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**Common Market for Eastern
and Southern Africa**

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**Practice Note on the Procedures relating to Cases before the COMESA
Competition Commission Where Undertakings Have Been Reached
Between the Commission
and the Respondents**

The COMESA Competition Commission (the “**Commission**”), having received several queries in relation to the procedure for cases before the Commission where Undertakings have been reached between the Commission and respondents hereby issues this practice note to be followed in such cases.

For purposes of this Practice Note, “Undertakings” shall be the commitments which respondents, that are subject to proceedings under Part 3 of the COMESA Competition Regulations, 2004 (the “**Regulations**”), can negotiate with the Commission to address competition concerns identified by the Commission from the parties’ conduct in order to reach a speedy conclusion of the proceedings.

With respect to investigations under the Regulations, the Commission may negotiate Undertakings with the respondents any time before the Committee Responsible for Initial Determination (the “**CID**”) makes a determination, at any of the following stages:

- a) when a respondent, in response to a Notice of Investigation, expresses in writing its interest to commence negotiations with the Commission;
- b) during the investigation period but before the submission of an investigation report to the CID

In this regard, either the Commission or the respondents may propose Undertakings to remedy the likely harm to competition.

In accordance with both the independent decision-making powers of the CID as well as the need to respect parties' right to be heard, the following procedure shall be followed:

- a. Where the Director believes that there is a breach of the Regulations, but competition could be restored through Undertakings, the parties may submit Undertakings to the Commission to address the anti-competitive concerns.
- b. If the Commission is satisfied that the Undertakings are likely to address the competition concerns, the Director shall in accordance with Rule 24(a) of the COMESA Competition Rules (the “**Rules**”) notify in writing the Chairperson of the Board that he/she believes there has been a breach of the Regulations and the agreed Undertakings between the Commission and the respondents. The Chairperson shall then convene a CID to consider the cases with the Undertakings.
- c. Should the CID disagree with the Undertakings presented by the Commission and the respondents, the appointed CID shall convene a full hearing. The respondent party shall be notified of the date and time of the hearing. The hearing shall be undertaken in compliance with Rules 29 and 49 of the Rules.
- d. In accordance with Rule 24(c) of the Rules, at the hearing, the respondent party may be represented by an Attorney, and the Commission shall be represented at that time.

Dr. Willard Mwemba
Acting Director and Chief Executive Officer