

COOPERATION FRAMEWORK AGREEMENT BETWEEN THE COMESA COMPETITION COMMISSION AND  
ESWATINI COMPETITION COMMISSION



**COOPERATION FRAMEWORK AGREEMENT**

**BETWEEN**

**THE COMESA COMPETITION COMMISSION**

**AND**

**THE ESWATINI COMPETITION COMMISSION**

**REGARDING**

**COOPERATION IN THE APPLICATION AND ENFORCEMENT  
OF THE COMPETITION AND CONSUMER PROTECTION  
LAWS**

**JUNE 2022**

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COOPERATION FRAMEWORK AGREEMENT BETWEEN THE COMESA COMPETITION COMMISSION AND  
ESWATINI COMPETITION COMMISSION

COOPERATION FRAMEWORK AGREEMENT BETWEEN THE COMESA  
COMPETITION COMMISSION AND THE ESWATINI COMPETITION  
COMMISSION REGARDING COOPERATION IN THE APPLICATION AND  
ENFORCEMENT OF THEIR COMPETITION AND CONSUMER PROTECTION  
LAWS

This Cooperation Framework Agreement is made on this <sup>29</sup> day of <sup>June</sup> 2022.

BETWEEN

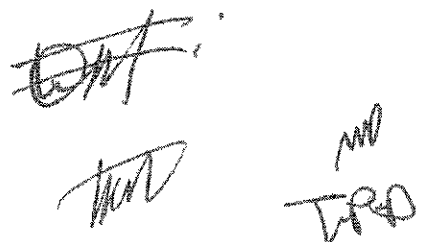
- I. The COMESA Competition Commission, a Regional Competition Agency established by the COMESA Competition Regulations which were issued in the COMESA Official Gazette Vol. 9 No. 2 as Decision No. 43 of Notice No 2 of 2004 and whose address of service is care of Kang'ombe House, 5<sup>th</sup> Floor, P.O Box 30742 Lilongwe 3, Malawi, on one hand; (hereinafter referred to as "the Commission")
- II. The Eswatini Competition Commission (ESCC) is a National Competition Commission established under Eswatini Competition Act 2007, and whose address of service for purposes of this agreement is care of Eswatini Competition Commission, Highlands View (Mountain Inn area), Emoyeni Road, Mbabane, Telephone Number:(+268) 2 404 0111/0421. ; (hereinafter referred to as "ESCC")

RECOGNISING:

The provisions of Article 55(3) of the Treaty establishing the Common Market for Eastern and Southern Africa (the "COMESA Treaty") under which the COMESA Competition Regulations ("the Regulations") are promulgated;

The provisions of Article 5 of the COMESA Treaty as read with Article 5 of the Regulations regarding the obligations of Member States; to take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of the Regulations or resulting from action taken by the CCC under these Regulations, to facilitate the achievement of the objects of the Common Market and abstain from taking any measure which could jeopardize the attainment of the objectives of the Regulations;

The provisions of Article 2 of the Regulations regarding the purpose of the Regulations which is to promote and encourage competition by preventing restrictive business practices and other restrictions that deter 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;

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The provisions of Article 6 of the Regulations establishing the CCC and Article 7(1) of the Regulations which mandates the CCC to apply the provisions of the Regulations with regard to trade between Member States and be responsible for promoting competition within the Common Market;

The provisions of Article 7(2) of the Regulations which empowers the CCC among others to: monitor and investigate anti-competitive practices within the Common Market and mediate disputes between Member States; initiate cooperation with competition authorities of Member States; help Member States promote national competition laws and institutions with the objective of harmonization with the Regulations and ensure uniform application of the same; assist Member States in the implementation of its decisions; support to Member States in promoting and protecting consumer welfare; facilitate the exchange of relevant information and expertise;

That Eswatini is one of the Member States of COMESA, a regional economic community whose objective is to promote regional economic integration through trade and investment;

That it is imperative that COMESA Member States give effect to the principles of regional competition Regulations and Rules and to use moderation and self-restraint in the interest of co-operation in the field of anti-competitive business practices, mergers and consumer protection matters;

The desirability of setting standards for procedures by which the regional competition agency can act as a forum for exchange of views, consultations and conciliations on matters relating to anti-competitive practices affecting COMESA regional and international trade;

The provisions of Articles 24(8) and 26(6) of the Regulations which provides for the referral of a merger application for consideration under the Member State's national competition law, and for the CCC to work with the relevant Member States in conducting merger enquiries, respectively;

The provisions of Rule 40 of the COMESA Competition Rules ("the Rules") which provides for close and constant liaison between the CCC and the competition authorities of the Member States in establishing the existence of infringements of Articles 16 or 18 of the Regulations in the applications and notifications by undertakings;

The provisions of Rules 41(1), 43(1) and 44 of the Rules which mandates the CCC to: obtain all necessary information from the Governments and competition authorities of the Member States and from undertakings and association of undertakings; to request competition authorities of Member States to undertake investigations which the CCC deems to be necessary; and for officials of the CCC to carry out investigations in Member States in consultation with the competent authorities of Member States in whose territory the investigation is to be made, respectively;

The importance of coordinating and cooperating with Regional Economic Communities (RECs) such as the Tripartite Free Trade Area (TFTA), the African Continental Free Trade Area

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(AFCFTA) and the need for Member States to comply with the obligations of enforcing regional competition and consumer protection law including harmonization of national laws with the regional laws.

**CONSIDERING:**

The desirability of Member States to cooperate at regional level in the implementation of their respective national competition and consumer legislation in order to eliminate the harmful effects of anti-competitive practices; and

That closer cooperation between the CCC and competition authorities of COMESA Member States in the form of notification, exchange of information, coordination of actions, and consultation among Member States should be encouraged.

**CONSCIOUS OF:**

Article 7(2) (d) of the Regulations which mandates the Commission to cooperate with competition and consumer protection authorities of Member States in order to accomplish the mandate of promoting competition and enhancing consumer welfare in the Common Market and Section 11(j) of Eswatini Competition Act one of the functions of Eswatini Competition Commission is “ (j) *co-operate with regional and international bodies engaged in the enforcement of competition law and the promotion of a competition culture*”.

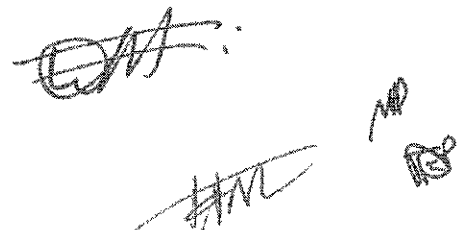
Now, therefore, the Parties agree as follows:

**Article 1**

**Definitions**

In this Agreement-

1. “**Agreement**” means this Cooperation Framework Agreement.
2. “**Anti-competitive**” means a conduct which restrains competition between the Member States and is not otherwise exempt by law or authorised in a manner required by the Regulations.
3. “**COMESA Treaty**” means the Treaty establishing the Common Market for Eastern and Southern Africa.
4. “**Common Market**” means the Common Market for Eastern and Southern Africa established by Article 1 of the COMESA Treaty.
5. “**Competition and Consumer Protection Authorities**” means:

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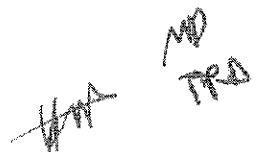
- a. the COMESA Competition Commission established by Article 6 of the COMESA Competition Regulations; and
  - b. the Eswatini Competition Commission established by Section 6 of the Competition Act, 2007.
6. **“Competition and Consumer Protection law(s)”** means:
- a. for the Commission, the COMESA Competition Regulations promulgated under Article 55 (3) of the Treaty establishing the Common Market.
  - b. for Eswatini, the Competition Act, 2007; and
  - c. for both the Commission and the ESCC, any such other legislations as the Parties shall jointly agree to be a “competition law” for the purpose of this Agreement.
7. **“Enforcement activities”** means any application of competition law by way of investigation or proceedings conducted by the competition authority of a Party.
8. **“Member State”** means a Member State of the Common Market.
9. **“Parties”** Means the COMESA Competition Commission (CCC) and the Eswatini Competition Commission (ESCC).
10. **“Regional Dimension”** means conduct or practice affecting two or more Member States or having an appreciable effect in the Common Market.
11. **“Territory”** means:
- a. The Common Market; and
  - b. Kingdom of Eswatini.

**Article 2**

**Purpose of this Agreement**

The Purpose of this Agreement is to promote and facilitate cooperation and coordination between Parties in:

- a. The harmonization of the respective competition and consumer protection laws and policies.
- b. Implementation of respective competition and consumer protection laws and policies to foster effective enforcement.
- c. Discussion of emerging trends and sharing international best practices on competition and consumer protection.



**Article 3**

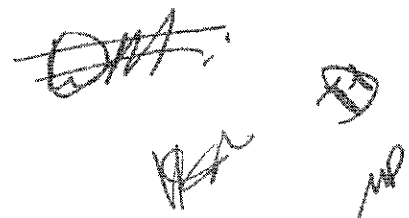
**Notification**

1. Each Party shall notify the other Party in writing whenever it becomes aware that its enforcement activities may affect interests of the other Party.
2. Enforcement activities as to which notification generally will be appropriate include those that:
  - a) Involve anticompetitive activities carried out in the Common Market or part of it;
  - b) Involve conduct believed to have been required, encouraged or approved by a Party; or
  - c) Involve the imposition of remedies, conditions, undertakings or commitments that would, in significant respects, prohibit conduct affecting the Common Market.
3. With respect to mergers or acquisitions, each Party will notify the other Party with any information that comes to its attention regarding mergers with a national or regional dimension that it believes is relevant to, or may warrant, enforcement activity by the Commission, or by ESCC.
4. Each Party shall notify the other Party whenever it intervenes or otherwise participates in a regulatory or judicial proceeding that does not arise from its enforcement activities, if the issues addressed in the intervention or participation may affect the interests of the other Party.
5. Notifications shall be made as soon as practicable and shall include the nature of the activities under investigation and the legal provisions concerned and will be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the activities in its respective territory.

**Article 4**

**Undertakings of the Parties**

1. The Parties shall take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of this Agreement or resulting from action taken by the Parties under this Agreement.
2. The Parties shall facilitate the achievement of the objectives of the COMESA Treaty and purpose of the Agreement and in so doing, shall abstain from taking any measure which could jeopardise the attainment of the objectives of this Agreement.
3. The Parties may, but shall not be obliged to, implement in their laws more extensive provisions against restrictive business practices than is required by this Agreement, provided that such provisions do not contravene the provisions of this Agreement.

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4. The Parties shall be free to determine the appropriate method of implementing the provisions of this Agreement within their legal system and practice, as long as such method of implementation enhances the efficient and effective attainment of the objectives of this Agreement.
5. The Parties will make submissions of information in a timely manner including information related to mergers as provided in the Rules on COMESA Revenue Sharing of Merger Filing Fees.

**Article 5**

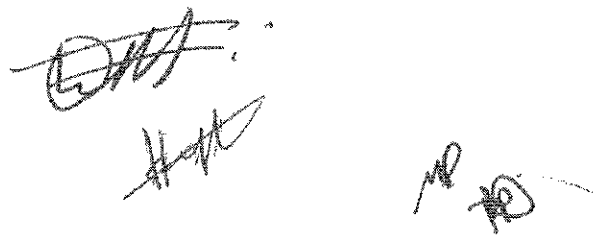
**Exchange of Information**

1. Each Party agrees to provide to the other Party, upon request and to the extent compatible with their respective competition and consumer protection laws, such information within its possession as the requesting Party may describe that is relevant to an enforcement activity that is being contemplated or conducted by the requesting Party's competition and consumer authority.
2. Each Party agrees to provide the other Party any information that comes to its attention regarding anti-competitive business practices, consumer protection matters and merger transactions that the Party believes is relevant to, or may warrant, enforcement activity by the other Party.
3. The information shared between the Parties shall be used solely for the purpose of implementing this Agreement.

**Article 6**

**Coordination and Cooperation in Enforcement Activities**

1. The Parties shall render assistance to each other in their enforcement activities, to the extent compatible with their respective competition and consumer protection laws and their respective interests, and within the reasonably available resources.
2. The Parties shall cooperate in the enforcement of the competition and consumer protection laws and share information which will facilitate effective implementation of the respective laws.
3. The Parties may review their competition and consumer protection laws where necessary to facilitate cooperation and collaboration.

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4. The Parties may coordinate in undertaking research and/or market inquiries in identified sectors and to ascertain any competition concerns in those sectors.
5. The Parties shall, in this regard, assist each other in the enforcement of the competition and consumer laws through:
  - a. Assisting, upon request, in collecting, locating and securing evidence and enforce voluntary compliance with requests for information from undertakings or natural persons.
  - b. Assisting the requesting Party with such information within the other Party's possession as the requesting Party may specify as relevant to the enforcement of the Regulations.
  - c. Assisting the Party with any information that comes to the attention of the other Party about anti-competitive activities and merger transactions and consumer protection violations that may be relevant to or may warrant enforcement activity of the beneficiary Party.
  - d. Assisting the requesting Party in the implementation and enforcement of sanctions and remedies issued to any undertaking by the requesting Party in the other Party's territory.
6. A Party may notify the other Party about, mergers, and anti-competitive practices in its territory, and consumer protection violations and may request that the other Party to initiate appropriate enforcement activities. The notification shall be as specific as possible about the nature of the conduct taking place in its territory and its likely effects and if enforcement has already taken place, it shall state the measures or remedies (if any) is imposed.
7. Upon receipt of a notification, the notified Party shall advise the notifying Party of its decision. If enforcement activities are initiated, the notified Party shall advise the notifying Party of their outcome and, to the extent possible, of interim developments.
8. The requested Party shall assist in the investigations which the requesting Party considers to be necessary. Such investigations shall be carried out with the assistance of officials of the requesting Party, upon request, in accordance with the respective Party's laws.
9. In cases where the Parties have an interest in pursuing enforcement activities with regard to related situations, they may agree that it is in their mutual interest to coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, the Parties shall take account of the following factors, among others:





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- a. the opportunity to make more efficient use of their resources devoted to the enforcement activities;
  - b. the relative abilities of the Parties to obtain information necessary to conduct the enforcement activities;
  - c. the effect of such coordination on the ability of both Parties to achieve the objectives of their enforcement activities; and
  - d. the possibility of reducing costs incurred by persons subject to the enforcement activities.
10. In any coordination arrangement, each Party shall conduct its enforcement activities expeditiously and, insofar as possible, consistently with the enforcement objectives of their respective competition laws.
11. The Parties shall carry out the investigations expeditiously and consistent with their relevant laws and shall take into account the enforcement objectives of the respective laws and the deadlines stipulated in their respective competition laws.
12. Nothing in this Article limits the discretion of the notified Party under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the notified anti-competitive activities or precludes the notifying Party from undertaking enforcement activities with respect to such anticompetitive activities, mergers and consumer protection activities.

**Article 7**

**Avoidance of Conflicts over Enforcement Activities**

1. The Parties agree that it is in their common interest to minimize any potentially adverse effects of their enforcement activities in as far as the application of the respective competition and consumer protection laws are concerned.
2. Each Party shall seek, at all stages in its enforcement activities, to take into account the important interests of the other Party in decisions as to whether or not to initiate an investigation or proceeding, the scope of an investigation or proceeding, the nature of the remedies or penalties sought, and in other ways, as appropriate.
3. Any divergent views arising out of the enforcement of the respective competition and consumer protection laws will be addressed in a timely and practicable manner as circumstances may permit.

**Article 8**

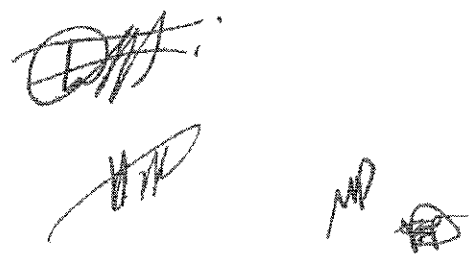
**Consultation**

1. Each Party agrees to consult promptly with the other Party in response to a request by the other Party for consultations regarding any matter related to this Agreement and to attempt to conclude consultations expeditiously with a view to reaching mutually satisfactory conclusions
2. Any request for consultations shall include the reasons thereof and shall state whether procedural time limits or other considerations require that the consultations be expedited. These consultations shall take place at the appropriate level, which may include consultations between the heads of the competition authorities concerned.
3. In each consultation under paragraph 1, each Party shall take into account the principles of cooperation set forth in this Agreement and shall be prepared to explain to the other Party the specific results of its application of those principles to the issue that is the subject of consultation.
4. A Party shall as soon as is practical, inform the other Party of any amendment made to its respective competition and consumer protection laws as well as any change in the enforcement practice of its competition authority that may affect the operation of this Agreement. Upon request of either Party, the Parties shall hold consultations in order to assess the specific implications of such amendments or changes for this Agreement, and in particular to determine whether this Agreement should be amended pursuant to paragraph Article 16.
5. The Parties shall meet at the appropriate level, at the request of either Party to among others:
  - (a) update each other on their current enforcement efforts and priorities in relation to the competition and consumer protection laws of each Party;
  - (b) exchange views on economic sectors of common interest;
  - (c) discuss policy issues of mutual interest; and
  - (d) discuss other matters of mutual interest relating to the application of the respective competition and consumer protection laws of each Party.

**Article 9**

**Technical Assistance and Capacity Building**

1. The Parties shall pursue technical assistance and capacity building programs through integrated strategies that incorporate economic, social, cultural, environmental and institutional elements that are unique to each Party.

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2. The technical assistance and capacity building programs shall pay systematic attention to institutional aspects and in this context shall support the efforts of either Party to develop and strengthen structures, institutions and procedures that help to enhance the effective enforcement of the competition and consumer protection laws and policies in their respective territories. In this context, the Parties shall:
- a) jointly mobilize resources for capacity building aimed at assisting the Parties in the establishment and/or strengthening of the respective competition and consumer protection laws and enforcement agencies.
  - b) jointly facilitate and develop competition and consumer protection advocacy programmes involving the sensitisation of stakeholders including but not limited to: policy makers, parliamentarians, the judiciary, the media, the business community and the general public about the role of competition and consumer laws and policies.
  - c) jointly facilitate the establishment of a mechanism to enable the Parties to take the necessary steps to adopt, strengthen and implement the necessary competition and consumer protection laws in their respective territories.

**Article 10**

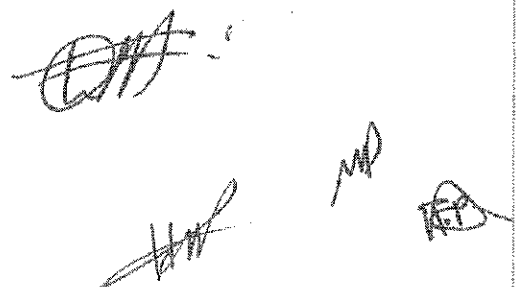
**Collaboration and Cooperation with Regional Economic Communities**

1. The Parties will collaborate and cooperate with Regional Economic Communities in order to enhance enforcement of regional competition laws.

**Article 11**

**Confidentiality of Information**

1. Notwithstanding any other provision of this Agreement, neither Party is required to provide information to the other Party if disclosure of that information to the requesting Party is prohibited by the law of the Party possessing the information or would be incompatible with important interests of the Party possessing the information.
2. Each Party agrees to maintain, to the fullest extent possible, the confidentiality of information provided to it in confidence by the other Party under this Agreement and to oppose, to the fullest extent possible, any application for disclosure of such information by a third party that is not authorized to obtain the confidential information by the Party that supplied the information.

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3. The Parties will only disclose to each other information that has been designated as confidential where the receiving party is obliged to respect the confidentiality of such information or documents.

Article 12

Communication under this Agreement

1. Communications under this Agreement shall be in writing and in English
2. Communications under this Agreement shall be in writing through registered post or electronically to the relevant address of the other party as indicated below to:

**For the Commission:** The Director and Chief Executive Officer  
COMESA Competition Commission  
P.O Box 30742  
Lilongwe 3  
Malawi  
Email: [compcom@comesa.int](mailto:compcom@comesa.int)




**For ESCC:** Chief Executive Officer,  
Eswatini Competition Commission  
Highlands View (Mountain Inn area)  
Emoyeni road  
P.O. Box 1976, MBABANE  
Eswatini, H100  
[info@compco.co.sz](mailto:info@compco.co.sz)

3. Each Party shall designate an Officer for the purpose of liaison with each other in the enforcement of the respective competition and consumer protection laws.

Article 13

Existing Law

1. Nothing in this Agreement shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the competition and consumer protection laws of the Parties.

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**Article 14**

**Dispute Resolution**

1. Any disputes that may arise from this Agreement will be amicably resolved through consultations.
2. Where consultations fail, the dispute will be resolved through mediation.

**Article 15**

**Entry into Force, Duration and Implementation**

1. This Agreement shall enter into force upon signature by the Parties.
2. This Agreement will remain in force unless terminated by either Party.
3. The Parties will agree on the mechanism and mode of implementation of this Agreement.

**Article 16**

**Review, Amendment and Termination**

1. The Parties will, at any time, review this Agreement with a view to adopting such further arrangements as may be feasible and desirable to enhance cooperation in the enforcement of their respective competition and consumer protection laws.
2. The Parties may, at any time, by consensus, amend this Agreement.
3. Either Party may terminate this Agreement by giving the other Party sixty (60) days written notice of intention to terminate this Agreement.

**Article 17**

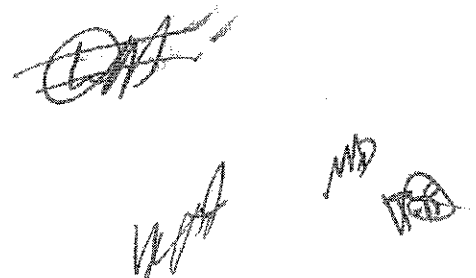
**Public Document**

This Agreement shall be a public document and be made available to stakeholders upon request.

**Article 18**

**Repeal and Replacement**

The Agreement, signed on 19<sup>th</sup> April 2016 between the CCC and the ESCC, is hereby repealed and replaced with this Agreement.

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IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this  
Cooperation Framework Agreement.

DONE in two original texts on this 29 day of June 2022 at Eswatini.

The COMESA Competition Commission

Eswatini Competition Commission



Dr. Willard Mwemba

Mr. Muzi Dlamini

Director & Chief Executive Officer

Chief Executive Officer

Witnessed by:

Witnessed by:

Name: Henri HASSANIEN

Name: Thembelike Dlamini

Signature: 

Signature: 