

COMESA COMPETITION COMMISSION

NOTICE ON THE COMMENCEMENT OF OPERATIONS OF THE COMESA COMPETITION COMMISSION

It is hereby notified to the general public that the COMESA Competition Commission (the Commission), established under Article 6 of the COMESA Competition Regulations (the Regulations) shall commence the enforcement of the Regulations as from 14th January 2013.

In accordance with Article 12 of the COMESA Treaty, Regulations shall be published in the Official Gazette of the Common Market and shall enter into force on the date of their publication or such later date as may be specified in the Regulations. In this instance, the Regulations were published in the COMESA Official Gazette Vol. 10 No. 2 of 2004 as Decision No. 43.

Since at the time of entry into force of the Regulations, the Commission was not yet in existence, it is hereby notified that the Commission has commenced operations and will start receiving applications and notifications in relation to Part 3, 4 and 5 of the Regulations as from 14th January 2013.

The Commission shall be at the core of the development of the Common Market Competition Law and Policy and shall be responsible for fact finding, taking action against infringements of the law including consumer protection violations, approving mergers or acquisitions with a regional dimension, granting individual exemptions and imposing penalties under the Regulations.

Members of the public are further advised to notify to the Commission all transactions having a regional dimension (that is, transactions affecting two or more COMESA Member States). It is further notified that the Council of Ministers has directed that all mergers are notifiable regardless of the size of the undertakings involved. Hence all mergers where both the acquiring firm and target firm or either the acquiring firm or target firm operate in two or more Member States. Once a notification is made to the Commission, there is absolutely no need to notify the same to the individual national competition authorities. All merger notifications must be accompanied by a fee calculated at 0.5% or COM\$ 500000, or whichever is lower, of the combined annual turnover or combined value of assets in the Common Market, whichever is higher. The merger notification fee must be deposited into any one of the Commission's bank accounts whose details are provided below. In this regard you are advised to scan and send to the Commission proof of payment.

The following are some of the transactions notifiable under the Regulations:

- **Mergers and other forms of acquisitions** where both the acquiring firm and target firm, or either the acquiring firm or target firm, operate in two or more COMESA Member States which may fall in any of the following threetypes of mergers:
 - **horizontal mergers-** Mergers between firms that produce and sell the same or similar products, i.e., between competing firms.
 - **vertical mergers-** Mergers between firms operating at different stages of production, e.g., from raw materials to finished products to distribution.
 - **conglomerate mergers-** Mergers between firms in unrelated business, e.g., between an automobile manufacturer and a food processing firm.
- **Vertical agreements** which are agreements between upstream and downstream firms which can be anti-competitive if they foreclose competition in either or both the upstream and downstream markets. In this regard, enterprises are invited to open discussions with the Commission in relation to their commercial agreements which are already operating in the Common Market and which may fall under the prohibitions provided for under Articles 16 (1)

and 18 of the Regulations. There are many types of vertical agreements which if not authorised may infringe the Competition Regulations and these include agreements which:

- restrict, or are likely to restrict, the entry of any undertaking into a market.
 - prevent or deter, or are likely to prevent or deter, any undertaking from engaging in competition in a market.
 - eliminate or remove, or are likely to eliminate or remove, any undertaking from a market.
 - directly or indirectly impose unfair purchase or selling prices or other restrictive practices.
 - limit the production of goods or services for a market to the prejudice of consumers.
- **Authorisations of contracts, arrangements or understandings:** Enterprises are invited in accordance with Article 20 of the Regulations to seek and apply to the Commission for the authorisation or exemption of their existing and contemplated agreements which even if they are anti-competitive, they have public benefits that outweigh their anti-competitive detriment. These may include the following:
 - **Joint research and development ventures.**
 - **Specialisation agreements.**
 - **Franchising agreements.**
 - **Consumer protection violations:** Members of the public are invited to report any consumer protection violations under Part 5 of the Regulations which include the following:
 - **False or misleading representation:** this include misleading and deceptive conduct, particularly in advertising and selling on the standard, quality, value, grade, composition etc. of goods.
 - **Unconscionable conduct in consumer and business transactions:** this is conduct that is grossly unfair particularly in markets where there is great disparity in knowledge, relevant experience and skills, unscrupulous persons seek to exploit these differences to their advantage.
 - **Product safety standards and unsafe goods:** this include the supply of goods that do not comply with a prescribed consumer product safety standard.
 - **Unsuitable goods:** this include the supply of goods that are not fit for the purpose.
 - **Defective goods causing injury and loss:** this includes the supply of goods that are defective by a manufacturer and such defects result in loss, injury or death to the consumer.

For the avoidance of doubt, any competition proceedings involving cases with a regional dimension that had commenced or are pending before the national competition authorities or any other relevant authority within Member States before the publication of this notice shall be finalised by the respective authorities. This means that the national process will be allowed to be exhausted without bringing such matters to the Commission.

Members of the public are also advised that the COMESA Council of Ministers at its meeting held in Kampala, Uganda in November 2012 approved the following Competition Rules which will soon be posted on our website:

- COMESA Competition Rules on Revenue Sharing of Merger Filing Fees.
- COMESA Competition Rules on the Determination of Merger Notification Thresholds.
- Amendment to the COMESA Competition Rules, 2004.

Members of the public are further advised to visit our website shown below and acquaint themselves with the various guidelines relating to the key provisions of the Regulations and access the enforcement forms. The following documents can also be found on our website:

- COMESA Regional Competition Policy.
- COMESA Regional Competition Regulations.

- COMESA Regional Competition Rules.
- COMESA Regional Competition Policy - User Guide for Business.
- COMESA Regional Competition Policy - User Guide for Consumers.
- COMESA Regional Competition Policy - A Manual for Competition Authorities.
- COMESA Competition Policy - User Guide on Mergers and Acquisitions.
- COMESA Competition Policy - User Guide on Exemptions and Exceptions.

Also on the website are the following enforcement forms:

- Form 1: Complaint.
- Form 2: Request for Confidentiality.
- Form 3: Notice of Refusal to Conduct Investigation.
- Form 4: Notice of Investigation (to Complainant).
- Form 5: Notice of Investigation (to Respondent).
- Form 6: Notice to Appear.
- Form 7: Application for Authorisation.
- Form 8: Request for Information.
- Form 9: Notice of Decision to Grant Authorisation.
- Form 10: Notice of Denial to Grant Authorisation.
- Form 11: Notice of Action to be taken by the Commission.
- Form 12: Notice of Merger.
- Form 13: Notice of Decision in Respect of Proposed Merger.

All payments in respect of all transactions can be made to any of the following Commission bank accounts:

1. Standard Bank Malawi		2. Ecobank Malawi Limited	
Bank Name	Standard Bank Malawi	Bank Name	Ecobank Malawi Limited.
Account Name	COMESA Competition Commission Revenue	Account Name	COMESA Competition Commission
Account Number	0240023475301	Account Number	0020017002396901
Branch Name	Capital City Branch	Branch Name	Kanengo
Branch Code	Code 1015	Swift Code	ECOCMWMW
Swift Code	SBICMWMX	Correspondent Bank Name	Citibank NA
Bank's Address	P O Box 30380, Lilongwe, Malawi, Africa	Correspondent Bank Address	111 Wall Street, Zone 1, Ny 10005, New York, USA
Correspondent Bank Name:	Deutsche Bank Trust – Company Americas	Swift Code for Correspondent Bank	CITIUS33
Swift Code For Correspondent Bank	BKTRUS33	Ecobank Malawi Limited A/c No. with Correspondent Bank	36159937

Members are also advised to continue visiting our website for the latest notices and information relating to mergers and anti-competitive practices procedural guidelines.

The Commission offices shall be open for the public every day from Monday to Friday, other than a public holiday during the following times, 09:00 to 12:00 and 14:00 to 16:00.

The Officers of the Commission are:-

George K. Lipimile	Director & Chief Executive Officer: glipimile@comesa.int
Willard Mwemba	Manager-.Mergers and Acquisitions: wmwemba@comesa.int
Vincent Nkhoma	Manager- Enforcement and Exemptions: vnkhoma@comesa.int
Mary Gurure	Manager- Legal Services and Compliance: mgurure@comesa.int
Meti Demissie Disasa	Registrar: mdisasa@comesa.int

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