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COMESA: Regional rapprochement refined, competition enforcement comes of age

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ABSTRACT

This article traces the trajectory of the Common Market for Eastern and Southern Africa (COMESA) competition regime—the first multi-national antitrust enforcement system in Africa, and the second to be created globally after the European Union, in what has since become a growing field of regional enforcement regimes. Operational since 2013, COMESA's competition regime has confronted formidable challenges; yet over the past decade, it has steadily consolidated its authority through the evolution of its enforcement body and pragmatic adjustments to its operational framework. Now, on the cusp of the adoption of new legislation set to take effect at the end of 2025, COMESA stands at a critical juncture. The revised regulations significantly expand its powers and mandate, opening new opportunities for more effective regional competition governance, while also raising new challenges for the path ahead.

1. Regional competition law has moved from the margins to the mainstream of global enforcement. The European Union (EU) provided the first template, but in recent years, Africa has become a laboratory for ambitious multijurisdictional initiatives. Among these, the Common Market for Eastern and Southern Africa (COMESA) stands out as a pioneer whose trajectory offers lessons for other regional regimes. Operational since 2013, the COMESA Competition Commission (CCC) has transformed from a small, contested agency into a recognized regional enforcer. Its merger control regime is now taken seriously by businesses and counsel across the continent, and its leadership has overseen a rapid expansion in scope and sophistication.

2. The release of the 2024 Draft COMESA Competition Regulations marks the next turning point. These reforms expand the CCC's toolkit—introducing suspensory merger control, cartel leniency, market inquiries, and digital-market provisions—while also placing public interest and consumer rights more explicitly into the regional framework. They are ambitious, progressive, and aligned with global trends, yet they also raise difficult questions of clarity, implementation, and institutional capacity.

3. This article examines the trajectory of COMESA's competition system and the significance of the Draft Regulations. It situates the reforms within broader global debates, evaluates their potential benefits and risks, and reflects on the challenges of embedding public interest and consumer rights in a multi-jurisdictional regime that must serve diverse member states while maintaining coherence and predictability.

I. Exponential enforcement evolution: Mapping CCC's accelerating pace and scope

4. COMESA is one of Africa's leading regional economic communities, comprising 21 member states today.[1] It traces its roots to the Preferential Trade Agreement (PTA) established in 1981 by several Eastern and Southern African countries, which was part of a broader post-independence push for regional cooperation and integration.

5. In 1993, the PTA nations established COMESA, reflecting a commitment to deepen economic integration and development among its member states. The COMESA Treaty, signed in late 1993 and ratified in December 1994, sets out this ambition clearly in its preamble, declaring its purpose as marking "*a new stage in the process of economic integration* (. . .) *through the implementation of common policies and programmes aimed at achieving sustainable growth and development.*" COMESA aspires to foster greater economic

1. The number of member states has fluctuated over the years. Today, COMESA comprises 21 member states: Burundi, the Comoros, the Democratic Republic of Congo (DRC), Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Swaziland, Seychelles, Somalia, Tunisia, Uganda, Zambia, and Zimbabwe. Of these, only Somalia lacks competition legislation, while Eritrea has not yet established an enforcement authority. All other member states have functioning competition agencies of varying strength, with jurisdictions such as Kenya and Zambia regarded as among the most effective, while newer members such as Uganda and the DRC are rapidly developing capacity with the support of the CCC.

convergence among its members, ultimately moving towards full market integration.[2]

6. Structurally, COMESA operates as both a free trade area and a common market with a common external tariff. Its integration framework, modeled on the EU, emphasizes free movement of goods, services, people, and the right of establishment across member states.[3] As such, it advances the formation of a large economic and trading unit capable of leveraging collective bargaining power, overcoming market fragmentation, and addressing other barriers faced by individual member states.

7. While COMESA's institutional architecture is multi-faceted,[4] this paper focuses on the trading bloc's competition-enforcement agency, the CCC. The CCC was established by the Council of Ministers to promote and enforce competition law and policy within the common market. When the COMESA Competition Regulations were adopted in 2004, COMESA became the second regional bloc globally—after the EU—to establish a supranational competition regime. However, the CCC itself only became operational in 2013.

8. Although the COMESA competition regime is still relatively young and its early progress was slower than that of its European counterpart, the CCC has since advanced with remarkable speed. A chronological comparison of the European and African regional enforcement schemes, set out in Table 1, illustrates the extraordinary pace of the CCC's evolution.

Table 1.

	European Union	COMESA
Regional trading bloc established & competition principles enshrined	18 April 1951 (Art. 65–66, ECSC Treaty of Paris)	5 November 1993 (Art. 55, COMESA Treaty)
Practical founding of regional competition legislation	25 March 1957 (Art. 85–86, Treaty of Rome)	7 December 2004 (COMESA Competition Regulations, No. 1/2024)
Time delta	6 years	*11 years*
Effective date of antitrust enforcement function established	16 January 1958 (Hallstein Commission, Directorate General IV, under Hans von der Groeben)	14 January 2013 (COMESA Competition Commission becomes operational under George Lipimile)
Time delta	1 year	*8 years*
Merger-specific framework established	21 December 1989 (Regulation 4064/ 1989)	31 October 2014 (Merger Assessment Guidelines)
Time delta	31 years	1 year
Fundamental overhaul of competition regulations (esp. merger-specific)	1 May 2004 (Regulation 139/ 2004)	circa November 2025 (anticipated ratification of Draft Amendments, "COMESA Competition and Consumer Protection Regulations")
Time delta	15 years	*11 years*
Total number of chief competition commissioners	12	2
Average tenure	6 years	6 years
Percentage of notified transactions blocked outright	<1%	<1%
Most recent year (and #) of merger prohibition decisions	2023 (1)	2023 (1)

2. *See further* Art. 3 of the Treaty establishing the Common Market for Eastern and Southern Africa, 1993 ("COMESA Treaty").

3. *See*, e.g., Art. 164, COMESA Treaty; COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence, 1998; *see further* E. M. Fox and M. Bakhoum, *Making Markets Work for Africa: Markets, Development, and Competition Law in Sub-Saharan Africa*, Oxford University Press, 2019.

4. There are several key institutions that are central to COMESA's operation. The Authority, made up of heads of state and government of all the 21 member states, serves as the highest policymaking body. The Council of Ministers manages the functioning of the common market, issuing regulations and directives. The Court of Justice is the judicial organ, having jurisdiction to adjudicate on all matters referred to it pursuant to the COMESA Treaty. The COMESA Competition Commission (CCC) serves as the regional competition regulator.

9. It is worth noting that the EU, COMESA's economically larger and older peer, did not build a seamless antitrust enforcement system overnight. It took decades to consolidate its institutional model and to overcome disagreements over policy direction[5], some of which persist today. By contrast, as Table 1 illustrates, the CCC's trajectory has been marked by an almost exponential acceleration in both enforcement activity and the adaption of the legislative instruments underpinning its mandate. Although the COMESA competition regime initially lay dormant for nearly two decades after the regional trading bloc's creation in 1993, its growth has accelerated sharply in recent years.

10. This acceleration roughly coincides with the CCC leadership transition in January 2021, when Dr. George Lipimile, the Commission's pioneering first chief executive, was succeeded by Dr. Willard Mwemba.[6] Mwemba, who remains at the helm, is expected to guide the Commission into a new era of significant institutional change. The amended Competition Regulations—drafted, reviewed, revised, and debated throughout his tenure—are expected to come into effect at the end of 2025. Commensurate with its growth, these new Regulations will expand the CCC's mandate to include consumer protection, with the agency adopting the new designation of "CCCC" to reflect its broadened remit.[7]

11. The transition from the Commission's operationalization in early 2013 to the anticipated "COMESA 3.0" phase has been transformative, though not without significant hurdles. The CCC began life with fundamental weaknesses in its original legislative instruments, including the absence of financial merger-notification thresholds, limited fining authority, excessive filing fees, and a skeleton staff. Only twelve years before the forthcoming COMESA Competition and Consumer Protection Regulations ("CCPR"), the CCC was enforcing competition law across what were then 19

5. S. Quack and M.-L. Djelic, Adaptation, Recombination, and Reinforcement: The Story of Antitrust and Competition Law in Germany and Europe, in *Beyond Continuity: Institutional Change in Advanced Political Economies*, W. Streeck and K. Thelen Kathleen (eds.), Oxford University Press, 2005, pp. 255–281.

6. Chief enforcer departs CCC, Mwemba takes on role, *African Antitrust*, 17 February 2021, https://africanantitrust.com/2021/02/17/chief-enforcer-departs-ccc-mwemba-takes-on-role/.

7. Dawn of the "QUAD-C": COMESA antitrust evolves, *African Antitrust*, 20 August 2024, https://africanantitrust.com/2024/08/20/dawn-of-the-quad-c-comesa-antitrust-evolves/.

member states with a staff complement of just five officials.

12. Before the CCC opened its doors in 2013, Lipimile, aided by Mwemba on the merger front, faced the formidable task of establishing a greenfield agency while educating businesses, the international press, and the general public about the CCC's mandate and its potential benefits—a task complicated by the region's diverse cultures, languages, and jurisdictions. At the same time, the Commission had to contend with resistance within COMESA's broader institutional apparatus, which was initially slow to recognize its value, particularly in relation to the bloc's wider free-trade mandate. The internal struggles were compounded by opposition from national competition authorities (NCAs), many of which sought to preserve their previously exclusive jurisdiction over merger reviews. For nearly half a decade, despite clear Treaty provisions and authoritative rulings affirming the CCC's authority, some NCAs repeatedly challenged the Commission's role as the region's one-stop shop for merger control.[8]

13. Yet the Commission grew rapidly, buoyed by revenue from early merger notifications. By drawing staff from across the region, the CCC built prospects for longevity, institutional memory and a constructive "revolving door" staffing policy with NCAs—an arrangement that endures to this day.[9] Over time, opposition gave way to cooperation. Today, all 21 member state authorities acknowledge and embrace the CCC's jurisdiction, exercised from the seat of its headquarters in Lilongwe, Malawi, and several national authorities have had former senior COMESA officials among their leadership—a development that has reinforced integration and reduced the risk of divergent outcomes.

14. Although the Lipimile era was dominated almost entirely by merger enforcement, particularly in its later years, the Commission also undertook important steps to address weaknesses in its original legal framework, which was often unclear and at times internally inconsistent. Notification thresholds, previously absent, were introduced; filing fees, initially set at inordinately high levels, were reduced to lower, though still comparatively high amounts; and several guidelines were written with the aim of assisting practitioners, improving transparency, and fostering broader international recognition of the authority.

15. The Mwemba era (2021–present) has both accelerated and consolidated these earlier reforms, contributing to increased confidence in the regime among international stakeholders. With the exception of a temporary pandemic-related decline, merger activity has continued to rise, surpassing 500 notifications to date and now including the Commission's first enforcement against gun-jumping. Non-merger enforcement has also expanded, with 45 conduct investigations and at least two cartel cases initiated. In parallel, the Commission has entered into numerous memoranda of understanding and multilateral cooperation agreements with African and global counterparts, strengthening its external partnerships. At the regional level, the CCC has acted as a catalyst for the establishment and development of NCAs, offering indirect financial support, training, and collaborative initiatives.[10]

16. This iterative process of course correction and capacity-building is now culminating in the long-awaited revision of the primary legislation. The new CCPR, due to take effect at the end of 2025, will formalize the Commission's expanded mandate. In light of the extensive reforms embodied in the new CCPR, and consistent with the prior informal designation of the CCC's post-2021 period as "COMESA 2.0," the implementation of the CCPR will mark the beginning of a third phase in the regime's evolution. Appropriately described as "COMESA 3.0," this stage is expected to be characterized by the following key attributes:

8. *See* COMESA Court of Justice, 31 August 2013, *Polytol Paints & Adhesives Manufacturers Co. Ltd. v. The Republic of Mauritius*, Reference No. 1 of 2012 (finding COMESA Treaty and Regulations binding on member states).

9. J. Oxenham and A. Stargard, Crossing the Competition Rubicon: Internationalising African Antitrust through COMESA, *Concurrences* No. 3-2013, art. No. 53004, pp. 198–203, at 200.

10. Not only does the CCC host educational and practical training seminars for member state NCAs with comparatively lower budgets, but CCC-derived merger filing fee revenues are split with the various member states, with the presumptive domestic budget designation to benefit their respective NCAs. *Official Gazette of the Common Market for Eastern and Southern Africa*, Vol. 29, 21 November 2023, https://www.comesa.int/wp-content/uploads/2024/05/COMESA-Gazette-Vol-29-N.pdf (urging Member States to channel "*all the merger fees resources disbursed by CCC to NCAs to ensure that they are utilised for their intended purpose of developing, strengthening and capacitating NCAs and Competent Authorities*").

- Expanded unilateral-conduct enforcement, owing to increased staffing, sustained capacity-building, and growing experience in conduct and cartel cases;
- A significant rise in cartel investigations, driven principally by the forthcoming leniency regime;
- Higher merger volumes, resulting from the move to a suspensory filing regime and accompanied by a likely increase in conditional approvals (subject to wider global economic conditions);[11]
- Strengthened consumer-protection enforcement by the "CCCC," reflecting the Commission's broadened mandate and aligning with wider African competition law trends, including South Africa's increasing incorporation of public-interest factors in merger analysis[12] and Nigeria's Federal Competition and Consumer Protection Commission (FCCPC) using data-protection grounds to impose record fines;[13] and
- The development and application of a carefully delineated "public interest" standard in competition cases, subject to strict guardrails to prevent politicization, and adapted to the unique constraints of a multi-national enforcement regime.

11. The CCC's statistical trajectory is already sloping upward, as it has reviewed approximately the same number of transactions in the past four years as it had in the first eight years of its existence.

12. For an illustration of the use of public interest in South Africa's merger regime, *see* the Constitutional Court of South Africa's decision in *Competition Commission of South Africa v. Mediclinic Southern Africa (Pty) Ltd and Another* (CCT 31/20) [2021] ZACC 35; 2022 (5) BCLR 532 (CC); 2022 (4) SA 323 (CC); the South African Competition Commission's prohibition of the Burger King merger and the subsequent approval by the South African Competition Tribunal in *ECP Africa Fund IV LLC and Others v. Competition Commission of South Africa* (IM053Aug21) [2021] ZACT 99; for an overview of the role and growing reliance on public interest considerations in South Africa, particularly following the Competition Amendment Act of 2018, *see* L. Mncube and H. Ratshisusu, Competition Policy and Black Empowerment: South Africa's Path to Inclusion, *Journal of Antitrust Enforcemen*t, Vol. 11, Issue 1, 2023, pp. 74–90.

13. *In Re: Federal Competition and Consumer Protection Commission v. Meta Platforms Inc. & WhatsApp LLC*, Final Order (Tribunal), 25 April 2025.

II. Rewinding the clock: Summary of COMESA enforcement's status quo

1. Legal basis for regional competition law

17. COMESA's commitment to competition policy is rooted in the Treaty itself and, at least in part, emanates from the practical requirements imposed by the World Bank and International Monetary Fund on developing nations during their Structural Adjustment Programs of the 1990s, effectively imposing the existence of competition law regimes on recipient countries. Article 55(3) mandates that the Council adopt regulations to govern competition within member states. While the Treaty was adopted in 1994, comprehensive competition regulations were not promulgated until 2004, and the CCC only became operational in 2013.

18. The competition prohibitions target anticompetitive practices affecting the regional market. Member states remain free (and indeed are encouraged) to enforce national competition laws alongside COMESA regional competition laws; however, COMESA competition law takes precedence where cross-border or regional effects are concerned.

19. Article 55(1) of the enabling treaty, which closely mirrors Article 101 of the Treaty on the Functioning of the European Union (TFEU), prohibits anticompetitive practices by agreement or concert that undermine the objective of free and liberalized trade by preventing, restricting, or distorting competition within the common market. However, as in the EU system, agreements that distort competition are prohibited unless they improve or promote production, distribution, technical or economic progress and have the effect that consumers receive a fair share of the resulting benefits.

2. Scope and purpose of the Regulations

20. The general purpose of COMESA's Competition Regulations is set out in Article 2, which states that the aim is "*to promote and encourage competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market, and to protect consumers against offensive conduct by market actors.*" The jurisdictional coverage of the Regulations extends to any conduct that has an appreciable effect on trade between member states and that restricts competition in the common market, thereby pre-empting national law where cross-border effects arise. Conduct confined within national borders remains subject to domestic competition regimes.

3. Prohibited practices

21. The COMESA Competition Regulations prohibit a range of anticompetitive conduct that may undermine the objectives of the common market. One core area of enforcement relates to restrictive agreements and concerted practices. Under Article 16(1), all agreements between undertakings and concerted practices that affect trade between member states and have "*as their object or effect the prevention, restriction or distortion of competition within the Common Market*" are prohibited. However, the Regulations also provide a mechanism for exemption. Firms may apply to the Commission for what is termed a "*Request for Authorisation*," where they must demonstrate that the agreement in question promotes "*technical or economic progress, while allowing consumers a fair share of the resulting benefit.*" The Commission then assesses whether the claimed efficiencies and other pro-competitive gains outweigh the anticompetitive effects. This system resembles earlier EU practice; however, the EU has since shifted to a self-assessment model.[14]

22. The Regulations prohibit the abuse of a dominant position. Article 17 defines a "dominant position" as a position of economic strength that enables a firm to operate in the market without effective competitive constraints. Article 18 elaborates on the types of conduct that may constitute an abuse of this position. These include conduct that is likely to restrict entry of any undertaking into the market; prevents or deters any undertaking from engaging in competition in a market; eliminates or removes, or is likely to remove, any firm from a market; limits production to the detriment of consumers; imposes unfair prices; or exploits customers or suppliers in ways that frustrate the benefits of the common market.

23. Article 19 of the Regulations addresses so-called hard-core anticompetitive practices, rendering them explicitly unlawful. They include horizontal agreements such as price fixing, market or customer allocation, collusive tendering, and bid rigging.

4. Mergers

24. The COMESA merger control regime applies to transactions with a regional dimension—those likely to affect competition in two or more member states under Article 23 of the COMESA Regulations. Initially, the notification threshold was very broad, requiring notification of all mergers involving parties operating in two or more member states, regardless of size or turnover. This drew criticism for imposing undue regulatory burdens.[15] Amended rules introduced financial thresholds to screen out smaller transactions and capped filing fees at USD 200,000 or 0.1% of the merging parties' combined annual (regional) turnover, whichever is lower.

25. Under the current framework, member states affected by a cross-border merger may petition the CCC to refer the matter, wholly or in part, to their national competition authority. The CCC retains

14. Fox and Bakhoum, *supra* note 3, at 134.

15. Ibid. at 135; W. Mwemba, Do Supra-National Competition Authorities Resolve the Challenges of Cross-Border Merger Regulation in Developing and Emerging Economies? The Case of the Common Market for Eastern and Southern Africa, doctoral thesis, University of Cape Town 2020, at 102–103 (the author argues that the zero-merger notification was unlawful); V. K. Kigwiru, Why, How, and When Do National Competition Agencies Support Supranational Regional Competition Regimes? A Case of the COMESA Competition Regime, *GRUR International*, Vol. 74, Issue 3, 2025, pp. 226–246, at 237 (the author explains that the zero-merger threshold blurred the division of authority between the CCC and NCAs, extending CCC jurisdiction to mergers that could have been handled domestically, generating uncertainty for businesses and practitioners).

discretion over whether to exercise its jurisdiction or to delegate the case. In exercising this discretion, the CCC may consider a range of factors, including the merger's anticipated impact on the national market, the importance of maintaining consistent and effective merger control, the enforcement capacity of the relevant merger state, and the risk of regulatory delay, fragmentation, duplication of effort, or conflicting outcomes.

26. The applicable notification requirements are clarified in the Merger Assessment Guidelines issued in 2014.[16] These guidelines support a "one-stop-shop" mechanism for merger control, under which qualifying transactions must be notified at the regional level and are assessed exclusively by the CCC. In theory, this precludes additional filings under national competition laws. In practice, however, not all member states have consistently observed this principle, with some national authorities historically requiring parallel filings notwithstanding COMESA's jurisdiction.[17]

27. COMESA's current framework follows a non-suspensory approach to merger control. Merging parties are required to notify the CCC within 30 days of reaching a decision to proceed with the transaction, but are not obliged to wait for the Commission's approval before implementing the merger. This system may be revised under proposed amendments to the Regulations, which, as discussed below, contemplate moving towards a suspensory regime that would prohibit implementation until clearance is granted.

28. Once a transaction is notified, the CCC undertakes a substantive assessment to determine whether the merger is likely to substantially prevent or lessen competition within the common market. This analysis mirrors established principles used in other jurisdictions and focuses on whether the merger may give rise to market power, reduce consumer choice, or otherwise distort competitive dynamics in the region.

16. Merger Guidelines, point 2.8.

17. For example, Kenya previously required parallel filings, but the Competition Rules, 2019 now recognize COMESA's supremacy: parties need only notify the Competition Authority of Kenya (CAK) within 14 days of filing with the CCC.

III. The 2024 draft COMESA Competition Regulations: Key proposed reforms

29. After a protracted vetting period, and as part of a broader global trend in reforming enforcement and regulatory approaches, the CCC released a draft of revised Competition Regulations in early 2024, marking a significant evolution from its existing practice in several important respects. Although originally expected to come into force by the end of 2024, the reforms are now anticipated to be ratified by the Council of Ministers at the end of 2025. The Draft Regulations propose a number of substantial changes to COMESA's merger control regime, create both a leniency system for cartel conduct and an express public-interest mandate for the Commission, and introduce new provisions addressing joint ventures, digital markets, and the conduct of market inquiries.

1. From voluntary to mandatory: The shift to a suspensory merger control regime

30. One of the most consequential proposed changes in the Draft Regulations, central to the CCC's core merger practice, is the shift from a non-suspensory notification system to one that is both mandatory and suspensory. Under the current framework, merging parties must notify the CCC within 30 days of a corporate decision to merge, but remain free to implement the transaction before clearance—albeit at the risk of having to unwind the deal across the region if it is subsequently found to contravene the Regulations. In practice, this has meant that while the Commission can still impose remedies or prohibit a transaction post-closing, the legal effect of pre-approval implementation has been ambiguous and largely unenforced.

31. Reflecting a broader global trend towards suspensory merger regimes, the Draft Regulations bring COMESA into line with this emerging standard. [18] Under the new regime, transactions that

(i) meet the prescribed notification thresholds, (ii) have a regional dimension, and (iii) involve a change in control must not only be notified to the CCC but also cleared before implementation. Any merger implemented without prior clearance will be deemed legally ineffective, and the parties may be subject to fines of up to 10% of their annual turnover within the COMESA common market. Article 37 even provides that such transactions will be "*null and void*," though this appears difficult to reconcile with the same Article's provision that unauthorized mergers "*may be revoked*," a drafting inconsistency that risks undermining predictability.

32. The implications are significant. Moving to a suspensory system will strengthen deterrence by reducing avenues for regulatory avoidance, but may simultaneously increase transactional risk by extending timelines, intensifying financing uncertainty, and exposing parties to severe sanctions in the event notification obligations are miscalculated. The broader policy trade-off is clear: while the move aligns COMESA with global practice and is likely to strengthen scrutiny of potentially harmful transactions—particularly in fast-moving digital markets—the reform does risk introducing procedural burdens that may slow execution or deter investment in time-sensitive deals. Its ultimate impact will depend on whether the CCC can administer reviews efficiently and provide sufficient clarity to mitigate the chilling effects of a more rigid regime.

2. Notification thresholds and filing timelines

33. The Draft Regulations further refine the mechanics of merger review. They preserve the dual requirement of a regional dimension and financial thresholds, but do not provide new definitions for either concept. Responsibility for setting thresholds is delegated to the CCC Board, subject to approval by the COMESA Council of Ministers. While this flexibility may allow thresholds to adapt over time, the lack of clear guidance risks generating uncertainty for businesses assessing filing obligations.

34. The procedural timelines are clarified but not necessarily improved. The current 30-day notification requirement will be abolished, with parties only obliged to notify before closing. The CCC will continue to have an initial review period of 120 days, but any extension will now be capped at 90 additional days. While this curtails the open-ended extensions permitted under the current system and thus enhances certainty, it also creates the possibility of a protracted overall review of up to 210 business days. For transactions with cross-border financing or urgent commercial imperatives, such timeframes could prove burdensome.

35. The Draft Regulations also contemplate a simplified review procedure for mergers unlikely to raise substantive concerns. However, the criteria for triggering such streamlined treatment remain undefined, leaving parties without clear guidance as to when they might benefit from expedited review. Absent detailed rules, there is a risk that the simplified procedure will remain underutilized and fail to deliver on its promise of efficiency.

3. Expanded public interest mandate

36. The Draft Regulations mark a notable shift in COMESA's merger regime by explicitly broadening the CCC's public interest mandate. Under the current framework, public interest considerations are largely folded into competition analysis and are not expressly delineated in their own right. The proposed reforms, by contrast, introduce a wider set of factors, including a merger's effect on employment across member states, the competitiveness of small and medium-sized enterprises (SMEs) within the region, and the ability of COMESA-based firms to compete internationally. They also introduce less typical public interest considerations in the African context, notably environmental sustainability and innovation, the latter of which remains relevant to the competition assessment itself.

37. This expansion reflects broader African and global trends, but it also raises practical challenges—particularly around implementation, consistency, and enforcement. The inclusion of environmental and innovation concerns is

18. *See*, e.g., Australia, where "*the absence of a mandatory-suspensory notification regime places us at a significant disadvantage when dealing with merger parties who are willing to push the boundaries of the informal system*." G. Cass-Gottlieb, Law Council Competition and Consumer Law Workshop opening address, 9 September 2022. Nota bene: Australia has since adopted a mandatory suspensory regime, which begins in January 2025.

normatively significant, signaling that the Commission views competition as a vehicle for advancing sustainability and long-term developmental goals. This marks a departure from the traditional view of competition law as confined to price, output, and efficiency, and situates COMESA within a broader regulatory movement that treats competition policy as part of a broader framework for inclusive and sustainable growth. At the same time, the Draft Regulations establish a hierarchy between competition and public interest considerations: competition effects remain the primary lens of analysis, while public interest considerations are assessed only secondarily. How this hierarchy will operate in practice remains uncertain and will require careful clarification in the forthcoming Public Interest Guidelines. Without such guidance, there is a risk that public interest factors are either marginalized in practice or, conversely, invoked inconsistently, undermining predictability.

38. The reforms also extend public interest beyond merger control. Agreements that might otherwise be prohibited as anticompetitive may now be justified on public interest grounds, including environmental protection and sustainability. The explicit recognition of environmental protection and the right to live in a healthy environment is unprecedented in COMESA and among the most far-reaching in African competition law to date. Yet this innovation also underscores the challenge: unless the Commission articulates a transparent methodology for balancing competition harms against public interest gains, the expanded mandate risks generating legal uncertainty and uneven enforcement.

4. Cartels: Leniency and dawn raids

39. Cartel and other hard-core offense[19] enforcement has consistently lagged behind the other pillars of COMESA's antitrust activity, with merger control dominating the agenda and conduct investigations receiving relatively greater attention. To date, only two cases have reached the investigatory stage, and neither has been concluded. This is set to change. The Draft Regulations equip the CCC with two powerful new tools: a formal leniency program and the authority to conduct unannounced corporate inspections.

40. The mechanics of antitrust amnesty and dawn raids are well known and need not be rehearsed here. What is of significance, however, is that a principal impediment to the operation of leniency within COMESA has now been removed: all member states have assented to recognize and give effect to leniency grants issued by the Commission, thereby eliminating the prior risk that an applicant might nonetheless face unilateral prosecution at the national level.

41. Looking ahead, Dr. Mwemba and his (soon-to-be-expanded) cartels team anticipate a substantial increase in collusion investigations relative to the Commission's first twelve years. Potential amnesty applicants are likely to be encouraged by the assurance that a Commission-granted leniency will shield them from prosecution in any member state, whilst being deterred by the enhanced prospect of unannounced inspections of their corporate premises.

5. Digital markets and the treatment of gatekeepers

42. In alignment with international developments, the Draft Regulations introduce provisions aimed at improving the CCC's oversight of digital markets. The revisions respond both to specific jurisdictional challenges and to broader international debates about how competition law should address the unique features of the digital economy.

43. In merger control, the CCC's foiled attempts to review the *Activision/Microsoft* transaction[20] pursuant to the current thresholds appear to have been a catalyst for reform. The Draft Regulations propose a new transaction-value threshold applicable specifically to mergers involving digital platforms. According to Article 36(5), notification will be required where one of the parties operates in at least two member states and the transaction exceeds a

19. The new CCPR will define hard-core offenses prosecuted under a per se liability rule broadly, including resale price maintenance, absolute territorial and passive sales restrictions, beyond the usual not just price fixing, market allocation, and bid rigging prohibitions. The CCC's reasoning behind this broad reach is that one of COMESA's key imperatives as an international trading bloc remains its goal to achieve a single, common market, and that conduct such as territorial restrictions fundamentally violate this integration principle.

20. Dr. W. Mwemba and H. M Hollman, Interview with Dr. Willard Mwemba, CEO, COMESA Competition Commission, *The Antitrust Source*, July 2025.

prescribed value threshold, to be determined by the CCC. This approach mirrors reforms in other jurisdictions, such as South Africa, designed to capture digital acquisitions that might otherwise escape review. Uncertainty remains, however, as to whether the value threshold could apply in cases where the target has no substantial economic presence in the COMESA common market.

44. Beyond merger control, the Draft Regulations reflect broader global trends. According to Article 31(1)(e), when assessing dominance in digital markets, the CCC will now be expressly required to consider factors such as the quantity, accessibility and control of data, as well as the strength of network effects. While these elements could arguably be captured under traditional dominance analysis, their explicit enumeration underscores the CCC's intention to subject digital platforms to heightened scrutiny for abusive practices.

45. Article 33 of the Draft Regulations introduces a prohibition on abuse of economic dependence, broadly defined as situations where one party to a transaction holds a position of relative strength to another and abuses that position. Such dependence may be established by reference to market share, bargaining power, availability of alternatives, or other factors contributing to the relationship of dependence. Unlike traditional abuse of dominance, this prohibition does not require proof of market dominance and expressly extends to undertakings designated as "gatekeepers." These entities are prohibited from abusing a position of relative dependence where such conduct substantially affects competition in the common market. Yet the provision is weakened by the absence of any definition or designation process for "gatekeepers," leaving its scope uncertain and its enforceability questionable. This notwithstanding, its inclusion reflects the influence of global regulatory discourse and signals an effort to address asymmetries of power that fall outside traditional dominance paradigms.

6. Joint ventures

46. For the first time, the Draft Regulations formally address joint ventures, codifying the CCC's existing practice, which had become known to practitioners appearing before it. A joint venture will be notifiable where it is intended to operate in two or more member states, at least one parent is active in COMESA, and the parties collectively meet the prescribed financial thresholds. The definition of a merger is amended to expressly include the creation of a joint venture that performs, on a lasting basis, the functions of an autonomous economic entity—effectively mirroring the position already set out in the Commission's Merger Guidelines.

47. Greenfield joint ventures may also be subject to notification where they meet these criteria. However, consistent with current CCC practice, those that demonstrably have no intention of operating within the COMESA market are likely to be exempt.

7. Introduction of market inquiry powers

48. A further institutional innovation in the Draft Regulations is the explicit introduction of powers to conduct formal market inquiries—an authority not provided under the current framework. Market inquiries are defined broadly to encompass general market studies or targeted investigations into specific sectors or practices affecting consumers or the broader competitive landscape, without the need to establish misconduct by a particular undertaking.

49. The Commission's powers in conducting an inquiry are wide-ranging. Under Article 24, the CCC may gather information from any person, with a corresponding obligation on that person to comply. Following an inquiry, the Commission may initiate a formal investigation, negotiate or order the implementation of remedies, issue policy recommendations, or undertake advocacy measures. The breadth of these powers—particularly the ability to impose an undefined set of remedies absent a finding of prohibited conduct—marks a significant expansion of the CCC's toolkit.

50. Such powers mirror developments in other jurisdictions. In South Africa, for instance, the Competition Commission has used market inquiries to address structural features of markets it deems anticompetitive, without having to prove unlawful conduct by individual firms. The Draft Regulations appear to contemplate a similar model, positioning market inquiries as a proactive instrument for shaping markets and advancing evidence-based enforcement in COMESA.

8. Consumer protection

51. The newly bestowed fourth "C" in the Commission's name entails a notable development: the Draft Regulations broaden the scope of its previously meager consumer protection remit[21] by introducing an express catalogue of "consumer rights." Article 47(1) provides that consumers enjoy the "*general basic rights to access essential goods and services such as food, clothing, shelter, healthcare, education and utilities*." Article 47(2) then sets out a detailed list of rights: the right to safety, to information, to freedom of choice, to be heard, to redress, to live in a healthy environment, to privacy, to equality in the market, and to fair and honest dealing.

52. Although placed within the chapter on unfair trade practices, the inclusion of these provisions alongside the public-interest reforms signals a broader normative ambition. By designating them as "rights," the Draft Regulations confer greater legal weight than would be implied by treating them as mere principles or objectives. What remains unclear, however, is how these rights will interact with competition analysis. Consumer welfare has traditionally been understood in economic terms—price, quality, variety, output—but the rights enumerated in Article 47 suggest a more expansive conception. Whether consumer welfare is now to be interpreted through this wider lens will be a key question for the CCC's future enforcement practice.

9. Reflections

53. Taken as a whole, the Draft Regulations represent a decisive step in the maturation of COMESA's competition regime. They strengthen merger control by moving to a suspensory model, sharpen cartel enforcement through the crucial introduction of leniency and dawn raids, and broaden the Commission's remit into digital markets, joint ventures, and market inquiries. The inclusion of an explicit public-interest mandate marks perhaps the most politically sensitive and legally complex innovation, as the agency's CEO is keenly aware.

54. The complexities of public interest are amplified in a regional context. Member states inevitably hold different priorities, and the risk of politicization cannot be ignored. Yet public interest considerations remain indispensable, because competition law must resonate with the socio-economic needs of the communities it serves. The Draft Regulations mark an important step in this regard by aligning COMESA with factors already recognized in national regimes—employment, the ability of SMEs to compete effectively, and the capacity of regional industries to operate in international markets—while also innovatively including sustainability and environmental protection. At the same time, the CCC's leadership has voiced caution about the use of public interest at the regional level, warning against the tendency to introduce matters that competition authorities are ill-equipped to address. Dr. Mwemba has made clear that competition analysis, market assessment, and efficiency standards—what he describes as the "*consumer-welfare standard*"—will remain paramount and carry greater weight in their assessment.[22] He further stressed that COMESA-level public interest must clear a high bar: it cannot be parochial or confined to a single member state, but must have demonstrable relevance to the Common Market as a whole.[23] The intention, he explained, is to prevent public interest from being deployed as a tool to pursue non-merger or competition-specific outcomes. Guidelines on public interest are planned, which he has indicated will be deliberately narrow. Until those are issued, however, it remains uncertain how these provisions will be interpreted if they come into effect beforehand, though the intention is that the high threshold and narrow scope will help insulate the regime from misuse of public interest for political ends.

55. The inclusion of environmental protections and sustainability—so far largely absent from national legislation across COMESA member states—is particularly striking and renders the CCPR unconventional, as the Commission's chief recognizes: "*The new Regulations are very progressive and address a number of contemporary issues affecting markets and society today. They will be more equipped to address issues in the digital*

21. To date, the CCC's consumer protection cases have largely focused on minor infractions, with minimal fines (if any), placing an emphasis on air travel cases (e.g., case no. CCC/CP/24/07/2025 (airline failure to issue refunds)), consumer goods (e.g., case no. CCC/CP/CA/01/2025 (cereal product recall)), or pharmaceuticals (e.g., case no. CCC/CP/CA/04/2024 (counterfeit pharmaceuticals); case no. CCC/CP/CA/01/2024 (drug recall)).

22. Mwemba interview, *supra* note 20.

23. Ibid.

economy, environmental concerns, and dark patterns from a consumer welfare perspective." [24] The Commission's view seems to be that, given the scale of environmental harm, competition authorities cannot remain passive where market conduct plays a role. This reasoning is compelling, but it raises a question of principle: if business and market conduct are understood to contribute to environmental harm, why should the same logic not apply to inequality, for example, which is equally rooted in market structures and outcomes? To privilege one and not the other risks incoherence. A principled approach would suggest that both concerns warrant consistent treatment within the regime.

56. Linked to this expansion of public interest is the parallel broadening of consumer protection. Article 47 introduces a catalogue of consumer rights that extend well beyond conventional economic conceptions of consumer welfare. By framing these as rights rather than aspirational principles, the Draft Regulations give them normative weight that may reshape how consumer welfare itself is understood, potentially strengthening the legitimacy of enforcement but also complicating the boundaries of what falls within competition law.

57. The reforms also situate COMESA within global debates about the future of competition law. Environmental protection is inherently transnational, and the Draft Regulations recognize it as such. Likewise, digital markets, cartels, and market structures all transcend national boundaries, requiring a regional framework capable of addressing cross-border conduct. At the same time, implementation challenges will be real, manifest in ongoing conflict within certain member states, the global resurgence of protectionism, ad hoc trade wars, and the risks of overlapping jurisdiction with other African regional regimes and the African Continental Free Trade Area (AfCFTA). Dr. Mwemba, when interviewed for this article, warned of both localized and broader systemic risks. On the one hand, "*differences in priorities by Member States and in some cases, inadequate funding of competent authorities at national level may affect the efficacy of the new Regulations. For example, lack of interest by some governments in establishing independent competition authorities may impede effective enforcement of the Regulations*." On a broader scale, the global resurgence of protectionism, he noted, is especially troubling and is "*irreconcilable with the tenets of free markets on which the application of competition laws is anchored*." Such practices pose a serious risk to the sustainability of the system and underscore the limits of treating models borrowed from elsewhere as prêt-à-porter legal templates befitting a major regional trading bloc. With those increasingly questioned, COMESA must instead chart a course responsive to its own regional realities.

58. Finally, it must also be acknowledged that some provisions of the Draft Regulations are not drafted with the clarity and precision one might hope for. Ambiguities—for example, around the interaction of "*null and void*" versus "*may be revoked*" in Article 37, or the absence of criteria for defining "gatekeepers"—could complicate enforcement and generate uncertainty for businesses. How these provisions are interpreted and applied will be critical in shaping the credibility and predictability of the regime.

59. Despite these shortcomings, the new Regulations are progressive. They will equip the CCC(C) with modern tools—transaction-value thresholds for digital mergers, market inquiries, robust penalties, and region-wide leniency—that should enhance deterrence, reduce duplication of enforcement, and enable the Commission to address issues at the intersection of markets, society, and sustainability. The express inclusion of environmental protection, the attention to digital markets, the new framework for consumer rights, and the high threshold set for public interest all reflect a system designed to engage with contemporary realities rather than replicate inherited models. Their success will ultimately depend on consistent application, institutional capacity, and the development of clear guidance—particularly on the weighing of public interest and the role of consumer rights.

IV. Conclusion

60. The 2024 Draft COMESA Competition Regulations reflect a bold and progressive attempt to reframe regional competition law in light of 21st-century challenges. They expand the CCC's toolkit, bring COMESA into alignment with global best practice, and embed broader socio-economic,

24. Dr. Mwemba, interviewed by the authors for the present article.

environmental, and consumer considerations into the regional competition framework. Yet, the reforms will undoubtedly also raise difficult questions of scope, clarity, and implementation.

61. COMESA now enters what may be described as its "third incarnation." Its competition law regime is firmly established, its leadership and staff increasingly experienced, and its regulations and procedures progressively adapted to the realities of global business transactions. Where African corporate antitrust counsel once advised clients to ignore COMESA, they now regard it as a serious regulator—and, at times, a convenient one-stop shop. The new Regulations promise to reinforce this trajectory by enhancing the Commission's ability to address anticompetitive conduct while improving predictability for businesses subject to its jurisdiction. The Draft Regulations thus herald the arrival of COMESA 3.0, a more mature phase in the evolution of the region's competition regime.

62. That said, while the headwinds of 2013 may no longer be blowing, novel challenges loom. The very success of COMESA in establishing a regional enforcement dimension has inspired a proliferation of other competition frameworks across the continent, which may ultimately test COMESA's supranational role: the EAC Competition Commission (set to begin operations in the fall of 2025), the AfCFTA's forthcoming ambitious continent-wide regime, and other regional agencies such as the Economic Community of West African States (ECOWAS) Regional Competition Authority (ERCA) in West Africa. These parallel initiatives (while perhaps flattering to the CCC's past achievements) carry obvious risks: conflicting outcomes, jurisdictional disputes, and renewed uncertainty for businesses navigating Africa's regulatory landscape. Left unchecked, such fragmentation may erode investor confidence and blunt the effectiveness of competition enforcement across the region, if not the continent. How these overlapping schemes will be reconciled in a business-friendly, efficient, and comity-respecting manner remains an open question.

63. Other challenges are perhaps more appropriately cast as unresolved questions: Will the CCPR's much-debated reforms truly future-proof COMESA's antitrust regime, enabling it to evolve into a robust enforcer against monopolization and cartels? Will changes in the still relatively young CCC leadership weaken the institution's effectiveness, as some have argued has occurred in Nigeria's FCCPC? Will the CCC have the institutional capacity and resources to implement the expanded mandate effectively, particularly in areas such as digital markets, environmental protection, and consumer rights? And will the Commission's imminent fourth "C"—consumer protection—prove to be a source of strength, or will the introduction of novel, and distinctly regional, public interest principles open the door to political influence?

64. In short, COMESA 3.0 is emerging. The Draft Regulations position the CCC at the forefront of regional competition enforcement, equipped with stronger tools, a broader mandate, and an ambition to address issues that transcend borders—from digital markets to environmental protection and consumer rights. Yet, ambition alone will not determine success. The credibility of COMESA's regime will depend on how consistently and transparently these reforms are implemented, whether institutional capacity can match the expanded mandate, and whether public interest and consumer rights are applied with clarity and restraint. If COMESA succeeds in striking the right balance—ensuring that competition enforcement remains rigorous while integrating carefully defined public interest and consumer rights—it has the potential not only to strengthen its own regime but also to provide a model for how regional competition systems can evolve to address global challenges while remaining firmly rooted in regional priorities.

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