

CAUTIONARY NOTICE

Cautionary Notice on Restrictive Business Agreements

The COMESA Competition Commission (“the Commission”) is established under Article 6 of the COMESA Competition Regulations (“the Regulations”). The mandate of the Commission is to promote and encourage competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market and to protect consumers against offensive conduct by market actors.

Article 16 of the Regulations prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and may have as their object or effect the prevention, restriction or distortion of competition within the Common Market. Premised on this, at the commencement of its operations in 2013, the Commission invited undertakings operating in the Common Market to seek and apply for authorisation or exemption of their existing and contemplated agreements in accordance with Article 20 of the Regulations.

The Commission has noted with concern that some undertakings operating in the Common Market, have been engaging in, and continue to engage in, agreements that include, among others restrictions, restrictive territorial clauses, market allocation and hence contributing to forming barriers to trade in the Common Market. The Commission has in its possession anecdotal evidence of certain sectors who have continued to engage in the said conduct(s). To date, the Commission has engaged in soft enforcement for a reasonable period, by engaging undertakings and requesting them to notify such agreements in accordance with Article 20 of the Regulations and through numerous awareness programs.

The Commission has considered that it has given ample time to undertakings operating in the Common Market to sanitise their agreements pursuant to Article 20 of the Regulations. In view of this, the Commission hereby notifies undertakings operating in the Common Market and the general public, that it shall henceforth focus more on hard enforcement through screening, detection, investigation and punishment of offenders.

TAKE NOTE that agreements which are found to contravene Part 3 of the Regulations will attract sanctions under the Regulations, which may include fines of up to 10% of annual turnover units of account in the Common Market pursuant to Rule 45 of the COMESA Competition Rules. The Commission will work closely with the national competition authorities in the Member States to ensure that offenders are detected, investigated and punished.

The Commission accordingly urges undertakings operating in the Common Market to desist from entering into any agreements or arrangements which deter the efficient operation of markets and restrict trade between Member States without obtaining the necessary authorization from the Commission.

If you wish to seek further details and/or clarifications on any aspect of this Notice, you may contact **Mrs Stellah Onyancha**, Manager, Enforcement & Exemptions on Tel:+256(0)1772466 or email sonyancha@comesa.int.

Dr. Willard Mwemba
Acting Director & Chief Executive Officer