
DISTINGUISHED STAFF MEMBERS REPRESENTING NATIONAL COMPETITION AUTHORITIES HERE PRESENT; THE CO-SPONSORS OF THIS VERY IMPORTANT FUNCTION – THE WORLD BANK, DISTINGUISHED PARTICIPANTS; LADIES AND GENTLEMEN.

I wish to welcome you to this important event at which the COMESA Competition Commission is presenting for the first time the Merger Assessment Guidelines as approved by its Board of Commissioners at its 6th
Meeting held in Lilongwe, Malawi. Consequently, it should be appreciated from the beginning that this event is meant for the discussion on the application of the guidelines in relation to the enforcement of the COMESA Competition Regulations by the various users of the regional competition system. Hence, we do not expect at this event to discuss in substance the guidelines as it was the case with the last two gatherings held in Johannesburg and Addis Ababa. That will be reactivated later in the course of time. It is important to mention at this stage that this does not mean the continued discussions to improve our regulations have been closed. Not at all, as you may know, there is no finality in drafting guidelines hence we shall continue opening new forums for consultations and discussions.

We thank you for having agreed to come and share your views with us on this very important assignment.

**Ladies and Gentlemen,**
Allow me to express our profound gratitude to our co-sponsors of this event, the World Bank Group for agreeing to host this event and for the tremendous hard work their officers rendered in the preparations and the necessary logistics.

Distinguished Delegates,

This workshop takes place at an opportune time when regional integration is occupying the centre stage as one of the key economic strategies and a rallying point for the development of the African continent. Let me also point out that regional integration can only be realized by supporting a strong competition culture in the Common Market.

Hence, one of the objectives of the Treaty establishing the Common Market is the attainment of single market integration. The single market integration remains a key
feature of the Common Market competition law and policy. As a result, the COMESA Competition Regulations are applied by the Commission with the objective of single market integration in mind. Agreements and conduct which might have the effect of dividing the territory of one Member State from another will be closely scrutinized and may be prohibited by the Commission.

The merger control provisions of the Regulations are an important component of most, though not all, systems of competition law. Since we commenced operations in January, 2013 the most active provisions of the Regulations has been the major control provisions. And since commencement, the Commission has found itself with the primary responsibility for explaining and interpreting the Regulations and for responding to inquiries from the public concerning their application. This prompted the Commission to commence the development of the Merger Assessment guidelines.
The process of developing the merger assessment guidelines has been with us for a long time. You will recall that the process of developing the merger assessment guidelines commenced immediately the Commission was established, and it is true that most of you present today have been part to this long process from that day. Hence, it is now important that we conclude this exercise.

As you may be aware, the Regulations were approved by Council in 2004. This means that a period of nine years had passed before the implementation of the Regulations commenced. During this period of the Regulations’ inactivity, markets had evolved legally and structurally among other things from the conditions prevailing when the Regulations were approved by Council in 2004. Therefore, when the Commission commenced the implementation of the Regulations in January 2013, some challenges immediately became
apparent. In the area of merger control, some of the challenges included -:

- **Notification**: Article 24 (1) “a party to a merger shall notify the Commission in writing of the proposed merger as soon as it is practicable but not later than 30 days of the parties’ **decision to merge**”. What amounts to ‘decision to merge’ has not been defined in the Regulations.

- **Article 3 (2)**: the interpretation is not clear when read together with Article 23 (3) vis a vis notifiable mergers. The question is – Given the Zero threshold: Who determines whether a conduct has ‘an appreciable effect on trade’. Is it the parties or the Commission? At what stage should such a determination be made?

- **Notification Thresholds**:
  - **Article 23 (4)**: The Board with the approval of the Council has prescribed the threshold at Zero. This has in turn generated serious concerns, namely:-
    - There is a risk that transactions where the target
has no activity in the Common Market whilst the buyer only has very limited activity but in two or more Member States, would need to be notified to the Commission.

- It has been argued that the zero threshold renders even extremely small transactions notifiable.

In order to address these challenges and many more others, we found that, there may be need to amend some provisions of the Regulations and Rules. However, it was decided that, in the meantime, as we ponder amending the ions, we first come up with the Merger Assessment Guidelines.

Therefore, in October 2013, the Commission and the International Finance Corporation signed a Cooperation Agreement which led to the engagement of a consultant tasked with the following deliverables:

1. Report on prescribed threshold of combined annual
turnover or assets in the region including the calculation method and text that can be used for advocacy purposes explaining the merger notification threshold under Article 23(4) of the Regulations;

2. Revised/modified filing fee;

3. Amended merger control legal framework; and

4. Draft the Merger Assessment Guidelines

The purpose of the Guidelines is to set forth framework to be applied by the Commission when determining whether a merger "is likely to substantially prevent or lessen competition" as per Article 26.1 of the Regulations. The Guidelines before you are therefore as a result of broader consultation with various stakeholders, in the region and internationally. They seek to explain the operation of the Common Market system of merger control: This reflects the Commission’s intention that the new regime should be transparent as much as possible.
...The Guidelines are intended to provide information so that the parties to a merger, industry participants, professional advisers as well as the public may:

a) Consider the likely level of scrutiny that a proposed merger will receive by the Commission;

b) Improve the understanding of the application of Articles 23-26 of the Regulations,

c) Assist in structuring (or restructuring) proposed mergers to avoid raising competition concerns;

d) Identify the types of information that will assist the Commission in assessing the likely impact on competition; and

e) Understand the Commission’s approach to potential remedies.
. In carrying out its functions, the Commission will have regard to these Guidelines. However, merger assessment is inevitably case-specific. Hence, there may be situations whereby the Commission may consider each merger with due regard to the particular facts of the case, including the information available and the deadlines applicable to the case, and will apply these Guidelines flexibly, departing from them where it considers it appropriate to do so.

. Ladies and gentlemen, as economic theory, legal thinking and best practice develop; the Commission may hence revise the Guidelines from time to time to reflect new developments. It is however important to be mindful that at this particular moment, the guidelines should as much as possible implement the Regulations as they are currently provided for. This means that we should avoid contradicting what is currently in the Regulations, as the process to make
amendments to the Regulations is still in progress.

I wish to assure that the Commission received so many comments on each subject matter, and the comments were given due consideration by both the Commission and the Board. In a situation like this it is not possible to adopt all the submissions. As you may know, COMESA consist of 19 Member States and its trading partners go beyond the Common Market hence, it requires consensus building and a balancing act. The Board adopted what we felt was beneficial to the Member States and what would work in the best interest of all Member States not a few. I however wish to state, as I mentioned earlier, that there is no finality to the process of legislating and drafting related guidelines and we shall keep calling on you when need arises.

Allow me to conclude by sincerely thanking our consultants and the World bank group for the
excellent work done and all of you who spared time at several times to participate in this project. The Commission had the privilege of learning a lot from your submissions and discussions. The written submissions from the law firms in the region were very helpful and we shall continue with the process of implementing them.

Thank you very much !!!