



COMESA COMPETITION AND CONSUMER PROTECTION REGULATIONS, 2025



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PREAMBLE

THE COUNCIL

HAVING REGARD TO:

Article 9(2)(d) of the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA) which empowers the Council to make Regulations in accordance with the provisions of the Treaty;

Article 10(2) of the Treaty which empowers the Council to make Regulations that are binding on all Member States in their entirety;

Article 55(1) of the Treaty which prohibits any practice that negates the objective of free and liberalised trade;

Article 55(3) of the Treaty which empowers the Council to make Regulations to regulate competition within the Common Market;

RECOGNISING:

That anti-competitive business practices, anti-competitive mergers and unfair trade practices may constitute an obstacle to the achievement of inclusive growth, trade liberalisation and economic efficiency, and enhancement of consumer welfare in the Member States;

That the continued growth in globalisation of business activities increases the likelihood that anti-competitive business practices in one country may adversely affect competition in another country;

That a regional competition legislation is an effective tool to prevent anti-competitive business practices and unfair trade practices having a regional dimension and, as a general rule, shall have primary and exclusive application as regards the conduct within its scope, in the application of a “one-stop shop” regime and in compliance with the principle of subsidiarity;

The need for Member States to give effect to the principles of regional competition and consumer protection regulation and to exercise moderation and self-restraint in the interest of co-operation in the enforcement of competition and consumer protection legislation;

The desirability of setting standards for procedures by which the regional competition and consumer protection agency can act as a forum for exchange of views, consultations and conciliation on matters related to anti-competitive business practices and unfair trade practices affecting regional and international trade;

That foreign direct investment, trade, regional and sub-regional economic integration should not result in anti-competitive business practices such as price cartels, market sharing and other practices which may adversely impact competition and consumer welfare;

The importance of internationally recognised and accepted principles which advocate for the protection of consumer rights;

CONSIDERING THAT:

It has become necessary to revoke the COMESA Competition Regulations of 2004 in line with new developments;

Member States should co-operate at regional level in the implementation of the regional competition and consumer protection legislation and their respective national legislation in order to eliminate the harmful effects of anti-competitive business practices and mergers, and unfair trade practices;

Close co-operation between the regional competition and consumer protection authority and Member States, and among Member States, in the form of notification, exchange of information, co-ordination of actions, and consultation should be encouraged; and

CONSCIOUS of the relative presence of national competition and consumer protection authorities in some Member States and the desirability of establishing national competition and consumer protection authorities in all Member States;

HAS ADOPTED THESE REGULATIONS

CHAPTER ONE PRELIMINARY

Regulation 1 Citation

These Regulations may be cited as the “COMESA Competition and Consumer Protection Regulations”.

Regulation 2 Interpretation

In these Regulations, unless the context otherwise requires:

“**acquiring undertaking**” means an undertaking, whether jointly or solely:

- (a) that as a result of a merger in any circumstances set out under Chapter Four of these Regulations, would directly or indirectly acquire or establish direct or indirect control, or change the quality of control held, over the whole or part of one or more undertakings;
- (b) that has direct or indirect control over the whole or part of an undertaking contemplated in sub-paragraph (a); or
- (c) that is directly or indirectly controlled by an undertaking contemplated in sub-paragraph (a) or (b);

“**anti-competitive business practice**” means conduct which restrains competition and is not otherwise exempt by law or authorised in a manner required by these Regulations;

“**asset**” includes tangible and intangible assets, and any other asset having a commercial value including data;

“**Board**” means the Board of the Commission constituted under Regulation 11;

“**Bureau of the Council**” means the Chairman, Vice-Chairman and Rapporteur elected in accordance with the Rules of Procedure of the meetings of the Council;

“**business user**” means any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing products to end users;

“Chairperson” means the Chairperson of the Board;

“collective dominance” means a dominant position held by more than one undertaking in the relevant market;

“COMESA Dollar” means the unit of account of the Common Market which shall be equivalent to one (1) United States Dollar;

“Commission” means the COMESA Competition and Consumer Commission established by Regulation 8;

“Commissioner” means a member of the Board;

“Common Market” means the Common Market for Eastern and Southern Africa (COMESA) established by Article 1 of the Treaty;

“Competent Authority” means any person or institution charged with the enforcement of competition or consumer protection matters in a Member State;

“consumer” includes:

- (a) any person who purchases or offers to purchase products, otherwise than for the purpose of resale;
- (b) any person who purchases any products for the purpose of using them in the production and manufacture of any other goods for sale or the provision of another service for remuneration; or
- (c) a user of those particular products or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular products;

“Council” means the Council of Ministers of the Common Market established by Article 7 of the Treaty;

“Court” means the Court of Justice of the Common Market established by Article 7 of the Treaty;

“day” means a calendar day;

“decision” includes determinations, resolutions, orders, directives, notices or letters;

“Division” includes a Division, Unit or Department of the Commission;

“dominant position” means a position of economic strength enjoyed by an undertaking, whether by itself or together with interconnected undertakings, which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers, suppliers and ultimately of its consumers;

“gatekeeper” means digital service providers operating a core platform service that serves as an important gateway for business users to reach end-users and enjoys an entrenched and durable position in its operations or is likely to enjoy such a position in the near future;

“market inquiry” means a formal inquiry in respect of issues affecting consumers or the general state of competition without necessarily referring to the conduct or activity of any particular undertaking;

“Member State” means a Member State of the Common Market;

“merger” means merger as defined in Regulation 41;

“Panel” means the Panel responsible for determinations, as established by Regulation 20;

“person” means a natural or legal person;

“product” includes goods and services;

“public hearing” means a hearing held as part of a market inquiry process or investigations which provides interested parties with the opportunity to make submissions, to the Commission in a public forum;

“Secretariat” means the Secretariat of the Common Market established by Article 7 of the Treaty;

“Secretary-General” means the Secretary-General of the Common Market provided for by Article 17 of the Treaty;

“service” means a service of any description whether industrial, trade, professional or otherwise, and includes the sale of goods, where the goods are sold in conjunction with the rendering of a service;

“settlement” means settlement as defined in Regulation 30;

“target undertaking” means an undertaking:

- (a) as a result of a merger which shall be directly or indirectly controlled by an acquiring undertaking;
- (b) as a result of a merger, whose direct or indirect control shall be transferred to an acquiring undertaking;

“trade” includes any business, industry, profession or occupation relating to the supply or acquisition of goods or services;

“Treaty” means the Treaty establishing the Common Market for Eastern and Southern Africa;

“unconscionable conduct” means grossly unjust or unfairly one-sided conduct in favour of the party who has the superior bargaining power that is contrary to good conscience, and causing a significant imbalance in the parties’ rights and obligations arising under a transaction, to the detriment of the consumer;

“undertaking” includes any person, public or private, engaged in an economic activity and includes a trade association, partnerships and trusts; and

“unfair trade practice” includes any conduct or practice that is deceptive, unethical, unconscionable, fraudulent, or which causes injury, damage of property or loss to a consumer or has the effect of denying the consumer any of the rights protected under these Regulations.

Regulation 3

Binding Nature of the Regulations

Pursuant to Article 10 (2) of the Treaty, these Regulations shall be binding in their entirety on undertakings and Member States.

Regulation 4

Purpose of the Regulations

The purpose of these Regulations is to:

- (a) promote competition by preventing and prohibiting anti-competitive business practices, anti-competitive mergers and other restrictions that deter the efficient operation of markets, thereby enhancing consumer welfare in the Common Market; and
- (b) enhance consumer welfare by preventing and prohibiting unfair trade practices thereby protecting consumers against offensive conduct by market actors in the Common Market.

Regulation 5

Scope of Application

- (1) These Regulations apply to all economic activities conducted by an undertaking within, or having or likely to have an effect in two or more Member States within the Common Market or a substantial part of it, except for those activities set out in Regulation 6.
- (2) These Regulations shall have exclusive application with respect to:
 - (a) anti-competitive business practices which may restrict competition in the Common Market, or a substantial part of it.
 - (b) mergers which:
 - (i) meet the prescribed thresholds; and
 - (ii) in the case of non-notifiable mergers, may restrict competition in the Common Market or a substantial part of it;
 - (c) unfair trade practices which have or may have an effect on consumers in the Common Market.
- (3) No Member State shall apply its national legislation to any conduct covered under these Regulations except:
 - (a) in reference to referrals pursuant to Regulations (45) and (46);

- (b) where the Commission has sought the assistance of the Member State which may require the use of its national legislation; or
 - (c) where the circumstances so require pursuant to Regulation 81(3).
- (4) Where there is a conflict between the provisions of these Regulations and the provisions of the national competition or consumer protection laws with respect to matters with a regional dimension, the provisions of these Regulations shall prevail.

Regulation 6 Exclusions

These Regulations shall not apply to:

- (a) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;
- (b) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;
- (c) activities of professional associations designed to develop or enforce professional standards reasonably necessary for the protection of the public interest unless they conduct their activities in such a manner to cause the anti-competitive effects prohibited herein; and
- (d) direct enjoyment of the privileges and protections conferred by other laws protecting intellectual property rights, including inventions, industrial models, trademarks and copyrights unless such proprietary rights are used in a manner that result in anti-competitive effects which are prohibited herein.

Regulation 7 Obligations of Member States

- (1) Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of these Regulations or resulting from action taken by the Commission under these Regulations.

- (2) Member States shall abstain from taking any measure which could jeopardize the attainment of the objectives of these Regulations.
- (3) Notwithstanding the generality of paragraph (1), Member States shall have the following obligations:
- (a) take the necessary legislative measures to ensure harmonisation, consistency and compliance with the Regulations;
 - (b) co-operate with the Commission in the enforcement of the Regulations and implementation of its decisions;
 - (c) assist investigations of the Commission in their territory when requested, including conducting investigations, market inquiries or studies, jointly or under the guidance of the Commission;
 - (d) enforce the decisions of the Commission in their territory; and
 - (e) refer to the Commission matters that fall under the scope of application of these Regulations.
- (4) A decision rendered by the Commission under these Regulations shall be binding on undertakings and Member States.

CHAPTER TWO
ESTABLISHMENT, FUNCTIONS AND POWERS

Regulation 8
Establishment of the Commission

- (1) There is hereby established the COMESA Competition and Consumer Commission which shall be an autonomous institution and shall enjoy international legal personality.
- (2) The Commission shall be composed of the Commissioners, the Chief Executive Officer and such other staff as may be appointed.
- (3) The Commission shall have in the territory of each Member State the legal capacity:
 - (a) required for the performance of its functions under the Treaty and these Regulations; and
 - (b) to acquire, hold, manage or dispose of movable and immovable property in accordance with the laws and regulations in force in each Member State.
- (4) The Commission may sue or be sued in its corporate name.
- (5) The Commission shall have an official Seal.
- (6) The Commission shall maintain a head office at a place and in a Member State to be decided by the Council.

Regulation 9
Functions and Powers of the Commission

- (1) The Commission shall:
 - (a) promote and enforce compliance with these Regulations;
 - (b) monitor, investigate and assess anti-competitive business practices by undertakings within, or having an effect within, the Common Market;

- (c) monitor and investigate unfair trade practices affecting or likely to affect consumers in the Common Market;
- (d) monitor, investigate and assess mergers within, or having an effect within, the Common Market;
- (e) monitor compliance and take any step required to enforce compliance with these Regulations;
- (f) conduct market inquiries, studies, research, and market investigations into matters affecting competition and consumer welfare within the Common Market;
- (g) mediate disputes between Member States concerning anti-competitive business practices and unfair trade practices;
- (h) regularly review regional competition and consumer protection policies so as to advise and make representations to the Council with a view to improving on the effectiveness of the Regulations;
- (i) assist Member States to promote national competition and consumer protection laws and institutions, with the objective of the harmonisation of those national laws with these Regulations to achieve uniformity of interpretation and application of competition law and policy within the Common Market;
- (j) co-operate with competition and consumer protection authorities in Member States;
- (k) co-operate and assist Member States in the implementation of its decisions;
- (l) facilitate the exchange of relevant information and expertise;
- (m) enter into such arrangements as will enhance its ability to monitor and investigate the impact of conduct outside the Common Market but which nevertheless has, or may have, an impact on trade between Member States;
- (n) be responsible for developing and disseminating information about competition policy and consumer protection policy;
- (o) co-operate with national, regional or international competition and consumer bodies;

- (p) co-operate with other agencies to monitor and regulate any conduct or specific sector;
 - (q) engage and advise governments of Member States on matters relating to policies and regulations that may have an impact on competition and consumer welfare;
 - (r) enter into agreements with any institution or agency for the better carrying out of the mandate of the Commission; and
 - (s) co-operate with consumer bodies duly registered under the appropriate national, regional or international laws.
- (2) In conducting investigations and market inquiries, the Commission may in accordance with the principles of natural justice:
- (a) order any person to appear before it to give evidence;
 - (b) require the discovery or production of any document or part thereof;
 - (c) permit a joinder of parties to proceedings following an application; or
 - (d) take any other reasonable action which may be necessary in furtherance thereof.
- (3) The Commission may negotiate and conclude settlement agreements.
- (4) The Commission shall have the power to:
- (a) make interim orders;
 - (b) issue determinations or decisions on applications for authorisation made pursuant to these Regulations;
 - (c) authorise search and seizure operations;
 - (d) issue comfort letters; or
 - (e) issue non-binding advisory opinions.

Regulation 10
Funds of the Commission

- (1) The funds of the Commission shall comprise:
 - (a) annual subventions from the Member States in accordance with the formula of budgetary contributions to Secretariat;
 - (b) payments payable to the Commission under the Regulations;
 - (c) grants and donations;
 - (d) fees that may be charged and collected by the Commission in respect of programs, publications, consultancies, advisory opinions, and other services; and
 - (e) any other monies that may vest in or accrue to the Commission whether in terms of the Regulations or otherwise.
- (2) The Council shall be responsible for appropriating the budget of the Commission from the annual subventions from Member States.
- (3) The Board shall be responsible for appropriating the budget of the Commission except for the annual subventions from Member States.
- (4) The Board shall be responsible for the oversight of all the funds of the Commission obtained from different sources.
- (5) The Chief Executive Officer, being the chief accounting officer shall be responsible for the utilisation and management of all the funds of the Commission obtained from different sources as stipulated in paragraph (1).
- (6) The accounts of the Commission relating to each financial year shall be prepared in accordance with international accounting standards and shall be audited in the following financial year.

Regulation 11
Establishment of the Board

- (1) There is hereby established the Board which shall be the supreme policy-making body of the Commission.
- (2) The Board shall consist of nine (9) Commissioners.
- (3) The Chairperson and the Vice-Chairperson shall be elected by the Board from among its members.
- (4) The Commissioners shall be non-executive and shall not be involved in the day-to-day administration of the Commission.
- (5) The Chief Executive Officer shall be an ex-officio member of the Board.
- (6) The conduct of the Board shall be set out in the Board Charter.

Regulation 12
General Principles of Appointment of Commissioners

- (1) The nominations of the Commissioners shall be based on:
 - (a) relevant professional expertise, experience and competence;
 - (b) diversity including gender; and
 - (c) the geographical and linguistic representation of the Common Market.
- (2) A person shall not be eligible for appointment as a Commissioner if that person:
 - (a) is under any written law, adjudged or otherwise declared to be of unsound mind;
 - (b) is an undischarged bankrupt;
 - (c) has been dismissed from the Court, the Secretariat or any of the institutions or agencies of the Common Market after following due process; or
 - (d) is not a citizen of any of the Member States.

- (3) The appointment of Commissioners shall be staggered in order to ensure that there is continuity in the operations of the Commission.

Regulation 13
Appointment Procedure of Commissioners

- (1) The Council, upon the recommendation of the Secretary-General, shall appoint citizens of Member States to be Commissioners.
- (2) The Secretary-General shall carry out the nomination and selection process as set out in these Regulations.
- (3) The Secretary-General shall issue a letter to the coordinating Ministry of each Member State requesting nominations of candidates who possess the qualifications stipulated in these Regulations.
- (4) Each Member State shall submit a maximum of two (2) nominees together with their detailed curriculum vitae within the time stipulated in the request.
- (5) The Member States shall ensure that nominees have suitable qualifications and a minimum of ten (10) years relevant experience in any of the following fields:
 - (a) competition law and policy;
 - (b) consumer protection;
 - (c) economics;
 - (d) law;
 - (e) commerce;
 - (f) industry;
 - (g) accountancy;
 - (h) public administration;
 - (i) labour; or

- (j) small-scale business matters.
- (6) Upon receipt of the nominations, the Secretary-General shall appoint a Selection Panel to shortlist and select nominees for appointment to the Board.
- (7) The composition of the Selection Panel shall be as provided for in the First Schedule.
- (8) The Selection Panel may invite any person with knowledge in competition and consumer law enforcement whose presence is in its opinion desirable to attend its meeting. Such persons shall have no voting rights.
- (9) Decisions of the Selection Panel shall be taken by simple majority, but in the case of a tie, the Chairperson shall have a casting vote.
- (10) The Selection Panel shall ensure that at least one Commissioner has qualifications and experience in law and one Commissioner has qualifications and experience in economics.
- (11) The Selection Panel shall not select more than one candidate from each Member State.
- (12) The Selection Panel shall submit a report on the selected nominees to the Secretary-General.
- (13) The Secretary-General shall submit the report on the selected nominees to the Council which shall consider the nominees and appoint the Commissioners.

Regulation 14
Term of Office and Removal of Commissioners

- (1) Commissioners shall hold office for a non-renewable term of five (5) years.
- (2) In the event that a Commissioner does not complete his or her term for reasons stated in paragraph (4), the vacancy shall be filled on request by the Secretary-General to Member States whose nationals are not on the Board to submit names for consideration in accordance with Regulation 13 and appointment to hold office for a non-renewable term of five (5) years.
- (3) The Member State of the vacating Commissioner who did not complete his or her term for reasons stated in paragraph (4), shall not be eligible to fill the vacancy.

- (4) The office of a Commissioner shall become vacant for the following reasons:
- (a) upon his or her resignation;
 - (b) upon his or her death;
 - (c) if the Commissioner is absent without reasonable excuse from three (3) consecutive meetings of the Board of which there has been due notice;
 - (d) if the Commissioner is absent even with reasonable excuse from six (6) consecutive meetings of the Board of which there has been due notice;
 - (e) if the Commissioner is lawfully detained or his/her freedom of movement is restricted for a period exceeding six (6) months;
 - (f) if the Commissioner becomes an undischarged bankrupt;
 - (g) if the Commissioner fails to disclose a material conflict of interest;
 - (h) if the Commissioner becomes of unsound mind or permanently incapacitated;
 - (i) if the Commissioner engages in any activity that may undermine the integrity of the Commission or amounting to serious misconduct; and
 - (j) if the Commissioner ceases to be a citizen of a Member State.
- (5) The Board Chairperson, upon establishing that any of the factors in paragraph (4) has occurred, may convene a Board meeting to consider the matter and make a determination.
- (6) On vacation of office by a Commissioner, the vacancy shall be filled by appointing a person in accordance with Regulation 13, provided that if the remaining period is less than six (6) months, the Secretary-General may decide not to fill the vacancy until the expiry of the period.

Regulation 15

Allowances and Benefits of Commissioners and Ex-officio Members

- (1) Commissioners and ex-officio members of the Board shall receive a sitting allowance for every Board meeting or Board Committee meeting attended.

- (2) The allowances and benefits of the Commissioners and ex-officio members of the Board shall be provided in accordance with the Second Schedule.

Regulation 16
Allegiance of Commissioners

- (1) The allegiance of the Commissioners shall be to the Commission.
- (2) Commissioners shall hold a high standard of fiduciary duty to the Commission.
- (3) Commissioners shall be accountable to the objectives and aspirations of the Common Market and shall advance the interest of the Common Market and not their respective countries.
- (4) Commissioners shall distinguish between their roles as Commissioners and their respective positions in their home countries.
- (5) Commissioners shall perform their duties impartially and conscientiously and preserve the confidentiality of the deliberations of the Commission.

Regulation 17
Powers and Functions of the Board

- (1) The Board shall be responsible for ensuring that the Commission adheres to the principles of corporate governance.
- (2) The Board, upon recommendation of the Chief Executive Officer, may approve policies, forms, procedures, guidelines, notices or any other such instruments, as may be necessary, for the better carrying out of the purposes of these Regulations.
- (3) The Board may, subject to the approval of the Council, issue block exemptions exempting any category of agreements, decisions and concerted practices from the application of Regulation 33.
- (4) The Board shall determine the remuneration and other benefits of the Chief Executive Officer and other staff of the Commission.
- (5) The Board may do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under these Regulations.

- (6) The Board may, in exceptional circumstances, delegate any of its powers, in writing, to the Chief Executive Officer.

Regulation 18 Committees of the Board

- (1) The Board may, for the purpose of performing its functions, establish committees and delegate to any such committee such of its functions as it considers necessary.
- (2) The Board, if it so chooses, may consider any matters that could have been considered by a committee.
- (3) The rules of procedure for such committees shall be provided for in their terms of reference to be approved by the Board.

Regulation 19 Proceedings of the Board

- (1) The quorum for meetings of the Board shall be a simple majority of the total number of the appointed Commissioners.
- (2) The Vice Chairperson shall, in the absence of the Chairperson, carry out the functions of the Chairperson. In the absence of the Chairperson and the Vice Chairperson, the Commissioners shall elect from amongst themselves an interim Chairperson to preside over a particular meeting.
- (3) When any member of the Board or staff member of the Commission or any other person attending has any direct or indirect interest in any matter under consideration at the Board meeting, he/she shall, immediately and prior to any deliberations, disclose his or her interest and shall not take part in any discussion relating to that matter. Any disclosure of interest made under these Regulations shall be recorded in the minutes of the Board meeting.
- (4) The Board shall cause minutes to be kept of all its meetings.
- (5) The Board shall meet as and when there is business to consider. Such meetings shall be held at places, platforms or combination of platforms, times and dates as may be determined by the Chairperson in consultation with the Chief Executive Officer.

- (6) In exceptional circumstances, a Special Board meeting may be convened to address urgent matters which, if not immediately addressed may prejudice the well-functioning of the Commission.
- (7) Upon written request by at least one third of the Commissioners or the Chief Executive Officer, the Chairperson may call for a Special Board meeting to be held within fifteen (15) days of receipt of such request.
- (8) Resolutions of the Board may be passed at Board meetings and by way of round robin.
- (9) The Chairperson shall only approve the passing of decisions by way of round robin in exceptional circumstances.
- (10) A round robin resolution of the Board shall be as valid as if it had been passed at a meeting of the Board duly called and constituted, provided that:
 - (a) each Board Member has received notice of the matter to be decided upon; and
 - (b) the required majority of the Board Members have voted in favour of the matter.
- (11) Any round robin resolution shall be in writing, signed in counterparts and shall be deemed to have been passed on the date of the last signature.
- (12) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in its meetings. Such persons shall have no voting rights and their terms and conditions of engagement shall be determined by the Board.
- (13) The Board may also retain consultants to give advice to and perform services for it. The terms and conditions of engagement shall be determined by the Board.
- (14) The Board shall develop its own rules of procedure for the conduct of its business in the Board Charter.
- (15) The Registrar shall be the Secretary to the Board. In the absence of the Registrar, any other staff member, may be nominated to act as secretary by the Chief Executive Officer.
- (16) The Registrar shall be the custodian of all the records of the Board and its affairs.

Regulation 20
Establishment of the Panel Responsible for Determinations

- (1) There is hereby established a Panel which shall have the power to make final determinations on competition and consumer protection matters or any related matter brought before it.
- (2) The Panel shall be composed of at least three (3) and not more than five (5) Commissioners appointed from amongst the Board, by the Chairperson of the Board.
- (3) The Chairperson of the Board shall appoint the Chairperson of the Panel from amongst the Panel members.
- (4) The Commissioners appointed under paragraph (2) shall have suitable qualifications and experience in any of the following;
 - (a) economics;
 - (b) law;
 - (c) competition law and policy;
 - (d) consumer protection; or
 - (e) commerce;
- (5) Without limiting the generality of paragraph (1), the Panel may:
 - (a) make decisions on any conduct prohibited in these Regulations;
 - (b) adjudicate on any other matter that may be brought before it in terms of these Regulations, and make an order provided for in these Regulations;
 - (c) consider and make determinations on mergers;
 - (d) co-opt experts to advise and take part in its deliberations from time to time;
 - (e) based on the findings of an investigation or an assessment, make a determination that there has been a breach of the Regulations;

- (f) order the termination or nullification as the case may require of agreements, conduct, activities or decisions by any person prohibited under these Regulations;
- (g) direct any person to cease and desist from any anti-competitive business practice or unfair trade practice;
- (h) direct any person to take such steps as it believes may be necessary to overcome the effects of any anti-competitive business practice or unfair trade practice;
- (i) order payment of compensation to persons affected by the conduct of undertakings;
- (j) impose appropriate fines and penalties for breach of these Regulations; or
- (k) make any ruling or order necessary or incidental to the performance of its functions in terms of these Regulations.

Regulation 21
Term of Office and Removal of a Member of the Panel

- (1) Members of the Panel shall serve for a duration of two (2) years.
- (2) A member of the Panel shall not serve for a cumulative duration of more than four (4) years.
- (3) The office of a member of the Panel shall become vacant:
 - (a) for the reasons stated in Regulation 14 (4) with the exception of sub-paragraph (c) and (d) of Regulation 14 (4);
 - (b) where a member of the Panel is absent without reasonable excuse from two (2) consecutive meetings of the Panel of which there has been due notice;
 - (c) where a member of the Panel is absent even with reasonable excuse from three (3) consecutive meetings of the Panel of which there has been due notice;
- (4) The Chief Executive Officer may, upon establishing that any of the factors in paragraph (3) has occurred, inform the Chairperson who may convene a Board meeting to consider the matter and make a determination.

Regulation 22
Meetings of the Panel

Only three (3) members shall sit at any meeting of the Panel as the Chairperson of the Board may determine.

Regulation 23
Proceedings of Panel Meetings

The terms of reference for Panel meetings shall be approved by the Board.

Regulation 24
Appointment of the Chief Executive Officer

- (1) The Council shall, upon the recommendation of the Board, appoint a citizen of a Member State to be the Chief Executive Officer of the Commission.
- (2) A sitting Commissioner shall not be eligible for appointment as the Chief Executive Officer.
- (3) The Chief Executive Officer shall have suitable qualifications in law, economics, commerce or public administration and experience in competition or consumer matters.
- (4) The Chief Executive Officer shall hold office for a term of five (5) years and shall be eligible for re-appointment only for one further term of five (5) years provided that no person of age of sixty-five (65) years and above shall hold office of the Chief Executive Officer.

Regulation 25
Removal or Resignation of the Chief Executive Officer

- (1) The Chief Executive Officer shall not be removed from office except by the Council upon the recommendation of the Board.
- (2) The Chief Executive Officer may be removed from office:
 - (a) for misbehaviour under the relevant Staff Rules of the Commission;
 - (b) for inability to perform the functions of his or her office;

- (c) if he or she is lawfully detained or his or her freedom of movement is restricted for a period exceeding six (6) months;
 - (d) if he or she becomes an undischarged bankrupt;
 - (e) if he or she becomes of unsound mind or permanently incapacitated;
 - (f) if he or she engages in any activity that may undermine the integrity of the Commission or amounts to serious misconduct; or
 - (g) if he or she ceases to be a citizen of any of the Member States.
- (3) The Chief Executive Officer may resign upon giving three (3) months' written notice addressed to the Council.

Regulation 26

Powers and Functions of the Chief Executive Officer

- (1) The Chief Executive Officer shall be responsible for administering the Commission's affairs, funds and property and for performing any other functions that may be conferred or imposed upon him or her by or under these Regulations or that the Council or the Board may delegate or assign to him or her.
- (2) The Chief Executive Officer may, as required, represent the Commission in the exercise of its functions.
- (3) The Chief Executive Officer shall:
- (a) determine, with the approval of the Board, the number of staff in light of the needs of the Commission and the available budget;
 - (b) assign Directors to head each Division and designate their duties and responsibilities; and
 - (c) be responsible for assigning staff members to each Division.
- (4) The Chief Executive Officer may effect changes in the responsibilities of each member of staff, as the need of the work so requires.
- (5) If the work of the Commission so requires, the Chief Executive Officer may employ project staff with the approval of the Board.

- (6) The project staff shall be citizens of Member States and where necessary the Chief Executive Officer, upon the approval of the Board, may employ project staff who are not citizens of a Member State.
- (7) The Chief Executive Officer may appoint project staff for projects exclusively financed by co-operating partners.
- (8) The project staff shall be guided in their work by the Chief Executive Officer.
- (9) The Chief Executive Officer, in consultation with the Board, shall arrange for suitable premises for the Commission.
- (10) The Chief Executive Officer may delegate some of his or her powers and functions to any senior staff member as may be necessary to assist in the effective management of the Commission.
- (11) The Chief Executive Officer may do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under these Regulations.
- (12) In the exercise of his or her functions and powers under these Regulations, the Chief Executive Officer shall be independent.

Regulation 27 Staff of the Commission

- (1) The Chief Executive Officer, with the approval of the Board, may appoint Directors, the Registrar and such other professional staff as may be necessary for discharge of the functions under the Treaty and these Regulations.
- (2) The Chief Executive Officer shall appoint staff in the General Services category and any other categories as appropriate.
- (3) A sitting Commissioner shall not be eligible for appointment as a member of staff.
- (4) The Chief Executive Officer, with the approval of the Board, shall be responsible for developing the structure of the Commission.

Regulation 28
Power to Conduct Market Inquiries

- (1) The Commission may conduct a market inquiry where it considers it necessary or desirable for the purpose of carrying out its functions.
- (2) The Commission may, for the purpose of an inquiry under paragraph (1), invite any person to submit information.
- (3) Any person from whom information has been requested, under paragraph (2) shall be under an obligation to provide the information.
- (4) On the basis of the findings of a market inquiry, the Commission may:
 - (a) initiate an investigation;
 - (b) enter into agreements with undertakings to implement necessary remedies aimed at addressing the Commission's concerns;
 - (c) make policy recommendations;
 - (d) conduct advocacy; or
 - (e) take any other action within its powers in accordance with these Regulations.

Regulation 29
Power of Search and Seizure

- (1) The Commission may enter into, search and inspect any premises occupied by an undertaking or any other premises, including a private dwelling, where the Commission reasonably suspects that information or documents which may be relevant to an investigation may be kept.
- (2) In furtherance of the powers as set out in paragraph (1), the Commission's staff, staff of the competent authorities of Member States and other officials authorised by the Commission may:
 - (a) enter any premises, land and means of transport of undertakings and associations of undertakings;

- (b) inspect premises, land and means of transport of undertakings and associations of undertakings;
 - (c) examine the books and other records related to the undertakings, irrespective of the medium on which they are stored;
 - (d) take or obtain in any form copies of, or extracts from, such books or records irrespective of the medium on which they are stored or their location be it physical or virtual or take samples of products;
 - (e) seal any premises, land, means of transport, and books or records or any electronic media of storage for the period and to the extent necessary; or
 - (f) interrogate any representative or member of staff of the undertaking.
- (3) The powers under paragraph (1), shall be exercised having regard to the procedures applicable for the exercise of such powers in the relevant Member State.
- (4) The competent authority of the Member State in whose territory the investigation is to be made shall, at the request of the Commission, assist the officials of the Commission in carrying out their duties.
- (5) When the Commission is conducting an investigation which requires authorisation from a judicial authority, the competent authority of the Member State shall request such authorisation on behalf of the Commission.
- (6) When the Commission is conducting an investigation which requires the assistance of other national institutions, the competent authority of the Member State shall secure such assistance.

Regulation 30 Settlements

- (1) For the purpose of these Regulations, settlement means the process through which parties subject to proceedings under these Regulations with or without admitting liability:
- (a) acknowledge their engagement or participation in conduct investigated by the Commission;

- (b) cease the conduct or offer remedies to address the Commission's concerns in order to bring the proceedings to an end without having to follow the lengthy standard procedures; and
 - (c) pay a fine as determined by the Commission.
- (2) The Commission may at any time, during proceedings under these Regulations, enter into a settlement agreement with an undertaking.
 - (3) A settlement agreement under paragraph (2) shall be binding.
 - (4) The Commission shall develop procedures for negotiation of settlement agreements under these Regulations.

Regulation 31 Confirmation of Settlement

- (1) The Chief Executive Officer shall submit a settlement agreement to the Panel for its confirmation.
- (2) The Panel may withhold its confirmation and return the matter to the Chief Executive Officer in cases where there are blatant and unfair settlement terms or blatant errors.
- (3) Upon returning the matter to the Chief Executive Officer, he or she shall re-engage the parties and submit a revised settlement agreement, if any, to the Panel.

Regulation 32 Interim Orders

- (1) Where the Commission has reasonable grounds to believe that an undertaking has engaged, or is likely to engage, in a practice likely to contravene these Regulations, it may, as a matter of urgency, issue an interim order in writing, directing the undertaking to cease and desist from engaging in such conduct, pending the completion of any investigation or market inquiry.
- (2) The Commission may, in determining the urgency of the matter under paragraph (1), have regard to:
 - (a) the risk of serious and irreparable damage to competition or consumer welfare; or
 - (b) the purpose of protecting public interest.

CHAPTER THREE ANTI-COMPETITIVE BUSINESS PRACTICES

Regulation 33 Anti-Competitive Business Agreements

- (1) Any agreements between undertakings, decisions by associations of undertakings and concerted practices which have or are likely to have, as their object or effect, the substantial lessening of competition within the Common Market, or a substantial part of it, are prohibited.
- (2) Paragraph (1) applies only if the agreement, decision or concerted practice is, or is intended to be, implemented or has an effect within the Common Market or a substantial part of it.
- (3) Any agreement or decision or part thereof which is prohibited by paragraph (1) is null and void, unless authorised by the Commission.
- (4) The Commission may declare paragraph (1) inapplicable in the case of any agreement or category thereof between undertakings, any decision by associations of undertakings, or any concerted practice, or category thereof which contributes to improving the production or distribution of products or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (a) impose on the undertakings concerned, restrictions which are not indispensable to the attainment of the above objectives;
 - (b) impose on the undertaking restrictions inconsistent with the attainment of the objectives of the Treaty;
 - (c) afford such undertakings the possibility of eliminating competition in respect of a substantial market for the products in question; and
 - (d) significantly affect public interest in the Common Market.
- (5) The Commission may in considering any agreement or category thereof between undertakings, any decision by associations of undertakings, or any concerted practice, or category thereof, take into account any factor which significantly affects public interest in the Common Market including, but not limited to, the following:

- (a) effect on employment;
 - (b) ability of small and medium sized businesses to be competitive;
 - (c) the ability of industries in the Common Market to compete in international markets;
and
 - (d) environmental protection or sustainability considerations.
- (6) The Commission may impose on any undertaking contravening this Regulation a fine not exceeding ten percent (10%) of the annual turnover in the Common Market for each of the undertakings participating in the infringement of this Regulation.

Regulation 34 **Prohibited Practices *Per se***

- (1) Undertakings involved in rival or potentially rival activities in the Common Market shall not engage or agree to engage in the practices set out in paragraph (3) and (4) unless these undertakings:
- (a) are dealing with each other in the context of a common entity under common control; or
 - (b) are otherwise considered as a single economic unit.
- (2) This Regulation applies to formal, informal, written and unwritten agreements, whether or not legally binding.
- (3) For the purpose of paragraph (1), no undertaking shall take part in any of the following practices which are prohibited *per se*:
- (a) agreements fixing prices;
 - (b) collusive tendering and bid-rigging;
 - (c) market or customer allocation agreements;
 - (d) allocation by quota as to sales and production;

- (e) collective action to enforce arrangements;
 - (f) concerted refusals to supply products to a potential purchaser, or to purchase products from a potential supplier; or
 - (g) collective denials of access to an arrangement or association which is crucial to competition.
- (4) For the purpose of paragraph (1), no undertakings that are in a vertical relationship, shall take part in any of the following practices which are prohibited *per se*:
- (a) absolute territorial protection;
 - (b) restrictions of passive sales; and
 - (c) minimum resale price maintenance.
- (5) The Commission may impose on any undertaking contravening this Regulation a fine not exceeding ten percent (10%) of the annual turnover in the Common Market for each of the undertakings participating in the infringement of this Regulation.

Regulation 35

Determination of a Dominant Position

- (1) An undertaking shall be considered dominant where it enjoys a position of economic strength whether by itself or together with interconnected undertaking, which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers, suppliers and ultimately of its consumers.
- (2) In determining whether an undertaking is in a dominant position, consideration may be given to the following factors, but not limited to:
- (a) relevant market defined in terms of the product and the geographic context;
 - (b) level of actual or potential competition;
 - (c) barriers to entry, expansion and exit;
 - (d) history of competition and rivalry between competitors in the sector; or

- (e) in case of digital markets, data quantity, accessibility and control, and network effects.

Regulation 36 **Abuse of a Dominant Position**

- (1) Any abuse by one or more undertakings of a dominant position or position of collective dominance within the Common Market, or in a substantial part of it, is prohibited if the undertaking:
 - (a) restricts, or may restrict, the entry of any undertaking into a relevant market;
 - (b) prevents or deters, or may prevent or deter, any undertaking from engaging in competition in a relevant market;
 - (c) eliminates, or may eliminate, any undertaking from a relevant market;
 - (d) directly or indirectly imposes unfair purchase or selling prices or other restrictive practices;
 - (e) limits the production of products;
 - (f) as a party to an agreement makes the conclusion of such agreement subject to acceptance by another party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the agreement;
 - (g) engages in any conduct that results in the exploitation of its customers or suppliers, so as to frustrate the benefits expected from the establishment of the Common Market; or
 - (h) applies dissimilar conditions to equivalent transactions with trading parties thereby placing them at a competitive disadvantage.
- (2) Notwithstanding paragraph (1), the Commission may have regard to such other practices as it deems relevant in determining whether there is abuse of a dominant position.

Regulation 37
Abuse of Economic Dependence

- (1) Economic dependence is deemed to exist where one person to a transaction is in a position of superior bargaining position in relation to another in such a way that sufficient and reasonable possibilities for switching to third parties do not exist and there is a significant imbalance between the power of such undertakings or group of undertakings and the countervailing power of other undertakings.
- (2) Any abuse of economic dependence within the Common Market, or in a substantial part of it, shall be prohibited.
- (3) Determination of abuse of economic dependence does not require a dominant position in any market.
- (4) The determination of economic dependence may be based on:
 - (a) the market share of the undertaking in the Common Market;
 - (b) the relative strength of the undertaking;
 - (c) the existence or lack thereof of alternative solutions;
 - (d) the factors that led to the situation of dependence; or
 - (e) any other relevant factors as the circumstances dictate.

Regulation 38
Prohibited Practices by Gatekeepers

Any undertaking or a group of undertakings designated as gatekeepers shall be prohibited from engaging in any of the following conduct, but not limited to:

- (a) imposing price or service parity clauses on business users;
- (b) imposing anti-steering provisions, or otherwise preventing business users from engaging consumers directly outside of a core platform;
- (c) using business user data to compete against the business user;

- (d) self-preferencing of products offered by the gatekeeper on a core platform;
- (e) differentiation in fees or treatment against small and medium enterprises;
- (f) placing restrictions on the portability of data or other actions that inhibit switching platforms for business and end-users;
- (g) failing to identify paid ranking as advertising in search results and to allow paid results to exceed organic results on the first results page;
- (h) combining personal data sourced from different services offered by the gatekeeper;
- (i) forcing purchase or provision of benefit or tie-in sales;
- (j) imposing sales target;
- (k) causing disadvantages; or
- (l) interfering with the business management or operation.

Regulation 39

Application for Authorisation

- (1) The Commission may, upon application by or on behalf of an undertaking, grant an authorisation to undertakings to enter or give effect to agreements even if they are anti-competitive if the Commission determines that benefits arising from the agreements outweigh the anti-competitive effects.
- (2) An application referred to in paragraph (1) shall be made in the form and manner as shall be determined by the Commission and shall be accompanied by the prescribed fee.
- (3) The Commission shall make a decision on the application within one hundred and eighty (180) days after receiving the complete application provided that if the application is incomplete, the examination period begins on the day following receipt of complete information.
- (4) Where the Commission sends a request for information necessary for its examination of the application, and the parties do not respond within the time limits, the Commission shall stop the clock until the information is provided.

- (5) If, prior to the expiry of the one hundred and eighty (180) day period provided for in paragraph (3), the Commission has decided that a longer period is necessary, it shall so inform the parties and seek an extension from the Panel.
- (6) The Panel shall have discretion to determine the number of days of extension, on a case-by-case basis.
- (7) The Commission may, in considering the application for authorisation, take into account whether the agreement:
- (a) contributes to improving the production or distribution of products or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;
 - (b) does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of the above objectives;
 - (c) does not impose on the undertakings concerned restrictions inconsistent with the attainment of the objectives of the Treaty;
 - (d) does not afford such undertakings the possibility of eliminating competition in respect of a substantial market for the products in question;
 - (e) significantly affects public interest in the Common Market having regard to:
 - (i) effect on employment;
 - (ii) ability of small and medium sized businesses to be competitive;
 - (iii) the ability of industries in the Common Market to compete in international markets;
 - (iv) environmental protection or sustainability considerations; and
 - (v) any other factors that bear upon public interest.
- (8) Upon considering the application, the Commission may:
- (a) authorise the agreement without conditions;

- (b) authorise the agreement subject to conditions or commitments; or
- (c) decline to authorise the agreement.

An undertaking that submits an application for authorisation to the Commission shall comply with the decision of the Commission on the application.

- (9) While the authorisation remains in force, no party to an agreement shall be in breach of the applicable provisions of these Regulations by entering and giving effect to the agreement.
- (10) The Commission's decision to grant the authorisation shall not be construed to mean that conduct of such nature is exempted under the Regulations.

Regulation 40 Leniency

- (1) The Commission shall have the power to grant leniency in respect of any practices prohibited under Regulation 34 (3).
- (2) The Commission shall implement a leniency programme where an undertaking voluntarily discloses the existence of any prohibited practice under Regulation 34 (3) and fully co-operates with the Commission in the investigation and the undertaking may receive immunity from all or part of an administrative fine that would otherwise be imposed under these Regulations.
- (3) Parties who have been granted leniency by the Commission shall not be subjected to separate legal proceedings at national level on the same matter.
- (4) A decision rendered by the Commission with respect to a leniency application shall be binding on undertakings and Member States.
- (5) The Commission shall not avail any information or evidence relating to the grant of a leniency application to any third party.
- (6) The Commission shall develop guidelines for the implementation of the leniency programme.

CHAPTER FOUR MERGERS

Regulation 41 Definition of Merger

- (1) In the review of mergers, the guiding principle is the preservation of the integrity of the one stop shop.
- (2) For the purpose of this Chapter, “merger” means the direct or indirect acquisition or establishment of control, or a change in control held, on a lasting basis, by one or more undertakings in the whole or part of one or more other undertakings whether that control is achieved as a result of:
 - (a) the purchase of shares or assets of a competitor, supplier, customer or other undertaking;
 - (b) the lease of assets of a competitor, supplier, customer or other undertaking;
 - (c) the amalgamation or combination with a competitor, supplier, customer or other undertaking;
 - (d) the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity; or
 - (e) any means other than those specified in this paragraph.
- (3) A merger shall not be deemed to arise where control is acquired by an office holder according to the law of a Member State solely for managing proceedings relating to liquidation, winding up, insolvency, cessation of payment, composition or analogous proceedings.
- (4) Control may result from rights, contracts or any other means which, either separately or in combination, confer the possibility of exercising decisive influence on the undertaking or asset concerned, including:
 - (a) determination or ability to influence the voting of the majority of the votes that may be cast at a general meeting of the undertaking;
 - (b) the ability to appoint or veto the appointment of the majority of directors and senior management of the undertaking;

- (c) the ability to determine or veto the determination of the strategic commercial policy of the undertaking, or strategic use of the asset concerned; or
- (d) the ability to influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in sub-paragraphs (a) to (c) of this paragraph.

(5) A proposed merger shall be a “notifiable merger” if all of the following conditions are met:

- (a) at least one of the parties to the merger operates in two or more Member States;
- (b) the target undertaking has operations in one or more Member States;
- (c) the combined annual turnover or value of assets, whichever is higher, in the Common Market of all parties to the merger meets or exceeds the applicable prescribed threshold; and
- (d) the annual turnover or value of assets in the Common Market, whichever is higher, of each of at least one acquiring party and one target party meets or exceeds the prescribed threshold,

unless each of the parties to the merger achieves or holds more than the prescribed percentage of its annual turnover or value of assets in the Common Market within one and the same Member State.

(6) A proposed joint venture shall be notifiable if all of the following conditions are met:

- (a) the joint venture is intended to operate in two or more Member States;
- (b) at least one of the parent undertakings to the joint venture operates in two or more Member States; and
- (c) the combined annual turnover or value of assets, whichever is higher, in the Common Market of all parties to the joint venture meets or exceeds the prescribed threshold.

(7) Parties to a proposed merger in a digital market, including platforms, shall notify the Commission of their merger where:

- (a) at least one of the parties to the merger has operations in two or more Member States; and
 - (b) the merger meets the prescribed transaction value.
- (8) The Board shall, subject to approval by Council, prescribe:
- (a) a threshold of combined annual turnover or assets in the Common Market or a threshold of transaction value; and
 - (b) a method for the calculation of annual turnover and assets and transaction value.
- (9) For the purposes of this Chapter:
- (a) “notifiable merger” means a merger with a value at or above the threshold prescribed in terms of paragraph (8); and
 - (b) “non-notifiable merger” means a merger with a value below the threshold prescribed in terms of paragraph (8).
- (10) The Commission may require parties to a non-notifiable merger to notify the merger to the Commission, in a form and manner specified by the Commission, if it appears to the Commission that the merger is likely to substantially lessen competition in the Common Market, or a substantial part of it, provided that the merger has not been implemented.
- (11) For the consideration of a non-notifiable merger, the Commission may, by notice in writing served on any undertaking, require the undertaking to supply it within the period specified in the notice specific information, and the undertaking on which such notice is served shall comply with it.
- (12) Any undertaking which contravenes the provisions of this Chapter shall be liable to a fine not exceeding ten (10%) per cent of either or both of the merging parties’ annual turnover in the Common Market as reflected in the audited accounts of any party concerned.
- (13) When determining an appropriate penalty, the Commission shall consider the following factors, but not limited to:
- (a) the nature, duration, gravity and extent of the contravention;

- (b) any loss or damage suffered as a result of the contravention;
 - (c) the behaviour of the parties concerned;
 - (d) the market circumstances in which the contravention took place;
 - (e) the level of benefits derived from the contravention;
 - (f) the degree to which the parties have co-operated with the Commission; and
 - (g) whether the parties have previously been found in contravention of these Regulations in the Common Market.
- (14) Civil proceedings for the recovery of any penalty imposed in terms of paragraph (12) may be brought against the party or parties concerned by the Commission.

Regulation 42 **Notification of a Merger**

- (1) The parties to a notifiable merger shall notify the Commission prior to its implementation.
- (2) A person shall not implement a merger to which these Regulations apply, except where:
- (a) the merger is approved by the Commission; or
 - (b) any derogations are granted by the Commission.
- (3) Notification in terms of paragraph (1) shall be made in such form and manner as shall be determined by the Commission and shall be accompanied by the prescribed fee and such information and particulars as may be prescribed or as the Commission may reasonably require.
- (4) The Commission shall develop rules on the mechanism for sharing merger filing fees with Member States affected by the merger.
- (5) Member States that require the notification, at national level, of transactions that are notifiable under these Regulations shall not be entitled to their share of the merger filing fees.
- (6) Member States shall ensure that the shared merger filing fee is utilized for the development and strengthening of their competition laws and capacity building, as well

as their infrastructure, for their competent authorities or where such a competent authority does not exist, a competent authority responsible for competition enforcement in that Member State provided that Member States that do not comply with this provision shall not be entitled to their share of the merger filing fee.

- (7) The prohibition under paragraph (2), shall not prevent the implementation of a public bid or of a series of transactions in securities including those convertibles into other securities admitted to trading on a stock exchange, by which control within the meaning of Regulation 41 (4) is acquired from various sellers, provided that:
- (a) the merging parties shall notify the transaction before its implementation; and
 - (b) the acquirer does not exercise the voting rights attached to the securities in question.

Regulation 43

Merger Implemented without Approval of the Commission

- (1) Where the Commission, upon its own initiative or upon receipt of information from any person, has reasonable grounds to believe that a notifiable merger has been or is being implemented without approval, it shall commence an investigation.
- (2) Any person who believes that a notifiable merger has been implemented without the approval of the Commission may inform the Commission in writing and shall disclose sufficient information for the Commission to make a preliminary assessment on whether it should proceed with an investigation.
- (3) An investigation conducted by the Commission under this Regulation may include:
- (a) a specific request for information from any undertaking or groups of undertakings;
 - (b) an invitation to provide information on any specific matter, event or business agreement or transaction;
 - (c) a request for written explanations or otherwise as required for the purposes of the issue at hand;
 - (d) an order to a person to supply information, documents or evidence or to appear before the Commission; or

- (e) an inspection of a location or site.
- (4) Where the Commission establishes that there is a contravention of Regulation 42 (2), the parties shall:
- (a) be provided the opportunity to be heard before the Commission makes a determination on applicable sanctions; and
 - (b) regularise the merger through submitting a duly completed Form 1 of the COMESA Competition and Consumer Protection Rules and paying the prescribed merger filing fee.
- (5) In determining if a merger has been implemented without approval, the Commission may consider whether:
- (a) there has been an actual integration of the whole or part of the business of the merging parties, including, but not limited to, the integration of infrastructure, information systems, corporate identity or marketing efforts;
 - (b) there has been movement or termination or hiring of employees in either target undertakings or the acquiring undertakings related to the merger;
 - (c) the acquiring undertaking(s) has influence or control on any competitive aspect of the target undertaking's business; or
 - (d) there has been an exchange of strategic information between the merging parties for purposes other than valuation or on a need-to-know basis, during due diligence in ways compromising the strategic independence of each of the parties to the merger.

Regulation 44

Merger Proceedings

- (1) The Commission shall commence the examination of a merger once the notification is received and shall make a decision on the notification within one hundred and twenty (120) days after receiving the notification.
- (2) Where the notification referred to in paragraph (1) is incomplete, the examination period shall begin on the day following receipt of complete information.

- (3) Where the Commission sends a request for information necessary for its examination of the merger, and the parties do not respond within the time limits, the Commission shall stop the clock until the information is provided.
- (4) If, prior to the expiry of the one hundred and twenty (120) days period provided for in paragraph (1), the Commission has decided that a longer period is necessary, it shall so inform the parties and seek extension from the Panel.
- (5) The Panel shall have discretion to determine the number of days of extension, on a case-by-case basis.
- (6) The Commission shall take all reasonable steps to notify the competent authorities in the relevant Member States before embarking on an assessment in terms of these Regulations.
- (7) The notice referred to in paragraph (6) shall include:
 - (a) the nature of the proposed merger; and
 - (b) all information pertaining to the activities of the merging parties in the relevant Member States.
- (8) For the avoidance of doubt, information referred to in paragraph 7(b), shall include information submitted as confidential by the parties.
- (9) The Commission shall only share with competent authorities information submitted as confidential where such competent authorities have provisions safeguarding confidentiality under their respective legislation.
- (10) The information provided to the competent authorities of the Member States shall be used solely for the assessment of the merger.
- (11) In addition to the notice referred to in paragraph (6), the Commission shall publish the notice of merger on its website or any other media calling upon any interested persons who wish to submit written representations to the Commission in regard to the subject matter of the proposed inquiry.

Regulation 45

Referral Request by Member States

- (1) A Member State having received notice of a merger from the Commission may within twenty-eight (28) days of receiving such notice request the Commission to refer the merger in whole or part for consideration under the Member State's national competition legislation,

provided that the Member State has the competence to review mergers under the national competition legislation.
- (2) On request of the Member State, the Commission may grant an extension of ten (10) days to the period indicated in paragraph (1), where circumstances so require.
- (3) Where a Member State requests for referral under paragraph (1), the Member State shall give justification to the Commission for the merger to be considered by the competent authority that the merger if carried out may disproportionately lessen competition to a material extent in the Member State or any part of the Member State.
- (4) The Commission shall consider the request referred to in paragraph (1) and shall inform the concerned Member State in writing within fourteen (14) days of the receipt of the request that:
 - (a) the Commission will deal with the case itself in order to maintain or restore effective competition on the market concerned and the region as a whole; or
 - (b) the whole or part of the case will be referred to the competent authorities of the Member State concerned.
- (5) Where a referral is made pursuant to paragraph 4 (b), the law of the Member State shall apply.
- (6) If prior to the expiry of the fourteen (14) days period provided for in paragraph (4), the Commission has decided that a longer period is necessary, it shall inform the concerned Member States and the parties provided that such extension shall not exceed seven (7) days.
- (7) Where a merger is wholly or partly referred to a competent authority of a Member State, no merger notification fee shall be paid to the concerned Member State.

- (8) The competent authority of the Member State shall be entitled to receive its portion of the filing fee in accordance with relevant rules on sharing of merger fees.

Regulation 46 **Referral to the Commission**

- (1) One or more Member States may request the Commission to examine a non-notifiable merger under these Regulations which threatens to substantially lessen competition within the territory of the Member State or States making the request.
- (2) Such a request shall be made within twenty-eight (28) days of the date on which notice of merger was received by a Member State or if no notification is required, otherwise made known to the Member State concerned.
- (3) The Commission shall, within fourteen (14) days of receiving the request, inform the competent authorities of the Member States affected by the merger and the undertakings concerned of any request received pursuant to paragraph (1).
- (4) Any other Member State shall have the right to join the initial request within a period of twenty-one (21) days of being informed by the Commission of the initial request. All national time limits relating to the merger shall be suspended until it has been decided where the merger shall be examined.
- (5) The Commission may, within fourteen (14) days after the expiry of the period set in paragraph (4), examine the merger where it considers that it is likely to substantially lessen competition within the territory of the Member State or States making the request.
- (6) If the Commission does not take a decision within the period stipulated in paragraph (5) it shall be deemed to have adopted a decision to examine the merger in accordance with the request.
- (7) The Commission shall inform all Member States and the undertakings concerned of its decision.
- (8) Where the Commission decides to examine the merger, merging parties shall submit the notification to the Commission and the Member State or States that made the request shall no longer apply their national competition legislation to the merger.
- (9) Where a Member State refers a non-notifiable merger to the Commission and the merging parties have already paid notification fees to the concerned Member State, no fee shall be paid to the Commission.

(10) Where the referred merger turns out to be a notifiable merger under these Regulations, the merger notification fees shall be paid to the Commission, notwithstanding any payment made at national level.

Regulation 47

Consideration of a Merger

(1) Whenever called upon to consider a merger, the Commission shall determine whether or not the merger is likely to substantially lessen competition by assessing the factors set out in paragraph (5) of this Regulation.

(2) In addition to the considerations referred to in paragraph (1) of this Regulation, the Commission may determine whether or not the merger is likely to significantly affect public interest in the Common Market by assessing the factors set out in paragraph (6).

(3) Where it appears to the Commission that a merger is likely to substantially lessen competition, the Commission shall determine whether the merger may be justified on:

- (a) public interest grounds;
- (b) technological efficiency; or
- (c) any pro-competitive gain,

which shall outweigh or offset the substantial lessening of competition and which would likely not be obtained if the merger is prevented.

(4) In considering the merger, the Commission shall place greater weight on the substantial lessening or prevention of competition test.

(5) When determining whether the merger would have the effect, or be likely to have the effect, of substantially lessening competition in the Common Market or a substantial part of it, the Commission may take into account the following factors:

- (a) the actual and potential level of import competition in the market;
- (b) the ease of entry into the market, including tariff and regulatory barriers;
- (c) the level, trends of concentration and history of collusion in the market;

- (d) the degree of countervailing power in the market;
 - (e) the likelihood that the acquisition would result in the merged parties having market power or strengthening their dominant position;
 - (f) the dynamic characteristics of the market including growth, innovation, innovation incentives and product differentiation;
 - (g) the nature and extent of vertical integration in the market;
 - (h) whether the business or part of the business of a party to the merger or proposed merger has failed or likely to fail;
 - (i) whether the merger will result in the removal of efficient competition; and
 - (j) the extent of ancillary restrictions including non-compete and non-solicitation restrictions.
- (6) The Commission may in considering a proposed merger take into account any factor which significantly affects public interest in the Common Market, including:
- (a) effect on employment;
 - (b) ability of small and medium sized businesses to be competitive;
 - (c) the ability of industries in the Common Market to compete in international markets;
 - (d) environmental protection or sustainability considerations; and
 - (e) innovation considerations.
- (7) Where, during the assessment, the Chief Executive Officer believes that a merger is more likely than not to substantially lessen competition and significantly affect public interest, he or she shall issue a Statement of Concern to the merging parties expressing the concerns identified.
- (8) The merging parties shall be afforded an opportunity to respond to the Commission within the period specified in the Statement of Concern.

(9) Following consideration of the parties' submissions, the Chief Executive Officer shall finalise the assessment and submit the findings to the Panel.

(10) Where parties do not make representations to the Statement of Concern within the specified period, the Chief Executive Officer may proceed to finalise the assessment and shall submit the findings to the Panel.

Regulation 48

Orders of the Commission in Merger Review

(1) Where the Commission is satisfied that a proposed merger is not likely to substantially lessen competition, the Commission shall approve the merger.

(2) Where the Commission is satisfied, that a proposed merger is likely to substantially lessen competition, the Commission may:

(a) prohibit the merger; or

(b) approve the merger subject to conditions or commitments, including;

(i) prohibiting or restricting the acquisition by any person named in the order of the whole or part of an undertaking or the assets of an undertaking, or the doing by that person of anything which will or may result in such an acquisition if the acquisition is likely, in the Commission's opinion, to lead to a merger;

(ii) requiring any person to take steps to secure the dissolution of any organisation, whether corporate or unincorporated, or the termination of any association where the Commission is satisfied that the person is concerned in or is a party to a merger;

(iii) requiring that if any merger takes place, any party thereto who is named in the order shall observe such prohibitions or restrictions in regard to the manner in which he carries on business as are specified in the order; or

(iv) generally making such provisions as, in the opinion of the Commission, are reasonably necessary to terminate or prevent the merger or alleviate its effects.

(3) An order made in respect of a merger may provide for any of the following matters:

(a) the transfer or vesting of property, rights, liabilities or obligations;

- (b) the adjustment of contracts, whether by their discharge or the reduction of any liability or obligation or otherwise;
 - (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities; or
 - (d) the formation or winding up of any undertaking or the amendment of the memorandum or articles of association or any other instrument regulating the business of any undertaking.
- (4) In considering the merger, where the Commission determines that the merger is likely to significantly negate the public interest factors provided for in Regulation 47 (6), the Commission may require the parties to submit commitments or may impose conditions on the merger to address its concerns.
- (5) Where the proposed order will apply to persons generally or if, in the Commission's opinion, it is impractical to notify its terms to all the persons to whom it will apply, the Commission shall cause the general content of the proposed order to be published in the manner as the Commission considers will bring it to the attention of the persons to whom it will apply and grant them thirty (30) days within which they should make submissions to the Commission.
- (6) Before making an order under this Regulation, the Commission shall ensure that every person affected thereby is informed of the general content of the order it proposes to make and is given an adequate opportunity to make representations in the matter.
- (7) An order shall be in writing and served on every person named therein,
- provided that, if the order applies to persons generally or if, in the Commission's opinion, it is impractical to serve it individually on all the persons to whom it applies, the Commission shall take all reasonable steps to appropriately inform the concerned Member States.
- (8) The Commission may amend or revoke such order issued pursuant to this Regulation where:
- (a) the parties to the merger submitted misleading or materially incorrect information in support of the merger; or
 - (b) a party to the merger fails to comply with any condition of an approval of the merger.

- (9) The Commission shall, where it proposes to revoke an approved merger under paragraph (8), give notice, in writing, of the proposed action to every party to the merger, and to any other person who is likely to have an interest in the matter, and call upon such party or person to submit to the Commission, within thirty (30) days of the receipt of the notice, any representations which they may wish to make on the proposed revocation.
- (10) In addition to paragraph (8), the Commission may impose a fine of up to ten percent (10%) of the annual turnover of the concerned undertaking(s) in the Common Market.
- (11) Any person who fails to comply with an order made pursuant to this Chapter shall be deemed to have breached these Regulations and shall be liable to a fine not exceeding ten percent (10%) of its annual turnover in the Common Market.
- (12) In addition to the fines in this Regulation, where the Commission has established that there has been a breach under this Chapter, it may give the relevant person such directions as it considers appropriate to bring the breach to an end.
- (13) A decision under paragraph (12) may, in particular:
- (a) require the person to take all such action as it may be necessary to nullify the merger;
 - (b) impose on the person a condition as to the manner in which the person conducts business; or
 - (c) require the person to sell or otherwise dispose of any part of the person's assets or business.

Regulation 49

Exclusive Jurisdiction of the Commission in Merger Review

- (1) Notwithstanding the provisions of Regulations 45 and 46, the Commission shall have exclusive jurisdiction on mergers which meet the prescribed thresholds within the meaning of Regulation 41.
- (2) It shall be contrary to the spirit of these Regulations and the Treaty for Member States to call for the notification of the mergers referred to in these Regulations at national level

Regulation 50
Powers of the Commission in Merger Proceedings

- (1) For the consideration of a merger under Chapter Four, the Commission may use any of the investigative powers conferred to it under these Regulations.
- (2) Where the Commission believes that, for the purpose of this Chapter, further information is required, it may, by notice in writing direct any person to supply the required information.
- (3) A notice under paragraph (2) shall state the legal basis and the purpose for the request, specify the information required and the time limit within which the information is to be provided.
- (4) An undertaking that fails to comply with the notice shall be deemed to have breached these Regulations and shall be liable to a fine as provided for under these Regulations.

Regulation 51
Abandonment of a Merger

- (1) A notifying party shall file a merger abandonment notice with the Commission in writing stating that it has abandoned an intended merger transaction and has no intention to implement it.
- (2) Upon the filing of the merger abandonment notice:
 - (a) the parties to the merger shall remain in the same position as if the merger had never been notified;
 - (b) the merger notification fee paid in respect of that merger shall not be refunded; and
 - (c) the Commission shall write to all affected Member States within fourteen (14) days of the filing of the notice and publish a notice notifying the stakeholders of the abandonment of the merger.

CHAPTER FIVE UNFAIR TRADE PRACTICES

Regulation 52 Consumer Rights

(1) Consumers shall have the following rights:

- (a) right to safety which is the right to be protected against products and, production processes that are hazardous to health or life;
- (b) right to information which is the right to be provided with complete and accurate information relating to products to enable the consumer to make informed choices;
- (c) right to choose which is the right to select freely a product of quality at competitive prices;
- (d) right to be heard which is the right to complain and be heard in case a consumer right is violated;
- (e) right to redress which is the right to have problems resolved and seek justice against exploitation and unfair trade practices;
- (f) right to live in a healthy environment which is the right to live in an environment free of hazards and threats to life;
- (g) right to privacy which is the right to protect privacy and confidentiality of the consumer in the purchase and usage of products;
- (h) right to equality in the market which is the right to equal treatment by the supplier in the purchase of products;
- (i) right to fair and honest dealing which is the right to protection from unfair tactics or any other similar conduct by the supplier; and
- (j) any other rights that are internationally recognised.

Regulation 53
False or Misleading Representation

(1) A person shall not, in trade or commerce, in connection with the supply or possible supply of products or in connection with the promotion by any means of the supply or use of products:

(a) falsely represent that:

- (i) products are of a particular standard, quantity, quality, value, grade, design, composition, style or model or have had a particular history or particular previous use;
- (ii) products are of a particular standard, quality, value, grade or design;
- (iii) products are new;
- (iv) a particular person has agreed to acquire products; or
- (v) products have sponsorship, approval, performance characteristics, accessories, uses or benefits;

(b) make a false or misleading representation:

- (i) with respect to the price of products;
- (ii) with respect to the delivery of products;
- (iii) which disparages the products or trades of another person;
- (iv) that a person has sponsorship, approval or affiliation;
- (v) concerning the availability of a product;
- (vi) concerning the availability of facilities for the repair of products or of spare parts;
- (vii) concerning the place of origin of products;

- (viii) concerning the need for any products;
 - (ix) concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy;
 - (x) concerning gifts and prizes;
 - (xi) that omits, hides or fails to conspicuously display material information necessary to enable a consumer to make an informed decision; or
 - (xii) anything in relation to the supply of products; or
- (c) engage in practices that amount to dark patterns or scams.

(2) Dark patterns and scams shall be prohibited *per se*.

Regulation 54 **Unconscionable Conduct**

- (1) A person shall not, in trade or commerce, in connection with the supply of products to a consumer, engage in conduct that is unconscionable.
- (2) In determining whether a person has contravened paragraph (1), the Commission may, among others, have regard to:
- (a) the relative strengths of the bargaining positions of the person and the consumer;
 - (b) whether, as a result of conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the person;
 - (c) whether the consumer was able to understand any documents relating to the supply of products;
 - (d) whether any undue influence or pressure was exerted on, or any unfair, coercive, abusive, exploitative and deceptive means, were used against the consumer;
 - (e) the amount for which, or the circumstances under which, the consumer could have acquired identical or equivalent products from another supplier; or

- (f) whether a consumer was informed by a supplier of all charges and fees imposed or intended to be imposed;
 - (g) the extent to which the person applied dissimilar conditions to equivalent transactions with other consumers;
 - (h) the requirements of any industry code, if the consumer acted on the reasonable belief that the supplier would comply with that code;
 - (i) the extent to which the person unreasonably failed to disclose to the consumer:
 - (i) any intended conduct of the person that might affect the interests of the consumer; and
 - (ii) any risks to the consumer arising from the person's intended conduct, being risks that the person should have foreseen would not be apparent to the consumer; and
 - (j) the extent to which the person was willing to negotiate the terms and conditions of any contract for supply of the products with the consumer.
- (3) For the purposes of paragraph (1), the Commission shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention.
- (4) A reference in this Regulation to products is a reference to products or services of a kind ordinarily acquired for personal, domestic or household use or consumption.
- (5) A reference in this Regulation to the supply or possible supply of products does not include a reference to the supply or possible supply of products for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.

Regulation 55
Unfair Consumer Contract Terms

- (1) A contract term shall be regarded as unfair if it causes a significant imbalance in the rights and obligations arising under the contract, to the detriment of the consumer.
- (2) A contract term may be considered to be unfair where the term, among others:
 - (a) imposes any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract;
 - (b) does not allow early repayment of debts on payment of applicable penalty;
 - (c) requires manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations;
 - (d) entitles the person to terminate such contract unilaterally, without reasonable cause or giving due notice;
 - (e) permits the person to assign the contract to the detriment of the consumer, without the consumer's consent;
 - (f) imposes on the consumer any unreasonable charge, obligation or condition which puts such consumer at a disadvantage; or
 - (g) does not provide for available redress mechanisms, and timelines in case of breach of contract.
- (3) A contract with an unfair term between a consumer and person shall not be binding.
- (4) Notwithstanding paragraph (3), the contract shall bind the parties if it is capable of being enforced without the unfair term.

Regulation 56 Unsafe Products

- (1) A person shall not, in trade or commerce, supply products that are intended to be used, or are of a kind likely to be used, by a consumer if the products are of a kind:
- (a) in respect of which there is a recognised consumer product safety standard and which do not comply with that standard;
 - (b) in respect of which there is an applicable consumer product safety standard and which do not comply with that standard;
 - (c) in respect of which there is in force a notice declaring the products to be unsafe;
 - (d) in respect of which there is in force a notice imposing a permanent ban on the products;
 - (e) which causes significant harm to the environment thereby endangering consumers' lives, health or safety; or
 - (f) that causes or is likely to cause loss or damage to a person by reason of a defect in, or dangerous characteristics of, the products or by reason of not having particular information in relation to the products.
- (2) For purposes of this Regulation, the safety of the product shall be assessed by taking into account the following elements where they exist, in particular:
- (a) applicable regional or international standards adopted by the affected Member States;
 - (b) recognised regional or international standards adopted by the affected Member States;
 - (c) the national standards in common among the Member States affected or likely to be affected;
 - (d) a notice in place by two or more Member States declaring the product to be unsafe;
 - (e) product safety codes of good practice in force in the sector concerned;

- (f) the state of the art and technology; or
 - (g) reasonable consumer expectations concerning safety.
- (3) A person shall not supply products within or into the Common Market which have been prohibited in paragraph (1) unless the products stipulated in the notice in paragraph (1) have been declared to no longer be unsafe or the ban has been lifted.
- (4) For the purposes of this Regulation, a consumer shall be deemed to have suffered loss or damage by the supply of products, where:
- (a) the products do not comply with a recognised consumer product safety standard or contravenes a notice in place;
 - (b) products do not comply with an applicable consumer product safety standard or contravenes a notice in place;
 - (c) the loss or damage, results from a defect in, or a dangerous characteristic of, the products or by reason of not having particular information in relation to the products; or
 - (d) a consumer would not have suffered the loss or damage if the products had complied with that standard.

Regulation 57

Product Information Standards

- (1) A person shall not, in trade or commerce, supply products which do not comply with a recognised or applicable consumer product information standard.
- (2) The Commission shall recognise a consumer product information standard which includes:
- (a) the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the products;
 - (b) information reasonably necessary to give persons using the goods as to the quantity, quality, nature or value of the products; and

- (c) the form and manner in which the information is to be disclosed on or with the products.
- (3) For purposes of this Regulation, compliance with the consumer product information standard shall be assessed by taking into account the following elements where they exist, in particular:
- (a) applicable regional or international standards adopted by the affected Member States;
 - (b) recognised regional or international standards adopted by the affected Member States;
 - (c) the national standards in common among the Member States affected or likely to be affected;
 - (d) the state of the art and technology; or
 - (e) reasonable consumer expectations concerning product information standards.
- (4) For the purposes of this Regulation, a consumer shall be deemed, to have suffered loss or damage by the supply of products, where;
- (a) the person has not complied with a recognised or applicable consumer product information standard in relation to the products;
 - (b) the consumer did not have particular information in relation to the products; and
 - (c) the consumer would not have suffered the loss or damage if the person had complied with that standard in relation to the products.

Regulation 58

Product Information and Labelling

- (1) A person engaged in trade or commerce shall disclose to consumers all relevant information relating to the product to enable the consumers to make informed decisions.
- (2) Notwithstanding the generality of paragraph (1), a person engaged in trade or commerce shall ensure that the labels of any products supplied in the Common Market include the following information:

- (a) the name of the product;
 - (b) the manufacturer's name;
 - (c) the physical location, telephone number and other contact details of the manufacturer;
 - (d) the date of manufacture;
 - (e) batch number; and
 - (f) country of origin.
- (3) In addition to the requirements in paragraph (2), a person engaged in trade or commerce, shall, ensure that the labels of any products supplied in the Common Market include where applicable:
- (a) the components or elements used in the product;
 - (b) usage and functionality;
 - (c) instructions for use;
 - (d) net quantity of contents;
 - (e) the ingredients used in the product;
 - (f) date of expiry of the product or best before date;
 - (g) nutritional information;
 - (h) allergen information; and
 - (i) the risks and precautions in the use of the product.
- (4) Any disclosure of information under this Regulation shall be done:
- (a) in a clear, conspicuous and comprehensible manner;

(b) in a manner that allows the consumer to save, print, keep, retain or store the information; and

(c) in an appropriate language to suit the target consumer market.

Regulation 59 **Compulsory Product Recall**

(1) The Commission shall, by appropriate notice, inform a person of its intention to institute a compulsory product recall where it appears that:

(a) products may cause injury to any person;

(b) products do not comply with a recognised or applicable consumer product safety standard;

(c) products are of a kind in relation to which there is in force a notice:

(i) declaring the products to be unsafe;

(ii) imposing a ban; or

(iii) recalling the products; or

(d) the supplier has not taken satisfactory action to prevent the products from causing injury to any person.

(2) Prior to instituting the compulsory product recall, the Commission shall afford the person an opportunity to respond and may receive submissions from stakeholders and the general public on the matter, within ten (10) days of receipt of the Commission's intention to institute a compulsory product recall.

(3) Where the Commission is satisfied that the product should be recalled, it shall by notice require the supplier to:

(a) recall the products within a specified period;

(b) disclose to the public, within a specified period:

(i) the nature of a defect in or a dangerous characteristic of the product;

(ii) the circumstances in which the use of the product is dangerous; or

- (iii) procedures for disposing of the products.
- (c) inform the public, that the person shall, within a specified period:
 - (i) repair the goods except where the notice identifies a dangerous characteristic of the products;
 - (ii) replace the products; or
 - (iii) refund the affected consumers the price of the products.
- (4) The Commission shall inform the public that the person has been required, within a specified period, to:
 - (a) repair the goods except where the notice identifies a dangerous characteristic of the products;
 - (b) replace the products; or
 - (c) refund the affected consumers the price of the products.
- (5) Where the person is aggrieved by the decision of the Commission to institute a compulsory product recall, the person may refer the matter to the Court.
- (6) Pending the reference under paragraph (5), the Commission shall impose an interim ban on the supply and sale of the product in the Common Market.

Regulation 60 **Voluntary Product Recall**

- (1) A person may voluntarily recall products upon detection of non-compliance with the mandatory standards, defect in the products, a safety related hazard regarding any dangerous characteristic of the products or injury resulting from the use of the said products.
- (2) Where a person recalls any product from a Member State, the person shall also recall such products from all other Member States in which the product is consumed.

- (3) Any product which is supplied in Member States and is recalled from a foreign jurisdiction shall at the same time be recalled from the Common Market by the person who supplies the product.
- (4) Where there is a recall by a manufacturer of a product, due to non-compliance with mandatory standards, the recall of the product shall be done immediately.
- (5) Where a person voluntarily recalls products, the person shall do so in the manner prescribed in the COMESA Competition and Consumer Protection Rules.
- (6) Where a person voluntarily recalls products, the person shall upon detecting the hazard or safety related issue in the product, inform the public within two (2) days of the voluntary recall:
 - (a) the nature of a defect in or a dangerous characteristic of the products;
 - (b) the circumstances in which the use of the products is dangerous;
 - (c) procedures for disposing of the products, where applicable; and
 - (d) recourse available to the consumer.

Regulation 61
Unsuitable and Defective Products

- (1) A person shall not supply a consumer with products that are:
 - (a) unsuitable or defective;
 - (b) not fit for the purpose for which they are normally used; or
 - (c) not fit for the purpose that the consumer indicated to the person.
- (2) A person who contravenes paragraph (1), shall:
 - (a) within twenty-one (21) days from the time the defect on the products concerned is reported to the person who supplies the goods, refund the consumer the price paid for the products; or
 - (b) if practicable and if the consumer so chooses, replace the products with those that do not contravene the requirements of paragraph (1).

- (3) A person shall supply a service to a consumer with reasonable care and skill and within the agreed time or within a reasonable time.
- (4) A person who contravenes paragraph (3) shall:
- (a) within twenty-one (21) days of the provision of the service concerned, refund to the consumer the price paid for the service;
 - (b) if practicable and if the consumer so chooses, perform the service again to a reasonable standard at no additional cost to the consumer; or
 - (c) make restitution to the consumer.
- (5) A supplier is liable to compensate the consumer for loss or damage arising from the supply of unsuitable or defective products.
- (6) The provisions of this Regulation do not apply where:
- (a) the products are not reasonably fit for purpose by reason of force majeure, occurring after the products have left the control of the person; or
 - (b) the circumstances show that the consumer did not rely on the skill or judgement of the person.

Regulation 62 Harmful Digital Content

A person shall not, in trade or commerce, supply or cause to be supplied digital content which causes distress, harm, has or may cause harmful or adverse effects on consumers.

Regulation 63
Penalties for Unfair Trade Practices

- (1) Any person who contravenes any provisions under this Chapter shall be deemed to have breached these Regulations and shall be liable to a fine not exceeding ten percent (10%) of the person's annual turnover in the Common Market.
- (2) In addition to the fine provided in paragraph (1), the Commission may order a person, as circumstances may determine, to:
- (a) repair the goods;
 - (b) replace the goods;
 - (c) refund the affected consumers the price of the products;
 - (d) perform the contracted services to the expected standard; or
 - (e) any other remedy as the circumstances dictate.

Regulation 64
**Power of the Commission to Recognise Product Safety or
Information Standards**

- (1) The Commission shall, by notice in writing, recognise that a particular standard is:
- (a) a consumer product safety standard; or
 - (b) a consumer product information standard;
- for the purposes of Regulations 56 and 57, as the case may be.
- (2) The standard in paragraph (1) shall include:
- (a) a standard or a particular part of a standard, prepared or approved by an internationally recognised association or body; or
 - (b) such a standard or part of a standard with additions or variations specified in the notice.

- (3) Where a notice has been issued by the Commission or another competent agency the standard, or the part of the standard or variations of the standard, as the case may be, shall be deemed to be a consumer product safety standard for the purpose of Regulation 56 or consumer product information standard for the purpose of Regulation 57, as the case may be.

Regulation 65 Unidentified Manufacturer

- (1) Where a person wishes to institute action against a manufacturer and does not know who manufactured the products, the consumer may serve on the person who supplied the products, where the person is known to the consumer, a written request to provide information identifying the manufacturer.
- (2) Where, after thirty (30) days of the request, the manufacturer has not been identified, each person served with the request shall be considered to have manufactured the products.

Regulation 66 Warning Notice to the Public

- (1) The Commission shall publish a notice in the Member States containing any of the following:
- (a) a statement that products of a kind specified in the notice are under investigation to determine whether the products will or may cause injury to any person;
 - (b) a warning of possible risks involved in the use of products of a kind specified in the notice; or
 - (c) imposing an interim ban on the supply of products into the Common Market where the Commission has reasonable grounds to believe that there is an impending danger to the public.

- (2) Where an investigation referred to in this Regulation has been completed, the Commission shall, as soon as practicable, issue a notice in writing informing Member States of the results of the investigation and whether:
 - (a) no action is required; or
 - (b) the actions proposed to be taken in relation to the products under investigation have been taken.
- (3) Where the Commission has determined that the products or use of products has or is likely to result in harm to consumers, it may by notice in writing:
 - (a) recall the product from the Common Market;
 - (b) impose a permanent ban on the supply of the product into the Common Market; or
 - (c) impose any other remedy.
- (4) A notice issued under this Regulation shall last for a period stipulated by the Commission in the notice or until the Commission determines that the supplier of the products, which are subject to the notice, has undertaken the necessary steps to ensure the safety of the products and to prevent future infringements pursuant to this Regulation.
- (5) The Commission may, based on available information, publish consumer alerts concerning products that cause, or may, cause loss or damage by reason of a defect or dangerous characteristic of the products.
- (6) An interim ban issued in this Chapter, may last for a period of ninety (90) days and may be extended for a further period to allow for the conclusion of investigations.
- (7) An interim ban may be made permanent upon conclusion of investigations, depending on the findings of the case.

CHAPTER SIX
PROCEDURES OF INVESTIGATIONS AND DETERMINATIONS

Regulation 67
Initiation of an Investigation

The Commission may, on its own volition or upon receipt of a complaint, initiate an investigation into anti-competitive business practices and unfair trade practices.

Regulation 68
Investigation Procedure upon Receipt of Complaint

- (1) Any person may request the Commission to conduct an investigation:
 - (a) where the person believes that activity by an undertaking has the object, effect, or is likely to have the effect, of substantially lessening competition within the Common Market or a substantial part of it; or
 - (b) into unfair trade practices in the Common Market.
- (2) A request under paragraph (1), shall be made in writing or any other appropriate manner and shall disclose sufficient information for the Commission to make a preliminary assessment whether it should proceed with the investigation.
- (3) Upon receipt of a request mentioned in paragraph (1), the Commission shall consult with relevant stakeholders and determine on the basis of such consultations whether:
 - (a) the investigation is within the jurisdiction of the Commission; and
 - (b) the investigation is justified in all the circumstances of the case.
- (4) The Commission may publish a notice calling for information from members of the public to enable it to carry out a preliminary assessment of the complaint.
- (5) The Commission is authorised to request any relevant information from any person to enable it to make a preliminary assessment of the complaint.
- (6) Any person who fails to comply with a request for information, under paragraph (5), from the Commission shall be deemed to be in breach of these Regulations and shall be liable to a fine in accordance with Regulation 77.

- (7) Where the Commission decides to conduct the investigation, the Commission:
- (a) shall issue a notice of investigation to the parties; and
 - (b) may publish the commencement of the investigations to inform stakeholders and invite the public to make submissions with respect to the investigation.
- (8) Where the Commission has reasonable grounds to believe that the issuing of a notice may materially prejudice its investigation, the Commission may defer the issuing of such notice until it deems appropriate.
- (9) Upon the completion of the investigation, where there is no breach of the Regulations, the Commission shall inform the parties. The Commission shall however, reserve the right to reopen the case if circumstances so warrant.
- (10) Upon completion of the investigation, where the Commission believes that there has been a breach of the Regulations, the Commission shall issue a Statement of Concern notifying the party of its concerns and shall afford that party an opportunity to defend its interests within the period specified in the Statement of Concern.

Regulation 69
Investigation Procedure on Commission's Own Volition

- (1) The Commission shall launch an investigation:
- (a) where it has reason to believe that any activity by an undertaking has the object, effect, or is likely to have the effect, of substantially lessening competition within the Common Market or a substantial part of it; or
 - (b) into unfair trade practices in the Common Market.
- (2) Where the Commission initiates an investigation, it shall:
- (a) Issue a notice of investigation to the parties; and
 - (b) where it has reasonable grounds to believe that the giving of a notice may materially prejudice its investigation, defer the giving of such notice until the Commission deems it appropriate.

- (3) Upon completion of the investigation, where there is no breach, the Commission shall inform the parties. The Commission shall however, reserve the right to reopen the case if circumstances so warrant.
- (4) Upon completion of the investigation, where the Commission believes that there has been a breach of the Regulations, the Commission shall issue a Statement of Concern notifying the party of its concerns and shall afford that party an opportunity to defend its interests within the period specified in the Statement of Concern.

Regulation 70
Procedures on Response to a Statement of Concern

- (1) Upon receipt of the Statement of Concern from the Commission pursuant to Regulations 68 (10) and 69 (4), the parties shall be given an opportunity to make their representations:
 - (a) within sixty (60) days for anti-competitive business practices; and
 - (b) within thirty (30) days for unfair trade practices.
- (2) Upon the parties' request, the Commission may grant an extension, from the expiry of the time period provided in paragraph (1):
 - (a) a maximum of sixty (60) days for anti-competitive business practices; and
 - (b) a maximum of thirty (30) days for unfair trade practices.
- (3) Parties may submit written representations to the Commission upon receipt of the Statement of Concern and indicate whether they require an opportunity to make oral representations to the Commission.
- (4) Where a party indicates that it requires an opportunity to make oral representations, the Commission shall:
 - (a) convene a meeting to be held at a date, time and place to be determined by the Commission; and
 - (b) give written notice of the date, time and place to:
 - (i) the parties concerned;

- (ii) any person who had lodged a complaint with the Commission concerning the conduct which was the subject matter of the investigation; and
 - (iii) any other person whose presence at the meeting is considered by the Commission to be desirable.
- (5) A person to whom notice has been given of a meeting in terms of this paragraph may be accompanied by any person whose assistance he or she may require at the meeting.
- (6) The proceedings at a meeting shall be carried out in a manner as informal as the subject matter may permit.
- (7) The Commission shall cause such record of the meeting to be kept as is sufficient to set out the matters raised by the persons participating in the meeting.
- (8) The Commission may terminate the meeting if it is satisfied that a reasonable opportunity has been given for the expression of the views of persons participating in the meeting.
- (9) Following consideration of the parties' representations, if the Chief Executive Officer still believes that a breach of the Regulations has occurred, he or she shall:
- (a) submit the matter to the Panel and so notify the parties; or
 - (b) issue a decision on matters where such powers have been delegated to, or conferred upon, him or her.
- (10) Upon expiry of the period to submit representations, if the parties have not made representations, the Chief Executive Officer shall:
- (a) submit the matter to the Panel and notify the parties of such submission; or
 - (b) issue a decision on matters where such powers have been delegated to, or conferred upon, him or her.

Regulation 71 Decisions

- (1) The procedure for making decisions shall be as follows:
- (a) the Chief Executive Officer shall send a notice to the chairperson of the Panel, to

- convene a meeting;
- (b) the Panel shall meet to consider the matters and make decisions;
 - (c) the Panel, may require parties, including third parties, to appear before it to make oral or written representations, where it deems necessary;
 - (d) where the parties have so requested, the Panel shall afford the parties an opportunity to appear before it; and
 - (e) determinations shall be based on matters on which all parties concerned have been provided an opportunity to comment.
- (2) After considering the matter, the Panel shall make a decision as to whether or not the Regulations have been breached and the remedies and penalties to be imposed and notify the parties.
- (3) Any party aggrieved by the decision under paragraph (2) has a right to refer the matter to the Court within forty-five (45) days of the date of the decision.
- (4) If the undertaking does not comply with the Commission's decisions, the Commission may refer the matter to the Court for an appropriate order.

Regulation 72
Public Hearings into Unfair Trade Practices

The Commission may, where the circumstances permit, conduct public hearings in the case of unfair trade practices.

Regulation 73
Representation before the Commission

A party may elect to be represented in proceedings before the Commission by a person of their choice.

CHAPTER SEVEN GENERAL PROVISIONS

Regulation 74 Cooperation with National Competent Authorities

- (1) Where a national competent authority of a Member State has commenced investigations on a conduct under its national legislation and it is subsequently established that the conduct falls under the jurisdiction of the Commission, the national competent authority and the Commission shall discuss and determine the best-placed authority to investigate the matter with regard to that Member State.
- (2) A Member State shall not initiate an investigation where the Commission has already commenced investigations into the matter.
- (3) Member States that are affected by the investigations shall co-operate with the Commission during the investigations.
- (4) Member States that are affected by investigations shall be afforded an opportunity to make inputs into the investigations of the Commission before determination.
- (5) The Commission shall set up the competition network and consumer network as platforms to facilitate cooperation between the Commission and the national competent authorities in the enforcement of the Regulations.

Regulation 75 Cooperation with Regional and Continental Competent Authorities

The Commission may engage regional and continental competent authorities to:

- (a) determine the best-placed agency to undertake investigations; or
- (b) to undertake joint investigations, studies and market inquiries.

Regulation 76 Decisions of the Commission and Reference to the COMESA Court of Justice

- (1) Decisions rendered by the Commission shall be binding on undertakings and Member States.
- (2) The Commission may institute proceedings in the Court on its own behalf for the enforcement of any decision or order made by the Commission, where there is non-

compliance with such decision or order.

- (3) A party aggrieved by the decision of the Commission may refer the matter to the Court within forty-five (45) days of the decision, failing which the decision of the Commission shall be final and binding.
- (4) A reference by any party shall not operate as a stay of execution of the decision of the Commission unless, on application by the applicant, the Court issues a stay of execution.

Regulation 77 **General Penalties**

(1) Any person who is found to be in breach of the provisions of these Regulations, for which no penalty has been specified, shall be liable to a fine to be determined by the Commission.

(2) The Commission may impose a fine of up to a maximum of ten percent (10%) of the annual turnover of each of the undertakings or association of undertakings concerned in the Common Market where the undertakings either:

- (a) obstruct an investigation or assessment under the Regulations;
- (b) fail to comply with an order, determination or decision of the Commission;
- (c) supply incomplete information;
- (d) supply materially incorrect information;
- (e) supply misleading information; or
- (f) fail to supply information within the time limit specified by the Commission.

(3) The Board shall, subject to approval by the Council, prescribe a method for the calculation of annual turnover for purposes of determination of fines and penalties.

(4) The Commission may impose a penalty, as may be determined by it on any person who hinders, delays or obstructs a submission in a manner that impairs its integrity or its availability for use in proceedings.

(5) When determining an appropriate penalty, the Commission shall consider the

following factors, including:

- (a) the nature, duration, gravity and extent of the contravention;
 - (b) nature and gravity of any loss or damage suffered as a result of the contravention;
 - (c) the behaviour of the parties concerned;
 - (d) the market circumstances in which the contravention took place;
 - (e) the level of benefits derived from the contravention;
 - (f) the degree to which the parties have co-operated with the Commission; or
 - (g) whether the parties have previously been found in contravention of competition and consumer legislation in the Common Market.
- (6) The Commission shall set up a mechanism in the rules for sharing fines with Member States affected by the anti-competitive business practice or unfair trade practice.
- (7) Member States that conduct a parallel investigation of cases in paragraph (8) shall not be entitled to a share of the fines.
- (8) Member States shall ensure that the fines shared pursuant to this Regulation are utilised for the development and strengthening of national competition and consumer laws and capacity building in their national competent authorities.

Regulation 78 **Enforcement of Fines**

- (1) A fine payable under these Regulations shall be a debt owed to the Commission and the Commission may institute proceedings in Court to recover the unpaid fines as a civil debt.
- (2) Any fine imposed by the Commission shall be paid within forty-five (45) days of the date of imposition of the fine.
- (3) Failure to pay a fine within the period specified in this Regulation shall attract a penalty of two percent (2%), per day, of the fine imposed by the Commission until the fine is paid in full.

- (4) Where within ninety (90) days from the date of commencement of payment of the fine, the parties fail to pay the fine imposed, the Commission shall refer the matter to the Court.
- (5) The Commission may upon request from an undertaking, which meets the criteria in the guidelines, permit the undertaking to pay a fine in installments as it may determine.

Regulation 79

Confidentiality

- (1) The information gathered by the Commission in its proceedings, including, documents and any other material, shall not be disclosed or made accessible by the Commission in so far, as it contains business secrets or other confidential information unless the disclosure is considered necessary by the Commission.
- (2) Any person, when submitting any information to the Commission for the purpose of these Regulations, may identify information that the person claims to be confidential information.
- (3) Every claim made under paragraph (2), shall be supported by a written statement giving reasons why the information is confidential. In the case of oral evidence, the claim may be made orally at the time of giving the evidence specifying the information and stating the reason of the claim.
- (4) The Commission shall grant confidentiality if it is satisfied that the information or material is of a confidential nature.
- (5) The Commission may disclose any information relating to any matter referred to in paragraph (1), in any of the following circumstances:
- (a) where the consent of the person to whom the information relates has been obtained; or
 - (b) for the purposes of:
 - (i) an order under these Regulations or by the Court;
 - (ii) proceedings under these Regulations;
 - (iii) enabling the Commission to give effect to any provision of these Regulations;or

- (iv) enabling the Commission, or any person to investigate a suspected violation under these Regulations or to enforce a provision thereof.
- (6) The Commission may disclose any information available to it for the purpose of complying with provisions of an agreement between the Commission and any competition and consumer protection authority where the following conditions are satisfied:
- (a) the authority undertakes to keep the information given confidential at all times; and
 - (b) the disclosure of the information is not likely to be contrary to public interest.
- (7) In considering whether to disclose any information, the Commission shall have regard to:
- (a) the need for excluding, so far as is practicable, information the disclosure of which, in its opinion, would be contrary to public interest;
 - (b) the need for excluding, so far as is practicable:
 - (i) commercial information the disclosure of which would, or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (ii) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interest; and
 - (c) the extent to which the disclosure is necessary for the purposes for which the Commission is proposing to make the disclosure.
- (8) The Commission shall give notice in writing to a person making a claim for confidentiality of the decision of the Commission, to grant or not grant confidentiality.
- (9) Any person aggrieved by a decision of the Commission under paragraph (8), may refer the matter to the Court within forty-five (45) days of the decision of the Commission.
- (10) The Commission shall treat the information as confidential pending the reference to the Court.
- (11) The Commission and competent authorities of the Member States shall not disclose information acquired or exchanged by them which is deemed confidential under these

Regulations.

- (12) The Commission shall share with competent authorities, information submitted as confidential where such competent authorities have provisions safeguarding confidentiality under their respective legislations.
- (13) In the event that the competent authority does not have provisions safeguarding confidentiality under their respective legislations, the competent authority shall be required to provide undertakings for non-disclosure of information.
- (14) The information provided to the competent authorities of the Member States shall be used for the purpose for which the information was given.
- (15) All information obtained under these Regulations from parties concerned shall be used only for the purpose of enforcing these Regulations.

Regulation 80 Anonymity of Submissions

The Commission may, in the course of its proceedings, maintain the anonymity of complainants, informants and any other persons.

Regulation 81 Suspension

- (1) In the event of a serious disturbance occurring in the Common Market or a substantial part of it, the Board may take such measures as are necessary, including temporarily suspending the application of any of the provisions under Chapters Three or Four.
- (2) The temporary suspension in paragraph (1) shall:
 - (a) be notified in writing to the Secretary-General;
 - (b) be applicable only as long as there is a risk of irreparable damage to society;
and
 - (c) not exceed what is strictly necessary to achieve the objective of the suspension.
- (3) Notwithstanding paragraph (1), Member States may, during the period of suspension, apply their national competition legislation as the circumstances dictate.

Regulation 82
Repeal and Transitional Provisions

- (1) The COMESA Competition Regulations (December 2004) are hereby repealed.
- (2) Any action undertaken under the COMESA Competition Regulations (December 2004) shall remain valid.
- (3) Notwithstanding the generality of paragraph (1):
 - (a) any Rules or other instruments made under the repealed COMESA Competition Regulations (December 2004) shall, in so far as they are not inconsistent with the provisions of these Regulations, be deemed to have been made under these Regulations and shall continue to be in force under these Regulations until amended or repealed under these Regulations; and
 - (b) any investigation, legal proceedings or penalty, forfeiture or punishment instituted or incurred in respect of a contravention committed under the repealed COMESA Competition Regulations (December 2004), before the commencement of these Regulations, may be instituted or continued under the repealed COMESA Competition Regulations (December 2004).
- (4) Any matter filed under the repealed COMESA Competition Regulations (December 2004), on or before the commencement of these Regulations, and pending before:
 - (a) the Board appointed under the repealed COMESA Competition Regulations (December 2004); or
 - (b) the Appeals Board and the Committee Responsible for Initial Determinations established under the repealed COMESA Competition Regulations (December 2004) and COMESA Competition Commission (Appeals Board Procedure Rules) 2017, shall be continued and concluded under the repealed COMESA Competition Regulations (December 2004).
- (5) A Commissioner appointed before the coming into force of these Regulations, shall continue to hold office as though they were appointed under these Regulations. No Commissioner shall serve for a cumulative period of more than five (5) years.
- (6) For the avoidance of doubt, a person who, before the commencement of these Regulations, was an officer, employee, expert or advisor of the COMESA Competition Commission established under the repealed COMESA Competition Regulations (December 2004), shall continue to be an officer, employee, expert or advisor of the

COMESA Competition and Consumer Commission, as the case may be, as if appointed or employed under these Regulations.

(7) On the commencement of these Regulations:

- (a) the assets, rights and liabilities of the COMESA Competition Commission under the repealed COMESA Competition Regulations (December 2004) shall be deemed to be the assets and liabilities of the COMESA Competition and Consumer Commission under these Regulations; and
- (b) any contract or agreement executed under the repealed COMESA Competition Regulations (December 2004) shall continue to have effect in accordance with its terms as if it was originally made and entered into under these Regulations.

Regulation 83 Rules

(1) The Board may make Rules which shall become effective upon approval by Council.

(2) Notwithstanding the generality of paragraph (1), the Rules may, provide for the following:

- (a) matters which are required or permitted to be prescribed under these Regulations;
- (b) terms and conditions of service of any staff members;
- (c) any fees payable in respect of any service provided by the Commission; or
- (d) such other matters as are necessary or expedient for the better carrying out of the purposes of these Regulations.

Regulation 84 Entry Into Force

These Regulations shall take effect upon approval of the Council.

**FIRST SCHEDULE
(REGULATION 13(7))**

COMPOSITION OF THE SELECTION PANEL

The Selection Panel shall be composed of six (6) members as follows:

NO	MEMBERSHIP	VOTING STATUS
1.	The Bureau of the Council	Voting members
2.	The Board Chairperson or any other Commissioner	Voting member
3.	The Nominee of the Secretary-General	Voting member
4.	The Chief Executive Officer who shall be ex-officio member	Non-voting member