



MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)
COMPETITION COMMISSION**

AND

THE EAST AFRICAN COMMUNITY (EAC) COMPETITION AUTHORITY

JUNE 2025

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MEMORANDUM OF UNDERSTANDING BETWEEN THE COMESA COMPETITION COMMISSION AND THE EAST AFRICAN COMMUNITY (EAC) COMPETITION AUTHORITY REGARDING COOPERATION IN THE ENFORCEMENT OF THEIR COMPETITION AND CONSUMER PROTECTION LAWS

- I. **COMESA Competition Commission**, a Regional Competition and Consumer Protection Agency established by the COMESA Competition Regulations which were issued in the *COMESA Official Gazette Vol. 9 No. 2 as Decision No. 43 of Notice No 2 of 2004* and whose address of service is care of Kang'ombe House, 5th Floor, P.O. Box 30742 Lilongwe 3, Malawi, on one hand; (hereinafter referred to as "the Commission").¹

AND

- II. **East African Community Competition Authority**, an institution of the East African Community established by the Treaty for the Establishment of the East African Community and East African Community Competition Act, 2006 and whose address of service is care of EAC Close, Afrika Mashariki Road, P.O. Box 1096 Arusha, Tanzania on the other hand; (hereinafter referred to as "the Authority").²
- III. The Commission and the Authority are hereinafter referred to as the Parties.

PREAMBLE

NOTING that the Parties share the view that sound and effective enforcement of competition and consumer protection laws is a matter of importance to the efficient operation of their respective markets and trade between them;

ACKNOWLEDGING their commitment to enhancing sound and effective enforcement of their competition and consumer protection laws through cooperation and, in appropriate cases, coordination between them in the enforcement of their laws;

NOTING that coordination of their enforcement activities may, in certain cases, result in a more effective resolution of the Parties' respective competition and consumer protection concerns than would be attained through independent enforcement action by the Parties;

ACKNOWLEDGING the Parties' commitment to giving careful consideration to each other's important interests in the enforcement of their competition and consumer protection laws;

¹ The COMESA comprises of twenty-one (21) Member States namely: Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Federal Republic of Somalia, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

² The EAC comprises of eight (8) Partner States namely: Burundi, Democratic Republic of the Congo, Federal Republic of Somalia, Kenya, Rwanda, South Sudan, Uganda and United Republic of Tanzania.

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HAVING REGARD TO:

The provisions of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA), wherein Member States agreed to prohibit any practice that negates free and liberalized trade and to that effect, to prohibit any agreement between undertakings or concerted practice which has its objective or effect the prevention, restriction or distortion of competition within the common market and under which the COMESA Competition Regulations (the "Regulations") are promulgated.

The provisions of Article 6 of the Regulations establishing the Commission as a body corporate with the functions of regulating, monitoring, and preventing anti- competitive business practices and unfair trading practices which may have an appreciable effect on trade between Member States and may restrict competition in the Common Market;

The provisions of Article 7 and 8 of the Regulations which empower the Commission to, among others, monitor and investigate anti-competitive practices of undertakings within the Common Market and mediate disputes between Member States concerning anti- competitive conduct; enter into such arrangements as will enhance its ability to monitor and investigate the impact of conduct outside the Common Market but which nevertheless has, or may have, an impact on trade between Member States; and co-operate with other agencies that may be established or recognized by COMESA to monitor and regulate any specific sector.

The provisions of Article 9 (2), 75 (1) (i) and 76 of the Treaty for the Establishment of the East African Community (Treaty) under which the East African Community Customs Union and East African Community Common Market are promulgated, the accompanying East African Community Competition Act, 2006 (the Act) and East African Community Competition Regulations, 2010.

Article 130 (2) of the Treaty which provides that the Partner States reiterate their desire for a wider unity of Africa and regard the Community as a step towards the achievement of the objectives of the Treaty Establishing the African Economic Community.

The provision of Article 130 (3) of the Treaty which provides that the Community shall foster co-operative arrangements with other regional and international organisations whose activities have a bearing on the objectives of the Community with a view to contributing towards the achievement of the objectives of the Community.

Article 21 (1) of the Protocol on the establishment of the East African Customs Union and Article 33 (1) of the Protocol on the establishment of the East African Community Common Market which are to the effect that Partner States shall prohibit any practice that adversely affects free trade including any agreement, undertaking or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Community.



Section 37 (1) of the Act which provides for the establishment of the East African Community Competition Authority.

Section 42 (1) of the Act which provides that the Authority shall have all powers, express and implied necessary for and conducive to the implementation and enforcement of the East African Community Competition Law. In the performance of its functions under this Act, the Authority has powers *inter alia* to co-operate with regional and international organizations and with foreign competition authorities.

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that the Parties are regional competition authorities whose core mandate is to regulate competition and protect consumers in their respective regions, including in those Member/Partner States which have overlapping membership.³

CONSIDERING

The importance of coordination and cooperation by regional competition authorities in the Tripartite Free Trade Area and African Continental Free Trade Area Agreements.

The desirability of regional competition authorities to cooperate in the implementation of their respective competition and consumer legislations in order to eliminate the harmful effects of anti-competitive and unfair trade business practices.

That closer cooperation between the regional competition authorities, regarding the coordination of their activities, should be encouraged.

HAVE AGREED AS FOLLOWS:

ARTICLE 1: PURPOSE

1. The purpose of this Memorandum of Understanding (MOU) is to promote cooperation and coordination between the Parties in order to improve and strengthen the relationship between the Parties by fostering cooperation in enforcement of their competition and consumer protection policies and laws based on the principles of equality and mutual benefit. The Parties recognize that cooperation will lessen the impact of jurisdictional conflict and differences in the enforcement of their respective laws.
2. The Parties will promote and strengthen cooperation in the implementation of their competition and consumer protection policies and laws.

³ Burundi, Democratic Republic of the Congo, Federal Republic of Somalia, Kenya, Rwanda and Uganda are members of both COMESA and EAC.

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ARTICLE 2: SCOPE OF COOPERATION

1. Cooperation between the Parties will be subject to the respective laws governing the conduct of the Parties and will include exchange of non-confidential information, ideas and views regarding:
 - a) developments in competition and consumer protection policy and regulation;
 - b) market research conducted in identified sectors;
 - c) investigations of competition and consumer law violations and enforcement; and
 - d) review of cross border mergers.
2. The development and use of legal, technical tools, and best practices by the Parties to achieve better outcomes or efficiencies in respect of the fulfillment of each Party's mandate in terms of the applicable competition and consumer protection laws.
3. With regard to cross-border mergers concerning both Parties, the Parties will coordinate their activities to the extent possible and consistent with their respective laws and responsibilities. Cooperation in reviewing cross-border mergers may increase the efficiency of the respective investigations and increase the overall transparency of the merger review process.
4. With regard to similar or the same anti - competitive practices and consumer violations investigated or prosecuted by both Parties, the Parties will cooperate and coordinate investigations where this is possible.
5. The Parties will pursue joint technical assistance and capacity building programmes.
6. Jointly facilitate sensitization of stakeholders' skills development in terms of establishing training programs, conferences/workshops, symposiums, study visits and exchange of staff programmes.

ARTICLE 3: AREAS OF COOPERATION

1. The main instruments of cooperation shall, subject to mutual agreement of the Parties and availability of funds, include the following:
 - a) exchanging information and views on significant developments in the competition and consumer protection policies, laws, rules and enforcement thereof in their respective Regional Economic Community;

- b) organizing and participating in conferences, workshops, seminars and other capacity building initiatives on competition and consumer protection law and policy and enforcement thereof;
- c) participating in joint studies and research on issues of common interest, including the assessment of the impact of their interventions in markets;
- d) cooperating and coordinating in enforcement of the laws specifically investigations on mergers, anti-competitive business practices, consumer violations and the prosecution of matters of common interest;
- e) exchanging information on investigations on mergers, anti-competitive business practices, consumer violations and the prosecution of matters of common interest; to the fullest extent possible in terms of their respective laws; and
- f) to the extent possible, harmonizing rules and procedures relating to mergers, anti-competitive business practices, consumer violations and market inquiries, among others.

ARTICLE 4: CONSULTATION

1. Either Party may request consultations regarding any matter relating to this MOU. The request for consultations shall indicate the reasons for the request and whether any procedural time limits or other constraints require that consultations be expedited. Each Party undertakes to consult promptly when so requested with the view to reaching a conclusion that is consistent with the principles set forth in this MOU.
2. During consultations under paragraph 1, each Party shall carefully consider the representations of the other Party in light of the principles set out in this MOU and shall explain to the other Party the specific results of its application of those principles to the matter under discussion.
3. A Party shall as soon as is practical, inform the other Party of any amendment made to its competition and consumer protection laws as well as any change in its enforcement practice that may affect the operation of this MOU. Upon request of either Party, the Parties shall hold consultations in order to assess the specific implications of such amendments or changes, and in particular to determine whether it should be amended pursuant to Article 15 of this MOU.

ARTICLE 5: NOTIFICATION AND HANDLING OF OVERLAPPING JURISDICTION

1. Each Party may notify the other Party in writing with respect to its enforcement activities that may affect the important interests of the other Party particularly in the cases of overlapping jurisdiction.

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2. Enforcement activities that give rise to notifiable circumstances include those that:
 - a) involve mergers, anti-competitive practices and consumer violations carried out wholly or in part in the territory of the other Party;
 - b) involve conduct believed to have been required encouraged or approved by the other Party or one of its Member/Partner States;
 - c) involve the imposition of, or application for, remedies by a competition authority that would require or prohibit conduct in the territory of the other Party;
 - d) involve one of the Parties seeking information located in the territory of the other party; or
 - e) Any other activity relevant to enforcement activities of the other Party.
3. In light of the above overlapping jurisdiction, the parties aspire to review their relevant legal frameworks in order to facilitate cooperation and ensure harmonization of their respective enforcement activities to address challenges of concurrent jurisdiction.
4. Each Party to notify the other Party of any significant information that comes to its attention regarding mergers that it believes is relevant to, or may warrant, enforcement activity by the other Party.
5. Each Party shall also notify the other Party whenever it intervenes or otherwise participates in a regulatory or judicial proceeding, if the issues addressed in the intervention or participation may affect the important interests of the other Party.
6. Notifications shall be made as soon as possible and shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity on its own important interests. Notifications shall include the names and addresses of the natural and legal persons involved, the nature of the activities under investigation and the legal provisions concerned.
7. The Parties may develop procedures, guidelines, notices or any other such instruments, as may be necessary, for the better carrying out of the provisions of this Article.

ARTICLE 6: COORDINATION OF ENFORCEMENT ACTIVITIES

1. The Parties may render assistance to each other in their enforcement activities to the extent compatible with their respective competition laws and their respective important interests.

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2. In cases where both Parties have an interest in pursuing enforcement activities with regard to related situations, they may agree that it is in their mutual interest to coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, either in whole or in part, each Party shall take into account the following factors among others:
 - a) effect of such coordination on the ability of each Party to achieve the objectives of its enforcement activities;
 - b) the relative ability of each Party to obtain information necessary to conduct the enforcement activities;
 - c) the extent to which either Party can secure effective preliminary or permanent relief against the anticompetitive activities involved;
 - d) the opportunity to make more efficient use of resources; and
 - e) the possible reduction of cost to persons subject to enforcement activities.
3. The Parties shall cooperate in the enforcement of the competition and consumer protection laws and share information which will facilitate effective implementation of the respective laws.
4. The Parties shall, in this regard, assist each other in the enforcement of the competition and consumer protection laws through:
 - a) assisting the other Party, upon request, in locating and securing evidence and voluntary compliance with requests for information from undertakings or natural persons within the respective jurisdiction;
 - b) assisting the requesting Party with such information within the other Party's possession as the requesting Party may specify as relevant to the enforcement of the law;
 - c) assisting the Party with any information that comes to the attention of the other Party about anti-competitive activities or unfair trade practices that may be relevant to or may warrant enforcement activity of the beneficiary Party.
5. a) The Parties may coordinate their enforcement activities by agreeing on the timing of those activities in a particular matter, while respecting fully their own laws and important interests. Such coordination may, as agreed by the Parties, result in enforcement action by one or both Parties, as is best suited to attain their objectives.

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- b) When carrying out coordinated enforcement activity, each Party shall seek to maximize the likelihood that the other Party's enforcement objectives will also be achieved.
 - c) Either Party may at any time notify the other Party that it intends to limit or terminate the coordination and pursue its enforcement activities independently and subject to the other provisions of this MOU.
6. If a Party has reason to believe that anti-competitive practices or unfair trade practices carried out in the territory of the other Party are adversely affecting, its interests, and it falls exclusively within the jurisdiction of the other Party, it may request that the other Party to initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the important interests of the requesting Party and shall include an offer of such further information and other cooperation as the requesting Party is able to provide.
7. Upon receipt of a notification, the notified Party shall advise the notifying Party of its decision. If enforcement activities are initiated, the notified Party shall advise the notifying Party of their outcome and, to the extent possible, of interim developments.
8. Nothing in this Article limits the discretion of the notified Party under its competition and consumer protection laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the notified anti-competitive activities or unfair trade practices or precludes the notifying Party from undertaking enforcement activities with respect to such activities.

ARTICLE 7: EXCHANGE OF INFORMATION

- 1. The transfer of information between the Parties will be made through designated contact persons or on the occasion of meetings attended by the representatives of the Parties;
- 2. Any information exchanges between the Parties will be made subject to the respective laws governing the conduct of the Parties and in particular the provisions protecting confidential information and business secrets of firms or individuals under their relevant competition and consumer protection laws of the Parties.
- 3. Subject to complying with any relevant legal requirements and unless otherwise agreed by the other Party in advance, each Party is obliged to keep the information provided by the other Party according to this MOU confidential.

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ARTICLE 8: AVOIDANCE OF CONFLICTS

1. The Parties agree that it is in their common interest to minimize or avoid any potentially adverse effects of their enforcement activities in as far as the application of their respective competition and consumer protection laws are concerned.
2. Any divergent views arising out of the enforcement of the respective competition laws will be addressed in a timely and practicable manner as circumstances may permit.

ARTICLE 9: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

1. The Parties shall pursue technical assistance and capacity building programs through integrated strategies that incorporate economic, social, cultural, environmental and institutional elements that are unique to each Party. In this context and within the framework of development policies and reforms pursued by the Parties; the Parties' cooperation framework and orientation shall take into account the different levels of development as well as the economic needs of each Party.
2. The technical assistance and capacity building programs shall pay systematic attention to institutional aspects and in this context shall support the efforts of either Party to develop and strengthen structures, institutions and procedures that help to enhance the effective enforcement of the competition and consumer protection laws and policies in their respective territories. In this context, the Parties shall:
 - a) mobilize resources for joint capacity building aimed at assisting the Parties in the establishment and/or strengthening of the respective competition and consumer protection laws and enforcement agencies.
 - b) jointly facilitate and develop competition and consumer protection advocacy programmes involving the sensitization of policy makers, parliamentarians, the judiciary, the business community, and the general public about the role of competition and consumer laws and policies; and
 - c) jointly facilitate the establishment of a mechanism to enable the Parties to take the necessary steps to adopt, strengthen and implement the necessary competition and consumer protection laws in their respective territories.

ARTICLE 10 : COMMUNICATION UNDER THIS MOU

1. Communications under this MOU shall be made in English or any other language as agreed upon by the Parties.
2. Communications under this MOU shall be carried out in writing and by direct communication among the Parties.

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3. In order to meet the objectives of the MOU, each Party shall designate contact persons.

ARTICLE 11: CONFIDENTIALITY AND USE OF INFORMATION

1. Notwithstanding any other provision of this MOU, neither Party is required to disclose information to the other Party where such disclosure is prohibited by the laws of the Party possessing the information or would be incompatible with the important interests of that Party.
2. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible, maintain the confidentiality of any information communicated to it in confidence by the other Party under this MOU. Each Party shall oppose, to the fullest extent possible, any application by a third party for disclosure of such information.
3. A Party, after notifying the other Party, will inform the competent authorities of the Member/Partner State or Member/Partner States whose interests are affected by the notifications sent to it by the other Party. A Party, after notice from the other Party, will inform the competent authorities of the Member / Partner States whose interests are affected by the notifications sent to it by the other Party. However, a Party will respect the other Party's request not to disclose the information which it provides when necessary to ensure confidentiality.
4. Before taking any action, which may result in a legal obligation to make available to a third party information provided in confidence under this MOU, the Parties shall consult one another and give due consideration to their respective interests.
5. Information received by a Party under this MOU shall only be used for the purpose of this MOU.
6. A Party may require that information furnished pursuant to this MOU be used subject to the terms and conditions it may specify. The receiving Party shall not use such information in a manner contrary to such terms and conditions without the prior consent of the other Party.

ARTICLE 12: LEGAL OBLIGATIONS

1. The MOU is not legally binding, and the Parties have no intention of creating any legal commitments. It will therefore not infringe and/or affect the rights and obligations of the Parties relating to other bilateral or international agreements which they are signatories.
2. Nothing in this MOU will limit the discretion of the respective Parties to decide whether or not to undertake enforcement activities or to make any decision.

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3. Nothing in this MOU will require any Party to take any actions, or to refrain from acting, in a manner which would be inconsistent with the existing laws of the Regional Economic Community of the respective Parties, nor will anything in this Memorandum require any changes to those laws.

ARTICLE 13: IMPLEMENTATION OF THE MOU

1. The Parties will develop the agenda of events, dates, venues and any other matter by common agreement, and if necessary, develop a Work Plan for specific cooperation activities under the MOU and update such a Work Plan as necessary.
2. The Parties may develop procedures, guidelines, notices or any other such instruments, as may be necessary, for the better carrying out of the provisions of this MOU.
3. Each Party will bear its own expenses with regard to the implementation of this MOU and any activities arising from it unless otherwise agreed upon by the Parties.

ARTICLE 14: DISPUTE SETTLEMENT

The Parties shall settle any dispute arising from the interpretation or application of this MOU amicably through consultation or negotiation amongst themselves.

ARTICLE 15: REVIEW AND AMENDMENT

The Parties shall, after prior consultations and agreement, review or amend this MOU in writing with a view to assessing their cooperative activities, identifying additional areas in which they could usefully cooperate and identifying any other ways in which the MOU could be improved.

ARTICLE 16: ENTRY INTO FORCE AND TERMINATION

1. This MOU shall enter into force upon signature by the Parties and will remain in force unless terminated by either Party.
2. Either Party may terminate this MOU by giving the other Party 60 days written notice of intention to terminate this MOU.

IN WITNESS WHEREOF, the undersigned, being duly authorized by the Parties, have signed this MOU.

DONE at Nairobi, Kenya in two original text this.....^{10th}.....day of June 2025

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Signed by the duly authorized representative of the COMESA COMPETITION COMMISSION

Name: Willard Mwebwa

Signature: [Signature]

Designation: Chief Executive Officer

In the presence of Witness

Name: Alexa Ukwu

Signature: [Signature]

Designation: Manager Legal Affairs

Signed by the duly authorized representative of the EAC COMPETITION AUTHORITY

Name: Stella N. Onyango

Signature: [Signature]

Designation: Acting Registrar

In the presence of Witness

Name: Dr. Anthony L. Katumbi

Signature: [Signature]

Designation: Counsel to Community (EAC)