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Crossing the competition rubicon: Internationalising African antitrust through COMESA

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Crossing the competition rubicon: Internationalising African antitrust through COMESA

Abstract

Antitrust publications were abuzz with "COMESA" in recent months. Yet, neither the decades-old pan-African organisation nor its Competition Regulations are novel. What's new is that COMESA's Competition Commission has finally -- and suddenly -- opened its doors and begun operations, already having reviewed two merger filings. This paper examines the economic advantages of COMESA for the region, analyses its role as a multi-national enforcement body, and identifies the pitfalls the agency will face in its inaugural year.

Les publications en droit de la concurrence étaient en effervescence avec « COMESA » ces derniers mois. Pourtant ni l'organisation pan-africaine, ni ses règlements concurrence ne sont nouveaux. Ce qu'il y a de nouveau, c'est que la Commission de la Concurrence du COMESA a finalement -- et tout à coup -- ouvert ses portes et a commencé ses opérations, ayant déjà examiné deux dossiers de fusion. Cet article examine les avantages économiques qu'offre COMESA pour la région, il analyse son rôle en tant qu'organe d'exécution multinational, et il identifie les pièges dont devra faire face la CCC durant sa première année.

1. The Common Market for Eastern and Southern Africa has recently grabbed international legal headlines. Its acronymic title, COMESA, now firmly features in the awareness of most competition lawyers. The organisation is not new, however, nor are its Competition Rules and Regulations. The multi-national body itself dates back at least twenty years, and the Regulations were finalised and (technically) entered into force in 2004.

2. Why all the ruckus in 2013 then? The reason is straight-forward: Antitrust law does not self-execute. It needs an enforcer, public or private. That enforcement agency now exists.

I. *Alea iacta est*: A new supranational competition authority is born

3. For the past decade of the Competition Regulations' theoretical existence, they dwelled in the nether region of unenforced laws – their Article 18 prohibition on abuse of dominance effectively had equal legal footing as the rule against a pedestrian jaywalking at a red stoplight: with no policeman in sight, either goes unpunished.

4. COMESA crossed the "missing policeman" rubicon on 14 January 2013, when the Competition Commission ("CCC") saw the light of day. With the advent of its operation – as well as that of the supervisory body, its Board of Commissioners – also comes the enforcement of the full spectrum of competition legislation embodied in the Regulations (merger control, unilateral conduct, cartels, and so on). Its impact will be felt by economic actors across an area spanning 19 member states, 12 million km^2 and a population of over 389 million.[1]

5. The basics of the COMESA Regulations and the CCC's powers are already well-documented elsewhere and do not merit repetition here. Instead, this paper is focussed on two broader policy points: (1) the law's potential beneficial impact on the region as a whole; and (2) the pitfalls and prospects of successful execution by the CCC. As the CCC has seemingly (and with good reason) done, we emphasise first and foremost the new merger-control regime, rather than other vertical and horizontal restrictive practices that are also, in principle, within the agency's enforcement powers but remain entirely untested for now.

6. The new competition regime has not emerged without escaping criticism in the press and in law firms' client alerts. Certain aspects of the feedback are particularly noteworthy, as they may have a fatal impact on the merger-control regime and indeed could render it unworkable in practice. The two key reproaches levied are (1) the "zero threshold" for mergers to be notified, and (2) that a two-party transaction must be notified even though one of the firms has no nexus to the COMESA market at all. In effect, were the COMESA merger provisions taken literally, "all"

1 Even when compared to the worldwide GDP leader and key historical role model of multi-national competition-law jurisdictions – the European Union – these figures are impressive for a comparatively young African agglomeration of economies. (By comparison, the EU has 27 member states, a population of 501 million, and a GDP of $16 trillion.)

transactions falling within the ambit of a notifiable merger, regardless of how small or how removed from the common market area, would be notifiable under penalty of 10% of the merging parties' turnover in the Common Market.[2]

7. The CCC has already indicated, however, that it will address these issues in its final Guidelines and, potentially, in revisions to the Regulations themselves. Its willingness to adapt – hopefully swiftly – is commendable. It must change its initial broad-brush notification approach to accommodate the reality that the purchase of a competing road-side lemonade stand by another juice vendor in Nairobi is simply not a competitive concern justifying the legal mandate for formal notification with a multi-national antitrust authority. Compliance with ICN Recommended Practices I.A and I.B is fundamental for a pragmatic solution and, not least, to forestall the facile spread of misconceptions about the CCC's perceived mission as well as, frankly, the danger of international ridicule.[3]

8. In addition to the criticism levelled against it by third-party observers, the CCC has also sustained an early blow from within, as there has been a jurisdictional tug-of-war between the CCC and Kenya (notably a COMESA member state). The fairly little-noticed matter involves the control of acquisition of shares, interest or assets among local firms in Kenya. Uncertainty as to who the responsible regulatory authority was for such intra-country dealmakers has resulted in the Kenyan Attorney General issuing an opinion giving the Competition Authority of Kenya (CAK) authority to act as the sole agency with the mandate to clear "local" mergers and acquisitions. It shields local firms from the COMESA regime as far as purely domestic transactions are concerned. The CCC's formal letter response to a contemporaneous blog posting by the authors on the dispute highlights the risk posed by vaguely worded filing requirements as far as "local" mergers are concerned: "[I]*t is our considered view that CAK has failed to comprehend the advice by the Attorney-General which … specifically states that CAK shall continue to exercise its jurisdiction on local mergers and acquisitions. It is our understanding* (…) [he] *has not referred to merger transactions with regional dimension. This is the correct position.*"[4]

9. Regardless of the outside criticism and internal jurisdictional skirmish, at least two mergers have already been notified to the CCC as of the writing of this article, and others are underway. By comparison to another "newborn" merger authority's performance – the Indian CCI, which was created in June 2011 – these numbers are arguably on the low end. The CCI saw a total of 51 and 62 merger filings in each of its first two years, respectively. At the CCC's current pace, it will likely not surpass a dozen notifications in its inaugural year, although we view the first four months since its inception as non-indicative of future filings and anticipate that the rate will increase significantly.

II. Measuring COMESA's success

10. To create a functioning, universally respected, supra-national competition authority *ex nihilo* is neither easy nor enviable, and to measure its success at only the half-year mark of its existence would be premature. Therefore, a perhaps more meaningful analysis of the short history of the CCC's performance should focus on other benchmarks than the insufficient merger statistics that are available as of now. We identify some cognisable waypoints below, which may guide future evaluation of the CCC's performance.

1. Best practices

11. The CCC's release of formal Guidelines – dealing with, *inter alia*, such expected topics as merger control and market definition, as well as uniquely region-focussed topics such as the public interest criterion of the COMESA Regulations – has provided welcome and early guidance to businesses and competition practitioners alike. What's more, the Guidelines' pre-release in draft form, and the CCC's concomitant request for public comment, conforms to international best practices for competition agencies and has allowed international commentators and global bodies (such as the American Bar Association) to provide valuable insight *ex ante*, before it is "too late" and enforcement blunders occur. It is too early to determine the extent to which the public comments will be taken into account and the Guidelines tweaked, however.

12. In addition, while simple in principle, it is hard to overstate the value inherent in clear, English-language agency documentation, made available on a professional, functioning, and well-designed web interface. The CCC offers all of the above, and fares well when compared to several of the more established competition agencies' public profiles (including the clarity, updated nature, and accessibility of their documentation), in contrast to MOFCOM or other more senior agencies elsewhere.

13. In sum, the CCC's pursuit of best practices from the get-go emphasises the overarching goal of "fairness" embedded in its basic charter, as well as its "*ongoing efforts to clarify and publish guidance about its enforcement policies and practices*."[5]

2. Organisational health

14. An enforcement agency is only as good as its enforcers, just as a law firm's real capital is human in nature, consisting of its attorneys. That said, there does exist a benefit of having an enforcement body with a significant history and consistency of practice, regardless of present leadership, which is: institutional memory and resulting predictability for

2 Article 24 of COMESA Competition Regulations 2004.

3 The "missing-nexus" and "zero-dollar" threshold problems have caused several antitrust experts – including private practitioners, EU Commission officials and US enforcement agency representatives – to scoff at even a passing mention of COMESA as a relevant jurisdiction to take into account when counselling clients on worldwide merger-notification obligations. The CCC must act with speed and determination to rectify these problems to maintain its bona fides vis-à-vis both its international sister agencies as well as private parties appearing before it.

4 Letter from COMESA Competition Commission, dated 22 March 2013 ("CCC March letter"), at § 14, available online at http://africanantitrust.com/2013/05/14.

5 CCC news release, COMESA Competition Commission Seeks Public Comments on its Draft Guidelines, available at: http://www.comesacompetition.org/latest.

the outside practitioner of the agency's enforcement actions and decisions. Here, this positive externality of having a long-lived authority with established practice is lacking.

15. The CCC is based in the administrative capital of Malawi, Lilongwe, and currently only fields eight staff members, which may be an issue if and when merger notifications increase. On the plus side, COMESA's anticipated multi-national staffing portends longevity, institutional memory, and the potential for a – conceivably constructive and beneficial – "revolving door" staffing policy between NCAs and the CCC. Yet, with only two mergers notified to date and in light of its infancy, we view these criticisms as less relevant.

3. Regional enforcement and cohesion

16. One of the professed goals of COMESA's CCC is to "*achieve uniformity of interpretation and application of competition law and policy*," not only as part of its own enforcement within the CCC's proper jurisdiction, but moreover "*within the common market*" as a whole.[6] In a region that has often lacked these features, such an approach is doubtless welcome. Based on the CCC's pronouncements,[7] the agency supports increased uniformity among member states' domestic competition enforcement, in addition to its own exclusive enforcement over matters with a COMESA dimension per Article 3 of the Regulations.

17. One of the historical motivations for a pan-African competition enforcer was the realisation of member states that "*with globalization, markets continued to extend beyond national boundaries and the national laws, and their enforcement institutions were no longer sufficient to deal with the new market problems of the region. To address these problems of enforcing multi-jurisdictional competition cases, a regional approach to the competition cases with regional coverage was found to be the solution*."[8]

18. Having a strong infrastructure in place has the potential to prevent pure competition policy and its application from descending into nationally politicised issues, as exemplified by anticompetitive government aid measures designed to prop up inefficient para-statal "domestic champion" enterprises.

4. Cost and time savings

19. The one-stop-shop concept which underlies the CCC's *raison d'être* brings with it potential efficiencies of scope and scale, and is, in principle, a sound one. Its prime exponent is arguably one of the most successful multi-national competition enforcers, namely the EU Commission. Its current competition commissioner called it one "*of the EU's success stories making sure that consumers benefit from products and services to choose from at competitive prices whilst allowing companies to get their mergers reviewed swiftly*."[9] Today, over 70% of pre-notification referrals seek one-stop-shop review by the EU Commission in lieu of individual national filings.

20. As for the CCC, its merger mandate is similar, i.e., to enhance the efficiency of notification (one in lieu of potentially eight) and the consistency of review (obtaining one single outcome rather than potentially divergent results in different member countries). Moreover, its promise is to lower parties' transaction costs: according to its own statement, the agency has already undertaken a "preliminary assessment" of the anticipated notification fees, concluding with the prediction that the cost of a COMESA filing will be "*much lower than that of the national competition authorities and this has resulted in the cost of doing business (notifying using the COMESA route) being reduced by about 43.4%*."[10]

21. Taking this initial assessment at face value would be premature, however. The CCC admits that it "*has not yet concluded any merger investigation for one to have a basis for any comparisons yet*."[11] Moreover, it is unclear from the CCC's quoted statement whether the entire cost of notifying (including counsel fees, avoidance of duplication before multiple NCAs, and other opportunity-cost savings) is being reduced or merely the filing fees.

22. One potential procedural avenue to ensure lower average fees would be to introduce the equivalent of "short-form" notifications for transactions with little to no competitive concerns or *nexi* to any COMESA member state. Assuming the truth of the CCC's assertion, however, it will be difficult for parties to squabble with expected cost savings that will slash their pre-merger legal expenditures by almost half.

23. Whether the CCC will have sufficient regulatory "bite" remains to be seen, as neither approval nor divestiture or prohibition decisions have been taken yet. It is noteworthy that the first parties to notify transactions to the CCC, however, have been highly reputable global electronics and pharmaceutical firms, respectively, represented by experienced competition counsel. Their decision to notify with the young and – at that moment still entirely untested – competition authority is, in our view, a vital sign of success for the CCC. Some observers at the EU in Brussels and at the OECD in Paris have called the high level of the pioneering notification a "*stroke of luck*" for the CCC, as the quality of the *Philips/Funai* deal will give pause to other foreign firms that may have otherwise chosen to ignore the COMESA regime. "Transaction No. 1" thus has the potential to provide the necessary initial bite to the virgin CCC's regulatory jaw.

6 Art. 1 of COMESA Competition Regulations, December 2004, available at http://www.comesacompetition.org/images/Documents/2012_gazette_vol_17_annex_12%20comesa%20competition%20%20regulations%20as%20at%20december%202004.pdf.

7 For instance, Art. 5 of the Regulations, and the CCC's mandate that national competition laws in the region "*should increasingly come into alignment*."

8 CCC March letter, at § 5.

9 J. Almunia, Commission Vice President and Competition Commissioner, Mergers: competition authorities agree best practices to handle cross-border mergers that do not benefit from EU one-stop shop review, 9 November 2011. See also J.J. Parisi, A Simple Guide to the EC Merger Regulation, January 2010 ("*The EC Merger Regulation (ECMR) was intended to provide a 'level playing field' in a 'one-stop shop' for the review of mergers with significant cross border effects*.").

10 CCC March letter, at § 17.

11 *Ibid.* at § 16.

5. Other externalities benefitting the common market and its participants

24. A functioning antitrust regime is beneficial to economic actors at all levels, from producers and importers down to the end user.[12] With COMESA's joinder of competition-law jurisdictions, that benefit accrues to the entire region, especially as only a minority of member states have an antitrust law at present, with varying levels of enforcement.[13]

25. When considering investments in Sub-Saharan Africa, one thinks of a single jurisdiction (for example, South Africa or Botswana). A functioning CCC will result in international investors considering COMESA instead of individual member states, promoting cross-border investments and thus enhancing COMESA's attractiveness and competitiveness within the region as a destination for foreign direct investment.

26. In this respect, the most important advantage realised by COMESA is, in principle, the elimination of multiple merger filings in various African jurisdictions in respect of a single transaction which results in a cross-border merger transaction. Accordingly, the COMESA one-stop-shop structure saves significant amounts of time and money, obviating the parties' need to examine and comply with each individual member jurisdiction's merger guidelines and regulations, not to speak of multiple filing fees for a single cross-border transaction.

27. The establishment of COMESA as a competition watchdog is largely welcomed in the region and appears to be on a promising international path, as well. Teething problems like thresholds, timing and jurisdictional reach are hopefully close to finalisation, which will provide greater clarity to merging parties. If the CCC and the Board manage the process of "righting the ship" well and in a timely fashion, we envisage that the COMESA competition regime will actually "enhance" the region's economic attractiveness for both foreign and local investors, and will promote rather than stifle cross-border transactions.

III. Righting the ship: Finishing the river crossing

28. Balancing its economic and legal benefits with the CCC regime's present shortcomings prompts the inevitable question what the implications are for future cross-border merger notifications. To realise its full potential of fostering regional growth, it is vital that the COMESA ship is righted urgently.

→ Merger thresholds need to be revised, if not outright introduced, as it is plainly non-sensical to have a zero-turnover threshold. The CCC itself appears to recognize this crucial deficiency, as it claims that: "*Small companies that fall below a given threshold will not need to undergo the authorisation process*."[14] Properly-scaled thresholds, i.e., thresholds that are appropriate for the region's economy, will also permit the CCC to ensure an efficient allocation of enforcement resources, avoiding the risk of being flooded by *de minimis* merger-control filings that would otherwise require review.

→ Article 23(3) of the Regulations implies that transactions would be notifiable to the Commission even if only one of the merging parties operates in two COMESA Member States and the other merging party does not operate in "any" COMESA Member State. This is also emphasized in the Guidelines on Merger Assessment, which suggest that a merger is notifiable even if only one of the merging parties has activities in at least two COMESA Member States and the other party has none. This would mean that a merger must be notified, or is otherwise subject to COMESA scrutiny, even if there is no nexus between one of the merging firms and the Common Market. If this interpretation is indeed maintained, we believe that it will place an undue burden on potential merger parties and undermine one of the crucial objectives of any merger regime: to gain international acceptance.

29. Absent swift rectification, these concerns may render the COMESA Competition regime unworkable. At best, they will merely deter parties from making a notification (hoping for lack of enforcement). Worse, these regulatory uncertainties may cause undertakings to abandon potential transactions entirely.

30. Addressing the issues identified above is imperative to ensuring the CCC's viability as a recognised international competition authority. In addition, we believe that the agency faces other – perhaps less serious, yet nonetheless important – obstacles on the final leg of its proverbial river crossing:

→ COMESA's express inclusion of so-called "para-statals" (i.e., fully or partial government-owned enterprises) within the penumbra of its jurisdiction under Article 3 is commendable and indeed important, given the comparative prevalence of such enterprises in the region and the risk of abuse inherent in their transformation into privatised businesses. The CCC must be careful, however, not to be side-lined by the member states' governments, as the Regulations' prior-exemption exception of Article 3(2) presents a potentially appetising jurisdictional loophole for dominant para-statals being shielded from review by the CCC.

→ The Guidelines' indirect reference to EU rules poses a threat of commingling divergent standards and interpretive assessments thereof, e.g., applying guidance on the SIEC standard to an SLC regime.

12 The European Commission's 2012 report on competition policy showed that without an effective European competition policy, the internal market cannot deliver its full economic potential. The COMESA Regulations' Preamble notably posits the tripartite goals of "*economic growth, trade liberalisation and economic efficiency*" as drivers for the regional antitrust regime.

13 Egypt, Kenya, Malawi, Mauritius, Seychelles, Swaziland, Zambia and Zimbabwe.

14 COMESA CCC Frequently Asked Questions.

→ The trigger date for notification is also not clear. Article 24(1) requires notification within 30 days of a "decision to merge." The Guidelines indicate that a decision to merge is "*construed when there is established a concurrence of wills between the merging parties in the pursuit of a merger objective*." Neither the commercial nor the legal meaning of this phrase is entirely clear and will make it difficult for companies to determine when to notify a transaction, resulting in the risk of facing penalties for late filing. Clarification of all relevant "notification triggers" is therefore highly desirable from the perspective of affected undertakings.

→ While the CCC's previously identified "*preliminary assessment*" of the anticipated fees appears to claim otherwise, we are of the (likewise preliminary) view that COMESA's merger filing-fee is not in accordance with other jurisdictions. These fees constitute a danger that may help to undermine COMESA's international and legal acceptance. Especially when compared to established global regimes – such as the EU's DG COMP or the German Bundeskartellamt (with no and relatively low filing fees, respectively) – the potential fees COMESA may charge notifying parties under its Rules pose a serious threat to the regime's legitimacy.

→ On a positive note in this regard, the CCC has taken notice of – and acted swiftly in response to – critics' public comments relating to the initially vague arithmetic determination of the CCC's filing fees. The alternative two-part provision contained a connecting "higher of" reference, which caused unintended confusion among competition practitioners.[15] Many a law firm's initial assessment and subsequent public client alert therefore referred to COMESA fees being the "greater of" the two computational bases. The CCC stepped in within merely weeks and issued clarifying guidance. While it did not correct the ambiguous language in the Rule itself, it issued a public notice of Interpretive Meaning of the Notification Fee Pursuant to Rule 55(4) of the Amended COMESA Competition Rules on 26 February 2013, thereby putting an end to speculation that filing fees would indeed be calculated on the higher-of basis.

→ The need for original copies to be filed with the notification goes against the global trend of leading enforcement agencies, such as the FTC or DG COMP, increasingly allowing filings to be made electronically. It hinders efficiency and increases administrative and timing burdens on the parties, which is inconsistent with the CCC's stated objectives and, indeed, contrarian to the developments of the 21st century.

31. Several international networks and associations comprising members from various antitrust jurisdictions worldwide have provided significant contributions to the CCC, working closely with the agency to propose practical and workable solutions to the identified hurdles. Organisations that have provided input include the International Competition Network (ICN) (which currently includes 128 agency members from 111 jurisdictions and is the most extensive network of competition authorities worldwide) and the American Bar Association's two sections of Antitrust Law and of International Law. They have offered the CCC assistance, particularly in the provision of commentary and proposed amendments to the merger assessment guidelines, suggesting workable (and tested) solutions in relation to the various teething problems it faces.[16] We note that there is a fine line between receiving offers of support and the affirmative seeking of advice – we would encourage the CCC to undertake the latter at all stages of its developmental process, as its legitimacy in the eyes of the global competition community will only be enhanced, not reduced, by its efforts to integrate itself into the global network of enforcers. As has been the mantra of many an NCA official's speeches over the past decade, convergence of international antitrust regimes is crucial to effective enforcement on the one hand and rational decision-making by businesses on the other. For COMESA to fall in line with the global trend of convergence, the CCC must not shy away from seeking the input of other, more advanced sister agencies and organisations such as the ICN, which – in our experience – are always glad to provide their support.

32. Finally, one key inquiry faced by any nascent international legal regime is whether the unified, single decisions made under a harmonised legal system are likely to be superior to the alternative, *i.e.*, the sum of those applying diverse national laws.[17] Even if uncoordinated domestic regimes are deemed inefficient, it does not automatically follow that a single multi-national regime will yield more pareto-optimal outcomes.[18] Historically, there have been three main criticisms levied against international antitrust regimes. They include higher monitoring costs, higher enforcement costs, and the loss of innovation.[19] Considering each of them in detail would breach the bounds of the present article. Suffice it to note that some scholarship suggests agency costs to be higher at an international level, with the concomitant effect that bureaucrats will have more ability to fashion rules in their own interest.[20] A parallel risk is that the multi-national process may appear more opaque than the more established and well-known domestic procedures, resulting *inter alia* in greater difficulty of monitoring those responsible for carrying out enforcement policy, as well as less innovative (because less diverse and more static) approaches to enforcement or resolution of conflicts.[21] An international regulator outside the direct control of government may pursue interests distinct from its members, which may not mirror the interests of the citizens living in the member states. Taken together, these risks may cause a global regime to appear less in the public interest than maintaining the sovereignty of individual domestic rules.[22]

15 Rule 55(4) of the amended COMESA Competition Rules reads as follows: "*Notification of a notifiable merger shall be accompanied by a fee calculated at 0.5% or COM$ 500 000, or whichever is lower of the combined annual turnover or combined value of assets in the Common Market, whichever is higher*".

16 *Ibid.*

17 JO McGinnis, The Political Economy of International Antitrust Harmonization, 45 *Wm. & Mary L. Rev.* 549 (2003), p. 555.

18 *Ibid*, p. 555.

19 *Ibid*, p. 560.

20 *Ibid.*

21 *Ibid*, at p. 560, 565.

22 *Ibid*, p. 561

33. While these critiques may have valid application in developed countries with mature competition authorities where a global harmonised regime is being considered, they appear somewhat neutralised in the case of COMESA. For one, a majority of the Member States did not have pre-existing competition-law regimes, and the remainder of the NCAs were arguably inexperienced and not developed. We submit that having at least a functioning and well-funded competition enforcement regime – centralised or decentralised – is more beneficial that having none at all.

IV. Conclusion

34. As with every rubicon worthy of its proverbial name, COMESA's crossing of the antitrust divide has advanced beyond the point of no return. And rightly so: the efficiency gains, consumer benefits, and appeal to investors derived from a stable, transparent and predictable competition-law enforcement that transcends national borders all promise a net positive return. We see this prospect holding true despite early teething problems, as the CCC appears to be in the process of rectifying most, if not all, of them in due course.

35. The CCC's future enforcement performance being in line with international best practices will be the ultimate litmus test for increased investment in the region and COMESA's economic growth. One gladly wishes to take the CCC by its word in describing the impetus behind the unified antitrust regime: "*cooperation and transparency in procedures* [are] *essential for business as they would not be subjected to excessive costs arising from multiple, parallel and poorly coordinated investigations*."[23] Businesses probably could not agree more – but a mere mission statement is a far cry from actual, competent enforcement. For the time being, the CCC's ship hasn't made it to the other river bank and is still traversing unpredictable rapids.

36. The near future will doubtless reveal several important benchmarking metrics of the CCC's merger review performance, for instance: how many transactions are notified? How quickly can the authority render decisions on most routine notices? How robust is its underlying economic and legal reasoning? It may take additional time before a complex merger demanding in-depth analysis will challenge the CCC to show its true analytical prowess and administrative ability to deal with difficult cases.

37. The CCC has the features and multi-national support that allow it, in principle, to become a robust regional competition authority. That said, its success is not a foregone conclusion, and the agency must ensure that it has the sanctioning not only of COMESA's regional member states and domestic NCAs, but also of the broader international antitrust community. ■

23 CCC March letter, at § 5.

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