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## PRACTICE NOTE NUMBER 1 of 2026 REGARDING THE NEW MERGER CONTROL REGIME PURSUANT TO CHAPTER FOUR OF THE COMESA COMPETITION AND CONSUMER PROTECTION REGULATIONS

1. The COMESA Competition and Consumer Commission (the 'CCCC') has observed that the repeal of the COMESA Competition Regulations of 2004 (the 'CCR') and their replacement with the COMESA Competition and Consumer Protection Regulations of 2025 (the 'CCCPR') have raised points of clarification from various stakeholders, especially the business community and legal fraternity.
2. The CCCC recalls that among the motivations to repeal the CCR was to achieve certainty and a greater degree of uniformity in the interpretation of some of its provisions. To ensure that certainty is achieved, the CCCC, **now therefore pursuant to Regulation 26(11) of the CCCPR**, issues this Practice Note Number 1 of 2026 to address the following matters requiring further explanation:

### Effective Date of the CCCPR

3. The CCCC hereby corrects the impression it projected in its press release of 8 December 2025, **CCC/PR/12/3/2025**, that the reference date regarding the entry into force of the CCCPR is 5 December 2025. The CCCC clarifies that the reference date is 4 December 2025, being the date when the CCCPR were approved by the COMESA

Council of Ministers (the 'Council'). The effective date of entry of the CCCPR was 4 December 2025 pursuant to Regulation 84 of the CCCPR which states that:

***“These Regulations shall take effect upon approval of the Council”.***

**How is the CCCC treating merger transactions signed shortly before the entry into force of the CCCPR but not yet notified or closed? What is the policy for “in-flight” deals?**

4. In view of paragraph 1 above, the CCCC clarifies that, pursuant to Regulation 82, all matters including mergers and acquisitions that the Commission was seized with before 4 December 2025 shall continue to be governed by the CCR until concluded (***emphasis***). Any matter that the Commission was not seized with by 4 December 2025 shall therefore be governed by the provisions of the CCCPR. This guidance is given pursuant to Regulation 82 of the CCCPR which reads that:

***“82(3)(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or penalty, forfeiture or punishment instituted or incurred in respect of a contravention committed under the repealed COMESA Competition Regulations (December 2004), before the commencement of these Regulations, may be instituted or continued under the repealed COMESA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)”.***

***“82(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)”.***

**Derogations under Regulation 42(2)(b): What criteria, evidence, and process will guide derogation decisions?**

5. As a general rule, the CCCPR makes it very clear, under Regulation 42, that a merger shall not be implemented before the CCCC approves it. There is a prohibition on

completion or closing prior to clearance by the CCCC. However, under Regulation 42(2)(b), the CCCPR provides an exception where the CCCC can grant derogations. The derogations contemplated under Regulation 42(2)(b) refers to implementation before the approval by the CCCC and not implementation without notifying the CCCC. There is no derogation from notification. All mergers that meet the notification requirements under Chapter 4 of the CCCPR shall be notified before implementation, without exception.

6. Derogation from implementing a merger before approval can be granted only when the notifying parties make such a request in order to proceed with the implementation of all or part of their transaction before approval. However, such derogation, which must be necessary and duly justified, shall be granted sparingly and only in exceptional circumstances. To avoid abusing this provision and limit frivolous applications, the CCCC shall only grant derogations pursuant to situations presented under Regulation 42(7) (*emphasis*), which provides that:

***“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”.***

7. The derogation from the stand-still obligation may be granted subject to conditions and is without prejudice to the power of the CCCC to impose a prohibition order or approve the merger subject to conditions or commitment in accordance with Regulation 48(2)(a) and (b).

### **Is there a Statutory deadline for notification of transactions?**

8. Considering that the CCCPR introduced a mandatory suspensory regime, there is no statutory deadline for the notification of a transaction. Notification is however mandatory before approval and implementation of the transaction.

### **Review Timelines of merger transactions**

9. The review timeline of merger transactions is provided under Regulation 44 of the CCCPR. Regulation 44(1) provides that:

***“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”.***

10. The computation of the 120 days shall be on the basis of calendar days and not business or working days. This is consistent with the definition of the word ‘day’ in Regulation 2 of the CCCPR. This also means that Rule 3(2) of the Rules shall not apply to the 120-day assessment period. Rules 3(1) and 3(2) provides that:

***“(1) Where a particular number of days is provided for performing an act or event or taking a proceeding, the number of days shall be computed by:***

***(a) Excluding the first day; and***

***(b) Including the last day on which the time is due to expire***

***(2) Where the time provided by or allowed under these Rules for doing an act or taking a proceeding expires on a day on which the office of the Registrar is closed, the act may be done or the proceeding may be taken on the first following working day of the office of the Registrar”.***

11. From the reading of Rule 3(1), it follows therefore that, when the merger is duly filed, the computation of 120 days shall commence on the day following the date of the notification unless the office of the Registrar is closed on that day. A merger is only considered duly filed after paying the merger notification fees and submitting the merger information requested in the Notice of Merger Form.

12. Pursuant to Rule 3(2) if a merger filing is made on a day on which the office of the Registrar is closed (Saturdays, Sundays and Gazetted holidays of the Republic of Malawi), the computation of the 120 days shall begin on the day when the office of the Registrar is not closed. Further, if the 120 days expire on the day when the office of the Registrar is closed, a decision on the merger filing shall be issued immediately on the day when the office of the Registrar is not closed. Under these circumstances, the parties shall not argue that the merger concerned is approved automatically by effluxion of time or by operation of the law merely because the decision was not issued on the expiry of the 120 days which fell on the day when the office of the Registrar was closed. For avoidance of doubt, the assessment of the transaction shall be concluded within 120 calendar days. It is the issuance of the decision that may be affected by Rule 3 since issuance of decisions are related to the office of the Registrar.

## On what basis can the timeline for review of merger transactions be extended in view of the suspensory nature of the regime

13. The circumstances under which the timeline may be extended are provided under Regulation 44 of the CCCPR. Regulations 44(4) and 44(5) provide that:

**“(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”.**

14. Regulation 44(4) empowers the CCCC to seek an extension from the Panel Responsible for Determinations (the ‘Panel’)<sup>1</sup>. This notwithstanding, to prevent the abuse of this provision by the CCCC, its power should not be unfettered. The CCCC shall only seek extension of the review period in circumstances where the merger has raised competition concerns that need further examination, investigation and engagement with the parties and other stakeholders. Transactions that do not raise competition concerns shall not be subjected to the application of this provision. Depending on the complexity of the identified competition concerns, the CCCC shall recommend to the Panel for approval the number of days of extension on a case-by-case basis. Only the Panel shall have the power and discretion to approve or reject the number of days of extension sought. If it rejects the CCCC’s recommendation, the Panel shall use its discretion, granted by the CCCPR, to unilaterally determine the number of days of extension. Pursuant to Regulation 44(5), the Panel shall not have the power to reject the CCCC’s request for extension where it is demonstrated that the transaction raises competition concerns. The Panel’s power is limited to the determination and approval of the number of days to be granted in the application for extension. The Panel can only reject the application for extension where it is manifestly clear that the transaction does not raise any competition concerns (**emphasis**).

15. The Panel may grant a request for extension of the review period so long as all such extensions do not cumulatively exceed 120 days. The Commission will provide prior notice of an extension to the notifying party.

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<sup>1</sup> The Panel Responsible for Determination, established under Regulation 20 of the CCCPR, is mandated to make determinations on merger notifications.

## **Digital transaction-value threshold: Is the COM\$250m threshold assessed on global transaction value or a COMESA-attributable value?**

16. Rule 23 (2) of the COMESA Competition and Consumer Rules of 2025 (the ‘Rules’) provides that a merger in the digital market shall be notifiable if it meets the transaction value of COMESA Dollar Two Hundred and Fifty Million (COM\$250 million).<sup>2</sup> The reading of Rule 23(2) does not presuppose the attribution of the thresholds to different geographic spaces or jurisdictions. It only refers to transaction values. Therefore, what will be considered by the CCCC is the aggregate transaction value, jurisdictions notwithstanding. As long as at least one of the parties to the merger has operations in two or more COMESA Member States (regional nexus) and the aggregate transaction value meets the thresholds, such a transaction would be notifiable. For simplicity of exposition, the COM\$250 million would not be assessed on a COMESA attributable value but the global transaction value.

## **Managing Regulatory Over-reach risk in digital transactions: How will the CCCC avoid capturing high-value digital deals with negligible COMESA nexus, and what interim approach should parties follow (pending guidelines)?**

17. Thresholds are generally intended to assist competition authorities to capture transactions that are likely to raise competition concerns. However, because the construction of thresholds is not a process that is governed with full mathematical precision, sometimes thresholds may fail to capture transactions that raise competition concerns. The converse is also true. This notwithstanding, thresholds provide certainty and avoid the use of discretion which would raise more concerns than the use of thresholds. Regulation 41(7) of the CCCPR requires that:

**“...a proposed merger in the digital market, including platforms, shall be notifiable 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”.**

Rule 23(2) of the Rules provides that:

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<sup>2</sup> 1 COM\$ is equivalent to 1US\$

**“A merger in the digital market shall be notifiable if it meets the transaction value of COMESA Dollar Two Hundred and Fifty Million (COM\$250 million)”.**

18. The CCCC is confident that given the global consultations it undertook when coming up with these thresholds, they will optimally serve the purpose for which they were developed. The CCCC shall simply apply the COM\$250 million threshold to all transactions in the digital market until Guidelines providing further clarity are developed.

**Joint ventures—intended to operate: Will the same thresholds for mergers apply to joint ventures? How will “intended to operate” be assessed for greenfield JVs with offshore operations or uncertain future sales into COMESA; and must parties reassess if intentions later change?**

19. For all intents and purposes, joint ventures captured under the CCCPR are mergers. The import of this is clear from Regulation 41(2) regarding the definition of a merger. The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity is by definition a merger. It follows therefore that the thresholds that are applicable to mergers shall be applicable to joint ventures. The general COM\$60m/ COM\$10m and two-thirds construction under Rule 23 shall apply to joint ventures. If the joint venture is newly created, only the parents' turnover shall be considered. It is not all joint ventures that are captured by the CCCPR but only those that would perform on a lasting basis all the functions of an autonomous economic entity. The CCCC shall consider long duration and lasting basis to be a period of 3 years and above.

20. Regulation 41(6) with regard to the notification of joint ventures is instructive. For a joint venture to be notifiable, all the requirements of Regulation 41(6)(a)-(c) should be satisfied. The requirements are cumulative. With specific regard to the assessment of intention to operate, the CCCC's policy is that any joint venture created by parents where at least one of the parent undertakings to the joint venture operates in two or more Member States should be notified even where the joint venture does not have operations in the Common Market currently but has intentions to do so in the foreseeable future. The Commission considers a duration of 3 years or less as foreseeable future. A duration of longer than 3 years shall not be considered foreseeable future and therefore joint ventures whose intention to operate in the

Common Market within a period of 3 years cannot be established shall not be required to be notified to the Commission. The definition of foreseeability in this case is only limited to the consideration of joint ventures intended to operate in the Common Market (**emphasis**).

21. Further, in determining the question of whether there is an intention to operate on a lasting basis, the CCCC shall consider the overall structure and purpose of the JV as well as expected and planned market activity.

### **Are factors unrelated to competition relevant?**

22. In addition to competition related considerations, the CCCC may also consider public interest factors provided under Regulation 47(6). Public interest factors are one of the grounds upon which notifying parties, pursuant to Regulation 47(3), could justify a transaction which is likely to substantially lessen competition. In its assessment, the CCCC always starts with competition effects and places greater weight on competition concerns. It means therefore that on balance of probability the Commission is more likely than not to reject an anti-competitive merger even if it has positive public interest. The standard of public interest is high and the burden of establishing this lies with the parties. It should also be noted that pursuant to Regulation 47(7), the CCCC can reject a merger if it appears that the merger is likely to significantly affect public interest. However, during assessment, greater weight shall be placed on competition considerations. Similarly, on a balance of probability, the Commission is unlikely to reject a pro-competitive merger even if it results in negative public interest and the burden of establishing these lies on the Commission. Particular attention in the above two scenarios should be placed on the words '**likely**' and '**unlikely**' which indicate probability of occurrence or non-occurrence. These words in their natural and plain meaning do not imply **absolute certainty**. The converse in each situation can occur *albeit* rare.



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