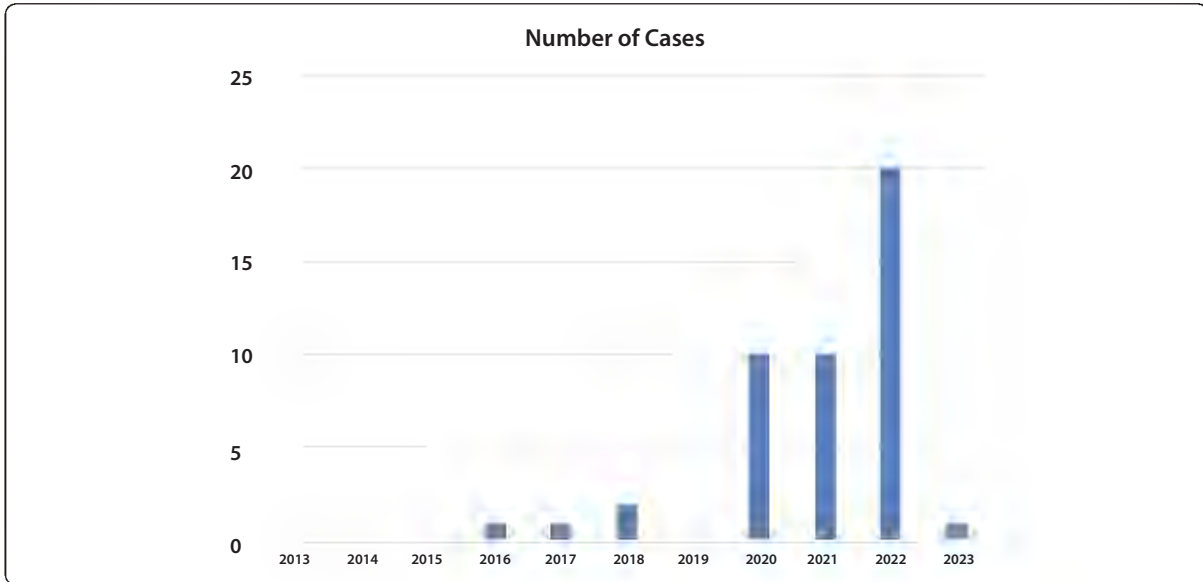


Figure 8 shows the overall number of consumer cases handled in each year from 2013 to 2023. While CCC has been investigating consumer cases since 2016, the Consumer Welfare Division was only operationalized in 2020 hence the increase in the number of cases from 2020 to date. However, the 2023 figures are only for the first quarter.

### CASES BY ECONOMIC SECTOR

**Figure 9: Consumer Cases handled by Economic Sector**

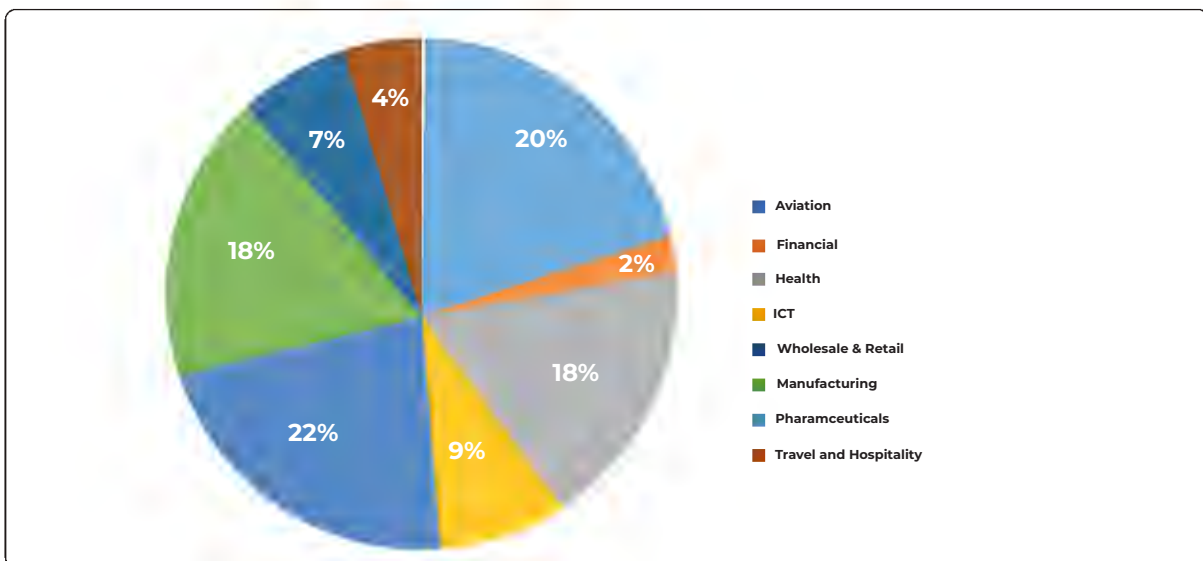


Figure 9 above shows the number of consumer cases handled by economic sector. Most cases handled were in Wholesale & Retail at 22%, followed by Aviation (20%), Manufacturing and Health at 18% each.

# CASES BY AFFECTED MEMBER STATES

Figure 10: Figure 10: Consumer Cases by affected Member States from 2013-2023

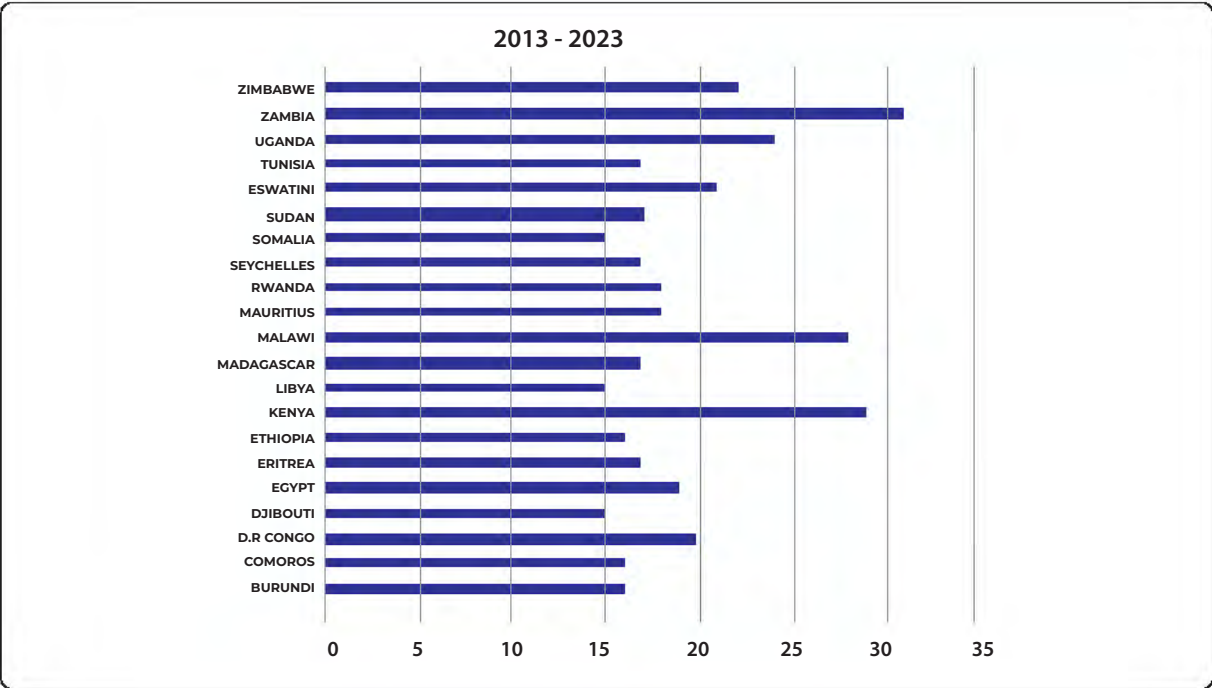


Figure 10 above shows cases by affected Member States. For the period under review, most of the cases reviewed by the CCC affected Zambia (31), followed by Kenya and Malawi with 29 and 28, respectively.

## HIGHLIGHTS OF SOME OF THE CASES HANDLED BY CCC.

### LISTERIOSIS OUTBREAK

In March 2018, the CCC became aware that there was an outbreak of Listeriosis in South Africa which was because of consumption of processed meat products contaminated with Listeria. The affected processed foods included polony, viennas/sausages and other cold meats supplied by Tiger Brands Unit-Enterprise Food and Rainbow Chickens Limited. As such the CCC issued a warning notice to the consumers in the Common Market pursuant to Article 30 and 31(2) of the Regulations as it was aware that the same products were also supplied to some Member States in the Common Market through the Supermarkets. The CCC also worked closely with the consumer agencies in the Member States to ensure that the products were removed from supermarkets shelves.





**COMPLAINT AGAINST ETHIOPIAN AIRLINES**

In December 2018, the CCC received a complaint from passengers that were travelling from Cairo to Nairobi. It was alleged that the passengers were denied boarding a flight as they were informed that it was overbooked, and their seats had been allocated to other passengers. In this regard, the passengers were delayed at the airport and were given vouchers for USD200 to be claimed at Jomo Kenyatta International Airport in Nairobi. However, at the time of claiming the vouchers, the consumers were given half of the value of the vouchers due to deductions. The CCC engaged Ethiopian Airlines as the conduct was misleading with regards to the value and price of goods or services pursuant to Article 27(1)(b) and (g) of the Regulations. Ethiopia committed to handling the matter and that they would provide redress to the Consumers. The CCC further advised Ethiopian Airlines to develop a sensitization strategy for the public and its employees on such matters and warned them not to engage in similar conduct.



**COMPLAINT AGAINST MALAWI AIRLINES**

The CCC came across a complaint involving Malawi Airlines where it was noted that in January 2022, there were passengers traveling from Johannesburg to Blantyre aboard Malawian Airlines who were landed at Kamuzu International Airport (KIA) in Lilongwe instead of Blantyre, allegedly due to bad weather.

The passengers were checked out of the airport and booked at a hotel in Lilongwe and were later informed by an airline official that they had to find their own means of getting to Blantyre the following day.

The CCC investigated the matter as it believed that it amounted to unconscionable conduct and contrary to Article 28(1) of the Regulations. Following the CCC's intervention, Malawi Airlines refunded the affected passengers.

**COMPLAINT AGAINST SOUTH AFRICA AIR LINK**

In December 2021, the CCC initiated investigations against South Africa Airlink, following a complaint received with regards to failure by the Airline to re-schedule a passenger's flight from Eswatini to Zambia through Johannesburg, occasioned by a delay in Eswatini. The passenger was instead required to contact their travel agent for rebooking which was effected at an additional cost.

South Africa Airlink's position was that it was their practice not to amend tickets purchased through travel agents or third parties that involve multisector itineraries. The CCC's position was that this is information that was not availed to consumers and was not in their terms and conditions of carriage and as such they did not have prior knowledge of this.

The CCC therefore advised Airlink to amend their terms and conditions to include such information for consumers to which they complied.

**PRODUCT RECALL OF 400G PILCHARDS IN TOMATO SAUCE AND CHILI SAUCE**

In February 2020, the CCC became aware that the National Regulator for Compulsory Specifications (NRCS) of South Africa had recalled 400g Pilchards in Tomato Sauce and 400g Pilchards in Chili Sauce. This was following investigations that there was a deficiency in the canning process and some cans were compromised during the sauce filling step on the product line. This resulted in the products not being safe for consumption by consumers. The CCC therefore issued a warning notice to the consumers in the Common Market pursuant to Article 30 of the Regulations because the products were supplied in the Member States. The CCC also collaborated with the consumer agencies in the Member States to ensure that the products were removed from the market.



**PRODUCT RECALL OF LIQUI FRUIT RED GRAPE STILL 330ML CANS**

In September 2020, the CCC became aware that there was a voluntary recall of Liqui Fruit Red Grape Still 330ml cans by Pioneer Foods. The product was recalled because it contained particles resulting from the crystallization of grapes in the cans and was not safe for consumption by consumers. The CCC therefore issued a warning notice to consumers in the Common Market pursuant to Article 30 of the Regulations as Pioneer Foods made sales in some Member States of the Common Market. the CCC also collaborated with the Member States on ensuring that consumers were aware of the product recall.



**INVESTIGATION OF MISLEADING LABELING OF ENJOY PRODUCTS BY LILONGWE DAIRY (2000) LIMITED**

The CCC noticed from the market that Enjoy products labeling was misleading consumers. The packages were made in a way to show to the consumers that they were consuming juice made from fruits that were on the package and yet they were only consuming the flavour. The CCC engaged Lilongwe Dairy on the matter as it was falsely representing that the product they were selling was of a particular composition and contrary to Article 27(1)(a) of the Regulations. Lilongwe Dairy agreed to amend their labeling on the package to clearly indicate that consumers were only consuming flavours of the fruits appearing on the package.

**COMPLAINT AGAINST AIRTEL MALAWI**

The CCC in October 2017 received a complaint through the Forum for National Development (FND) against Airtel Malawi. It was alleged that Airtel Malawi was providing poor network services, charging for dropped calls and there were unexplained data depletion and expensive tariffs. The CCC engaged Airtel Malawi. Airtel Malawi committed that they would upgrade the network infrastructure and when they are doing so, they would ensure that they inform the consumers of the inevitable service interruptions. Airtel Malawi also undertook to indicate the reasonable timeframes within which the upgrades would be finalized in a particular area. The matter was closed, and CCC committed to monitoring the developments in the sector.

**COMPLAINT AGAINST JUMIA GROUP**

The CCC launched investigations in June 2021 against Jumia Group following a review of its terms and conditions on its e-commerce platform to determine if they were in line with the Regulations. In the Common Market, Jumia operates the online marketplace, logistics and payments platforms in Kenya, Uganda, Tunisia, and Egypt. Further, it operates in classifieds in Rwanda, Malawi, Kenya, Uganda, Tunisia, Ethiopia, Zambia, Burundi, Djibouti, Eritrea, Eswatini, Madagascar, Seychelles, and Comoros.

The CCC's concerns were that: Jumia's terms and conditions on its platform did not indicate the registered company and business that owned the platform and who their actual legal representative was. Under section 12 of its terms and conditions, Jumia did not warrant that: the information on their website was complete or accurate; the material on the website was up to date; the website/platform would operate without fault; and that it would remain available; Jumia excluded itself from being party to the contract for sale or purchase, claiming that it was not involved in the transaction, was not an agent of any buyer or seller and therefore did not have liability in connection with a transaction under the contract; Jumia did not provide a dispute resolution mechanism online; and Jumia's return policy only allowed consumers 15 days for Jumia Mall, and 7 days for Jumia Express and Global to return defective goods.

The CCC engaged Jumia on their incompatibility of their terms and conditions to the Regulations and they were cooperative and complied with Commission's recommendations. Jumia made relevant amendments, including inclusion of a Dispute Resolution Policy in their terms and conditions. The terms and conditions were subsequently reviewed by Jumia, and the CCC was satisfied with their compatibility with the Regulations. The matter was therefore closed.



#### MISLEADING CONDUCT AGAINST FASTJET AIRLINES LIMITED

The CCC in February 2016 noted that Fastjet Airlines Limited (Fastjet) advertised air tickets that were not inclusive of taxes and other fees and purported that these were final prices when in fact not thereby misleading consumers. The conduct by Fastjet was in contravention of Article 27(g) of the Regulations which prohibits businesses from falsely or engaging in misleading representation with respect to the price of goods or services.

Fastjet was engaged by the CCC, and they complied with the Regulations.

## RESEARCH

To support its mandate as provided for under Article 2 and its functions as stipulated under Article 7, it is important that the CCC undertakes research and market inquiries in the market or sectors of the market to establish whether certain conducts could constitute violations of the competition and consumer provisions of the Regulations. Research and market inquiries are key in supporting the effective enforcement of competition and consumer protection laws as it can assist in identifying competition and consumer concerns, understanding the causes, and designing the relevant interventions to address the concerns. This assists in ensuring that the enforcement of competition and consumer protection laws contribute to an integrated Common Market.

Article 42 of the COMESA Competition Rules ("the Rules") provides the CCC with powers to undertake inquiries in economic sectors while on the other hand Article 7 of the Regulations allows the CCC to monitor sectors of the market where anti-competitive conduct is likely to be prevalent. In this regard, the CCC has undertaken research and market screening exercises over the years, some of which are highlighted below.

#### THE 2017/2018 CCC/WORLD BANK ANTICARTEL PROJECTS

In February 2017, the CCC signed a cooperation agreement with the International Finance Corpora-

tion, a member of the World Bank Group, to cooperate in a project to strengthen competition within COMESA through developing and implementing a region-wide anti-cartel enforcement strategy (“the project”).

The Project was aimed at determining a strategy for identifying conduct which may result in the prevention, restriction, or distortion of competition in the Common Market. To this end, the CCC developed enforcement and advocacy tools to enhance the capacity of the CCC and of National Competition Authorities to detect and punish conduct which may have anti-competitive effects in the Common Market, as well as affect trade between Member States.

The 2019/2020 CCC/World Bank Project on Screening of the selected sectors for characteristics of cartel conduct and development of the Regional Leniency Policy.

Further to the 2017/2018 project, the CCC collaborated with the World Bank Group to screen for cartel conduct in the Common Market and improve the legislative framework for the effective enforcement of cartel conduct.

The first component of the project involved the screening of markets for characteristics that could facilitate cartels in selected sectors. The review involved an analysis of market players and multi-market contact in identified sectors in the Common Market. The second component of the project involved the review and strengthening of the legal framework for anti-cartel enforcement and the development of a regional leniency program in the Common Market.

Member States were involved in both Projects through gathering market information as well as providing information to the Project team on the legal provisions of their respective national competition laws. This information was analysed and formed the basis for the Project outcomes.

## **COLLABORATION WITH THE UNIVERSITY OF JOHANNESBURG’S CENTRE FOR COMPETITION, REGULATION AND ECONOMIC DEVELOPMENT**

The CCC 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 were functioning for small-scale farmers and food produc-

ers and consumers to promote more inclusive and competitive markets across the continent.

### **THE AFRICAN MARKET OBSERVATORY**

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

Some of the findings of the Market Observatory were that the agri-food markets were not working well for smaller farmers and producers and that market information was essential. It was particularly noted that large traders have customer networks, transport, storage, and knowledge of prices across places, and they are linked to large processors. On the other hand, SMEs have limited information about prices and often do not have access to storage facilities. The high levels of concentration in trading by large traders and poor storage alternatives imply that small scale farmers must sell their harvest at low prices while large traders can on-sell the products at higher prices with big profit margins to buyers including small agro-processors. There are also major changes in prices over short periods of time which implies that parties which can control stocks can make big profit margins. Transparency can improve the bargaining power of smaller farmers and has the potential to reduce the large trader margins. If accompanied by better options for storage and transport, it can allow small-scale farmers to plan based on any reasonable expectation of the prices they may be paid in future.

It was also noted that climate change and weather patterns compounded the challenges facing farmers and producers, especially smaller farmers. However, improved intra-regional trade through broader and deeper markets is an essential part in mitigating the risks associated with climate change as when one part of the region experiences poor weather impacting negatively on production, other areas continue to have good conditions for production. Realising the potential gains from better-working agricultural markets also entails supporting smaller farmers and producers, and enabling climate-smart agriculture that adapts to the effects of climate change and severe weather patterns.

It was also noted that various East and Southern African countries have engaged in the imposition of

trade restrictions in the name of ensuring domestic food supply and to protect consumers from international food price hikes, especially regarding maize. However, studies have shown that trade restrictions, particularly on maize, have historically been ineffective in managing prices in the long run and tended to exacerbate price fluctuations. Furthermore, a trigger in price shocks in one domestic market can generate lasting deviations in prices in adjacent markets within the region resulting in significant price differences

over time. Restrictions appeared to have exacerbated spikes in neighbouring countries facing a production shock, for example, in Malawi in 2019 when the cyclones hit, while Zambia and Tanzania blocked exports.

Following the findings of the research, the CCC held a meeting with Member States that participated in the research and agreed on the way forward in implementing the recommendations of the research.



## COLLABORATION WITH THE AFRICAN COMPETITION FORUM

The CCC is a member of the African Competition Forum (ACF) and has to date participated in two studies that is the ACF Cross-Country Study on Airlines and on cost of roaming.

### ACF CROSS-COUNTRY STUDY ON AIRLINES

The CCC contributed a chapter to the study whose objective was to get an understanding of the market structure, alliances, state involvement and regulatory setting for the airline industry with a particular focus on regional and international services that impact on continental trade and tourism. The study also sought to identify the competition concerns that exists in respect of the airline industry in the different ACF member countries as well to identify regional and continental priorities in respect to the airline industry to address existing competition concerns and to ensure the development of a more competitive airline industry that promotes regional and continental integration and the flow of trade within the continent.

The CCC found that generally ticket prices for regional destinations are similar. This was the case regardless

of whether the routes were direct or connecting. The CCC observed that Ethiopian Airlines (ET) prices varied or remained stable depending on other airlines flying the same route. For example, the Kenyan and Malawian routes had stable prices for all airlines operating on that route, whereas the South African prices fluctuated visibly during the search period. CCC observed that all connecting routes connect at the respective hubs of the different airlines for varying periods. For example, Kenya Airways transits in Nairobi for about 1h 45mins for refueling, whereas Emirates and Turkish Airlines transit for longer periods of 10 hours and 6 hours, respectively. The CCC noted with concern that the ET direct flights are priced similarly to the connecting flights. The logical expectation would be for the ET direct flights to be cheaper given that they have a different set of costs associated with landing, refueling and other airport costs. Even though the transiting flights transit at their respective hubs the landing and refueling costs would be expected to form part of the ticket pricing. It therefore bears the question whether ET is a price setter for its respective routes; i.e., whether flights competing with ET would seek to price similarly to ET regardless of their route and associated costs.

The study established that the ticket prices for ET direct routes are similar to ticket prices for competing airlines connecting through their respective hubs. This may be an indication that there is little price competition in the sector. However, it was not established whether ET was a price leader or price taker.

## ACF CROSS-COUNTRY STUDY ON THE COST OF ROAMING

The CCC contributed a chapter to the cross-country study on the cost of roaming whose objectives were to Understand the market structure, state involvement and the regulatory setting of the telecommunications industry in the Common market focusing on DRC, Egypt, Kenya, Uganda, and Zambia, with a particular focus on the determination of roaming charges that impact on continental trade and tourism. The study also aimed at identifying the competition concerns and the policy recommendations aimed at promoting competition in the telecommunications sector.

The CCC found that the mobile services market in the Common Market is dominated by MTN, Vodafone, Orange, and Airtel. The four MNOs operate in 13 of the 21 Member States of the Common Market which makes up about 75.7% of the total population of the Common Market. The study focusing on five of the Member States namely, DRC, Egypt, Kenya, Uganda, and Zambia found that the mobile services markets in these countries are highly concentrated. The five countries were picked due to their size of population and economies which are likely to have an appreciable effect on trade in the Common Market.

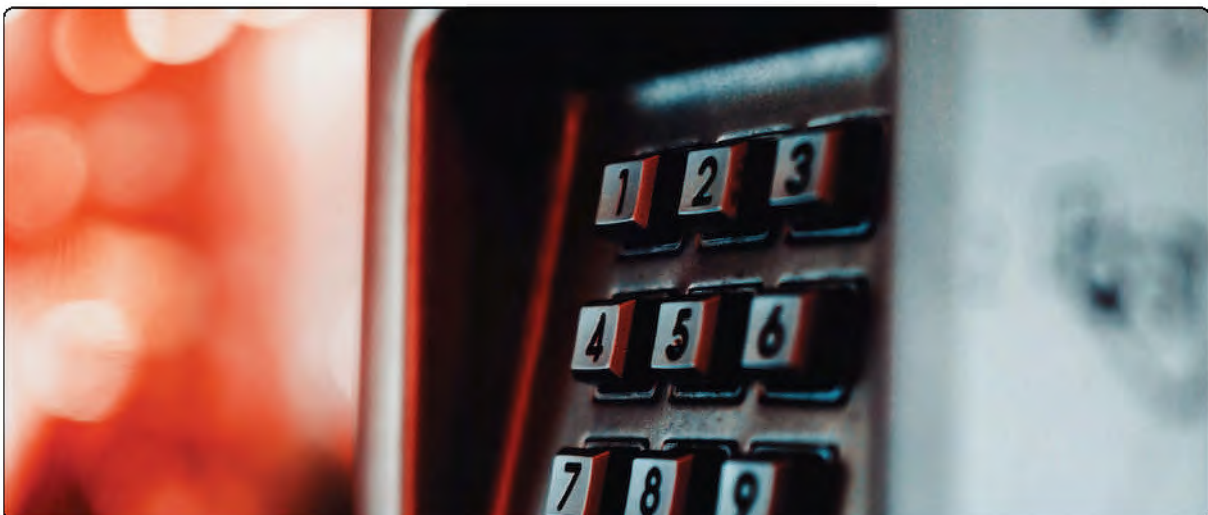
The study also found that all the countries assessed have sector specific regulators enforcing the relevant laws in the market, four of these countries have developed competition authorities in place except for DRC whose competition law enforcement was in its initial stages while Uganda does not have competition law in place. However, some sector regulators

such as the telecoms sector have competition laws embedded in their laws.

The study found that the cost of roaming for subscribers in the countries under the study is high. However, MNOs with an extensive network within the Common Market charge much lower prices in comparison to the other MNOs for subscribers that roam using the partner operators in their network, as is the case for Airtel and Vodafone. It was also clear that countries with special regional or bilateral arrangements for roaming enable their consumers to benefit from lower cost of roaming as is the case for the ONA arrangement.

The study also found that there is no transparency in the wholesale agreements that MNOs enter into with their roaming partners and the prices in the agreements are influenced by the volume of roaming traffic. The study found that these factors may be contributing to how the existing MNOs behave in the market.

The study noted that even though, there are new developments on technology and with the use of WhatsApp, Messenger, Facetime and Skype which could offer competition to mobile roaming, the use of such services is affected by the high charges on mobile data roaming, restrictions of use in some countries and the lack of adequate access to internet in some countries. It was noted that there may be need to put in place deliberate policies to reduce the cost of roaming in the COMESA region as it was noted that the cost of roaming had significantly reduced in other regions such as the European Union and the East African Community **albeit** the East African Community is for a significant part a part of the Common Market for Eastern and Southern Africa.



# TECHNICAL ASSISTANCE AND CAPACITY BUILDING TO THE MEMBER STATES

To effectively enforce the Regulations, the CCC has been providing technical assistance and capacity building to the Member States. This is important because Member States are at different levels in their enforcement of competition and consumer protection law. Out of the 21 Member States, 17 have competition laws in place while others such as Eritrea, Libya, Somalia, and Uganda do not yet have the law in place. The 17 Member States with competition laws are all at different levels in terms of enforcement, with some more advanced than others, while others have competition laws in place but do not yet have enforcement institutions to enforce the laws.

With these varying degrees in the existence and enforcement of competition laws, the provision of technical assistance and capacity building is important if the regional law is to be effectively enforced. It is obvious that the effectiveness of the CCC as a regional competition authority depends on the effectiveness of national competition laws and authorities as they are an integral part of the regional competition law enforcement.

Through the technical assistance provided by the CCC, Member States such as Comoros and DRC have been able to operationalize their national competition authorities, other countries such as Uganda and Eswatini have been able to domesticate the regional competition law, countries like Uganda have been able to produce a Bill on competition and consumer protection which is yet to be enacted into law, training has been provided to various stakeholders such as the judiciary, legal practitioners, companies operating in the Common Market and business reporters who are all very key in the enforcement of competition law. As one of its functions, the CCC also wants to ensure that the national competition authorities harmonise their laws with the regional

competition law, and this will result in uniformity of interpretation and application of competition law and policy within the Common Market. Such tenets are important for certainty on businesses resulting not only in easy detection, prevention, and prohibition of anti-competitive conduct but also reduction in the cost of doing business in the Common Market. This is essential in bringing business investments into the Common Market.

Technical assistance and capacity building are provided based on the needs and priorities of the Member States. Member States identify the areas where they need technical assistance and request the CCC for such assistance. This also applies to capacity building if required. Sometimes the CCC may initiate technical assistance and capacity building initiatives for a Member State *ex proprio motu* depending on the gaps observed.

It should be noted that the CCC has deliberate training programmes planned every year aimed at training members of staff of the national competition authorities and coordinating ministries in countries where there are no competition authorities in the enforcement of competition laws generally and more specifically in mergers and acquisitions and restrictive business practices. The training programmes cover different areas including the emerging trends in enforcement of merger laws as well as restrictive business practices and consumer protection. The national competition authorities do get an opportunity of learning from experiences of their counterparts within the Common Market or from experiences of more experienced competition authorities like the US Department of Justice and the Federal Trade Commission, and regional authorities such as the European Commission. More dedicated trainings are also held on investigative tools relevant for the effec-

tive enforcement of laws on mergers and restrictive business practices. The trainings have been provided by the CCC every year from 2013 to date and have been offered to all the Member States.

Capacity building training has not only been provided for the members of staff of the national competition authorities or the coordinating ministries but has been extended to other stakeholders important in the enforcement of competition law. These stake-

holders include the judiciary, legal practitioners, the business community, and business reporters.

In addition to training aimed at building the capacity of Member States, the CCC provides technical assistance to its Member States aimed at addressing enforcement gaps. Technical assistance is also provided for purposes of harmonizing the national competition laws with the regional Regulations. Such technical assistance is highlighted for each country below:

## HIGHLIGHTS OF TECHNICAL ASSISTANCE AND CAPACITY BUILDING PROVIDED TO MEMBER STATES

### BURUNDI

The CCC has provided technical assistance and capacity building to Burundi on competition law matters for members of staff from the Ministry in charge of COMESA matters, the judiciary, other key stakeholders, and business reporters. Representatives from Burundi have taken part in trainings conducted by the CCC.

The CCC also conducted sensitization and awareness meetings with representatives of Ministries, national legislative offices, sector regulators, professional bodies, and the private sector to raise awareness on the enforcement of competition and consumer protection laws in Burundi in 2021. In June 2022, the CCC conducted training for the officials from government on the application of competition and consumer protection laws. This was done to prepare for the establishment and operationalization of the competition and consumer protection authority in Burundi. A memorandum of understanding on cooperation in competition law enforcement has since been signed with the Ministry of Trade, Transport, Industry and Tourism.



*Sensitization meeting of stakeholders in Burundi*

### COMOROS

The CCC has conducted sensitization workshops for different stakeholders in Comoros on competition and consumer protection law enforcement. Representatives of the COMESA coordinating ministry and the judiciary in Comoros have also taken part in training meetings for purposes of capacity building. The CCC also held meetings with the Ministry responsible for COMESA matters, chambers of commerce, consumer protection association and the Law Society of Comoros in 2021 to discuss the operationalization of the Comoros National Competition Authority. Suffice to mention that Comoros has now set up the National Competition Authority as well as the National Consumer Protection Authority.



*The CCC holds a training workshop for government officials and stakeholders on the application of competition and consumer protection laws in Moroni, Comoros in 2022*



## DEMOCRATIC REPUBLIC OF CONGO

The CCC has been supporting DRC since 2014 and through this support, the national competition authority in DRC has been operationalized. In 2017, the head of the competition authority of DRC was sponsored by the CCC on a study tour to the Competition Commission of Mauritius and other members of staff have been taking part in various trainings on competition law enforcement. The CCC has also conducted sensitization on competition and consumer matters among the stakeholders including the business community, consumer associations, judiciary, and other government officials on the enforcement of competition and consumer protection law. The aim of the training and sensitization were to assist in the establishment and operationalization of the DRC competition authority. The institution is now operational, and the CCC has started conducting extensive joint investigations with the authority.



*Sensitisation of stakeholders on competition and consumer protection laws in DRC*

## DJIBOUTI

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



*From left to right, Madame Rouda Dahir – Legal Counsel of Djibouti Ministry of Commerce and Tourism, Mr. Ali Daoud Prime Secretary of the Ministry of Commerce and Tourism of Djibouti, Dr Hend Mostafa, Senior Legal Officer- CCC and Dr George Lipimile, International Consultant on the review of the competition policy and the competition and consumer protection law of Djibouti.*

## EGYPT

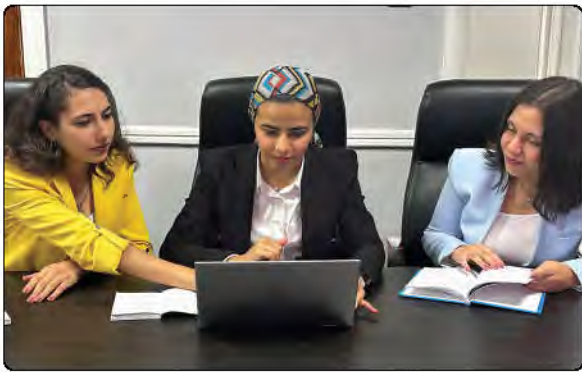
The CCC has been partnering with the Egyptian Competition Authority (ECA) on hosting joint training programmes for members of staff from other Member States. The CCC has also been sponsoring some members of staff of the ECA to take part in training on mergers, abuse of dominance and restrictive business practices. The two authorities have also collaborated in the assessment of some merger transactions and investigation of anti-competitive conduct by some companies. Other stakeholders in Egypt such as the judiciary, legal practitioners and business reporters have benefited from training organised by the CCC. In January 2023, three (3) members of staff of the ECA were seconded to the CCC in furtherance of an MOU that exists between the two (2) authorities.



*In October 2021, the CCC met with the ECA to discuss common cases of interest that the two institutions should work on together. At the Centre, Dr Mahmoud Momtaz, Chairman of the ECA and Dr Willard Mwemba Director and Chief Executive Officer of the CCC.*



*On 10 October 2021, the CCC led by the Director & CEO met the Governor of the Central Bank of Egypt H.E Mr. Tarek Hassan Amer to discuss the role of the Central Bank in Competition and Consumer Protection Regulation*



*Representatives from the Egyptian Competition Authority seconded to CCC, from left to right Rawan Shaarawy, Mayar Tarek and Hana Hosny*

## ERITREA

CCC sponsored delegates from Eritrea to take part in meetings targeting business reporters. The delegates from Eritrea took part in the meetings from 2014 and have participated in other training and sensitisation programmes organised by CCC to date.

## ESWATINI

CCC assisted the Eswatini Competition Commission (ESCC) on the review of the national competition law aimed at harmonizing the national competition law with the COMESA Competition Regulations. CCC also co-sponsored with the COMESA-RISM, activities leading to the domestication of the Regulations in Eswatini in 2017. CCC in 2021 also provided financial support to ESCC towards the training of its Members of Staff on competition and consumer protection law. In 2022, financial support was provided to develop the ESCC strategic plan for 2022 to 2027.

Other training courses have also been provided for members of staff of ESCC and other stakeholders. CCC has also provided direct technical assistance in providing legal and economic guidance to the Board of the Eswatini Competition Commission in adjudicating some cases before it.

## ETHIOPIA

Members of staff from the Trade Competition and Consumer Protection Authority (TCCPA) have been sponsored to attend training on mergers and restrictive business practices from 2014 to date.

In 2015, the Head of the Mergers and Acquisitions Division of CCC then, Mr. Willard Mwemba was attached to the TCCPA for a month to assist in training officers and in the development of procedures for the effective operation of Ethiopia's merger control regime. CCC also sponsored the attachment of two members of staff of TCCPA to CCPC (Zambia) for three months while two others were attached at the Competition Authority of Kenya (CAK) for three months to train them on competition and consumer protection law enforcement.

In 2022, CCC undertook capacity building for the officers from the Ministry of Trade and Regional Integration in Ethiopia who are responsible for enforcing competition and consumer protection laws since the abolition of the Trade Competition and Consumer Protection Authority. Currently, CCC is assisting Ethiopia to build capacity of its officials responsible for competition and consumer matters and to draft various instruments required for the effective implementation of the law.



*Capacity building workshop for the members of staff of the Ministry of Trade and Regional Integration responsible for enforcing competition and consumer protection law in Ethiopia.*



*CCC's Chief Executive Officer paid a courtesy visit to the Honourable Minister of Trade and Regional Integration in Ethiopia His Excellency Gebremeskel Chala (middle) on the left is the Honourable State Minister Honourable Teshale Belihu Kefene of the same Ministry*

## KENYA

The CCC has sponsored members of staff of the CAK to take part in training on mergers, abuse of dominance and restrictive business practices from 2013 to date. Business reporters and the business community in Kenya have also been trained on competition and consumer protection matters.

## MADAGASCAR

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

## MALAWI

Members of staff of the Competition and Fair Trading Commission (CFTC) of Malawi and other stakeholders have been sponsored to take part in training organised by the CCC. In 2021, the CCC provided financial support to assist CFTC to conduct training for its Board Members as well as for it to hold a con-

sultative meeting with relevant stakeholders on the development of its guidelines on restrictive business practices. Additionally, in 2021, the CCC provided financial support to CFTC on the amendments to their competition and consumer protection laws. The CCC has also been providing technical assistance to the CFTC through provision of its staff members as resource persons to train the Board Members of the CFTC.

On 24-25 November 2021, a team from the CCC 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; Dr Jerry Jana, Board Chairperson of CFTC; Board member of CFTC, Dr Mwemba; and Ms Christina Chatima PS Ministry of Trade and Industry*

## MAURITIUS

The CCC is providing technical assistance to the Competition Commission of Mauritius (CC) on the review of legal and procedural framework on the co-operation mechanism between the CC and CCC on cross border enforcement. This project is expected to produce a sound and functional legal cooperation mechanism facilitating effective joint investigations between the CC and the CCC. The CCC has also sponsored members of staff of the CC and other stakeholders to take part in training on mergers, abuse of dominance and restrictive business practices. In 2023, the CCC held a two-day capacity building workshop for different stakeholders in Mauritius on the enforcement of competition and consumer protection laws. The CCC further commenced discussions with the Ministry of Commerce and Consumer Protection on concluding an MOU regarding the protection of consumer interests in Mauritius and the Common Market at large.



*From left to right, Mr. Steven Kamukama- Manager Consumer Welfare at the CCC, Commissioner Ellen Ruparanga, Board Chairperson of CCC, Mr. Soodesh Satkam Callichurn, Minister of Commerce and Consumer Protection, Mr. Deshmuk Kowlessur, Executive Director of the CC, Mrs. M.D Mathur Dabidin Acting Permanent Secretary of the Ministry of Commerce and Consumer Protection and Commissioner Brian Lingela, Vice Chairperson of the Board of the CCC.*



*Stakeholders during the two-day capacity building workshop in held in Mauritius.*

## **RWANDA**

The CCC has been providing technical assistance and capacity building to Rwanda since 2017. In 2021 the CCC provided technical assistance to the Rwanda through a capacity building workshop by training the members of staff of the Rwanda Inspectorate of Competition and Consumer Protection Authority (RICA) and key stakeholders on the enforcement of competition and consumer protection laws and the interactions with other sector regulators. Prior to this, training was provided to Members of Staff of the Ministry of Trade and Industry which was responsible for competition matters as well as to other stakeholders. In 2022, the CCC jointly commemorated World Competition Day with RICA and co-sponsored the

winners of the students essay competition on the theme for World Competition Day.



*Joint Commemoration of World Competition Day with the Rwanda Inspectorate, of Competition and Consumer Protection Authority*

## **SUDAN**

The CCC sponsored a study tour for three members of the Council for Promotion of Competition and Prevention of Monopoly of Sudan (CPMS) and the head of the COMESA Competition Desk in the Ministry of Trade to the Egyptian Competition Authority in 2016. In 2018, four members of the CPMS were sponsored for a study tour to CCPC (Zambia) while four other members of staff were sponsored for a study tour to the Malawian Competition and Fair Trading Commission. The other four were sponsored and attached to the Competition Authority of Kenya.

The CCC has also sponsored members of staff from the Sudan Ministry of Trade and other stakeholders to take part in the trainings on competition law.

## **SEYCHELLES**

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

The CCC has sponsored training for members of staff of the Fair Trading Commission (FTC) and other stakeholders.

## UGANDA

The CCC in 2016, provided technical assistance to the Government of Uganda through the Ministry of Industry, Trade and Cooperatives towards the domestication of the COMESA Treaty to facilitate the smooth implementation of the COMESA Laws and Regulations. The assistance provided included paying for a consultant, printing brochures on the COMESA treaty for distribution to Parliament. This resulted in the domestication of the COMESA Treaty in Uganda in 2017. Trainings have also been provided for members of staff of the Ministry of Industry, Trade and Cooperatives who are also responsible for COMESA as well as other stakeholders on competition law matters. The CCC has also been instrumental in ensuring that Uganda has its own competition law and authority. This work is on-going. In 2023, the CCC provided capacity building and awareness on competition and consumer protection laws to the Members of the Uganda Parliament.



*Seated is the State Minister from the Ministry of Trade, Industry and Cooperatives, Honourable David Bahati, and members of the Parliamentary Committee on Tourism, Trade and Industries from the Parliament of Uganda, staff from the Ministry of Trade, Industry and Cooperatives, as well as the Members of Staff of the CCC.*

## ZAMBIA

In 2022 and 2023, the CCC sponsored the training of the Board Members of the CCPC. This is important in ensuring that the decision makers who are key in the enforcement of competition law are trained on

such matters to enhance their understanding on the subject matters as well as other matters such as those on corporate governance. The CCC has also been sponsoring members of staff of the CCPC and other stakeholders on training in competition law matters.



*Sensitization of the Board Members of the CCPC (Zambia) in 2022 in Lusaka Zambia*

## ZIMBABWE

The CCC has been providing training for members of staff of the Competition and Tariff and Commission (CTC) and other stakeholders on competition law matters. In 2022, the CCC conducted an extensive training on competition and consumer law matters to the Members of the Judiciary of Zimbabwe and the event was graced by His Excellency the President of the Republic of Zimbabwe, Dr. Emmerson Dambudzo Mnangagwa.



*Training Workshop for the Judiciary in Zimbabwe jointly organised by CCC, CTC and the Judicial Service Commission of Zimbabwe*

# ADVOCACY AND STRATEGIC COLLABORATION

The CCC undertakes advocacy activities at national, regional, and international level to raise its visibility and build capacity among different stakeholders on regional competition law. These stakeholders include journalists, the business community, legal practitioners, and judges. The CCC also collaborates with

stakeholders at different levels to effectively enforce its competition and consumer protection laws. These stakeholders include national and regional competition authorities, regional, continental, and international organisations, and institutions.

## ADVOCACY

The CCC has been undertaking advocacy activities since inception. The advocacy activities undertaken over the years are shown below in pictorial.



*First Regional Judges Workshop held in Mangochi, Malawi in 2016 attended by the Chief Justice of Malawi and Zimbabwe.*



*Second Regional Judges Workshop held in Livingstone, Zambia in 2022 attended by the Chief Justice of Zambia and Zimbabwe as well as the Judge President of the COMESA Court of Justice.*



*The Honourable Chief Justice of the Republic of Zambia, Dr Mumba Malila giving his speech as the Guest of Honour during the Second Regional Judges Workshop*



*First regional business community workshop held in Nairobi, Kenya in 2018, attended by representatives of businesses operating in the Common Market.*



*First Diplomatic Conference held in Livingstone, Zambia in 2016 attended by the former Secretary General of the COMESA Mr. Sindiso Ngwenya and the Southern Province Minister of the Republic of Zambia at the time, Honourable Nathaniel Mubukwanu.*



*Sensitisation of the business community in Kenya in 2022, attended by the business community in Kenya and representatives of the Competition Tribunal of Kenya*



*Fifth Business Reporters Workshop held in Nairobi, Kenya in 2016 attended by business reporters from media houses of the Member States.*



*Sensitisation workshop of the business community in Lusaka, Zambia held in 2022 and attended by business representatives from Zambia.*



*Mergers Training Workshop held in Eswatini in 2018 attended by case officers from the Member States*

## STRATEGIC COLLABORATION

The CCC is cognisant that for competition law to be enforced effectively, networking and sharing ideas with relevant stakeholders are important. The CCC therefore ensures that it was linked to other regional and international groupings to learn from what others are doing.

### **INTERNATIONAL COMPETITION NETWORK**

The CCC is a member of the International Competition Network (ICN). The ICN provides competition authorities with a specialized yet informal venue for maintaining regular contacts and addressing practical competition concerns. This allows for a dynamic dialogue that serves to build consensus and convergence towards sound competition policy principles across the global antitrust community.

The ICN is unique as it is the only global body devoted exclusively to competition law enforcement and its members represent national and multinational competition authorities. Members produce work products through their involvement in flexible project-oriented and results-based working groups. Working group members work together largely by internet, telephone, teleseminars, and webinars.

### **INTERNATIONAL CONSUMER PROTECTION AND ENFORCEMENT NETWORK**

In 2019, the CCC joined the International Consumer Protection and Enforcement Network (ICPEN) and currently has an observer status. ICPEN is a membership organisation consisting of consumer protection law enforcement authorities from across the globe. ICPEN provides a forum for developing and maintaining regular contact between consumer protection agencies and focusses on consumer protection concerns. By encouraging cooperation between agencies ICPEN aims to enable its members to have a greater impact with their consumer laws and regulations.

### **AFRICAN CONSUMER PROTECTION DIALOGUE**

The CCC has been taking part in activities under the African Dialogue on Consumer Protection. The African Consumer Protection Dialogue is an informal consumer protection dialogue among consumer protection government agencies/entities (the "African Dialogue") in North, South, East and West Africa. The idea for the African Dialogue is to exchange consumer protection experiences, information, and best practices and to organize informal monthly teleconferences among several regional agencies/entities to



discuss current issues. The CCC has since co-hosted the African Consumer Protection Dialogue which was held on 13 and 14 October 2020.



*The CCC took part in the 7<sup>th</sup> Annual African Dialogue Conference that was held in Cairo, Egypt in August 2015.*

## AFRICAN COMPETITION FORUM

The CCC in 2019 took part in the first African Competition Forum (ACF) Study. The CCC has also co-hosted ACF Mergers Workshops.



*ACF Mergers Training Workshop held in Salima, Malawi in 2022, attended by case officers from different ACF Member countries.*

## CENTRE FOR COMPETITION REGULATION AND ECONOMIC DEVELOPMENT

The CCC has been collaborating with CCRED of the University of Johannesburg. The first collaboration was on a joint study on the Market Observatory

whose purpose was to assess how agriculture markets were working for small holder farmers and food producers. The study focused on five Eastern and Southern African Countries that is Kenya, Malawi, Uganda, Tanzania, Zambia, and Zimbabwe. The main crops assessed during the study were Maize, Maize Meal, Soybean, Soybean Meal, Rice, and Fertiliser. CCC also co-hosted the Seventh (7<sup>th</sup>) ACER WEEK in Malawi from 12-16 September 2022.



*Seventh ACER Week held in collaboration with CCRED and the CFTC in 2022*

## ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The CCC has been working closely with the OECD. In 2021, the CCC was one of the Lead Examiners in the Peer Review of the Eurasian Economic Union (EAEU) law under the OECD. A series of meetings interviewing various stakeholders of the EAEU were held from 19 to 22 October 2021 and Examination Session took place on 8 November 2021. During the Examination Class, the CCC highlighted some of the areas where it observed that the EAEU could consider making some changes. These areas included the need for extra-territorial powers, developing a regional leniency programme and the inclusion of regional merger regulation in the Union. The CCC also took part in the presentation of the recommendations from the Peer Review to the OECD Global Forum on Competition held on 6th December 2021.

Further, the CCC in 2022 joined the OECD Competition Statistics (OECD CompStats) which compiles data on competition agencies' resources, enforcement activity and advocacy initiatives and currently includes 73 jurisdictions from different continents.

## UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

The CCC has been working closely with the United Nations Conference on Trade and Development (UNCTAD). From 1 to 3 December 2021, CCC participated in the UNCTAD's Global Policy Dialogue. CCC represented by the Director and Chief Executive Officer was a speaker on the topic of "Interagency cooperation between MSME agencies and competition authorities." During the session, CCC shared its work with MSMEs in the Common Market with regards to competition and consumer law enforcement. The CCC also participates in the Inter-Governmental Group of Experts meetings as speaker.



*The Director and Chief Executive Officer of CCC, Dr Willard Mwemba, taking part in the 2022 IGE session with other speakers in Geneva, Switzerland*

## EUROPEAN COMMISSION DEPARTMENT OF COMPETITION

The CCC has developed a great working relationship with the EU-DG Comp. EU DG Comp sends some of their staff to conduct training for officers of CCC and Member States. The DG Comp also sponsors the training of staff of the CCC to be trained at their offices in Brussels.



*Ms Sunjida Bundhun (left) and Mr Joseph Kaumba (right) with the Director General of the EU-DG Comp, Mr Oliver Guersent (Centre), during their attachment in 2022*

## UNITED STATES DEPARTMENT OF JUSTICE

The CCC has been working with the US DOJ who have been providing training to staff of the CCC and Member States on competition law issues. The training has been conducted on various enforcement matters including interview techniques and conducting dawn raids.

## UNITED STATES FEDERAL TRADE COMMISSION

The CCC has been working with the USFTC who have been providing resources for capacity building for training staff of the CCC and the Member States on various enforcement matters including merger assessment. The USFTC has also collaborated with the CCC in sponsoring officers to undertake capacity building for other Member States.



*Dr Willard Mwemba, Director and Chief Executive Officer of CCC with members of staff of USFTC during the International Bar Association in March 2022.. From left to right is Dr Patty Brink, Mr Carsten Reichel formerly with USDOJ and Ms. Molly Askin*

# SIGNING OF MEMORANDA OF UNDERSTANDING WITH MEMBER STATES AND STAKEHOLDERS

The CCC has to date signed 14 Cooperation Agreements with Member States which stipulate how the CCC is to work together with the competent authorities of the Member States in the enforcement of the Regulations. The Cooperation Agreements specifically stipulate the role of competent authorities of the Member States in regional merger regulation, investigations of anti-competitive business practices, consumer protection matters, as well as research and market inquiries. The Agreements also stipulate how the institutions are to work together in the development of instruments necessary for the enforcement of competition laws in their respective jurisdictions such as Guidelines, handling of confidential information and the provision of technical assistance and capacity building to the Member States. The Member States that the CCC has signed Agreements with are Burundi, DRC, Egypt, Eswatini, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Zambia, and Zimbabwe.

The CCC has also signed MoUs with the Eurasia Economic Commission (EEC) and CARICOM. The MoUs with EEC and CARICOM are aimed at promoting cooperation between the institutions in the areas of competition policy and competition law enforcement especially that they have a common interest in the enforcement of competition laws at regional level. The institutions intend to cooperate in the exchange of non-confidential information on regional integration, laws, regulations, rules, statistical and informational materials, and other documents related to competition policy and antitrust regulation. The institutions are also expected to cooperate in the exchange of experiences and best practices in competition case investigations and research.

CCC also signed an MOU with the Law Association of Zambia and is also in the process of signing Cooperation Agreements with Africa Civil Aviation Commission,

East African Community Competition Authority and Uganda.



*MoU Signed with the Ministry of Trade, Transport, Industry and Tourism of Burundi in 2023.*



*MoU signed between the Ministry of Trade and Regional Integration Ethiopia and the CCC in October 2022.*



MoU signed between RICA and the CCC in December 2022



MoU signed between the CCC and the CC in 2017



MoU signed between EEC and the CCC in July 2022



MoU signed between the CCC and ECA in 2016



First MoU Signed with the CFTC in 2015



MoU signed between the CCC and the DRC (CONAC) in 2021

# CHALLENGES FACED BY CCC IN ITS FORMATIVE STAGES

The CCC's journey in the last ten years has been an exciting one with several challenges to overcome. It has been exciting because the success of any organization is measured by its ability to overcome insurmountable challenges and remain afloat. The challenges faced by the CCC in its formative stages include *inter alia*;

- a) Inadequate financial and human resources to effectively implement programmes;
- b) Inadequate staff levels due to budgetary constraints to recruit as per the approved organizational structure. It is worth noting that at commencement of operations, the CCC only had five (5) professional staff members, a secretary, and a driver. The total staff complement was only 7;
- c) Insufficient benchmarks for regional competition enforcement in less developed countries;
- d) Resistance by the business community to submit to the jurisdiction of the CCC on account of non-domestication of the Regulations, zero merger notification thresholds and perceived high filing fees; and
- e) Inadequate appreciation of the Regional Competition enforcement regime at Member States level.

The challenges elucidated above are elaborated in the proceeding sections below:

## INADEQUATE FINANCIAL RESOURCES TO EFFECTIVELY IMPLEMENT PROGRAMS

It is well known that Member States and the donor community have been facing financial constraints and fatigue to fund institutions and projects more so newly created ones. The CCC's operations commenced at a time when the Member States had made it very clear that they were not ready to fund

newly created institutions due to budget constraints and that any such created institutions should devise revenue raising mechanisms to sustain their operations. This therefore meant that the CCC's operations could not commence from 2004 when the Regulations were enacted to 2011 when its Director and Chief Executive Officer was engaged.

Immediately after the Director and Chief Executive Officer was recruited, he embarked on funding mechanisms and initiatives to commence the operations of the CCC. The Director secured funding from Trademark to support the drafting of subsidiary legislation and other rules of procedure to enable and facilitate the commencement of the CCC's operations. Further the Director identified provisions in the Regulations which would assist the CCC with its operations. Further to finance the investigation and assessment of regional mergers and acquisitions, the CCC devised rules on merger filing fees.

After two years of preparatory work and establishing systems of operations, the CCC was ready to recruit its first cohort of staff under the phased recruitment approach. Thus, by January 2013 the CCC recruited four professional staff members as follows:

- a) Manager; Mergers and Acquisitions
- b) Manager; Enforcement and Exemptions
- c) Manager; Legal Services and Compliance
- d) Registrar

At the same time, in January 2013, the CCC commenced enforcement operations with a lean staff complement and inadequate funding from Member State subventions covering only administration costs like communication and stationery. Despite these funding challenges, the CCC took off and became one of the most respected competition authorities the world over.



*First Officers of the CCC from 2013 left to right, Ms Alfred Chima (Driver), Ms Lucy Dziko ( Senior Finance Assistant), Ms Mary Gurure ( Manager Legal Services and Compliance), Ms Angela Minika (Senior Administrative Assistant) Ms Meti Disasa (Registrar) at the back from left to right, Mr Lloyds Vincent Nkhoma, then Manager Enforcement and Exemptions, Dr George Lipimile; then Director & Chief Executive Officer of the CCC and Dr Willard Mwemba, then Manager of Mergers and Acquisitions.*



*Officers of the CCC in 2016*

### **INADEQUATE STAFF LEVELS DUE TO BUDGETARY CONSTRAINTS TO RECRUIT AS PER THE APPROVED ORGANIZATIONAL STRUCTURE**

The CCC's approved organization structure had 33 posts. However, not all these posts could be filled in at inception due to budgetary constraints and Member States' position that they were not ready

to fund operations of newly created institutions. The Member States subventions were only enough to recruit and pay 5 professional staff members. This was a significant setback for the CCC as the staff levels were inconsistent with the volume of work that that it was expected to undertake. The CCC had a huge task of ridding the Common Market of anti-competitive conduct that had been going for a long time. This mammoth task required a reasonable workforce more than the 5 professional staff employed at the CCC at the time. Therefore, the CCC had to generate its own funds to facilitate the recruitment of more staff as per the approved organizational structure under the phased recruitment approach. To date, the CCC has recruited 30 staff members with only a few vacant positions remaining to be filled on the organizational structure.



*Some Members of Staff of the CCC as of June 2022*

### **INSUFFICIENT BENCHMARKS FOR REGIONAL COMPETITION ENFORCEMENT IN LESS DEVELOPED COUNTRIES**

The CCC was the first Regional Competition Authority (RCA) to start enforcing competition and consumer protection law in Africa. This meant that there were no benchmarks to refer to in regional enforcement. While the only operating supra-national competition authority, the European Commission offered a learning reference point for the CCC, there were differences in the geographical, economic, social, and political context within which the law was to be applied. The CCC was alive to this fact even as it was drawing lessons from the European Commission.

## RESISTANCE BY THE BUSINESS COMMUNITY AND SOME MEMBER STATES TO SUBMIT TO THE JURISDICTION OF THE COMMUNITY ON ACCOUNT OF NON-DOMESTICATION OF THE REGULATIONS

The CCC faced resistance by the business community and some Member States on the application of the Regulations and their enforceability on account of no domestication. The business community were resistance to the Regulations as they did not know if the Regulations had the force of law in the Member States. At the same time, some Member States argued that they first needed to domesticate the Regulations for them to be enforceable in their jurisdiction.

The CCC therefore had to raise awareness among the business community and the Member States on the fact that the Regulations were enforceable drawing from the provisions of the COMESA Treaty and the Regulations. Specific reference was made to Article 5(2) and 10(2) of the COMESA Treaty, and Article 5(2) of the Regulations as well as Rule 5 of the COMESA Competition Rules and the COMESA Court of Justice in the matter involving **Polytol Paints & Adhesives Manufacturers Co. Ltd v. the Republic of Mauritius.**

# TESTIMONIALS FROM EXTERNAL STAKEHOLDERS

## **ACCOUNT OF MR. NKONZO HLATSHWAYO, WERKSMANS ATTORNEYS, DIRECTOR COMPETITION PRACTICE.**



At the time, we and our clients had many questions. At the outset, it was apparent that the CCC wanted to be an open and transparent regulatory authority as it entertained several questions and sought to allay our fears.

A few months down the line, we were at the CCC's offices to talk about what we considered to be impracticable and burdensome interpretations of the Regulations. To our surprise, we were warmly received by the CCC which remained keenly open to listen. Although we did not reach agreement on some of the issues brought to the CCC, it was a matter of time before the CCC started addressing these in earnest, in a transparent and open way. In all the validation workshops that we have been invited to, it was clear that the CCC wanted to hear from the users of the system how to structure an enforcement framework effective enough to deal with anti-competitive conduct but efficient enough not to create or impose unnecessary burdens on companies that do business in COMESA.

I personally commend the CCC for its openness and transparency in its enforcement of the Regulations and Rules."

"Congratulations to the Director & CEO of the CCC and the entire team for the [10<sup>th</sup>] anniversary of CCC. You have all worked tirelessly to establish a credible regional competition authority in the COMESA region. Well done!

I recall hosting the former Director & CEO Dr. George Lipimile and his Head of the Mergers and Acquisitions Department Dr. Willard Mwemba in Johannesburg at the beginning of 2013 for a conference on the new COMESA regime. This was on the eve of the commencement of the CCC's operations.



**EXPERIENCE OF ANJARWALLA AND KHANNA LAW FIRM KENYA: ITS INTERACTION WITH THE CCC FOR THE PAST 10 YEARS (ACCOUNT OF MS. ANNE KI-UNUHE, PARTNER)**



"When the CCC opened its doors about 10 years ago, it had limited staff and resources, no Guidelines and everything about the Regulations was untested. Today, the CCC has managed to overcome many of its initial obstacles, and whilst it still has some way to go, the progress it has made so far is both evident and commendable! Over the years, I have been honored to work closely with the CCC in formulating some of the much-needed Guidelines as well as amendments to the Regulations and Rules. One thing I have observed and admired about the CCC's approach is their obvious willingness to engage with the various stakeholders (including us as the legal counsel who regularly interact with the CCC), their openness to take into consideration the suggestions and critiques where certain aspects of their competition regulation regime are not working and their desire to implement the required change in a pragmatic manner".

**"EXPERIENCE OF BOWMAN GILFILLAN: ITS INTERACTION WITH THE CCC FOR THE PAST 10 YEARS (ACCOUNT OF MR. DERECK LOTTER, HEAD OF COMPETITION)**



"It is a great honour to have been asked to write a few words on the tenth anniversary of the establishment of the CCC. Since January 2013, the CCC has moved forward to establish itself as a credible and impactful regional competition law regulator able to consider and engage robustly on competition matters affecting COMESA Member States. COMESA, as a regional body, is well positioned to positively uplift people living in Africa and the CCC will continue to be crucial in achieving these outcomes in the interests of consumers and investment in the region. In this context, I wish the CCC the best for the future."



# TESTIMONIALS OF MEMBERS OF STAFF OF THE CCC

“Working with the CCC from its inception in January 2013 has given me vast opportunities and experiences than other companies in the 30 years of my working life. I have enjoyed the fast-paced, always changing environment, and working with some of the finest co-workers in the world with great expertise in law and economics. The mixed skills set that are required in enforcing competition law which is underpinned in economics principles was intriguing at first. The CCC offers impeccable training and endless possibilities to learn, while challenging you to obtain the best results. Everyone in the Commission from the top to the bottom is incredibly supportive, understands that providing a truly great service to our regional and international stakeholders is the key to success.

The CCC’s dynamic and international settings with a multicultural workforce from the COMESA region has motivated me to ensure that I do my part as an international civil servant to facilitate the achievement of the goals of economic regional integration for the 21 COMESA Member States. Of course, there have been challenges but these are overshadowed by the many memorable moments in my time with the CCC with the most satisfying being to support Member States in adopting national competition laws and operationalizing national competition authorities”.

**Ms. Mary Gurure**  
**Manager Legal Services and Compliance**

“I am honoured to be a part of this great institution which has and continues to positively impact consumers in the COMESA Region. The CCC has definitely left a mark in the competition and consumer protection space, owing to its outstanding enforcement efforts over the last 10 years. During the period that I have been here, the Commission has helped me grow personally and professionally and I appreciate how invested the Management is in progressing the welfare of not only its external, but the internal stakeholders as well. 10 down, many more successful years to come!”

**Ms. Nancy Otori**  
**Consumer Welfare Officer**

Working at the CCC is very exciting as it provides insight into a lot of industries and the functioning of economies in the Common Market and beyond. The work is also fast-paced and collaborative and provides gratification that our recommendations go into decisions that positively impact consumers in the Common Market.

The CCC provides an enabling environment for personal growth though providing avenues for the upskilling and retooling of its staff to ensure they are adequately equipped to address developments in the market. The hiring practices at the CCC ensures diversity and inclusiveness at the workplace which comes with new perspectives, fresh ideas, a wider talent pool and representation across the Member States.

**Mr. Barnabas Andiva**  
**Competition Analyst**

# PROSPECTS FOR THE FUTURE

## **FOSTERING RELATIONSHIPS WITH COMPETITION AUTHORITIES AND CO-OPERATING PARTNERS.**

Going forward, the CCC shall continue fostering closer relationships with competition authorities outside the Common Market. This is important to address competition concerns that arise outside but their effects manifest in the Common Market. The converse is also true. Further the relationships are expected to facilitate capacity building and exchange of experiences to enhance the efficiency and effectiveness of competition enforcement in the Common Market and beyond. Such relationships are expected to be symbiotic as other competition authorities outside the Common Market shall equally learn from the experiences of competition enforcement from the CCC.

## **AMENDMENT TO THE COMESA COMPETITION REGULATIONS AND RULES**

The Regulations have achieved their purpose and effectively ensured a competitive landscape in the Common Market. However, any law is like a living organism that continues to grow. Therefore, after all these years of effective enforcement, gaps have been identified and the process of reviewing the Regulations has commenced and is expected to be concluded as soon as possible bearing in mind the consultative legislative process involved. Perfection is a continuous process, and the CCC shall continue to move along this dynamic trajectory to serve the Common Market and beyond with incomparable distinction!



# CONCLUSION

What a great and exciting journey it has been. We especially recognise all those who have been with us in this journey, who assisted us to shape our practice and gave us valuable guidance. We also thank all those who aggressively criticized us in our formative stages. Your aggressive criticism put us on our toes to work hard to perfect our system. To all of you, we say thank you very much. We would not be where we are today without your contributions. We wish to refer to two interesting individuals who among others made some unforgettable impact on our journey namely; Professor William Kovacic and Mr. Andreas Stargard . It was Professor Kovacic who breathed confidence and courage in us when the going got tough by stating that **“Continue with your enforcement efforts and ignore calls for amendment of the law at this early stage for you can only amend what you have tested. Those who invented an aeroplane would have not known that it was able to fly if they did not fly it.”** With these words, we had renewed vigour to forge ahead and effectively implement the mandate of the CCC.

We remember Mr. Stargard for his aggressive criticism of our law and our very short decisions in our formative stages. We recall that he would criticize us even on our text when we missed a comma or indeed wrote with a wrong spelling. This criticism perfected our system and today, our decisions are very detailed and comprehensive setting precedent and indeed the CCC has as a result emerged as one of the most respectable competition authorities not only in Africa but the world over.



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