



Annual Report 2022





Our Vision, Mission and Values

■ **Vision**

To be a centre of excellence for competition regulation and consumer protection by 2030.

■ **Mission**

To promote competitive markets and enhance consumer welfare within the Common Market by preventing and prohibiting anti-competitive business practices and protecting consumers, thereby deepening regional integration.

■ **Core Values**

In carrying out this mission, the Board of Commissioners, management, and staff of the Commission are guided by the following values:

■ **Integrity:** We shall uphold integrity through operating in a manner that is fair, transparent, ethical, honest, and incorruptible.

■ **Efficiency:** We shall deliver services in a timely and cost-effective manner ensuring that every function that is executed contributes to the achievement of competitive markets, enhancement of consumer welfare, and ultimately regional integration within the Common Market.

■ **Effectiveness:** We shall exhibit the highest level of ability and willingness to do work. This shall be accompanied by a learning attitude and recognition that we are all stewards of public trust and as such have a higher calling to deliver public service.

■ **Accountability:** We shall ensure accountability to stakeholders in our operations and decision-making process.

■ **Independence:** We are independent in carrying out our mandate and reaching our decisions without undue influence.

■ **Continuous improvement:** We shall embrace and sustain a culture of innovation, responsiveness to change and best practices.

■ **Cooperation:** We shall work in close collaboration and mutual assistance with Member States and Stakeholders.

Table of Contents

OUR VISION, MISSION, AND VALUES	1
CHAIRPERSON'S MESSAGE	5
FOREWORD OF THE DIRECTOR	7
OUR FOCUS AREA	10
THE BOARD OF COMMISSIONERS	12
CORPORATE GOVERNANCE	21
<i>THE SECRETERIAT</i>	24
2022 HIGHLIGHTS OF THE COMMISSION'S INTERVENTION IN THE MARKET	25
DETERMINATION OF CONDUCT HARMFUL TO COMPETITION AND CONSUMER WELFARE IN THE COMMON MARKET	25
STRENGTHENING ENFORCEMENT	56
<i>Enhance Compliance with the decisions of the Commission</i>	56
ADVOCACY AND STRATEGIC COLLABORATION	69
INSTITUTIONAL STRENGTHENING	87
<i>Organizational capacity for the Commission</i>	87
PROSPECTS FOR THE FUTURE	90



List of Figures

Figure 1: Merger Cases handled by outcome/determination in 2022 in comparison to 2021	27
Figure 2: Merger Cases by Economic Sector 2022 in comparison with 2021	28
Figure 3: Member States Affected by the Merger Cases	29
Figure 4: Restrictive Business Practices by type	39
Figure 5: Restrictive Business Practices by Sector	40
Figure 6: Member States Affected by the Cases	41
Figure 7: Consumer Cases handled in 2022 in Comparison to 2021	48
Figure 8: Member States Affected by the Cases	48
Table 1: Board Meetings Held in 2022	25



Acronyms

ABA	America Bar Association
ACF	African Competition Forum
AFCAC	African Civil Aviation Commission
AfCFTA	African Continental Free Trade Area
AU	African Union
CAK	Competition Authority of Kenya
CARICOM	Caribbean Community
CBC	COMESA Business Council
CC	Competition Commission of Mauritius
CCJ	COMESA Court of Justice
CCPC	Competition and Consumer Protection Commission
CCRED	Centre for Competition Regulation and Economic Development
CFTC	Competition and Fair Trading Commission
COMESA	Common Market for Eastern and Southern Africa
COMFWB	COMESA Federation of Women in Business
CTC	Competition and Tariff Commission
CBE	Central Bank of Egypt
CID	Committee Responsible for Initial Determinations
EAC	East African Community
ECA	Egyptian Competition Authority
EC	European Commission
ESCC	Eswatini Competition Commission
EAEU	Eurasia Economic Union
EEC	Eurasian Economic Commission
EU	European Union
FTC	Fair Trading Commission
ICN	International Competition Network

ICPEN	International Consumer Protection and Enforcement Network
LAZ	Law Association of Zambia
OECD	Organisation for Economic Cooperation and Development
RICA	Rwanda Inspectorate of Competition and Consumer Protection Authority
SADC	Southern Africa Development Community
TFTA	Tripartite Free Trade Area
UNCTAD	United Nations Conference for Trade and Development

Chairperson's Message



**Commissioner Ellen
Ruparanganda
Chairperson of the Commission**

I am honoured to present the COMESA Competition Commission (the “Commission”) 2022 Annual Report. This report highlights milestones achieved by the Commission in 2022 as it continues to promote competition in the Common Market and enhance consumer welfare.

The year recorded many successes even amid global challenges such as the Russia-Ukraine War and that the World is still recovering from the effects of the COVID-19 pandemic. The economic landscape in the year under review added another layer of challenges and these impacted on competition and consumer law enforcement. In 2022, global economic growth was at 3.2% as provided by the International Monetary Fund (IMF), a reduction from the 6% in 2021. Sub-Saharan Africa’s growth was at 3.6%, a reduction from 4.7% in 2021. It is projected that growth will slow down in 2023 to 2.7%. However, even with the eminent global challenges and the slow global growth rates, the Commission has made milestones in the enforcement of competition and consumer protection laws in the Common Market, thereby supporting the regional integration agenda.

In the year under review, the Appeals Board issued its first decision. This was following an appeal by CAF against the decision of the Committee Responsible for Initial Determination (CID) to reject undertakings negotiated between CAF and the Commission. The undertakings were meant to address competition concerns identified by the Commission in the matter. The Appeals Board did not agree with the decision of the CID and upheld the undertakings negotiated between CAF and the Commission. The ruling of the Appeals Board is a clear demonstration of the independence of the different decision-making structures within the COMESA competition regulatory framework in accordance with the COMESA Competition Regulations (the “Regulations”). The Commission further continued to receive more consumer related cases following the operationalisation of the Division in 2020. There was also an increase in the number of merger cases and investigations of restrictive businesses practices handled which enhanced welfare of consumers in the Common Market.

I am also cognizant of the significant role that National Competition Authorities play in the implementation of our mandate and that our successes are also their successes. In our continuous liaisons with Member States, the Commission continued to provide technical assistance and capacity building to Member States. Technical assistance was provided to support the development and harmonisation of laws and supporting the institutional setup of enforcement institutions. Capacity building was provided to Member States to equip them with investigative skills necessary for investigations of cases and to support the implementation of Regulations at national level.



In the year under review, the Commission welcomed three new Commissioners to its Board namely, Commissioner Adelbert Emmanuel Booto Nkaimana from Democratic Republic of Congo (DRC), Commissioner Vipin Naugah from Mauritius and Commissioner Sam Kuloba Watasa from Uganda. The new Commissioners brought a wealth of knowledge to the Board which is essential in undertaking its adjudicative and policy oversight role. May I hasten to observe that the Commission should not claim alone, the achievements made in 2022 without acknowledging the role of cooperating partners. I therefore wish to thank our cooperating partners that have been supporting some of the activities of the Commission by providing technical assistance and capacity building. These include the Commonwealth Secretariat, the European Union Directorate General of Competition (EU-DG COMP), United States Federal Trade Commission (USFTC), United States Department of Justice (USDOJ) and the United Nations Conference on Trade and Development (UNCTAD).

I also recognise the continued collaboration with various institutions like the African Union Southern Africa Regional Office (AU-SARO), International Competition Network (ICN), American Bar Association (ABA) and the International Bar Association (IBA). Others include the African Civil Aviation Commission (AFCAC), Organisation for Economic Co-operation and Development (OECD), University of Johannesburg, Centre for Competition Regulations and Economic Development (CCRED), Eurasia Economic Commission (EEC), CARICOM Competition Commission (CCC) and the African Competition Forum (ACF).

Finally, I want to thank the Board of Commissioners and the Management of the Commission for their dedication and commitment to the service of the Commission.

Commissioners have lived up to the mammoth task of adjudicating complex cases. This of course could not have been possible without the exceptional work submitted by the Commission's Management. I can confidently report that all parties have adequately lived up to the task having been faced with unique cases and novel challenges.


Commissioner Ellen Ruparanganda
Chairperson of the Commission



FOREWORD OF THE DIRECTOR



Dr Willard Mwemba

Director and Chief Executive Officer

The year 2022, yet again, presented another challenging but interesting period with regards to the Commission's mandate. The Commission investigated interesting competition and consumer cases. It undertook several soft law enforcement activities aimed at ensuring that the Common Market is effectively contestable and that consumers are safeguarded from unorthodox conduct by businesses operating therein.

The Commission's focus areas are highlighted in the 2021-2025 Strategic Plan which provides for four strategic objectives. These are (i) the Determination of conduct harmful to competition and consumer welfare in the Common Market; (ii) Strengthening Enforcement; Advocacy and Strategic Collaboration; (iii) Strengthening Research and (iv) Institutional Strengthening. These strategic objectives are in line with Article 55 of the Treaty establishing COMESA and aim to promote regional integration by addressing any conducts that may negate the objective of free and liberalized trade in the Common Market. The strategic objectives also aim to enhance the welfare of consumers in the Common Market by protecting them from offensive conduct by market actors.

In the year under review, a total of sixty-one (61) mergers were notified, representing 32.8% increase from 2021. Most of these mergers occurred in the banking & financial services, agriculture, energy, and transport & logistics sectors. In the same year, the Commission handled seven (7) cases of restrictive business practices most of which affected transport, storage & logistics. Twenty (20) cases on consumer protection were handled, representing a 100% increase from 2021. Most of the consumer cases handled were in the aviation, health, and wholesale & retail sectors. The Commission is cognisant that consumers are the largest single economic actors, yet the most vulnerable. Further, the Commission is mindful that when consumers' rights are not respected and protected, it is difficult to fulfill the regional integration agenda.

To effectively execute its mandate, the Commission works closely with Member States National Competition Authorities. Therefore, in 2022, the Commission provided financial support to Eswatini for the development of its strategic plan, Malawi for the development of the competition and consumer protection laws, and Zambia for training of Board Members. A project was initiated in Djibouti to support the development of a competition policy and the development of the competition and consumer protection laws which is expected to be completed in 2023. Capacity building was provided to Burundi, Comoros, and Ethiopia as well as support towards the training of the Judiciary in Zimbabwe. The Commission reviewed the existing Memorandum of Understandings (MoUs) with Eswatini and Zambia and signed new MoUs with Ethiopia and Rwanda.

To build capacity among the different stakeholders relevant to the effective enforcement of competition and



consumer protection laws, the Commission held its First Regional Legal Practitioners Workshop. The workshop was attended by lawyers from ten (10) countries around Africa. The legal practitioners' workshop led to the signing of an MoU with the Law Association of Zambia. The Commission also held its Second Regional Judges Workshop which was attended by Judges from thirteen (13) Member States and three (3) Chief Justices from DRC, Zambia, and Zimbabwe as well as the Judge President of COMESA Court of Justice (CCJ). The business community in Zambia and Kenya was also sensitised on their obligations under the national and regional competition and consumer protection laws even as they fought off the effects of the COVID-19 pandemic on their operations.

At international level, outside COMESA, the Commission established a great working relationship with the Eurasia Economic Commission and CARICOM Competition Commission culminating in the signing of MoUs. Further, the Commission took part in several activities spearheaded by the United Nations Conference on Trade and Development (UNCTAD) and the European Union (EU) which included being speakers on matters related to the Africa Continental Free Trade Area (AfCFTA) and consumer product safety. The Commission also collaborated with the United States Department of Justice and the Federal Trade Commission (USDoJ and USFTC), African Competition Forum (ACF), and the South Africa Competition Commission (CCSA) on several issues ranging from joint training workshops to bilateral interactions on the investigation of cases. The excellent working relationship between the Commission and the EU DG Comp resulted in two members of staff of the Commission being attached at the DG Comp Brussels offices for three months.

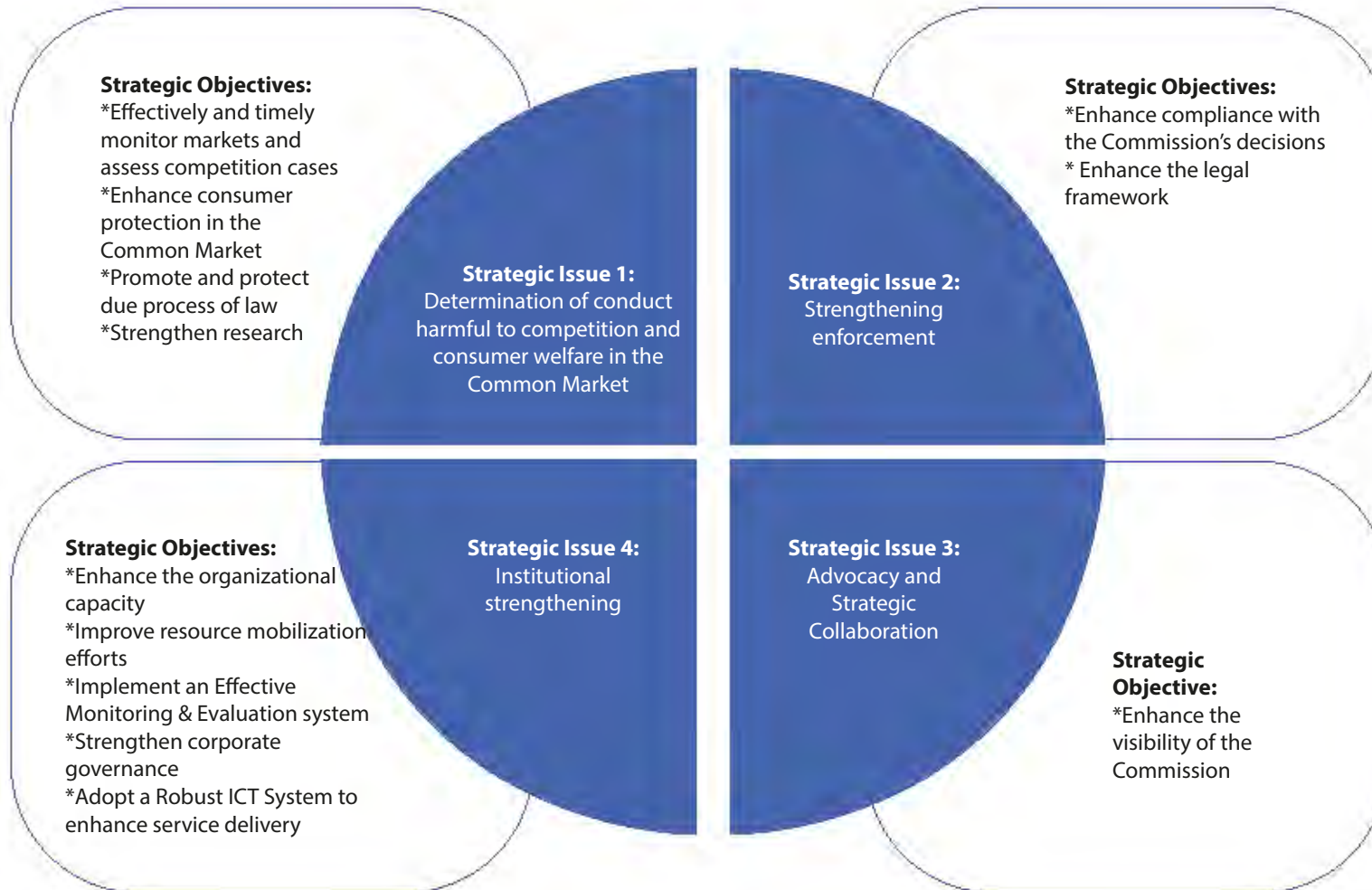
I cannot be prouder of the Commission's Board and staff for this unwavering commitment to deliver and execute the Commission's mandate in a robust fashion. The Commission is also grateful to the COMESA Secretariat through the Secretary General Ms. Chileshe Mpundu Kapwepwe which has continued to provide support to the Commission.

Finally, may I take this opportunity to profoundly appreciate you, our stakeholders. The Commission has made all the achievements we are reporting on because of the indispensable support that all our stakeholders have provided. We therefore assure you that as your international public servants, we shall continue responding to a higher calling to deliver public service in the best interest of the Common Market and beyond.

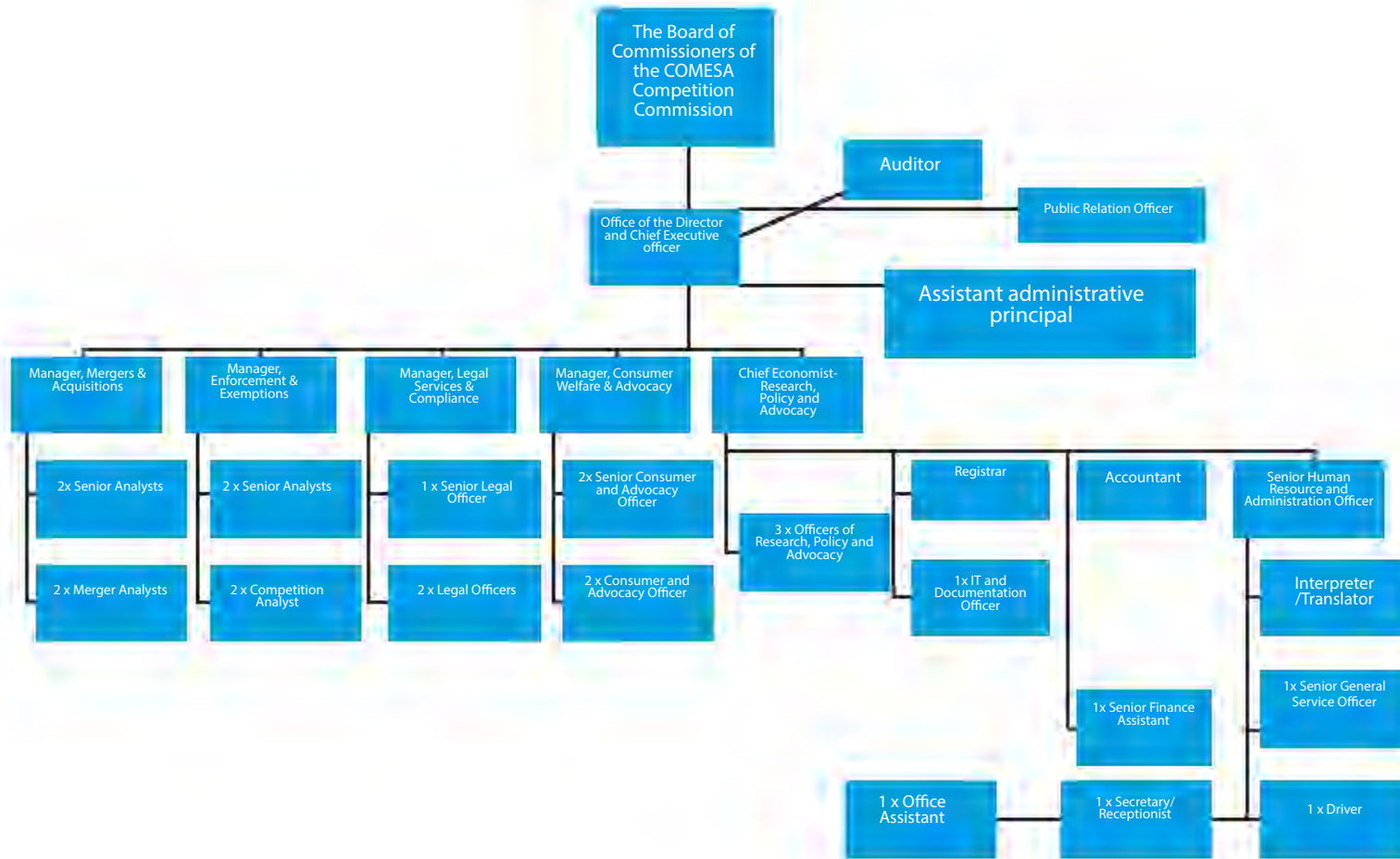
Dr Willard Mwemba
Director and Chief Executive Officer



AREA OF FOCUS



ORGANISATIONAL STRUCTURE





مهاية المنافسة
EGYPTIAN COMPETITION AUTHORITY

BOARD OF COMMISSIONERS

The Board is the supreme policy and adjudicative body of the Commission with the remit to make decisions on cases referred to it by the Commission. It determines the appropriate remedies to address any identified anti-competitive practices.

The Board consists of a maximum of thirteen (13) members appointed by the Council of Ministers from the COMESA Member States. Three of the Commissioners pursuant to Article 13(4) of the Regulations, are assigned as members of the CID.

The role of the CID is to adjudicate and makes determinations on competition and consumer cases before the Commission. Decisions by CID may be appealed to the Appeals Board pursuant to the Appeals Board Procedure Rules, 2017.

To ensure independence and impartiality between the two adjudicative bodies, the three (3) CID members are not part of the Appeals Board Members who sit to hear the appeal. The Appeals Board is constituted from the Board of Commissioners.

To further secure accountability and due process, the decisions of the Appeals Board are appealable to the COMESA Court of Justice.



COMMISSIONER ELLEN RUPARANGANDA

Commissioner Ellen Ruparanganda is the current chairperson of the COMESA Competition Commission effective from September 2021. She holds a Bachelor of Honours Degree in Economics and a Master's Degree in Business Administration both from the University of Zimbabwe. She has vast experience in macro-economic analysis, public procurement, trade tariff analysis and competition policy and law.

As a trade and competition practitioner, she currently heads the Competition and Tariff Commission (CTC) in Zimbabwe. During her tenure, she has successfully enhanced the Commission's visibility and reviewed the Competition Act aligning it to international best practices. Prior to joining the Commission, she worked in the Ministry of Finance and Economic Development and the State Procurement Board.

She won a Gold award for being an outstanding public service leader under the Megafest Business Awards held in November 2021, in recognition of her outstanding contribution, exceptional efforts, and achievements in the public sector in Zimbabwe. She is also currently a board member of the National Competitiveness Commission and a member of the Audit Committee in the Ministry of Industry and Commerce.



COMMISSIONER BRIAN MULETAMBO LINGELA

Commissioner Brian Muletambo Lingela serves as the Executive Director of the Zambia's Competition and Consumer Protection Commission (CCPC). He has previously served as Director of Mergers and Monopolies, Director Cartels and Restrictive Business Practices and Director Consumer Protection.

As the Director of Consumer Protection, he was responsible for protecting Zambia's consumers from unfair trading practices during which he served as Zambia's alternate designate for Consumer Protection for UNCTAD.

He has spoken widely both locally, regionally, and globally on Competition and Consumer Protection issues under the auspices of the ICN, ICPEN, the Commission and the African Dialogue on Consumer Protection.

In 2015, he served as International Visiting Fellow at the USFTC. Since 2018, he has served as Commissioner on the Commission's Board of Commissioners. Between 2018 and 2021 Commissioner Lingela served as a Member of the Technical and Strategy Committee and the CID.

He is currently the Vice Chairperson of the Commission Board of Commissioners, Chair of the Building Committee and Member of the Technical and Strategy Committee of the Commission.



COMMISSIONER AMBASSADOR MESGANU ARGA MOACH

Commissioner Moach is currently State Minister of the Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia.

He has previously served as Director General of the Ethio Engineering Group of Ethiopia from December 2021 to December 2022, State Minister of the Ministry of Trade and Industry from October 2018 to November 2021 and State Minister of the Ministry of Labor and Social Affairs of Ethiopia from May – October 2018. He has served as the Chief of Staff of the Prime Minister of Ethiopia, H.E Hailemariam Desalegn and H.E Abiy Ahmed. From December 2011 to November 2017, he served as Ambassador Extraordinary Plenipotentiary and Special Envoy for Qatar and United Arab Emirates.

From July 2010 to September 2013, he was the Consul General of the Federal Democratic Republic of Ethiopia to Dubai and Northern Emirates. He led the National Security Border and Trans Boundary Resource Affairs Directorate, Regional Good Governance, Justice and Human Rights Affairs and Policy, Information and Analysis Directorate.

Ambassador Mesganu has also served as Deputy Mayor and Bureau Head of the Addis Ababa City Information and Culture City Cabinet Member and Addis Ababa Millennium Council Vice Chairperson from 2006 to May 2008.



COMMISSIONER SENATOR DANSON BUYA MUNGATANA

Commissioner Moach is currently the member of the Audit and Risk Committee of the Board
Commissioner Senator Danson Buya Mungatana is a Senator for Tana River County in Kenya and a senior consultant and founder of Mungatana & Co Advocates. He has served as parliamentarian of the Republic of Kenya (MP) representing the Garsen constituency. From 2013-2014, he served as Chairman of Kenya Ports Authority. He served as special assistant to the senior political advisor of the Office of the President in 2013.

He has gained experience in different disciplines as parliamentarian while serving as Assistant Minister of the Government of Kenya on medical services, Justice, National Cohesion & Constitutional Affairs, Foreign Affairs, Lands, Provincial Admin. & Internal Security, and Regional Development Authorities. He holds an LLB Degree and Masters of Trade and Investment law from the University of Nairobi.

Commissioner Mungatana is the Chairperson of the Technical and Strategy Committee of the Board and member of the Finance and Administration Committee. He further served as member of various Ad hoc Committees of the Board.



COMMISSIONER LLOYDS VINCENT NKHOMA

Commissioner Lloyds Vincent Nkhoma is the Executive Director of the Competition and Fair Trading Commission of Malawi. Prior to that he was a professional expert in competition policy formulation, enforcement and application at national and regional level. He previously worked for both the Competition and Fair-Trading Commission. He has vast experience working on trade, investment and industrial development programmes having worked at the Ministry of Trade and Industry as well as at the Malawi Consulate General in Johannesburg as Trade and Investment Attaché.

He holds a Master's Degree and a Postgraduate Diploma in Economics for Competition Law from Kings College London. He also holds a Bachelor's Degree in Social Sciences majoring in Economics from the University of Malawi.

Commissioner Nkhoma is member of the CID, Building Committee and Finance and Administration Committee of the Commission



COMMISSIONER THEMBELIHLE DLAMINI

Commissioner Thembelihle Dlamini is a member of the Board and is an astute legal professional whose legal career has spanned over 14 years, 10 of which have been with the Eswatini Competition Commission (ESCC) where she has transcended into different positions.

She is currently the Legal Adviser and Company Secretary at the ESCC and holds inter alia, an LLB degree (University of Swaziland), MA in EU Competition Law and a Postgraduate diploma in EU Competition Law from Kings College in London. She was admitted as an Attorney of the High Court of Swaziland in February 2012 and has vast experience on competition and consumer law as well as other fields of law. She has worked in private practice and public service where she worked at the Attorney General's office. At the ESCC, Commissioner Dlamini has for the last 10 years been reading and analysing various legal documents lodged by parties and drafting legal opinions on broader competition and consumer law. This ultimately facilitates informed and sound decision making by case teams conducting various investigations. In addition, Commissioner Dlamini has also been drafting pleadings, representing the ESCC during hearing of cases, assisting case teams in various investigations and the ESCC in various legal challenges arising from their work.

As Company Secretary, she provides legal support and guidance to the Board of the ESCC and its Committees on Governance, Ethics, Conflicts, and duties. She is currently the Chairperson of the Finance and Administration Committee and a member of the CID at the Commission.



COMMISSIONER FRANCIS LEBON

Commissioner Francis Lebon is currently the Principal Secretary of Trade in the Ministry of Finance, National Planning and Trade in Seychelles. Prior to this, he was the Chief Executive Officer of the Fair-Trading Commission of Seychelles.

He started his career at the Central Bank of Seychelles and held the post of Senior Domestic Debt Officer in the Public Debt Unit.

He was the Trade and Sales Manager at Barclays Bank of Seychelles before joining the Fair-Trading Commission in December 2010 as Senior Competition Analyst and promoted to Director of competition in January 2012, to Deputy CEO in 2015 and was appointed as the Chief Executive Officer in 2017.

He also serves as a member of the Financial Services Authority Appeal Board.

Commissioner Lebon holds a BSc (Hons) in Economics, Finance & Banking, Postgraduate Diploma in Economics for Competition Law, Diploma in Accounting and MBA with the University of West Scotland through the University of Seychelles.

He is a member of the Building Committee and Vice-chairperson of the Technical and Strategy Committee of the Board.



COMMISSIONER ISLAM TAGELSIR AHMED ALHASEN

Commissioner Islam Tagelsir is a Lawyer, legal advisor, and former public prosecutor with more than 15 years of experience, including 9 years of extensive work in trade remedies, regional integration, competition regulation and consumer protection. He obtained a Bachelor's degree in Law and a Diploma in Legal Translation.

He served (in Sudan) in the Ministry of Justice, Public Prosecution and Humanitarian Aid Commission as a Registrar General for voluntary and humanitarian aid organizations.

Commissioner Alhasen is member of the CID, Building Committee and Technical and Strategy Committee of the Board. He has also served the Board in various ad-hoc Committee



COMMISSIONER BÉATRICE UWUMUKIZA

Commissioner Uwumukiza is currently the Director General of Rwanda Inspectorate, Competition and Consumer Protection Authority (RICA). Prior to that post, she was the Director General of the Rwanda Agriculture and Livestock Inspection and certification Services (RALIS) under the Ministry of Agriculture and Animal Resources (MINAGRI) where she coordinated the Sanitary and Phytosanitary (SPS) activities as well as the functions of the National Plant Protection Organization (NPPO)

She is the Focal Point for International Plant Protection Convention (IPPC) for Rwanda. She also served as a Board Member of the National Agricultural Export Development Board (NAEB) 2012-2015 and the Vice Chairperson in the Board of Directors for Rwanda Agriculture and Animal Resources Development Board (RAB) 2015-2018. She has vast experience in quality control as well as standards and regulations enforcement and actively participates in the development of several policies, regulations and standards. She holds a Master's Degree in Plant Sciences with specialization in Plant Pathology and Entomology obtained from Wageningen University, the Netherlands.

Commissioner Uwumukiza is the Chairperson of the Risk and Audit Committee of the Commission.



COMMISSIONER MAHMOUD MOMTAZ (PhD)

Commissioner Mahmoud Momtaz (PhD) is currently the Chairman of the Egyptian Competition Authority (ECA) since January 2021. He serves as a board member of the Gas Regulatory Authority, the Supreme Council for Media Regulation, Egyptian Electric Utility and Consumer Protection Agency. Further he is a member of the Advisory Committee of Anti-Dumping, Subsidy and Safeguard.

Prior to assuming his position at ECA, He served as a Private Sector Development Specialist at the World Bank's headquarters in Washington D.C. where he was mainly responsible for several competition policy projects as well as private sector development in the MENA region and Southeast Asia. Additionally, he has actively participated in the reformulation of the competition laws and enforcement regimes in a number of Middle Eastern countries and conducted several trainings to numerous stakeholders.

He has also lectured Competition Law & Economics at both Hamburg University, Germany and Cairo University, Egypt. Dr Momtaz holds a PhD in Competition Law and Economics from the University of Hamburg, Germany and a Master's Degree in International Business from the German University in Cairo.

Dr Momtaz is the Chairperson of the Committee Responsible for Initial Determinations and a member of the Technical and Strategy Committee.



COMMISSIONER VIPIN KAMAL NAUGAH

Commissioner Vipin Naugah is the Head of Legal and Cartels at the Competition Commission of Mauritius (CC). He is a Barrister-at-Law, called to the Bar of England and Wales at the Honorable Society of Middle Temple, London, in 2006 and was called to the Mauritian Bar in January 2008.

He joined the CC since its inception in 2009. He obtained his LLB (Hons) at London South Bank University, and went on to do an LLM in International Commercial Law at the University of Kent, UK and did his Bar Vocational Course (BVC) at the University of West of England, Bristol, UK. He also holds a Post-Graduate Diploma in Economics for Competition Law and a Post-Graduate Diploma in EU Competition Law, both from King's College, London."

Commissioner Naugah is a member of the Technical and Strategy Committee and the Risk and Audit Committee of the Commission.



COMMISSIONER ADELBERT EMMANUEL BOOTO NKAIMANA

Commissioner Adelbert Nkaimana is currently the Advisor to the Minister of Regional Integration and Francophonie in Charge of the East African Community (EAC).

He was previously Provincial Minister of Mai-Ndombe in Democratic Republic of Congo (DRC) from 2018. Prior to this, he was the Commercial Manager in Charge of Key Accounts at Standard Telecom where he rose through the ranks from Sales Supervisor in 2007 until he left as the Commercial Manager in 2018.

He holds a Bachelor's Degree in Law from the University of Kinshasa and was admitted to the Bar in 2012. He also holds a State Diploma from the Bomoyi College.

Commissioner Nkaimana is a member of the Risk and Audit Committee of the Board.



COMMISSIONER SAM KULOBA WATASA

Commissioner Sam Watasa is the Executive Director of the Uganda Consumer Protection Association (UCPA). He is also the Chairperson of the Technical Petroleum Committee under the Ministry of Energy and Mineral Development in Uganda and Commissioner of the East African Community Competition Authority.

He holds a Master of Business Administration from the Makerere University and is a member of the Chartered Institute of Marketing, United Kingdom.

Commissioner Watasa is a member of the Finance and Administration Committee.





MEET THE MANAGEMENT TEAM



Dr. Willard Mwemba
Director and Chief Executive Officer



Ms. Mary Gurure
Manager Legal Services and Compliance



Mr. Steven Kamukama
Manager Consumer Welfare



Manager Mergers and Acquisitions



Chief Economist



Ms. Meti Demissie Disasa
Registrar



Mr. Roland Mhango
Accountant

Note; The Commission had not filled in the positions of Manager Mergers and Acquisitions and Chief Economist. The position of Manager Mergers and Acquisitions was previously held by Dr Mwemba before he was appointed as CEO while the position of Chief Economist had been newly established.

The background features several 3D geometric shapes, including a large white rectangular prism on the left, a smaller white rectangular prism on the right, and a larger grey rectangular prism in the foreground. The shapes are rendered with soft shadows and highlights, creating a sense of depth and perspective against a dark, gradient background.

CORPORATE GOVERNANCE

The Commission is aware that the success of its mandate is dictated by its corporate governance and practices. The Commission's corporate governance involves various practices and policies that are critical in ensuring efficient decision-making and management.

At the helm of this corporate governance system is the Board of Commissioners (the Board) which is non-executive. The Board ensures that there is accountability, transparency, and due process in the Commission's decisions and other activities.

The Commission's Board meets regularly to provide regulatory and administrative oversight on the Commission. The Board is governed by the Regulations and Board Charter, and the Commission's Registrar is its secretary.

The Registrar has the responsibility of ensuring that Board procedures and rules are complied with. To provide effective and efficient oversight on the Commission, the Board may establish committees and delegate to any such committee its functions as it considers necessary. To this end, the Board has established four committees to ensure effective oversight of the affairs of the Commission.

These committees are:

1. The Risk and Audit Committee
2. The Finance and Administration Committee
3. The Technical and Strategy Committee.
4. Building Committee

The Risk and Audit Committee ensures that it identifies all the risks to which the Commission is exposed and recommends measures to prevent these risks or remedy the effects of the risks if they have already materialized.

The Audit and Risk Committee is responsible for the maintenance of sound internal control and risk management systems. The Audit and Risk Committee is composed of three members.

The Finance and Administration Committee's remit includes the development of the Commission's annual budget, overseeing its financial position, considering matters of human resources including recruitment, monitoring financial performance, and reporting to the Board as appropriate, reviewing and recommending investment policies to the Board among other things. It is responsible for efficiency, effectiveness, and governance of the Commission. The Finance and Administration Committee is composed of three members.

The Technical and Strategy Committee oversees the development of processes and systems that relate to all technical functions of the Commission. It develops and recommends to the Board, Rules that relate to the effective implementation of the Regulations. It also recommends to the Board, various instruments like the Regulations and Rules to ensure effective and efficient promotion of competition in the Common Market through the prevention, detection, and prohibition of anti-competitive practices.

In 2022, the Building Committee was established to oversee the project for the construction of the Commission's Headquarters and a competition and consumer law training centre in Lilongwe, Malawi. In the period under review, the following number of meetings were held by the Board.

Table 1: Board Meetings Held in 2022

Meeting Type	Number of Meetings	Period
Board Meeting	Two (2)	February and August
Appeals Board	Six (6)	Between February and December
Committee Responsible for Initial Determinations	Eleven (11)	Between February and December
Finance and Administration Committee	One (1)	July
Technical and Strategy Committee	One (1)	July
Building Committee	Two (2)	May and December

Board Training

In August 2022, the Board Members were trained in corporate governance and adjudication of cases. Training of Board Members is key in ensuring the effective enforcement of competition and consumer protection laws in the Common Market as well as supporting the operations of the Commission by providing policy guidance.



Assis de gauche à droite : M. Mumba Kapumpa (formateur), M. Willard Mwemba (PDG), Mme Ellen Rugaranganda (présidente du Conseil), M. Brian M. Lingela (vice-président) et Juge Dennis Davis (formateur).



THE COMMISSION'S OFFICE PREMISES



Some staff members of the Commission

The Secretariat is the investigation wing of the Commission. It is responsible for the day-to-day operations of the Commission and makes recommendations to the Board on investigations conducted and on other policy matters.

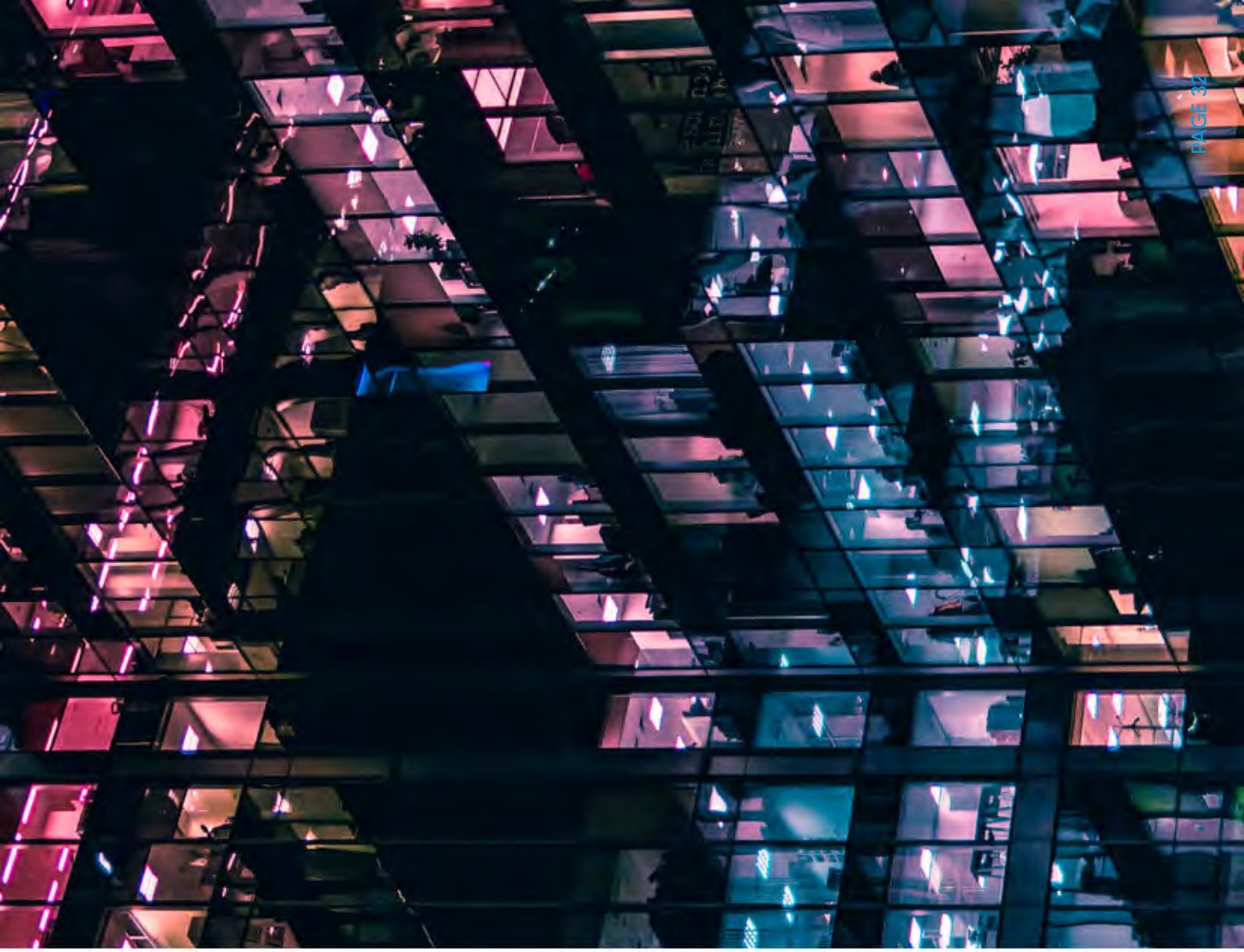
The Secretariat is headed by a Director and Chief Executive Officer who is appointed by the COMESA Council of Ministers. Further, the Secretariat has five core Divisions and Units working on mergers and acquisitions, restrictive business practices, consumer protection, legal services and compliance and research, policy and advocacy.

The Divisions are composed of lawyers and economists who are experts in competition and consumer protection. In addition, the Secretariat has units overseeing, finance, administration and IT matters.

2022 HIGHLIGHTS OF THE COMMISSION'S INTERVENTION IN THE MARKET

The Commission's activities for the Year 2022 were implemented pursuant to the 2022 approved Annual Work Programme that was developed in line with the Commission's Strategic Plan. This section summarises the key achievements of the Commission under the four (4) Strategic Issues of the Commission.

The core mandate of the Commission is to detect, prevent and prohibit anti-competitive business practices including anti-competitive mergers and to protect consumers against offensive conduct by market players having operations in the Common Market.



DETERMINATION OF CONDUCT HARMFUL TO COMPETITION AND CONSUMER WELFARE IN THE COMMON MARKET

This strategic issue entails the detection and elimination of anti-competitive conduct and consumer welfare violations in the Common Market to prevent any likely competition harm and degradation of the welfare of consumers in the Common Market.

REGULATING MERGERS AND ACQUISITIONS

The Commission has been reviewing mergers and acquisitions that meet the regional dimension requirement (being operations in at least two Member States) since February 2013. Over the years, the Commission has perfected its systems and acquired expertise and skills in the review of mergers and acquisitions. Of particular importance is that the Commission has developed a very transparent system of separating jurisdiction and competencies on cases that are reviewed by it and those that are reviewed by national competition authorities.

Through this process, the Commission has diligently observed the principle of subsidiarity which relates to the best-placed authority/ies to review a particular merger case.

The review of mergers with a regional dimension is paramount, for, if left unregulated, anti-competitive mergers have the potential of working against the COMESA Treaty's objective of single market integration.

At the same time, the Commission attaches significant importance to effective and timely assessment of mergers. This is important to ensure that the regulation of mergers does not frustrate businesses and the flow of investments in the Common Market.

The Regulations make it mandatory for all notifiable mergers to be notified to the Commission for review and determination on whether they are anti-competitive, pro-competitive or competition-neutral. Parties to any notifiable merger are required to notify the Commission within thirty (30) days of the parties' decision to merge failing which sanctions may be imposed on the parties.

A notifiable merger means a merger or proposed merger with a regional dimension and a value at or above the thresholds prescribed in Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "Rules on Merger Notification Thresholds").

The proposed merger must satisfy the regional dimension test and the following cumulative conditions under Rule 4 of the Rules of Merger Notification Thresholds:

- a) the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds US\$ 50 million; and
- b) the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds US\$ 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.

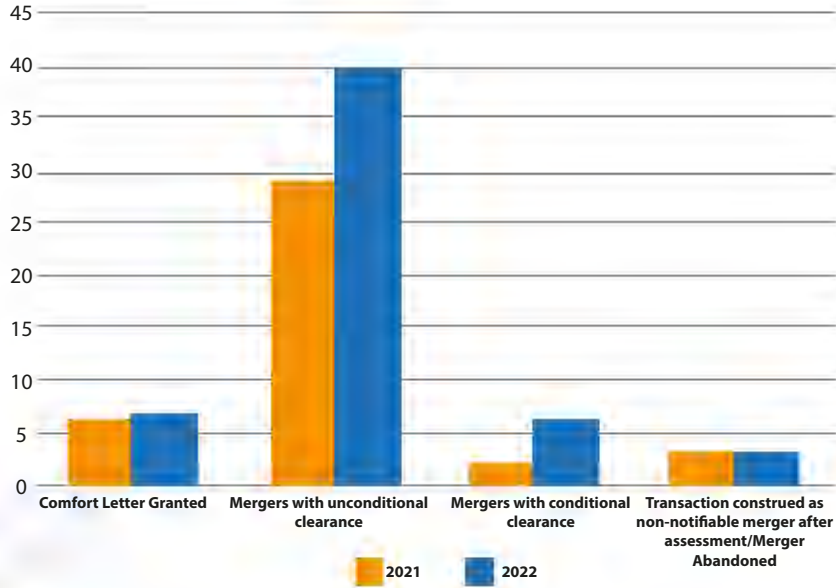
To facilitate commerce and offer guidance to parties, the Commission offers advisory opinions to parties who are not sure whether their transactions are notifiable. This ensures that the parties are guided on the steps to undertake in a particular transaction to avoid potential litigation for failure to notify a notifiable transaction. In instances where the Commission concludes that the transaction is not notifiable, it issues a comfort letter to the concerned parties.

Comfort letters are granted based on, inter alia, a transaction not satisfying the definition of a merger as provided under Article 23(1) of the Regulations or a transaction not meeting the merger notification thresholds under Rule 4 of the Rules on Merger Notification Thresholds. Where the Commission rejects a request for a comfort letter, the parties are required to complete merger notification procedures as provided for under Article 24(3) of the Regulations which includes payment of the related applicable merger notification fees.

Once such a transaction is notified, the Commission proceeds to assess the merger to determine any competition and public interest concerns likely to result from the merger. Mergers notified to the Commission may be approved either unconditionally, or with conditions or may be rejected entirely.

During the period under review, a total of sixty-one (61) merger transactions were notified to the Commission and fifty-six (56) were cleared by the CID within the statutory period of 120 days provided for under the Regulations. Among the mergers notified in 2022, five (5) mergers were carried forward to the year 2023.

Figure 1. Merger Cases handled by outcome/determination in 2022 in comparison to 2021



The figures shows the breakdown of cases handled by the Commission in 2022 in comparison to 2021.

Figure 1 shows the merger cases handled by the Commission by outcome/determination.

It shows that the number of merger transactions approved without conditions increased from 29 to 40 between 2021 and 2022 and those approved with conditions increased from 2 to 6 while the number of transactions that were construed as non-notifiable remained the same.

Figure 2: Merger Cases by Economic Sector 2022 in comparison with 2021

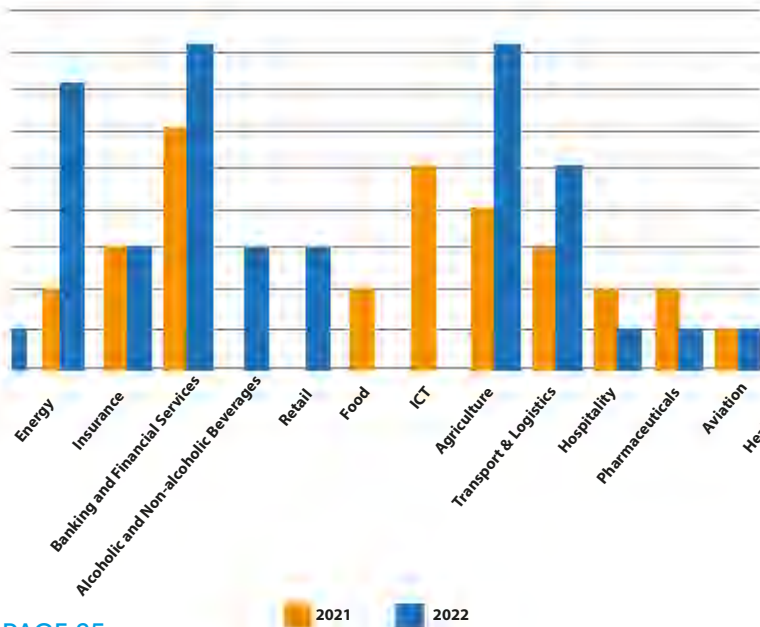


Figure 2 shows the cases by economic sector in 2022 in comparison with 2021. The figure shows that most cases handled in 2022 were in the agriculture and banking & financial services with (8) cases, followed by the energy sector (7), and transport & logistics (5); whilst other sectors such as construction, hospitality, pharmaceuticals and aviation recorded one case each.

It was also noted that there was an increase in the number of cases in each of the sectors in 2022 compared to 2021 with an exception of hospitality and pharmaceuticals.

Figure3: Member States Affected by the Merger Cases

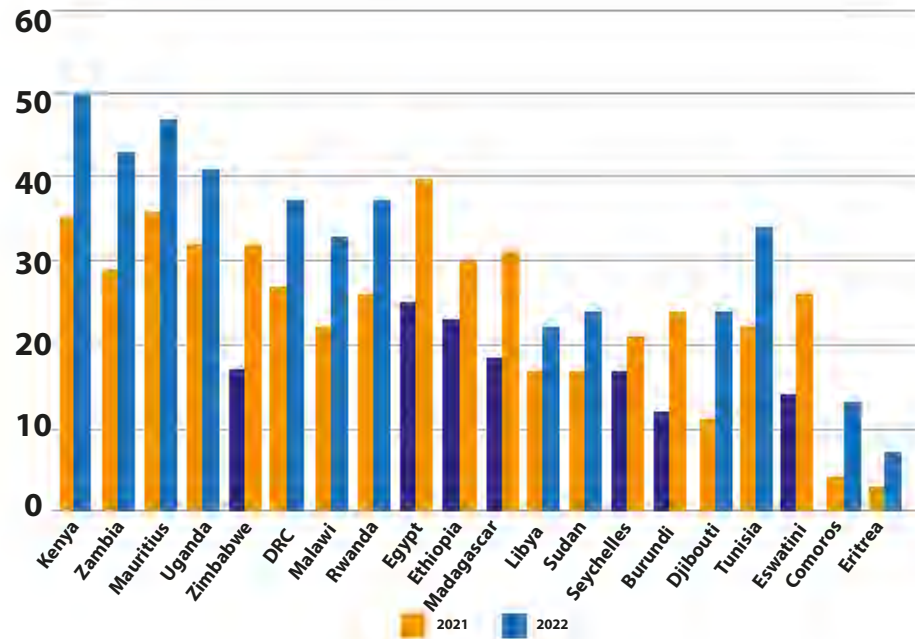


Figure 3 shows the Member States affected by the merger cases assessed by the Commission.

The countries most affected by the cases assessed in 2022 were Kenya, followed by Mauritius, Zambia, Uganda, and Egypt compared to 2021 where most of the cases affected Mauritius, followed by Kenya, Uganda, DRC, and Rwanda. The Member States with the least number of cases affecting them were Comoros and Eritrea for both 2022 and 2021.

HIGHLIGHTS OF MERGER CASES ASSESSED BY THE COMMISSION IN 2022

Merger involving Sanlam Emerging Markets Proprietary Limited (SEM) and aYo Holdings Limited (aYo)

The transaction involved the acquisition by SEM of 50% of the shares in aYo, leading to the joint control of aYo by SEM and MTN Group. SEM is a subsidiary of the Sanlam Group, an insurance provider in the Common Market, while aYo offers mobile microinsurance services. The transaction would lead to Sanlam fulfilling the role of product development and underwriting, while aYo would take responsibility for the marketing and distribution of the micro-insurance products, policy administration and claims processes.

The Commission observed that the Share Purchase Agreement included exclusivity provisions which it deemed overly restrictive and not necessary to achieve the objectives of the joint venture or to protect the investments of the merging parties. Accordingly, the merging parties agreed to conditions requiring the amendment of the exclusivity provisions of the shareholders' agreement to ensure the following:

- In Uganda and Zambia (and any other COMESA Member State), following a period of ten years from the closing date (or a period of ten years from the commencement of operations in the case of any Member State in which aYo does not already have operations), or such longer period as agreed to by the Commission, MTN may allow any other financial services provider to market, sell, distribute or deliver any products that compete with aYo's offering to its customers via its network or platforms, notwithstanding that Sanlam is able to provide such product.
- To the extent that either MTN or Sanlam wishes to market, sell, distribute, or deliver any products that compete with aYo's offering in any COMESA Member State in which the other party does not have a presence, it shall be entitled to do so in partnership with any other financial services / mobile network operator, provided that aYo's intellectual property may not be used where another network / platform is utilised.
- Sanlam shall not be entitled to utilise aYo's customer database to market, sell, distribute or deliver any of its other products / via its other distribution channels, however it may contact aYo customers where such customer is identified by Sanlam independently.



Joint Venture involving SAS Shipping Agencies Services Sàrl (SAS), Kenya Ports Authority (KPA) and Kenya National Shipping Lines Limited ("KNSL")

The transaction concerned the joint venture involving SAS, a wholly owned subsidiary of MSC Mediterranean Shipping Company SA (MSC), KPA and KNSL. In the Common Market MSC provides deep-sea container liner shipping services, sea freight forwarding services and in-land transportation services. KPA, on the other hand, is mandated to maintain, operate, improve and regulate all sea and inland waterway ports in Kenya. KNSL is a subsidiary of KPA and is a sea freight forwarding company that offers in-land transportation services and freight forwarding services.

The transaction involved SAS acquiring 47% shareholding of KNSL while KPA would maintain a 53% shareholding. MSC held 33.3% shareholding in KNSL since 1997. MSC would acquire an additional 14% shareholding in KNSL leading to them having a shareholding of 47%. The transaction would create vertical links between the parties' operations in the upstream markets for container terminal services, downstream market for container liner shipping services; and the downstream market for inland transportation services and freight forwarding services.

The Commission identified concerns in terms of (i) foreclosure access to the port, given that Container Terminal 2 (CT2) which would be operated by KNSL is an important modern facility providing access to the East African market; (ii) access to confidential information which would lead to substantial lessening of competition on the markets; (iii) the vertical links would increase the risk of discrimination in the access to container terminal services by KNSL in favour of itself and its shareholders which would likely result in foreclosure concerns i.e., limiting the establishment or expansion of other container shipping liners.

However, the parties were granted conditional clearance, on the basis of undertakings submitted by them to address the competition concerns identified by the Commission. Among the undertakings were that KNSL would not exclusively allocate the capacity of CT2 to one container liner shipping company and shall operate it under a common user facility principle. This undertaking would apply on condition that:

- the operation under a common user facility principle remains compatible with the stated public policy objectives of the joint venture namely, increasing gateway and transshipment traffic to and productivity of CT2.
- KNSL shall develop and/or establish objective, fair and transparent procedures for accessing the CT2. Post-merger, where the Commission upon review of the market situation comes to the conclusion that such procedures are not objective, fair and transparent, it reserves the right to use other provisions under the Regulations to resolve the matter.
- The tariffs to be applied by KNSL for container terminal services in CT2 would be the tariffs reflected in the KPA Tariff Book, to the extent required by the applicable Kenyan law or otherwise on non-discriminatory terms. Where KNSL is providing discounts and rebates to its customers on its tariffs or on any other charges for its services, this should be done on non-discriminatory terms. KNSL shall develop and/or establish objective, fair and transparent procedures for providing discounts and rebates.
- Employees of KNSL shall not have dual roles within KNSL and MSC simultaneously.
- The Senior Positions at KNSL such as General Managers, Sales Managers, General Counsel, Chief Financial Officer, and Chief Operations Officer shall not be held by someone who has held that position in MSC during a 1-year period preceding the Commission's approval of the merger.

- No director serving on the board of directors of MSC shall simultaneously serve as a director on the board of directors of KNSL. No existing director of MSC can serve the Board of KNSL prior to three years after the end of expiry of his directorship at MSC.
- Commercially sensitive information of KNSL's customers, other than MSC, such as competing container liner shipping companies, freight forwarders and providers of inland transportation (which shall include recent past, current and future price information, cost information, information about future product offerings, and non-public information of such customers of KNSL) will not be exchanged under any circumstances between KNSL and its shareholders. The exchange of non-commercially sensitive information by KNSL with its shareholders shall be solely for purposes of monitoring the performance and operational efficiency of KNSL.
- The IT operating system to be used by KNSL post transaction should be distinct, separate and not connected to the IT systems of MSC or any of its subsidiaries, such that the computer systems of KNSL cannot have any shared information exchange interface, except in MSC's capacity as a customer of KNSL to enable data transfers of MSC cargo only.
- There would be no merger-specific retrenchments at KNSL.
- Contracts of service providers engaged by KPA at Container Terminal 2 will be maintained by KNSL, subject to compliance with the public procurement laws of Kenya.





Merger involving B.G.I Ethiopia Private Limited (“BGI Ethiopia”) as the acquiring undertaking and Meta Abo Brewery Share Company (“Meta Abo”)

BGI Ethiopia is a subsidiary of Brasseries Internationales Holdings (“BIH”), the holding company of the Castel Group. The Castel Group developed its activities in two main directions, the wine business on the one hand, and the beer, soft drink and water business on the other hand.

The products supplied by BGI Ethiopia in the alcoholic segment were beer and in the non-alcoholic segment malt-based beverages, sold under the brand name of Sen’q.

Meta Abo was a subsidiary of Diageo Plc (“Diageo”), a UK-headquartered global manufacturer and supplier of alcoholic beverages across spirits and beer. Meta Abo was established in Ethiopia in 2013 and operated a brewery business that produced and sold beer and non-alcoholic refreshment beverages (i.e., Malta) in Ethiopia only.

The Commission was concerned that there was a risk that post-merger, the products of the target may be discontinued by the acquirer. Further, there was a risk that post-merger, the quality and variety of the products may be negatively affected. Further, the Commission also took into consideration the concerns raised by stakeholders in Ethiopia on the risk of job losses post-merger.

The Commission therefore approved this transaction subject to the following commitments by the Merged Entity:

- The Merged Entity will continue to build capacity of the current employees of Meta Abo Brewery business in key operations of the company.
- For a period of 24 months, from the date of approval of the transaction by the CID, the Merged Entity will not terminate any employment contract of Meta Abo Brewery business as a result of the merger, except for positions at Senior Management Level. Termination of contract does not include:
 - i. voluntary retrenchment and/or voluntary separation arrangements;
 - ii. separation upon the agreement with employees;
 - iii. voluntary early retirement offers;
 - iv. termination for unreasonable refusals to be redeployed;
 - v. termination lawfully effected for operational requirements unrelated to the Transaction; and

vi. terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

- There shall be no merger-specific termination of contracts for suppliers of the Meta Abo Brewery business, unless for commercial reasons it is unwarranted or reasonably unjustifiable to maintain such contracts.

- The Meta brand or the Malta Guinness brand of the Meta Abo Brewery business should not, as a direct result of this transaction, be discontinued and that the quality of the products should remain the same, unless

(i) a significant deterioration in the market conditions occurs, or

(ii) if the volume of, or demand for, the Meta brand or the Malta Guinness brand declines or remains unduly low or

(iii) for commercial reasons that are warranted or reasonably justifiable.



Merger involving Coca-Cola Sabco (East Africa) Limited (“CCSEA”) as the acquiring undertaking and Castel Malawi Limited (“Castel Malawi”) as the target undertaking

CCSEA is a wholly owned subsidiary of Coca-Cola Beverages Africa Proprietary Limited (“CCBA”), in turn controlled by The Coca-Cola Company (TCCC). CCBA operates Coca-Cola bottling operations throughout Africa. CCBA bottles and distributes, inter alia, the following TCCC-branded NARTD products:

Coca-Cola, Sprite, Fanta, Stoney, Sparletta, Schweppes, Powerade, Bonaqua, Play and Monster, Appletiser, Minute Maid, and Fuze Tea.

The Acquiring Group also supplies Coca-Cola concentrates to all TCCC authorized bottlers in all COMESA Member States. The transaction involved the acquisition of the “soft drinks” business of Castel Malawi which was operating as an authorized bottler of TCCC in Malawi.

The Target Business produced, bottled, and distributed TCCC products. In addition to TCCC products, the Target Business also produced and supplied Castel Malawi Sobo brand range, which included the Sobo carbonated soft-drinks range, as well as cordial, and its Quench bottled water brand.

The Commission noted that both CCBA and the Target business were engaged in the supply of ready to drink non-alcoholic products. The Commission established that the relevant market was replete with a vast number of players and thus concluded that the merged entity would still be constrained by the other players which would thwart any attempt on its part to engage in unilateral anti-competitive conduct.

However, the Commission established that the transaction was likely to negatively affect public interest. The Commission noted the importance of the products under consideration in maintaining competition on the Malawian Market and their historical value to Malawian consumers, and was concerned there was a risk that post-merger, the Sobo Squash brand and the carbonated soft drinks under the Sobo brands that the Target Business manufactured and supplied could be discontinued by the Acquiring Group.

Such a development may negatively affect the interest of consumers in regard to the variety of such products.

The Commission therefore approved this transaction on 9 July 2022 based on the following undertakings submitted by the parties:

- CCSEA commits that the Sobo branded carbonated soft-drinks and cordials sold under the Sobo Squash brand should not be discontinued as a direct result of the merger and that the quality should remain the same or even be improved.

This undertaking shall be effective for a period of five (5) years from the date of approval of the transaction by the Committee Responsible for Initial Determinations, unless (i) a significant deterioration in the market conditions occur or (ii) if the volume of, or demand for, a Sobo product or brand declines or remains unduly low such that it is unwarranted or reasonably unjustifiable to continue with this undertaking with respect to a particular Sobo product before the expiration of 5 years;

- After 5 years, the Commission shall review the relevance of agreeing the continuation of the relevant brands and products in line with these undertakings and CCSEA shall engage with the Commission in good faith in that regard.



Merger involving Bolloré Africa Logistics SAS (BAL) and SAS Shipping Agencies Services Sàrl (SAS Lux)

SAS Lux is a wholly owned subsidiary of MSC. MSC Group services include deep-sea container liner shipping services, container terminal services, inland services by road and freight forwarding services. BAL, on the other hand, offered terminal services, freight forwarding, contract logistics services and inland transport services by road. The transaction involved the purchase of 100% shares in BAL by SAS Lux.

The transaction would lead to the MSC Group exercising sole control over BAL, which operates, directly or indirectly through its affiliates, mainly in the African continent (i) port terminals (terminals, operations, marine line agent and goods handling); (ii) railway concessions; (iii) transit and logistics (freight forwarding, logistics operations and/or associated businesses) for import and export activities; (iv) holding services; and (v) other ancillary services.

The transaction would raise horizontal concerns in the sea freight forwarding and inland road transportation markets. The transaction also raised vertical concerns between sea freight forwarding and (i) deep-sea container liner shipping markets on one hand and (ii) container terminal services markets on the other hand.

The assessment revealed concerns in relation to the vertically integrated nature of the transaction across several relevant markets, which could give rise to incentives to foreclose rival freight forwarders. Specifically, the Commission was concerned that:

- i. MSC would have the ability and incentive to restrict the choice of the freight forwarding provider to BAL, given that it is a significant player in the maritime transport market and customers are likely to have particular preferences for a shipping line having regard e.g., to its reputation for timely services.
- ii. On a balance of probabilities test, the transaction would create sufficient incentives for the merged entity to attempt to use its

influence in KNSL, by virtue of its joint control, to discriminate against competing freight forwarders' access to Container Terminal 2 at the Mombasa port, in order to increase their market position in the freight forwarding market.

iii. As a customer, BAL would have access to detailed information in relation to the pricing, discounts and other competitive terms offered by MSC's competitors. There were serious risks that as a result of the transaction, through BAL, MSC may obtain commercially sensitive information about its competitors that it may not have in the ordinary course of business, and further that BAL could be used as a hub to facilitate the sharing of information between MSC and its competitors.

The Commission approved the transaction on 19 December 2022 subject to the parties' compliance with the following undertakings:

- For a period of three years from the date of merger clearance, MSC shall not require or oblige directly or indirectly customers of its deep-sea container liner shipping services to or from the Common Market to also purchase sea freight forwarding services from BAL.
- From the date the proposed acquisition of joint control over KNSL closes, and for so long as SAS Lux holds a controlling interest in KNSL, SAS Lux shall not use its joint control over KNSL to discriminate against competitors of BAL in the sea freight forwarding market by denying or otherwise restricting open and fair access to the Kipevu Container Terminal at the Port of Mombasa and its associated services, in accordance with its obligations contained in the Terminal Operation Agreement.
- For as long as SAS Lux holds a controlling interest in BAL, BAL shall not harm competition through the facilitation of the exchange of competitively sensitive non-public information between competitors in the provision of deep-sea container liner shipping services. To this end, the merged entity will establish, post-closing, information barriers designed to prevent the disclosure of competitively sensitive non-public information by BAL to any deep-sea container liner shipping company, including MSC.

Within a period of three months from the date of approval, the merged entity shall submit to the Commission a report setting out the necessary practical steps taken by it to establish the abovementioned information barriers designed to prevent the disclosure of competitively sensitive non-public information by BAL to any deep-sea container liner shipping company, including MSC.

- The merging parties shall honour all contractual obligations validly entered into by the merging parties with customers in Kenya prior to the implementation of the proposed transaction.

RESTRICTIVE BUSINESS PRACTICES

The Regulations prohibit all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States; and have as their object or effect the prevention, restriction, or distortion of competition within the Common Market.

The Commission's initiatives under this area entail investigating anti-competitive business practices which are prohibited under Articles 16, 18 and 19 of the Regulations including, inter alia, price fixing, collusive tendering, market allocation and abuse of dominance.

Under Article 20 of the Regulations, the Commission is empowered to authorize agreements following an application for authorisation by parties who wish to enter into or give effect to contracts, arrangements or understandings even if they are anti-competitive if the Commission determines that there are public benefits outweighing the anti-competitive effects.

The Commission may also commence investigations upon request by any persons pursuant to Article 21 of the Regulations, or initiate investigations on its own volition pursuant to Article 22 of the Regulations.

During the period under review, the Commission handled a total of seven (7) cases as indicated in the figures below:

Figure 4: Restrictive Business Practices by type

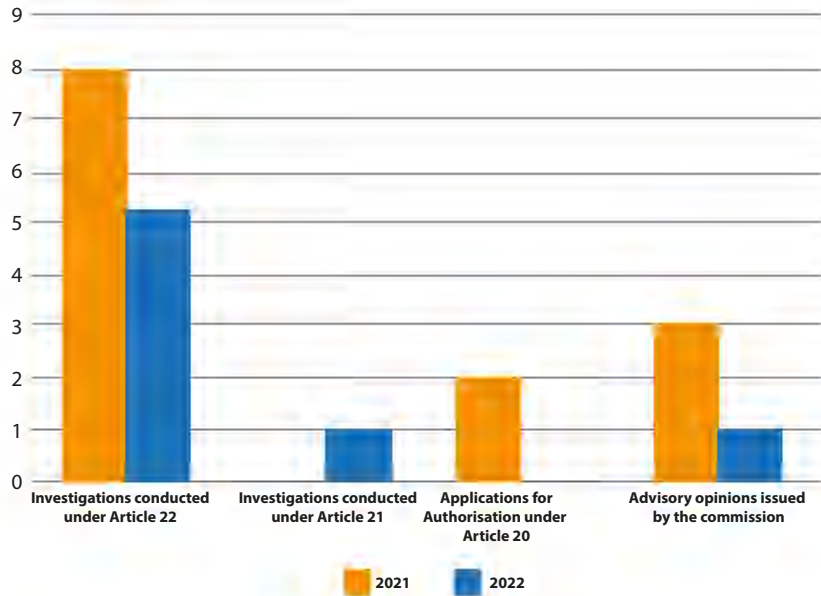


Figure 4 shows that the number of cases that were handled by the Commission pursuant to Article 22 reduced to five (5) in 2022 in comparison to eight (8) in 2021, while one case was handled pursuant to Article 21 and one advisory opinion was issued in 2022.

Figure 5: Restrictive Business Practices by Sector

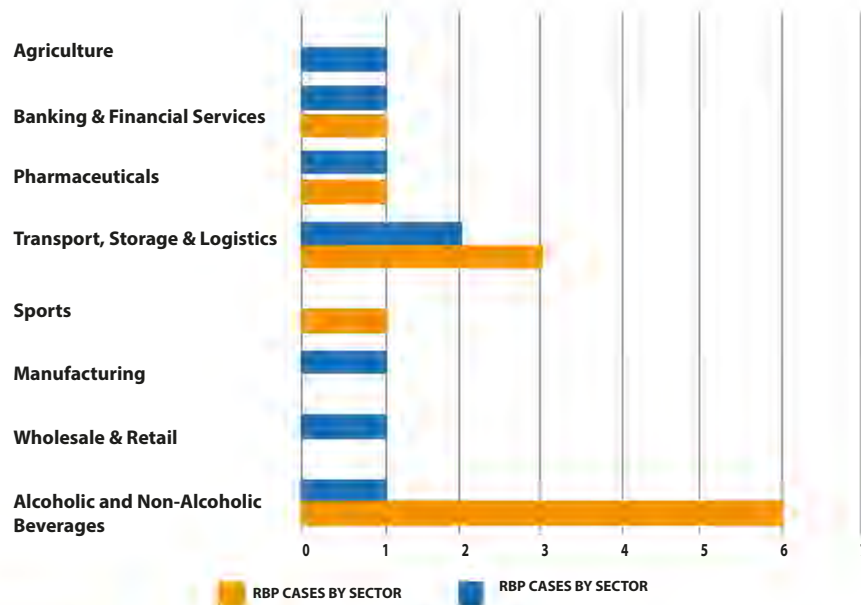


Figure 5 shows the restrictive business practices handled by the Commission in 2022 in comparison to 2021 by economic sector.

The majority of cases handled in 2022 were in transport & logistics compared to 2021 where the majority of cases handled were in alcoholic and non-alcoholic beverages.

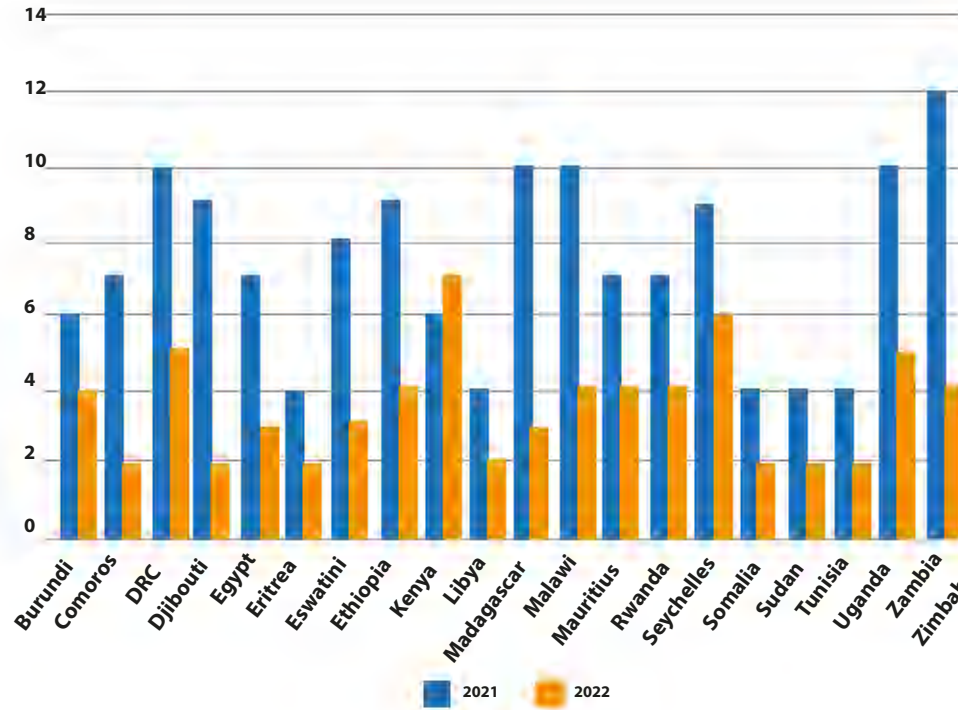


Figure 6 shows the Member States affected by the cases handled by the Commission. It can be noted that the majority of cases affected Kenya, followed by Seychelles and Zimbabwe compared to 2021 where the majority of cases affected Zambia, followed by Uganda, Malawi, Madagascar and DRC.



Highlights of Restrictive Business Practices Cases

Investigation into Agreements between the Confédération Africaine de Football ("CAF") and Lagardere Sports SAS relating to the commercialization of marketing rights for CAF competitions.

On 13 February 2017, the Commission commenced an investigation, pursuant to Article 22 of the Regulations, into possible violations of Article 16 and Article 18 of the Regulations by CAF. The case related to agreements pertaining to the commercialization of media and marketing rights for CAF competitions.

On 16 April 2019, following additional information gathered during the investigation, the Commission identified additional respondents, which led the Commission to issue Notices of Investigation to Lagardere Sports SAS (now called Sportfive), Orange and TOTAL in relation to Sponsorship agreements for the Marketing of CAF Football Events. While the cases, involving Orange and TOTAL were closed in June 2021, the case involving Sportfive and CAF was continued for further investigations due to the following concerns:

- a. Long Form Contract between CAF and Sportfive relating to the Marketing and Media Rights for CAF Competition, of 3 October 2007 (the 2007 Agreement).
- b. Full Form Agreement between CAF and Sportfive relating to the Commercialisation of Commercial Rights of CAF competitions signed on 28 September 2016 but took effect retrospectively on 11 June 2015 (the 2015 Agreement).

The 2007 Agreement granted Sportfive the exclusive rights to commercialise media and marketing rights of the CAF competitions from 2008 to 2016 and covered: Africa Cup of Nations 2010, 2012, 2014 & 2016; CAF Champions' League from 2009 to 2016; Confederation Cup from 2008 to 2016 and the African Youth Championship 2009, 2011, 2013 & 2015. Though the 2015 Agreement, CAF appointed Sportfive exclusively and on a worldwide basis for purposes of commercialising all the commercial rights from 2015 to 2023 edition of the last phase of the CAF Confederation Cup.

The Commission's concern with the agreements were as follows:

- a. Awarding of intermediation rights for CAF competitions in the absence of an open and competitive tender process;
- b. The long-term duration of the exclusive contracts for intermediation rights for CAF competitions; and
- c. The inclusion of the right of first refusal clause in the Agreements. CAF submitted undertakings to the Commission to address the competition concerns which the Commission submitted to the CID on 29 June 2021, whereas Sportfive elected not to dispute the Commission's recommendations on a no-admission of guilt basis.

However, the CID rejected the submission that the matter be considered on a no-admission of guilt basis. The CID determined that the case should be heard on the merits as it was not convinced that the Regulations were not breached. The CID therefore decided that the parties to the Agreement should be afforded an opportunity to be heard within 30 days of receipt of the decision.

In July 2021, Sportfive and CAF submitted applications to the CID to reconsider its decision that the matter could not be heard on a no-admission of guilt basis and therefore, requested the CID to reconsider their decision. However, the CID rejected both applications. On 22 November 2021, CAF lodged an appeal against the decisions of the CID rejecting the undertakings negotiated between CAF and Secretariat. On 16 December 2022, the Appeals Board issued its ruling on the various grounds raised by CAF including ; the rejection of the undertakings, admission of guilt, assessment of the market test and proportionality, absence of reasoning and quorum of the CID. The ruling was made by the Appeals Board as follows.

- a. With regards to the rejection of the undertakings, the Appeals Board observed that there was no evidence that the CID carefully considered the CAF undertakings, availed the parties an opportunity to be heard on the CAF undertakings, or provided guidance to Secretariat on any possible variations to be made to the undertakings as should have been the case as per the Practice Note issued by the CID on 23 April 2021.

The Appeals Board were of the view that the CID's decision to reject the undertakings without hearing the parties or examining the sufficiency or proportionality of the undertakings, may set an undesirable precedent and compromises the Commission's ability to engage with parties in finding rapid resolution in future cases.

b. With regards to the CID's requirement for an admission of guilt by CAF, the Appeals Board observed that the Regulations and international best practices did not require admission of guilt for the approval of undertakings.

The Appeals Board ruled that the CID committed an error of fact and law in rejecting the undertakings on the basis that they were made in the absence of an admission of guilt.

c. With regards to the proportionality of the undertakings, the Appeals Board observed that the competition concerns and proposed recommendations were guided by interviews and research carried out by Secretariat with various market players. Further, that the undertakings were the product of extensive negotiations between Secretariat and CAF, and specifically addressed each alleged competition infringement identified in the report and that the 2015 Agreement was terminated by CAF upon, amongst others, the Commission's recommendations.

d. With regards to CAF's arguments on the absence of reasoning by the CID, the Appeals Board concluded that the Decisions of the CID were not well reasoned and directed that going forward all CID decisions must contain the reasons for the decision and must substantially; set out the facts of the matter and the issue of determination including the historical background, the issues of determination, make reference to legal authorities and case reference where necessary and provide reasons/rational on the findings or determination on each issue.

e. With regards to the Quorum for the September Hearing: the Appeals Board ruled that the September decision was not invalid as it was issued in accordance with the terms of reference approved by the Board with regards to the constitution of the CID.

The Appeals Board concluded that the undertakings were aligned with the information gathered by Secretariat during its investigations and were the result of extensive consultations between Secretariat and CAF to ensure effectiveness and feasibility of the implementation

of the undertakings. The Appeals Board found that the undertakings by CAF were sufficient and proportionately addressed the identified competition concerns. With the ruling of the Appeals Board, the matter was concluded with the following undertakings to address the competition concerns of the Commission:

a. To the alleged infringement that the intermediation rights for CAF competitions were awarded in the absence of an open and competitive tender process, CAF undertook to award all future exclusive agreements relating to the intermediation of commercial rights of CAF competitions within the Common Market on the basis of an open, transparent and non-discriminatory tender process, based on a set of objective criteria which shall be shared with the Commission prior to launching the tender. CAF shall continue to publish the results of all tender exercises conducted on its website, subject to redaction of confidential information.

b. To the alleged infringement that the long-term duration of the exclusive contract for the award of intermediation rights for CAF competitions led to a significant lessening of competition, CAF undertook not to enter into new exclusive agreements for the intermediation of commercial rights of CAF competitions within the Common Market for a duration that exceeds four (4) years. Where CAF has justifiable grounds to enter into a future exclusive agreement for the intermediation of commercial rights of CAF competitions within the Common Market or a duration which exceeds a duration of four (4) years, CAF shall notify the Commission for authorisation of such agreement pursuant to Article 20 of the Regulations.

c. To the alleged infringement that the inclusion of rights of first refusal in the agreements between CAF and Sportfive led to a significant lessening of competition, CAF undertook to eliminate all right of first refusal clauses, or similar preferential renewal clauses, from its existing and future exclusive agreements relating to the intermediation of commercial rights of CAF competition within the Common Market.

d. With respect to monitoring compliance with the undertakings, CAF undertook to submit an annual compliance report to the Commission for a period of three years.

Investigations into Price Announcements by Shipping Companies in the Common Market

In 2022, the Commission commenced investigations pursuant to Article 22 of the Regulations, into potential violations of Articles 16 and 19 of the Regulations by various shipping liner companies operating in the Common Market, namely: Maersk, CMA-CGM and United Africa Feeder Line. In particular, the Commission observed that the shipping liners had issued price announcements which may be an infraction of Article 16 of the Regulations.

The Commission had preliminary concerns that price announcements were a form of coordinated behaviour or concerted practice. Part 3 of the Regulations, particularly Article 16, prohibits all agreements which may affect trade between Member States and have as their object or effect the prevention, restriction or distortion of competition in the Common Market.

Furthermore, Article 19 prohibits agreements or arrangements between competitors which, among others, allocate customers and markets within the Common Market. As such, the Commission will assess the extent to which the price announcements are compatible with the Regulations. The investigation is still ongoing. The Commission's investigation does not presuppose a finding of an infringement of the Regulations.

Once the investigations are concluded, the Commission's determination will be made public in accordance with the relevant provisions of the Regulations.

Investigations into the Pricing of COVID-19 PCR Tests

The Commission commenced investigations into potential violations of Articles 16 and 18 of the Regulations by Medical Laboratories operating in the Common Market, namely: Drs Dietrich, Voigt, Mia & Partners and Dr WJH Vermaak Incorporated ("PathCare") and Drs Mauff AC & Partners t/a Lancet Laboratories ("Lancet").

The Commission became aware that leading pathology laboratories in

South Africa had submitted consent agreements to the South African Competition Tribunal following an investigation by the South African Competition Commission to reduce their prices for Covid-19 PCR tests and Covid-19 rapid antigen tests for two years.

The Commission was further aware that two of the laboratories, PathCare and Lancet had operations in the Common Market and that the prices of Covid-19 PCR tests remained high in the Common Market. The Commission's preliminary concerns were that travelers in the Common Market were paying excessive prices for the Covid-19 PCR tests.

As such, the Commission would assess the conduct of the laboratories to determine their effect in the Common Market and apply appropriate measures as per the Regulations. The investigation is still ongoing. The Commission's investigation does not presuppose a finding of an infringement of the Regulations. Once the investigations are concluded, the Commission's determination will be made public in accordance with the relevant provisions of the Regulations.

Investigations into alleged Territorial Restriction and Resale Price Maintenance by Toyota Tsusho Corporation.

The Commission also commenced investigations into potential violations of Article 16 of the Regulations by Toyota Tsusho Corporation ("Toyota") operating in the Common Market.

The Commission became aware that Toyota had appointed agents as authorised distributors in various countries in the Common Market and had concluded distribution agreements with them for the sale of Toyota products, specifically; brand new vehicles and spare parts. The Commission had reasonable cause to suspect, and does suspect, that the distribution agreements do not allow authorised distributors to sell Toyota products outside their respective territories or countries or sell Toyota products to any third party whom they believe would sell, export or transfer directly or indirectly to any place or country outside their territory.

Furthermore, the Commission had reasonable cause to suspect, and does suspect, that Toyota had provided price guidelines to its authorised

distributors for the pricing of the Toyota products sold to consumers in the Common Market which may contravene the provisions of the Regulations pertaining to resale price maintenance.

The Commission had preliminary concerns that Toyota may be prohibiting out-of-territory passive sales to the detriment of consumers and may also be maintaining high prices of brand-new vehicles and spare parts in the Common Market. As such, the Commission will assess the conduct of Toyota to determine its effect in the Common Market and apply appropriate measures as per the Regulations.

The investigation is still ongoing. The Commission's investigation does not presuppose a finding of an infringement of the Regulations. Once the investigations are concluded, the Commission's determination will be made public in accordance with the relevant provisions of the Regulations.

CONSUMER PROTECTION

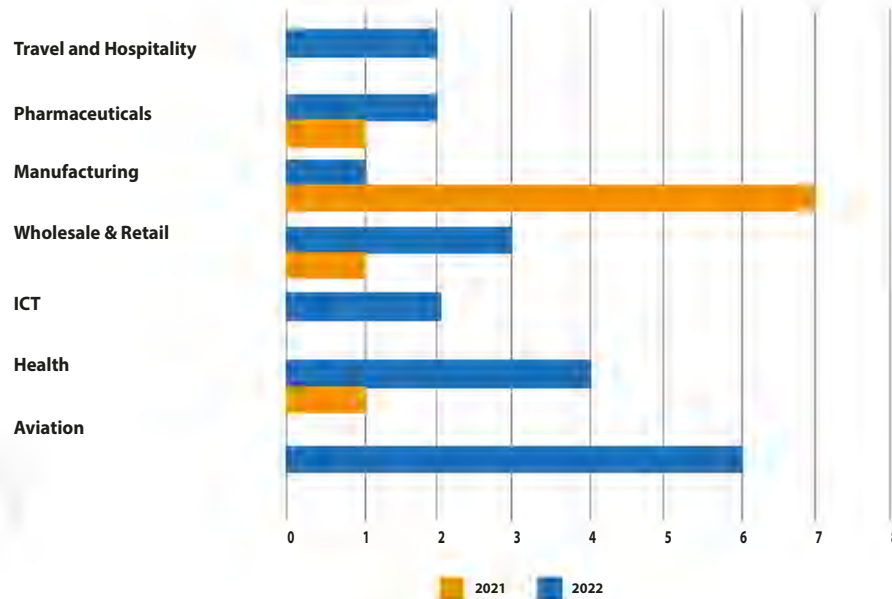
The Regulations empower the Commission to protect consumers in the Common Market against offensive conduct by market actors. The consumer protection mandate of the Commission includes, inter alia, the prevention of false or misleading representation; unconscionable conduct and the supply of defective and unsafe goods within the Common Market.

In 2022 the Commission investigated a total of twenty (20) consumer cases against ten (10) cases handled in 2021. The 100% increase is a demonstration of the seriousness the Commission attaches to matters of consumer welfare in the Common Market.

The Commission has increased its surveillance of the markets since the Consumer Division was operationalised in 2020, leading to an increase in the number of cases detected.

The cases dealt with in 2022 affected a cross section of economic sectors that included manufacturing, aviation, health, information communication technology (ICT), wholesale and retail, and pharmaceutical sector.

Figure 7: Consumer Cases handled in 2022 in comparison to 2021



The figures shows the distribution of cases handled in 2022 in comparison to 2021.

Figure 7 shows the distribution of consumer cases by economic sector for 2022 and 2021, it can be seen from the above figure that most of the cases handled were in the Aviation sector (6), followed by Health sector (4) and the least cases were in manufacturing sector. It can be noted that in 2022 majority of cases handled by the Commission were in the Aviation sector as opposed to 2021 where most of the cases handled were in the manufacturing sector.

Figure 8: Member States Affected by the Cases

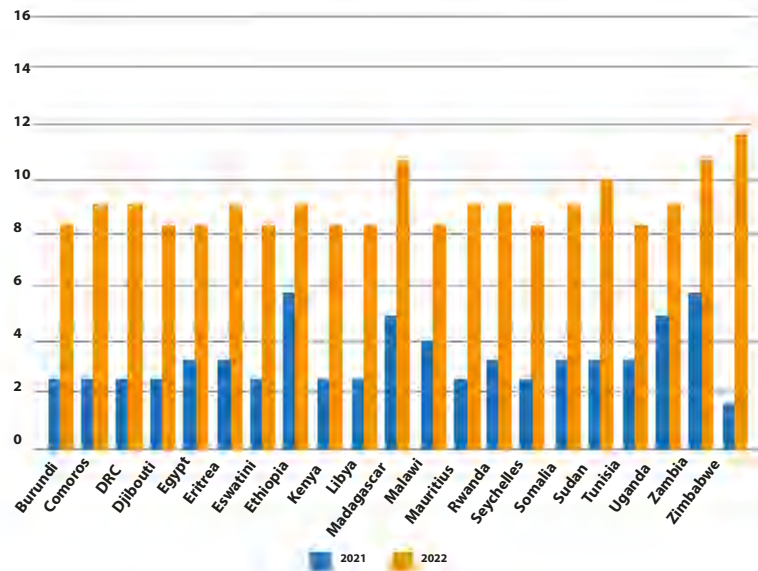


Figure 8 above shows the Member States affected by the consumer cases handled by the Commission in 2022 in comparison to 2021. It can be noted that there is an increase in the number of cases handled by the Commission in 2022 as compared to 2021.

The Member States that were mostly affected in 2022 were Zimbabwe with 14 cases, Malawi and Zambia each with 13 cases and Eswatini with 11 cases, in comparison to 2021 where most of the cases affected Kenya and Zambia with 7 each followed by Malawi and Mauritius with 6 and 5 cases, respectively.



Highlights of Consumer Cases

Complaint Against Malawi Airlines

The Commission through its market intelligence, became aware that in January 2022, passengers traveling from Johannesburg to Blantyre aboard Malawian Airlines were rerouted to Kamuzu International Airport (KIA) in Lilongwe instead of Blantyre, allegedly due to bad weather.

The passengers were booked at a hotel in Lilongwe and were later informed by the airline's official that they had to find their own means of getting to Blantyre the following day.

The Commission investigated the matter as it believed it amounted to unconscionable conduct and contrary to Article 28(1) of the Regulations. Following the Commission's intervention, Malawi Airlines refunded the affected passengers for the disrupted leg of their flight.

Complaint against South Africa Air Link

In December 2021, the Commission initiated investigations against South Africa Airlink following a complaint against the Airline for failure to reschedule a passenger's connecting flight from Johannesburg to Zambia, occasioned by a delay in Eswatini. The passenger was instead required to contact their travel agent for rebooking which attracted an additional cost.

South Africa Airlink's position was that it was their practice not to amend tickets purchased through travel agents or third parties that involve multisector itineraries. The Commission's position was that this information was not availed to consumers and was not in their terms and conditions of carriage and as such they did not have prior knowledge of this.

The Commission therefore required Airlink to amend their terms and conditions to include such information for consumers, to which they complied.

Investigation into Misleading labeling of Enjoy products by Lilongwe Dairy (2000) Limited

The Commission through its market surveillance, noted that the labelling on the Enjoy range of drinks was misleading consumers. Enjoy products are produced by Lilongwe Dairy (2000) Ltd, a company registered and operating in Malawi and exporting the Enjoy range of drinks to other Member States of the Common Market including, Zambia, Zimbabwe, Kenya and Rwanda. The Commission noted that the packs were labelled in such a way that they represented to consumers that they were consuming juice made from the fruits indicated on the package, however this was only an added flavour.

The Commission engaged Lilongwe Dairy on the matter as it appeared to be falsely representing that the product they were selling was of a particular composition and contrary to Article 27(1)(a) of the Regulations.

Lilongwe Dairy agreed to amend the labeling on the package to clearly indicate that consumers were only consuming flavours of the fruits appearing on the package. The matter is yet to be closed as Lilongwe Dairy is yet to submit a report of full compliance within the period that has been given to them by the Commission.

Complaint against Jumia Group

The Commission launched investigations in June 2021 against Jumia Group following a review of its terms and conditions on its ecommerce platform, to determine if they were in compliance with the Regulations. In the Common Market, Jumia operates the online marketplace, logistics and payments platforms in Kenya, Uganda, Tunisia, and Egypt. The classified operations are in Rwanda, Malawi, Kenya, Uganda, Tunisia, Ethiopia, Zambia, Burundi, Djibouti, Eritrea, Eswatini, Madagascar, Seychelles, and Comoros.

The Commission's concerns were that: Jumia's terms and conditions on its platform did not indicate the registered company and business that owned the platform and who their actual

legal representative was. Under section 12 of its terms and conditions, Jumia did not warrant that: the information on their website was complete or accurate; the material on the website was up to date; the website/platform would operate without fault; and that it would remain available. Jumia excluded itself from being party to the contract for sale or purchase, claiming that it was not involved in the transaction, and that it was not an agent of any buyer or seller and therefore did not have liability in connection with any transaction under the contract. Further, Jumia did not provide a dispute resolution mechanism online; and Jumia's return policy only allowed consumers 15 days for Jumia Mall, and 7 days for Jumia Express and Global to return defective goods. The Commission engaged Jumia on the incompatibility of the platform and their terms and conditions to the Regulations. Jumia was cooperative and complied with the Commission's recommendations which included:

- i. Jumia includes a specific provision in its terms and conditions that highlights the entity to be served for legal purposes with full details.
- ii. Jumia guarantees the authenticity of information on its platform to the extent that where the seller cannot be traced in the case of a dispute, Jumia shall be liable as there is legitimate expectation by consumers that Jumia should have adequate terms and conditions for engaging the sellers.
- iii. Jumia's terms and conditions to be amended to reflect that where Jumia is the seller, they are party to the contract of sale and therefore liable if the product is not fit for purpose.
- iv. In cases where the product was sold by a third party seller, Jumia should provide access to the contract of sale between a named and clearly identified seller on the platform to enable the buyer to review and accept the terms before purchase. Jumia to also ensure that to the extent possible, the information posted on the platform is accurate.

The terms and conditions and the platform were subsequently reviewed by Jumia, and the Commission was satisfied with their compatibility with the Regulations. The case was therefore closed in 2022.



STRENGTHENING RESEARCH

The Commission recognizes the need for, and importance of robust research to inform its investigations and decisions relating to the enforcement of the Regulations in the Common Market. In furtherance of this, the Commission took part in the African Competition Forum (ACF) cross country study on roaming.

The Commission contributed a chapter to the cross-country study on the cost of roaming whose objectives were to Understand the market structure, state involvement and the regulatory setting of the telecommunications industry in the Common market focusing on DRC, Egypt, Kenya, Uganda and Zambia, with a particular focus on the determination of roaming charges that impact on continental trade and tourism. The study also aimed at identifying the competition concerns and the policy recommendations aimed at promoting competition in the telecommunications sector.

The Commission found that the mobile services market in the Common Market is dominated by MTN, Vodafone, Orange, and Airtel. The four MNOs operate in 13 of the 21 Member States of the Common Market which makes up about 75.7% of the total population of the Common Market. The study focusing on five of the Member States namely, DRC, Egypt, Kenya, Uganda and Zambia found that the mobile services markets in these countries are highly concentrated. The five countries were picked due to their size of population and economies which are likely to have an appreciable effect on trade in the Common Market.

The study also found that all the countries assessed have sector specific regulators enforcing the relevant laws in the market, four of these countries have developed competition authorities in place except for DRC whose competition law enforcement was still in its early stages while Uganda does not have competition law in place. However, the telecom regulators in these jurisdictions have competition laws embedded in their law. The study found that the cost of roaming for subscribers in the countries under the study is high.

However, MNOs with an extensive network within the Common Market charge much lower prices in comparison to the other MNOs for subscribers that roam using the partner operators in their network, as is the case for

Airtel and Vodafone. It was also clear that countries with special regional or bilateral arrangements for roaming enable their consumers benefit from lower cost of roaming as is the case for the ONA arrangement.

The study also found that there is no transparency in the wholesale agreements that MNOs enter into with their roaming partners and the prices in the agreements are influenced by the volume of roaming traffic. It was also noted that. The study found that these factors may be contributing to how the existing MNOs behave in the market. The study noted that even though, there are new developments on technology and with the use of WhatsApp, Messengers, Facetime and Skype which could offer competition to mobile roaming, the use of such services is affected by the high charges on mobile data roaming, restrictions of use in some countries and the lack of adequate access to internet in some countries.

It was noted that there may be need to put in place deliberate policies to reduce the cost of roaming in the COMESA region as it was noted that the cost of roaming had significantly reduced in other regions such as the European Union and the East African Community.

STRENGTHENING ENFORCEMENT

The Commission's goal under this strategic issue is to build its capacity and that of the National Competition Authorities in Member States to effectively enforce both the Regulations and the national competition laws. The Commission strengthens enforcement through comprehensive review of its competition legal framework and encouraging compliance with its decisions by Member States.

Enhance Compliance with the decisions of the Commission

To enhance compliance with its decisions, the Commission was deliberate in enhancing its efforts towards the provision of technical assistance and capacity building activities to selected Member States and the conclusion of enforcement cooperation agreements with national competition and competent authorities in Member States.

The purpose of this exercise was to harmonise national competition laws and policies with the regional competition law and to support the setting up and/or operationalisation of national competition authorities and the implementation of national and regional competition laws in Member States. In this respect, the Commission engaged with the following Member States:

Burundi

The Commission held a capacity building workshop in Burundi in June 2022 to facilitate the operationalisation of the national competition authority, as a follow up activity to the fact-finding mission and awareness campaign with relevant Ministry officials that was held in Burundi from 7th to 8th October 2021.

The Commission also held a bilateral meeting, on the side-lines of the capacity building workshop, with the Director General in the Ministry of Trade and high-ranking officials from the Burundi government to discuss the competition enforcement cooperation framework. An MOU template was shared by the Commission for Burundi's consideration and further discussion and possible conclusion in 2023. Further, the Director held bilateral talks with the Honorable Minister in the Ministry of Commerce, Transport, Industry and Tourism, honorable Marie Chantal Nijimbere to discuss areas of possible collaboration.



Dr Willard Mwemba with the Honourable Minister in the Ministry of Commerce, Transport, Industry and Tourism of Burundi, Honorable Marie Chantal Nijimbere

Comoros

In November 2022, a training workshop for government officials and stakeholders was conducted in Moroni, Comoros on the application of competition and consumer protection laws in preparation for the operationalization of the national competition and consumer protection authority.

In attendance was the President of the Council for the Comoros National Competition Authority (CNCA) Mr. Mohamed Chanfiou Ahamada Djibir. The training workshop was attended by all the CNCA Council members and different stakeholders including officials from the Ministry of the Economy, the Bar Association, representatives of sector regulators, the Consumer Federation, and the private sector from the three major Comoros Islands, namely, Ngazidja, Moheli and Anjouan.

Democratic Republic of Congo (DRC)

The Commission held a bilateral cooperation meeting with the Commission Nationale de la Concurrence (CONAC) officials to develop an implementation plan for the MOU in February 2022 in Salima, Malawi.

The meeting was also used to offer training to the officials on competition and consumer protection matters and institutional set up to assist CONAC to set up the offices and effectively enforce the law in DRC.

Following the meeting, CONAC actively started enforcing competition law in DRC and has since conducted joint investigations with the Commission.



In the centre is the Honourable Kamalidine Souef, Minister of Posts and Telecommunications who officiated at the Commission's training workshop on behalf of the Honourable Minister of Economy together with the participants at the workshop

Eswatini

In June 2022, the Commission reviewed the Memorandum of Understanding (MoU) with Eswatini Competition and Consumer Protection Commission (ESCC) which was first signed in April 2016. The Implementation Workplan was also revised and signed for 2022-2023 to guide the implementation of the MoU.

In the same year, the Commission provided financial support which was used to undertake Leadership Development Training and the Review and Development of the ESCC Strategic Plan.

The ESCC has since shared the report for the training and the finalized ESCC Strategic Plan for 2022-2027.

Ethiopia

The Commission provided capacity building to officers responsible for enforcing competition and consumer protection laws under the Ethiopian Ministry of Trade and Regional Integration (MoTRI). The capacity building was necessitated by the change in the structural implementation of the laws following the declaration that moved the responsibility to enforce such laws from the Trade Competition and Consumer Protection Authority (TCCPA) to MoTRI.

An MOU was also signed on the sidelines of the meeting and the MOU Implementation Plan for 2023-2024 developed.

As a follow up to the meeting, the Commission will be providing technical assistance to MoTRI in 2023 by facilitating the engaging of a consultant to provide training for the members of staff of MoTRI who are responsible for enforcing the competition and consumer protection laws.



Negotiations of the revised MoU between ESCC and the Commission. In the Centre is Mr Muzi Dlamini, CEO of the Eswatini Competition Commission and Dr Willard Mwemba, Director & CEO of the Commission



From left to right, Dr Willard Mwemba, Director & CEO of the Commission, Honourable Teshale Belihu Kefene, State Minister, MoTRI, Mr Gizaw Tekle, Advisor to the State Minister and staff of MoTRI that took part in the training and Commission staff that facilitated the training.

Other forms of assistance will include assisting MoTRI with resources to develop a strategic plan for enforcing competition and consumer protection laws in Ethiopia and developing advocacy materials.

Malawi

The CFTC engaged the Commission for financial and technical support to review the national competition law and harmonise with the regional competition law among other things. The Commission supported CFTC engagement of a consultant to review the law in line with the UNCTAD Peer Review which recommended a review of the law.

In November 2022, the Commission took part in the stakeholder consultations to discuss the lay man drafts on the Competition and Fair Trading Bill and the Competition and Fair Trading Regulations prepared by the consultant.



Commission Staff took part in the stakeholder dissemination workshop for the CFTC Peer Review by UNCTAD in Lilongwe, Malawi.

Rwanda

The Commission negotiated and signed an MOU on cooperation in the enforcement of competition and consumer protection laws with the Rwanda Inspectorate, Competition and Consumer Protection Authority ("RICA") in December 2022 in Kigali, Rwanda on the side lines of events to commemorate the World Competition Day.

Cooperation between the two institutions has already begun with a planned capacity building workshop to be undertaken in March 2023 for the RICA staff.



Left to right, Ms Mary Gurure, Head of Compliance and Legal Services at the Commission exchanging the signed MoU with Ms Beatrice Uwumikiza, the Director General of RICA.

Zambia

In June 2022, the Commission reviewed the Enforcement Cooperation Agreement signed with the Competition and Consumer Protection Commission (“CCPC”) in November 2016. The review was aimed at capturing and addressing new issues that were not adequately captured in 2016. The reviewed MOU placed emphasis on matters of consumer protection and competition enforcement in the digital markets.

The implementation plan for the Agreement was also revised for the years 2023-2024 and the signing took place in November 2022 after clearance by the Ministry of Justice of Zambia.

The Commission also provided financial support to the CCPC towards the training of their Board Members. Board Members are key in the enforcement of competition and consumer protection laws, and it is important that their capacity is enhanced to ensure sound decision making in line with the laws. In most national competition authorities, Board members are responsible for case adjudication.



Picture taken after the signing of the revised Enforcement Cooperation Agreement between the Commission and CCPC. Left to right, Mr Chenga Chisha (Board Member, CCPC), Mr Brian M.Lingela (Acting Executive Director), Ms Margret Moonga (Chief Economist, Ministry of Commerce, Trade and Industry), Dr Willard Mwemba, Director & CEO of the Commission and Mr Fredrick Imasiku (Board Member of CCPC).



Training of CCPC Board Members in Zambia, seated from left to right, Mr Nsangwa Ngwira (CCPC Board Member), Mr Chilufya Sampa (Executive Director, CCPC) Honourable Chipoka Mulenga (Minister of Commerce, Trade, and Industry), Dr Willard Mwemba (Director & CEO, Commission) and Dr George Lipimile (Consultant)



His Excellency Emmerson Dambuzo Mnangagwa, President of the Republic of Zimbabwe (Centre) after officially opening the training workshop for Judges in Zimbabwe.

Zimbabwe

The Commission in collaboration with the Competition and Tariff Commission of Zimbabwe and the Judicial Service Commission held a training workshop for the Judiciary in Zimbabwe. The training was attended by Judges from the Supreme Court, High Court, Constitutional Court, Magistrate Courts, and Labour Courts and was aimed at capacitating the Judges on competition and consumer protection law enforcement.

This was necessary due to the critical role that Judges play in the enforcement of the law. The workshop was well attended and officiated by His Excellency Emmerson *Dambuzo*. Mnangangwa, President of the Republic of Zimbabwe.

Engagement with stakeholders outside the Common Market for Eastern and Southern Africa

Eurasia Economic Commission (EEC)

The Commission is cognizant that some anti-competitive conduct may be implemented outside the Common Market but would have effects therein.

Therefore, in order to effectively address such anti-competitive conduct, it is important to have working arrangements with authorities outside the Common Market.

It is also important to collaborate with other regional and international competition authorities as mandates are similar and therefore sharing experiences and capacity building initiatives would be valuable.

In furtherance of the foregoing, the Commission and the EEC on 21 July 2022 on the sidelines of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy signed an MoU that will guide cooperation between the two institutions in areas of investigations, research and capacity building.



Dr Willard Mwemba, Director & CEO of the Commission and Mr. Arman Shakkaliyev, Member of the Board and Minister in Charge of Competition and Antitrust Regulation at the EEC sign an MoU on 21 July 2022

CARICOM Competition Commission

On 8 December 2022, an MoU was signed between the Commission and CARICOM for the purpose of cooperating in competition and consumer protection investigations, research, capacity building and any matters of common interest. Following the signing of the MoU, the Commission started working with CARICOM to develop course content for an online competition course to be organised by CARICOM.

Law Association of Zambia ("LAZ")

The Commission signed an MOU with LAZ on 5 December 2022. The MOU is expected to build capacity on competition and consumer matters among the members of the Law Association of Zambia and to raise awareness on the Commission and its mandate.



Mr Lungisani Zulu, President of LAZ, and Dr Willard Mwemba, Director &CEO of the Commission after signing the MoU.

CAPACITY BUILDING REGIONAL CASE HANDLERS

Under the Strategic Issue, 'Strengthening Enforcement', the Commission has an annual regional programme for case handlers at National Competition and Consumer Agencies to enhance and strengthen their capacity to enforce the Regulations and indeed their national competition laws.

The programme is crucial to ensuring that the Commission and the NCAs have the right skills and tools to prevent, detect and prohibit anti-competitive conduct at both national and regional level thereby contributing to the regional integration imperative. In this respect the Commission held the following trainings for case handlers in the period under review:

In partnership with the USDoJ, the Commission conducted a Virtual training workshop on interview techniques and dawn raids in May 2022. The Workshop attracted participation from 9 Member States and afforded the opportunity to case handlers to participate in a practical session based on a hypothetical case study. The Resource Persons for the virtual workshop were sourced from the DOJ, Federal Bureau of Investigations (FBI) and national competition authorities of Australia and Ireland.

The Commission also organized the Annual restrictive business practices Case handlers' in June 2022 in Ezulwini, Eswatini. The training focused on interview techniques and dawn raids with the facilitation and cooperation of the Eswatini Competition Commission.

The workshop was facilitated by resource persons from the FBI and Anti-trust divisions of the USDoJ, the USFTC, Competition Commission

South Africa, and Eswatini Anti-Corruption Commission. The workshop was attended by participants from 12 Member States.

The Annual Regional Mergers Case Handlers workshop was also held in June 2022 in Ezulwini, Eswatini. The workshop focused on assessment of digital and non-horizontal mergers and improving cooperation with and among the national competition authorities of the Member States. The workshop was attended by 35 case handlers from 12 Member States. The resource persons included representatives from the USFTC, the European Commission and CCRED.



Delegates during the mergers training workshop in Eswatini

ADVOCACY AND STRATEGIC COLLABORATION

The strategic issue on advocacy and strategic collaboration, aims to create a competition culture in the Common Market through enhancing the visibility of the Commission and increasing public awareness on the benefits of competition and competition law enforcement within the Common Market. The Commission's approach is to engage various stakeholders within the Common Market which include National Competition Authorities, the business community, consumer groups, business reporters, Judges, and the legal fraternity.

The Commission also engages stakeholders outside the Common Market such as international organization dealing with competition and consumer matters. In 2022, the Commission implemented the following activities under this Strategic Issue:

World Consumer Rights Day and World Competition Day

World Consumer Rights Day (WCRD) falls on 15th March every year. In 2022, the commemoration took place under the theme "Fair Digital Finance" and the Commission undertook the following activities:

- Organised a Virtual Workshop to discuss the theme of the WCRD
- Participated in TV Talk shows in Collaboration with the Trade Competition and Consumer Protection Authority of Ethiopia and the Ministry of Industry and Commerce of Zimbabwe
- Published a Press release in the East African Newspaper

Virtual Workshop to discuss the theme of the WCRD

The workshop was held virtually on 10th March 2022, and brought together speakers from the Commission, Bank of Uganda, Competition Authority of Kenya, CFTC of Malawi, CCPC, as well as the Chairperson of the COMESA Consumer Protection Committee. The Workshop was attended by over seventy (70) participants from 13 Member States. The speakers discussed how digital finance impacts consumers and how we to ensure that they are protected even as they take advantage of the efficiencies that come with digitization.

TV Talk show in Collaboration with Zimbabwe and Ethiopia

Officers from the Commission also took part in TV talk shows held on 15th March 2022, in Zimbabwe and Ethiopia to discuss the theme of the WCRD. A panel discussion was held where the CCC among other sector regulators educated the public on digitization, its advantages and disadvantages and their rights pertaining to the supply of digital financial services.

A Press Release was also published in the East African Newspaper on 15th March 2022, which has a regional presence.

The Article highlighted the work undertaken by the Commission, as well as creation of awareness to consumers on their rights. The suppliers of digital financial services were equally sensitized on the Regulations and urged to ensure compliance.

COMESA Consumer Protection Committee Meeting

A meeting for the members of the COMESA Consumer Protection Committee was convened in March 2022 in Mombasa, Kenya. The Committee which comprises consumer protection agencies or competent authorities in charge of enforcing consumer protection laws as well as consumer organisations discussed the modalities for developing a regional early warning system for tracking unsafe products and recalling dangerous goods.

The meeting also discussed the Framework for designing of a regional training curriculum and established working groups to spearhead implementation of the two programs.

In October 2022, a follow up meeting was held in Nairobi, Kenya to discuss the draft documents on modalities for developing a regional early warning system for tracking unsafe products and recalling dangerous goods.



Mr Yonas Anteneh, Legal Officer of the Commission during a television programme in Ethiopia on World Consumer Rights Day



Ms Nancy Otori, Consumer Welfare Officer at the Commission during a TV programme in Zimbabwe



Sensitisation of the Business Community in Kenya and Zambia

The Commission conducted two national sensitization workshops for the business community in Nairobi, Kenya in March 2022 and in Lusaka, Zambia in April 2022 on the role of the competition and consumer protection laws in post COVID-19 business recovery. The workshops were also used to discuss the obligations of businesses under the laws and how the regional and national laws interface.

Participation at the Kenya International Trade Exhibition

In June 2022, the Commission participated in the 23rd Kenya International Trade Exhibition (KITE). The Commission used the exhibition to engage stakeholders on its mandate in the Common Market as well as distribute brochures, flyers, and books.

COMESA First Regional Workshop for Legal Practitioners

The Commission held the first (1st) regional workshop for legal practitioners in April 2022 in Livingstone, Zambia. The workshop which was held in partnership with Corpus Legal Practitioners was attended by about 80 lawyers from 10 Member States.

The Lawyers were trained on various topics on the enforcement of competition law including the role of economics in competition law enforcement, emerging trends in competition law enforcement at national and regional level as well as the challenges, opportunities and how the relationship should be shaped for effective enforcement.



From left to right, Mr Phil Daka (CEO of ZACCI), Dr Willard Mwemba (Director & CEO of the Commission), Mrs Chawe P.M Chuulu (Permanent Secretary of MCTI), Mr Felix Mutati (Minister of Technology and Science) Ms Chileshe Kapwepwe (Secretary General of COMESA), Mr Chilufya Sampa (Executive Director of CCPC), Dr George Lipimile (Consultant)

Among the meeting's outcomes were that the Commission could consider issuing more detailed decisions accessible to stakeholders electronically to enable them to have a better appreciation of how the Commission arrives at its decisions. The Commission was also encouraged to continue having such meetings as there was need to continue competition law training among lawyers.

Second Regional Judges Workshop

In April 2022, the Commission held the Second Regional Judges Workshop which was attended by Judges from 13 Member States under the theme "Enforcement of Competition and Consumer Protection Law in the wake of Regional and Continental Integration".

The workshop was attended by three Chief Justices from DRC, Zambia and Zimbabwe, the Judge President of CCJ and members of the Competition Tribunal of Kenya. Judges were trained on the enforcement of competition law. The topics included tools and skills required for competition law cases, the interface between regional and national laws and emerging trends on competition law enforcement at regional and national level.

Through the workshop, the Commission was advised to play an active role in the development of the competition protocol for the AfCFTA to guide the drafters based on its experience as the most active regional competition authority in Africa. The Commission was also advised to continue training stakeholders so as to effectively enforce competition law.



Seated from left to right Dr George Lipimile (Consultant), Mr Pieter Steyn (Director of Werkmans and Chairman of Lex Africa), Mr Chilufya Sampa (Executive Director, CCPC), Ms Thabisile Langa (Head of Law Reform Unit, Eswatini) Mr Abyudi Shonga Jr SC (LAZ President), Dr Willard Mwemba (Director &CEO of the Commission), Mr Sydney Chisenga (Managing Partner, Corpus), Mr Stanley Nyamanhindi (CEO,SADC Lawyers Association), Mr Mohammed Nyaoga, SC (Board Chairman of the Central Bank of Kenya) and Mr Gabriel Masuku (Director Legal, COMESA).



Seated from left to right, Dr Willard Mwemba (Director & CEO), Judge Dennis Davis (Resource Person), Lady Justice Lombe Chibesakunda (Judge President of CCJ), Justice Dr Mumba Malila (Chief Justice of the Republic of Zambia), Justice Luke Malaba (Chief Justice of the Republic of Zimbabwe), Justice Musanga David-Christophe (Chief Justice of DRC) and Lady Justice Qinisile Mabuza (Principal Judge, CCJ).

World Competition Day

On 5 December 2022, the Commission joined the rest of the world in commemorating World Competition Day under the theme “Competition Policy and Climate Change”. The Commission jointly commemorated with RICA and CFTC by undertaking joint sensitisation activities in line with the theme.

International Cooperation, Outreach and Networking

In 2022, the Commission implemented and took part in several international and regional activities for purposes of international cooperation, outreach and networking. These included the following:

The African Union-Southern African Regional Office (AU-SARO)

The Commission joined the rest of the African Embassies, High Commissions and other African International Organizations and communities present in Malawi in May 2022, to commemorate the 2022 Africa Day celebrations. The event was organized in Lilongwe by the African Union Southern African Regional Office under the theme: “The Year of Nutrition”. The objective of the event was to display and showcase the richness of the African agricultural sector and the diversity reflected in the food culture, to facilitate interactions and conversations on food security and safety and to amplify the need to support the growth of the industry in the continent.

The Commission took this opportunity to display its consumer protection mandate. Through display of its banners, brochures, flyers and books and speaking to stakeholders on its mandate.

Tenth Bowmans Annual Competition Law Conference

The Commission was invited to attend the 10th Bowmans Annual Competition Law Conference in February 2022 as part of its international outreach and networking advocacy activities.



From left to right Ms Mary Gurure (Head of Legal Services and Compliance Division, Mrs Beatrice Uwumikiza (Acting Director General, RICA), Mr. Richard Niwenshuti (Permanent Secretary, Ministry of Trade and Industry) and Ms Stellah Onyancha (Deputy Registrar of EAC Competition Authority)

The conference was held under the theme: "Competition policy in addressing African trade imperatives". The Commission participated as a panelist on the topic "Competition law developments across Africa", as well as a speaker during the dinner preceding the conference on the broader theme of the Conference.

International Competition Network Mergers Workshop

The Commission participated in the ICN Mergers Workshop held from 29 March -1 April 2022 in El Salvador, Brazil.

The Commission participated as a speaker on the session concerning "Merger Regulation Procedures by Competition Authorities".

American Bar Association

The Commission participated at the 2022 70th Spring Meeting of the American Bar Association (ABA) Section of Antitrust Law Washington DC in April 2022 which was attended by over 3000 competition law practitioners from all over the world. Dr Willard Mwemba also took part in the USA FTC-DOJ Pre-Conference Enforcers' Summit as part of the Panel Discussion on "Whole of Government Competition Policy: Lessons for Interagency Collaboration". He presented in detail the collaboration initiatives that the Commission has embarked on and undertaken since its inception highlighting the importance and benefits of cooperation with national and regional competition law enforcers to achieve effective competition law enforcement.

African Civil Aviation Commission

A meeting was held with the Africa Civil Aviation Commission (AFCAC) on 11 April 2022 and 14 June 2022 to discuss the



Senior Consumer Analyst at the Commission Mr John Mwesige explaining to the public on the mandate of the Commission.

areas of cooperation between the two institutions. AFCAC is an institution under the African Union that is charged with regulating the African Air Space in terms of competition and consumer protection.

AFCAC approached the Commission as it noted that the Commission is also mandated with enforcing competition and consumer protection in all sectors including aviation in the COMESA Region. As such, the two institutions discussed areas of cooperation and started negotiating an MoU which will be signed in 2023. Further, the Commission took part in the Single African Air Transport Market (SAATM) Continental Workshop on the Yamoussoukro Decision (YD) Instruments.

UNCTAD Inter-Governmental Group of Experts Meetings

The Commission participated in the UNCTAD Inter-Governmental Group of experts (IGE) meeting on competition and consumer protection held from 18 -22 July 2022 in Geneva, Switzerland.

The Director and Chief Executive Officer delivered presentations on “Modalities for the implementation of the recommendation on preventing the cross-border distribution of known unsafe consumer products” as well as on “Regional Organisations”.

Ninth Annual Conference of the Law Association of Zambia

The Commission participated at the Law Association of Zambia (LAZ) 9th Annual Conference held in July 2022 and presented on the COMESA Competition Legal Framework as part of its participation in the panel discussion on the Future Outlook of National and International Competition Law.

CAK capacity building workshop on Competition Policy and Law

The Commission participated in the Competition Authority of Kenya (CAK) capacity building workshop on Competition Policy and Law, that was held in Nairobi, Kenya in October 2022.

OECD Global Forum on Competition

The Commission participated at the Organisation for Economic Co-operation and Development (OECD) Global Forum on Competition that was held in December 2022 in Paris, France. The event brings together high-level competition officials from around the world including Africa, Asia-Pacific, Europe, Middle East and the Americas.



*Dr Willard Mwemba during the UNCTAD IGE Meeting in Geneva
Ninth Annual Conference of the Law Association of Zambia*



Mr Yonas Anteneh Legal Officer at the Commission (left) taking part in the discussions during the meeting

SADCLA-AFSA Development of International Commercial Arbitration Seat

The Commission participated at a planning workshop for development and adoption of a unified roadmap to the establishment of a regional seat for international commercial arbitration, trade and investment dispute resolution, which was held on 7-8 December 2022 in Sandton, South Africa.

This was a result of the Commission's earlier participation in the launch of Arbitration Foundation of Southern Africa (AFSA) which is a partnership between the Southern African Development Community Lawyers Association (SADC-LA) and AFSA (which is a private dispute resolution authority).

AFSA is the leading international arbitration center in the Southern African Region. During this launch the Commission was informed that AFSA which is based in South Africa seeks to be the seat of arbitration in Africa and to encourage African countries to choose it as the preferred forum for dispute resolution instead of resorting to avenues outside Africa as has been the case.

National Competition Conference of Kuwait

In December 2022, the Commission participated in the National Competition Conference in Kuwait which was organised by the Economic Governance and Planning Section at the United Nations Economic Commission for Western Asia (UN-ESCWA) in collaboration with the Kuwaiti Competition Protection Agency.

The conference was organised to advance protecting, consolidating and promoting competition in Kuwait, following the promulgation of the new Competition Law No.72 of 2020.



From left to right, Dr Mahmoud Momtaz, Chairman of the Egyptian Competition Authority, Dr Willard Mwemba, Director and Chief Executive Officer of the Commission and Dr Abdullah Al-Owaisi, Executive Director of the Competition Protection Authority of Kuwait during the conference



International Bar Association (IBA) Competition Law in Africa Conference

The Commission participated in the IBA Competition Law in Africa Conference held in November 2022 in Lagos, Nigeria. The Commission participated in three panel discussions, namely: Fireside chat: Essentials in Preparing market and competition reports in merger notifications; Merger Control: Key trends; what to look out for and remedies; and Extraterritorial/concurrent jurisdiction. The Commission also made a presentation on “AfCFTA: Impact, gains and challenges” at the African Regional Forum Regulators capacity building workshop which was organised by the Federal Competition and Consumer Protection Commission of Nigeria.



In the Centre is Dr Willard Mwemba taking part in the discussions during the meeting

Seventh Annual Competition and Economic Regulations Week

The Commission co-hosted the 7th Annual Competition and Economic Regulation Week (ACER) Week 2022 in collaboration with the University of Johannesburg, Centre for Competition Regulations and Economic Development (CCRED) and the CFTC. The meetings were held in Salima Malawi and were attended by competition experts, regulators and legal practitioners from around Africa.



Seated from left to right is Justice Charlotte Wezi Malonda (Judge in the High Court of Malawi), Ms Ellen Ruparanganda (CCC, Board Chairperson), Honourable Mark Katsonga (Minister of Trade and Industry) and Dr Jerry Kana (CFTC Board Chairperson)

Joint COMESA/COMESA Institutions and the COMESA Competition Commission's programs

The Commission as one of the COMESA Institutions in accordance with Article 175 (1) of the COMESA Treaty is required to consider the objectives, policies, programmes and activities of the Common Market during implementation of the Regulations.

As provided under Article 175 (2) of the COMESA Treaty, the Commission and the COMESA Secretariat are expected to maintain a continuous working relationship which is meant to further the implementation of the COMESA Treaty and make cooperation arrangements to this effect. Additionally, pursuant to Article 175 (3) of the COMESA Treaty, the Commission is required to submit annual progress reports to the COMESA Council of Ministers on its activities. In view of this, in 2022, the Commission undertook the following activities under the framework of joint COMESA and COMESA Institutions programs and as part of its Corporate Governance responsibility to report to the Council:

Thematic Dialogue on Enhancing Women's Leadership and Political Participation in Fostering Trade and Economic Integration

Upon invitation of the COMESA Secretariat Gender and Social Affairs Division, the Commission participated in a Thematic Dialogue on Enhancing Women's Leadership and Political Participation in Fostering Trade and Economic Integration held in June 2022 in Chongwe, Zambia.

In the Dialogue, the Commission participated in the Session for African Continental Free Trade Area (AfCFTA) in the context of COMESA Regional Integration – What's in it for Women?

COMESA Twenty Sixth Meeting of Legal Affairs and 43rd Intergovernmental Committee Meeting

The Commission participated at the Twenty Sixth Meeting of The Committee on Legal Affairs and the Twenty Fifth Meeting of COMESA Ministers of Justice and Attorneys General held on 31 October to 3 November 2022; the 43rd Intergovernmental Committee meeting held on 29 - 30 November 2022; and the 43rd COMESA Council of Ministers meeting held on 1 December 2022 which considered and approved:

- the Appointment of three Commissioners of the Commission as follows:



Commissioner Vipin NAUGAH
from Mauritius



**Commissioner Adelbert Emmanuel
BOOTO NKAIMANA** from DRC



Commissioner Sam Kuloba WATASA
from Uganda

- the 2023 Budget of the Commission.

Tripartite Free Trade Area

COMESA is part of the Tripartite Free Trade Area (TFTA) which also comprises Member/Partner States of SADC, COMESA and the EAC. In the period under review, the Commission was part of the Tripartite Task Force (TTF) which is the Secretariat coordinating meetings of the Technical Working Groups on Competition Policy and the EAC. In the period under review, the Commission was part of the Tripartite Task Force (TTF) which is the Secretariat coordinating meetings of the Technical Working Groups on Competition Policy.

INSTITUTIONAL STRENGTHENING



To strengthen its operations, the Commission builds the capacity of both the Board of Commissioners and its staff. The Commission's ultimate success in implementing its mandate significantly relies on the recruitment, training, and retention of talented and competent staff. As such, in the period under review, the Commission undertook the following activities under institutional strengthening:

Organizational capacity for the Commission

In this regard, the Commission implemented the following activities aimed at enhancing its capacity:

- Review of Staff, Executive, Financial and Procurement Rules, Rules for the appointment of Board Members
- Amendments to the Staff Rules, Executive Management Staff Rules, and the Financial and Procurement Rules were proposed by the Finance and Administration Committee held in August 2022 and endorsed by the Board for onward transmission for approval and enactment through the COMESA Policy Organs. The said Rules are expected to be submitted to the COMESA Council of Ministers in 2023.

Training of Members of Staff on the Result Based Performance Appraisal System

Members of staff were trained on the result-based Performance Appraisal system of the Commission in March 2022 in Lilongwe, Malawi.

Staff attachments at the European Commission

Through its cooperation with the European Commission, two of the Commission's staff were attached to the European Commission for a three month period from October to December. This gesture was voluntarily extended by the European Commission to the COMESA Competition Commission in line with the excellent working relationship that the Commission has fostered with the European Commission over the years. The European Commission has further extended its support to the Commission by accepting an attachment for one more more staff member of the Commission in the first quarter of 2023.



Mr Oliver Guersent, Director General of the European Commission DG Comp with two officers of the Commission Ms Sunjida Bundhun and Mr Joseph Kaumba

ACER Week Training for Members of Staff

All member of staff of the Commission were trained during the seventh Annual Competition and Economic Regulation Week which was held in September 2022 in Malawi. The staff were trained in advanced economics, competition law and policy and economics of competition law.

Electronic Case Flow Management

The Commission started the procurement process for engaging a quality assurance firm to manage the project for development of an Electronic Case Management System and e-filing Portal of the Commission.

The Quality assurance firm is expected to commence in 2023 and assist the Commission in mapping its internal flow of information, analyse the systems and IT infrastructure needs, develop TORs for engaging the experts to develop the software/systems, assess their work and conduct any other functions incidentals for the entire project. Once completed, this is expected to greatly enhance the efficiency and effectiveness of the Commission's operations and make it easier for stakeholders to make e-filings and notifications.

Redesign of the Website

The Commission redesigned its website with the aim of making it for user-friendly and being able to respond to the needs of its stakeholders. It is expected that the redesigned website will make it easy for users to find publicly available information, stay up to date with the activities of the Commission and have easier access to the Commission as it will provide for links to among other things submit complaints to the Commission. The redesign of the website is expected to be completed by the first quarter of 2023.

PROSPECTS FOR THE FUTURE

In the coming year, the Commission will continue to enforce the Regulations with regards to mergers, restrictive business practices and consumer protection to ensure a level playing field for all businesses in the Common Market and contribute to the regional integration agenda by facilitating trade in the Common Market.

Of particular interest to the Commission is digital markets and how the regulations will be enforced on online platforms following the increased use of such platforms. It is in this regard, the Commission intends to undertake a market inquiry in digital markets in 2023 to understand the markets, conditions of competition and how the Regulations will be applied to businesses operating on such platforms.

The Commission is also aware that the Regulations first came into force in 2004 and due to the passage in time, it is important that they are reviewed to ensure that they are in line with the changes in the market dynamics or ways of doing business. This also presents an opportunity for the Commission to amend what has not been working well for the benefit of promoting competition in the Common Market. It is in this regard that the Commission intends to finalise the amendments to the Regulations in the coming year after consultations with the relevant stakeholders.

In the year 2023, the Commission is expected to heighten further, the enforcement against restrictive business practices. The Commission is mindful that such practices are a great enemy to the regional integration agenda, curtail innovation and indeed dwarf economic growth and development. The Commission will therefore enhance its market surveillance and work closely with the national competition authorities, regional competition authorities and indeed all stakeholders to ensure that such practices are detected, investigated and prosecuted for the

benefit of the Common Market and beyond.

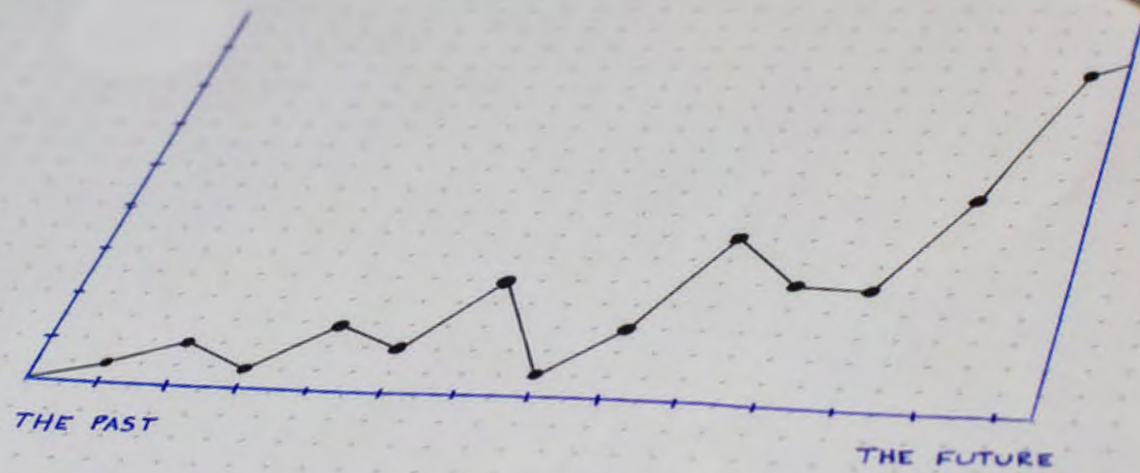
The Commission shall also continue enhancing its surveillance on consumer violations to ensure that businesses do not take advantage of vulnerable consumers and ultimately exacerbate poverty, the vice we all ultimately strive to eliminate in all that we are mandated to do. The Commission shall also continue with its research activities more especially with regard to unreasonably rising food inflation that are driving consumers into extreme poverty and ultimately threatening the fabric of the regional integration agenda.

The Commission has also been keenly following the developments at continental level with regards to the African Continental Free Trade Area (AfCFTA) with specific interest to matters relating to competition policy. The Commission is fully aware of the developments and looks forward to working closely with the AfCFTA Secretariat and institutions that will be formed in line with the Agreement Establishing the AfCFTA and the Protocols developed pursuant to the Agreement. The Commission is aware that as the only well-established Regional Competition Authority, it can offer valuable lessons to the establishment of systems and institutions at continental level.

The Commission is mindful that both the COMESA Competition Regulations and the AfCFTA Protocol on Competition are intended to ensure that markets are competitive, contribute to economic growth and innovation and ultimately realise the vision of the single market. It is in this regard that the Commission looks forward to working closely with the AfCFTA Secretariat to achieve these objectives for a better and thriving Africa that competes favourably with the rest of the world.

In conclusion, it is recalled that the Commission commenced its operations in January 2013. Therefore, in 2023, the Commission will be commemorating ten years of operations and achievements and taking stock of improvements to be made. The Commission looks forward to your attendance at this event and for your guidance on where the Commission can do better in the next phase of the ten year journey.

The Commission hopes you have enjoyed reading the 2022 annual report. We also implore you to give us guidance on enforcement and other operational areas where there is need improvement in order to serve the Common Market better. The Commission practices an open door policy and are always glad to welcome engagements to discuss issues that will enhance the enforcement of competition and consumer law in the Common Market. The year 2022 was very exciting for and we look forward to even a more exciting 2023. Stay tuned!



AUDITED FINANCIAL STATEMENTS



2022 Director and Chief Executive Officer's Commentary

1. The COMESA Competition Commission ("the Commission") is a regional body established under Article 6 of the COMESA Competition Regulations. The COMESA Competition Commission Financial Rules in Rule 6 (2) designates the Director and Chief Executive Officer as the Chief Accounting Officer of the Commission responsible to the Council through the Board for the proper administration of the funds of the Commission.
2. The Commission is implementing the External Audit framework as approved by the Council in 2016 in Madagascar where Auditors General undertakes the Audit of the Commission from Member States through the COMESA Board of External Auditors (COBEA). COBEA Audit Instruments including the Audit Charter and Audit Manuals were developed and approved by Council in 2020 to ensure that audits are undertaken in line with international best practices.
3. COBEA conducted the annual external audit for 2022 and issued an unqualified audit opinion and the related management letter on 7 July 2023, which will be presented to the Audit and Risk Committee this year.
4. I have the pleasure of presenting a summary of the Audited Financial Statements of the Commission for the financial year ended 31 December 2022. The summary of the Audited Financial Statements comprises the Statement of financial position, the Statement of income and expenditure, the Statement of changes in accumulated funds and the Statement of cash flows.
5. These Audited Financial Statements combine, the results of activities carried out with funding from both Member States and the Commission's extra-budgetary resources as provided for in the Regulations and Rules. The Audited Financial Statements provide a complete overview of the finances of the Commission for the financial year ended 31 December 2022. This includes information on the financial

position of the Commission, its operations during the year, movements in the accumulated funds and reserves, its cash flows as well as the financial commitments and obligations of the Commission.

6. One of the key highlights of 2022 Audited Financial Statements is the strong financial position which is backed by the very liquid asset of cash. The Commission has a strong cash position of **USD 23.3** million which is backed by accumulated funds and reserves of **USD 19.7** million. The asset class of Property, Plant and Equipment increased from **USD 152,385 to USD 621,950** mainly as a result of the capital grant of land that was received from the Government of Malawi amounting to **USD 337,486**. It should be noted that the Commission managed to lower its liabilities from **USD 6.7** million to **USD 6.4** million while increasing its cash from **USD 21.9 million to USD 23.3** million.
7. The operations of the Commission resulted in a surplus of **USD 2.2** million for the year ended 31 December 2022. Of significant mention are the increase in merger fees and the increase in interest income from the investments.

Merger fees increase from **USD 3.1** million in 2021 to **USD 4.4** million in 2022. There was also a capital grant of land from the Government of Malawi valued at USD 337,486 which is part of the revenue for the year. Interest income increased from **USD 474,544** in 2021 to **USD 621,586** in 2022.

2022 Audited Financial Statements

Statement of Financial position as at 31 December 2022

	2022	2021
Assets		
Equipment	621,950	152,385
Amounts due from related parties	2,173,202	2,184,069
Total non-current assets	2,795,152	2,336,454
Receivables	4,626	3,639
Cash and cash equivalents	23,350,638	21,919,390
Total current assets	23,355,264	21,923,029
Total assets	26,150,416	24,259,483
Accumulated funds		
Accumulated funds	19,647,292	17,457,26
Capital reserves	47,068	38,204
Revaluation reserves	3,145	5,646
	19,697,505	17,501,111
Liabilities		
Amounts due to related parties	5,312	16,385
Payables	5,848,747	6,221,068
Deferred income	598,812	520,919
	6,452,911	6,758,372
Total accumulated funds and liabilities	26,150,416	24,259,483

2022 Audited Financial Statements

Statement of Income and Expenditure for the year ended 31 December 2022

	2022	2021
Income	5,648,173	3,984,036
Total income	5,648,173	3,984,036
Expenditure		
Programme expenses	(1,488,622)	(636,396)
Staff costs	(2,219,887)	(1,596,845)
Administrative expenses	(87,462)	(226,191)
Operational expenses	(74,174)	(95,397)
Profit/(loss) on disposal	288	(1,568)
Depreciation	(74,156)	(42,051)
Total expenditure	(3,944,010)	(2,598,448)
Net finance income	621,586	474,544
Surplus for the year	2,187,530	1,860,132

2022 Audited Financial Statements

*Statement of Changes in Accumulated Funds
for the year ended 31 December 2022*

	Capital reserves	Revaluation reserves	Accumulated funds	Total
Balance as 1 January 2021	20,802	88,31	15,593,944	15,593,944
Surplus for the year	-	-	1,860,132	1,860,132
Amortisation	(5,905)	-	-	(5,905)
Amortisation on revaluation reserve	-	3,185	3,185	3,185
Capital grants received	23,307	-	-	23,307
Balance at 31 December 2021	38,204	5,646	17,457,261	17,504,952
Balance as 1 January 2022	38,204	5,646	17,457,261	2,187,530
Surplus for the year	-	-	2,187,530	-
Amortisation	-	-	(7,097)	-
Amortisation on revaluation reserve	-	(2,501)	2,501	-
Capital grants received	15,961	-	-	15,961
Balance at 31 December 2022	47,068	3,145	19,647,292	19,697,505

Accumulated funds

Accumulated funds are the brought forward recognised income, net of expenses of the Commission, plus current period surplus.

Capital reserves

Capital reserves represent the value of assets acquired by the Commission. Capital grants are deferred and credited to the income and expenditure in equal annual instalments over the useful life of the related assets.

Revaluation reserves

The revaluation reserves arises from the revaluation of motor vehicles in March 2020 and represents the excess of the revalued amount over the carrying value of the motor vehicles at the date of revaluation. The revaluation was performed by an independent valuer.



2022 Audited Financial Statements

Statement of Cash Flows for the year ended 31 December 2022

	2022	2021
Cash flows from operating activities		
Surplus for the year	2,187,530	1,860,132
Adjustments:		
Depreciation	74,156	42,051
	(7,097)	(5,905)
Amortisation of capital grants	(321,525)	23,307
Capital grants received	(288)	1,568
Disposal of assets	(621,586)	(474,544)
Interest income		
	1,311,190	1,446,609
Changes in:		
Amounts due from related party	10,867	10,867
	(11,073)	(6,884)
Amounts due to related party	(987)	(495)
Payables	(372,281)	658,883
Deferred income	77,893	35,805
	(295,581)	676,442
Net cash generated from operating activities	1,015,609	2,123,051
Cash flows from investing activities	(206,235)	-
Purchase of equipment		(78,624)
Proceeds from sale of assets	288	
Interest received on bank and other deposits	621,586	474,544
Net cash used by investing activities	415,639	395,919
Net increase in cash and cash equivalents	1,431,248	2,518,970
Cash and cash equivalents at beginning of the year	21,919,390	19,400,420
Cash and cash equivalents at end of the year	23,350,638	21,919,390





**© COMESA Competition Commission
5th Floor, Kang'ombe House,
PO Box 30742
Lilongwe 3, Malawi**



@CCC_COMESA



COMESA Competition Commission



Tel: +265 01 772466;



compcom@comesacompetition.org



www.comesacompetition.org