INTRODUCTION

Welcome to the first edition of our bi-annual newsletter of the African Competition Forum. As decided at the ACF Steering Committee, this Newsletter has been produced in collaboration with our member agencies, and with the support of the ACF secretariat.

We hope that you find this newsletter a useful source of information on competition law issues across the African continent. Its success depends on the voluntary contributions of the member agencies.

In this edition, we look at several major competition law activities, including in ECOWAS where the regional authority has been established in Banjul, Gambia to enforce the 15 member countries common competition rules.

The biennial meeting of the ACF will be held in Marrakech, Morocco 11 - 12 October 2018 and will provide a forum to review recent developments in competition law and policy of concern to African countries as well as review the ACF priorities for the next two years.

This issue of the newsletter is focusing on advocacy to government and regulators. The note under “in-focus” by Francis Kairuki discusses in details how the evidence based advocacy by the Kenyan Competition Commission can be a powerful tool to remove outdated regulations, improve consumer welfare and reduce the cost of doing business in the country.

The Cotton study by Zambia is another powerful evidence based advocacy. Zimbabwe’s investigation of government regulations of security uniforms prices and its role in facilitating collusion in public tender is another example effective advocacy.

Swaziland investigation of collusion in the provision of school supply is a compelling example of what young agencies can do with limited resources. The ongoing investigation of alleged monopolisation by the Swaziland Dental association is an interesting case to follow.
About the ACF

The official launch of the African Competition Forum (ACF) occurred on March 3th, 2011. It was launched with financial support from the International Development Research Centre (IDRC), Canada and the UK’s Department for International Development (DFID). The launch conference was co-hosted by the Kenyan Monopolies and Prices Commission (MPC).

The African Competition Forum (“ACF”) is a network of African national and multinational competition authorities or where authorities do not exist, government departments or line ministries responsible for competition policy and enforcement.

The ACF seeks to promote the adoption of competition principles in the implementation of national and regional economic policies of African countries, to alleviate poverty and enhance inclusive economic growth, development and consumer welfare by fostering competition in markets and thereby increasing investment, productivity, innovation and entrepreneurship.

The ACF counts on the participation and contribution of all member competition authorities, regional and international organisations. Agencies. The ACF encourages African national and regional competition authorities from different regions and stages of development to participate and contribute to the dialogue, capacity building and networking among policy makers and enforcers.

The ACF provides competition authorities with a specialized network for maintaining regular contacts and addressing practical competition concerns that are specific to the circumstances of the African continent.

This allows for a dynamic dialogue that serves to build skills and identify solutions to handling anti-competitive practices affecting individual countries, as well as those that may have a cross border impact; promotes competition principles as a tool for economic development and poverty alleviation; and advocate for policy coherence between competition law and public policies.

The main goal of the ACF is to improve and advocate for sound competition policy and its enforcement across the African continent; it seeks to develop and promote sound procedural and substantive principles drawing on best and relevant practices developed by members, regional and multilateral organisations.

In all this work, the ACF leverages knowledge and expertise, inter-alia, in the ICN, OECD and UNCTAD fora. The ACF provides an overarching forum bringing together competition agencies, academia and other experts for the purposes of enabling knowledge sharing on the formulation and enforcement of competition laws, and enhancing engagement with new agencies at different stages of development, as well as government department handling competition policy matter in the continent.

The Forum is held in a different Africa country every other year with the partnership/support of a host competition authority. In 2017, Mauritius hosted the 4th meeting of the ACF and Morocco will be hosting the next edition to be held on 10-11October 2018.

The biennial conferences and workshops provide opportunities to discuss research projects organize training for case handlers and discuss new and emerging issues facing African competition agencies.
South Africa’s second consecutive term as Chair of the ACF is coming to an end in October 2018, having been at the helm for the four years. During this time, the ACF has recorded some notable successes. It has recorded sustained growth as a ‘virtual network’ owing to advances in technology that bring us together more seamlessly and the committed leadership of its member agencies.

We have managed to position the ACF as an authoritative institution on competition policy in Africa. We have built strategic relations with global institutions such as the World Bank, ICN, BRICS, UNCTAD, OECD, and other regional competition authorities and soon, we will establish formal ties with the African Union (Union).

We have made strides in the three workstreams of the ACF, namely; facilitating integration, capacity building and raising awareness. Among others, we have seen the growth of exchanges and cooperation among ACF members in areas such information sharing, knowledge development, staff exchanges and cooperation on cases.

Over the last two years alone, six capacity building workshops were conducted in partnership with ACF partners and the participation of member agencies has been impressive. The focus of these workshops has been on core competition issues such as cartel investigation and prosecution, merger review and competition economics.

In February 2017, the ACF published a book entitled ‘Competition in Africa: Insights from Key Industries’, which draws insights on the nature of competitive rivalry and the power and interests of large firms in four key sectors in southern and East Africa.

This notable achievement has been followed by cross-country research in a further five sectors (telecommunications, cement, construction, fertilizer and liquefied petroleum gas); all sectors that are crucial to economic development. The ACF plans to publish a comparative review of the
The challenges that the ACF faces are not insurmountable. We can work smarter in the digital age to improve communication and achieve even better outcomes. We should always strive for greater inclusion across the artificial barriers of borders and language and will remain committed to doing so. Like most of African institutions that thrive, we will need political will, resources and leadership.

Although it still has a long way to achieving long-term sustainability, I am confident that the foundation laid thus far, will stand the ACF in good stead as it charts new strategic waters into the future.

It was a great pleasure to serve this important pan-African institution which holds great promise for the entire continent. I wish to thank all the members of the Steering Committee, and especially the deputy Chairperson Deshmuk Kowlessur, for their contribution, guidance and support.

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I also wish to thank our interim Secretariat located in South Africa for making the ACF an operational success. I hope the 2008 biennial Conference will take the necessary decisions to take the ACF to even greater heights.

I hope you enjoy the inaugural ACF Newsletter, I certainly did.

Kind regards,

Tembinkosi Bonakele
ACF Chairperson
ACF priorities are:

(a) Integration: Encourage and assist African countries that do not have a competition law to adopt one. Urge Governments to approach the judicial system to have effective implementation of competition laws in each country.

(b) Capacity Building: Help build the capacity of existing and future African competition agencies: this includes human resources, budget and institutional structure through training, exchange, and funding.

(c) Awareness raising: Increase the awareness of the benefits of implementing competition laws among governments, the public and stakeholders.

IN FOCUS: Competition policy Advocacy

IMPROVING THE LIVES OF KENYANS THROUGH PRICE TRANSPARENCY IN THE DIGITAL FINANCIAL SERVICES (DFS)

Wang’ombe Kariuki, MBS Director General, Competition Authority of Kenya

By giving millions of Kenyans this convenience of knowing the cost of transaction before they take place, the Authority is confident that this will lead to better planning, timely repayment of app-based loans and efficient usage of financial resources. It is the belief of the Authority that this intervention has greatly contributed to financial inclusion.

The Authority’s intervention is critical going by official statistics from the Communications Authority of Kenya (CA), that state that over 21 million Kenyans access loans through mobile-based lending platforms such as M-Shwari and KCB-MPESA. The Kenya Bureau of Statistics, in its 2018 Economic Survey notes that the informal sector employment grew by 6.0 per cent from 13.3 million persons in 2016 to 14.1 million persons in 2017.

The importance of these numbers is that millions of Kenyans in the low-income bracket make use of the M-Shwari and KCB-MPESA services, mostly for loans to buy personal necessities or finance their businesses. It is with these Kenyans in mind, with the aim of improving their lives, as well as those with higher incomes and financial literacy levels, that the Authority pushed through the digital transparency initiative.

Now, when sending money to another party, the sender, in addition to being informed of the identity of the intended recipient, they are also informed of the amount of money the transaction will cost them. By knowing the cost beforehand, a sender has the unhindered opportunity to decide whether to go ahead with the transaction if it is affordable or, if it is too expensive, cancel it altogether.

Additionally, when a mobile money user is withdrawing money from an agent, they are also able to clearly determine the cost of this transaction well before completing it through “in-flight” notifications. Additionally, once a transaction is completed, the mobile subscriber receives a debit receipt delivered their mobile phones through a SMS as a confirmation of the cost that had been highlighted beforehand.

The totality of this notification is that subscribers are comforted about the charges levied using various services through their mobile phones.
The kind of disclosures mentioned above do not only apply to person-to-person transactions but also for mobile-based services such as paying for utilities such as electricity and water as well as payments for goods at supermarkets or petrol at a fuel station.

The disclosure also applies to customers withdrawing money from their bank account and transferring it to their mobile money wallet (and vice-versa) or when they are simply checking their bank balance or requesting for a statement.

**How is it related to enhancing a competitive environment?**

It is known that the aim of competition is to protect the interests of consumers, and when consumers are aware of their rights as enshrined in Article 46 of the Constitution, then they will exert the necessary pressure on businesses to maintain high standards of business conduct.

The pressure that consumers exert on businesses helps promote a competitive environment as businesses will be compelled to compete on the basis of price.

The businesses will also be compelled to innovate, leading to the development of new and improved products, thus enabling the consumer to have choice of product at a competitive price.

The intervention by the Authority in the Digital Financial Services (DFS) has enabled consumers to be aware of the applicable charges and fees for transactions, thus exerting pressure on the mobile financial service providers to compete on the basis of price.

**South African Competition Commission**

In 2018, bid rigging in public procurement continued to feature prominently in the cases investigated by the Commission. Hence the Advocacy Division hosted several meetings to raise awareness about bid rigging and to impart the tools needed for procurement officials to identify and report the conduct.

For example, the ongoing school uniform investigation called for a dual advocacy and investigation approach prompting the Commission to engage stakeholders in this industry and review the tendency to conclude exclusive agreements for the supply of school uniforms.

A related priority for the Commission is the successful implementation of the criminal provisions of the amended Act.

The Commission engaged stakeholders in the criminal justice system with a view to understanding the implications of individual criminal liability in competition law and to reach agreement on the roles of each institution in the implementation of these provisions of the Act.

The Advocacy Division also gave input on policy, participated in awareness-raising events and communicated the Commission’s key messages through broadcast, print and social media throughout the year.

**Raising awareness about collusive tendering**

The Commission provided training on how to identify and detect bid-rigging to 50 senior provincial auditors of the Office of the Auditor General (AG) in Pretoria in April 2017.

The training covered prohibited practices in the Act, guidelines for fighting bid rigging in public procurement, designing tenders to reduce bid rigging, detecting bid rigging in public procurement, bid rigging patterns and the role of the certificate of independent bid determination in mitigating bid rigging.

The outcome of the Commission’s training was that the Office of the AG amended its audit procedures to include bid-rigging detection.

On 26 September 2017, the Commission provided similar training to the procurement staff of the Nelson Mandela Bay Metropolitan Municipality.

The audience was staff from finance, procurement, supply chain, internal audit and members of bid evaluation and bid adjudication committees.
Image: Commissioner, Tembinkosi Bonakele, Competition Commission South Africa and Wang’omebe Kariuki, Director General, Competition Authority of Kenya sign a Memorandum of Understanding during the 10th Annual Competition Law Economics & Policy Conference in Cape Town, South Africa, 2016
School uniforms in the spotlight

The Commission drafted a Circular to assist the National Department of Education in promoting competitive bidding for the procurement of school uniform by schools in South Africa.

The purpose was to encourage a move away from the common practice of exclusive agreements between schools and school uniform suppliers. The department then issued the Circular to all provinces on the 15 May 2016.

Thereafter the Commission undertook a survey to test the extent to which schools have complied with the department's circular. The preliminary report indicated that some schools have taken measures to implement competitive bidding in the procurement of school uniform.

In November 2017, a Commission team presented to the senior management of the National Department of Basic Education, focusing on the results of the school uniform survey.

In the last quarter of the 2017/18 financial year, the Commission engaged with the National Education Collaboration Trust on school uniform procurement. The engagement was attended by various delegates including by the Minister of Basic Education, and the Deputy Minister.

Driving change in the automotive industry

The Commission published a draft code of conduct for competition in the automotive industry aimed at resolving competition problems in the automotive aftermarket sector.

The Commission is concerned about the exclusive arrangements between original equipment manufacturers (OEM’s) and approved dealers, repairers and parts suppliers in carrying out in-warranty service and repair work.

These exclusive arrangements have the effect of limiting the participation of some players in the market, especially small and medium sized enterprises (SME’s).

The arrangements concerning the sales, distribution and use of spare parts also limit competitiveness in this market.

The Commission is also pursuing broader reforms in the sector, including promoting the increased ownership of dealerships by historically disadvantaged persons and advocating for price transparency, including the unbundling of vehicle costs from the costs of a maintenance and service plan.

Competition issues in the Cotton Sector of Zambia

The Zambian Competition and Consumer Protection Commission undertook a Cotton Value Chain market study in 2017. This study was aimed at improving the ability of Small and Medium Enterprises (SMEs) and emerging farmers to commercially link into larger markets.

Zambia produce quality cotton that is highly appreciated by buyers, principally because it is hand-picked and therefore typically cleaner and has less damage to fibres than machine picked cotton. However, the Zambia cotton seed market is characterized by a small number of private operators licensed to produce seed.

Furthermore, the cotton seed has remained regulated with restrictive market regulations and or lack of coordinated regulation and policy focus in the entire process of seed multiplication.

Inadvertently, these regulations and government decisions have reinforced dominance on the cotton seed market (e.g. import and export bans, non-tariff barriers) and facilitated collusion and restricted ability of firms to compete on prices, quality and other product dimensions such as influence on price of the crops.

These conditions have negatively affected the performance of the cotton sector of Zambia.
The Commission is concerned about the exclusive arrangements between original equipment manufacturers (OEM’s) and approved dealers, repairers and parts suppliers in carrying out in-warranty service and repair work.

These exclusive arrangements have the effect of limiting the participation of some players in the market, especially small and medium sized enterprises (SME’s).

The study also found that open cotton seed sourcing would also assist in breaking the farmer-ginner relationship that had for long been problematic and would induce competition at both seed market level and seed cotton level.

Opening the market to other players would result in making cotton seed readily available on the open market and allow more players such as local farmers to participate in the cotton value chain.

The current scenario leaves local cotton farmers disadvantaged as Ginders and CDT dictate to them how the market should operate.

The Commission observed that there was an overarching strategy to tackle anti-competitive trade practices and improve the quality of market regulations along key cotton value chains to provide an environment where sustainable investments could take place.

The Commission recommended that the Cotton Development Act be revised by removing anti-competitive clauses and market foreclosing clauses to promote competition in the cotton sector of Zambia.

Further, that Government makes a deliberate policy to promote cotton seed multiplication by commercial seed companies that have the expertise and experience. In addition, that this seed multiplication is de-linked from the giners to promote competition in the cotton seed supply.

**Zimbabwe**

The Competition and Tariffs Commission undertook investigations into allegations of collusive tendering by the providers of security guard services. It was alleged that, security companies have been tendering uniform rates for services they render.

The investigations established that the source of the lack of competition in the sector was the Statutory Instrument promulgated by the Minister of Home Affairs, the Private Investigators and Security Guards (General) Regulations, [S.I. 156 of 2007] (“the Statutory Instrument”). In terms of the Statutory Instrument, the security industry is expected to charge “specified minimum rates” for their services and these minimum rates are mandatory. The commercial security service providers were thus complying with the provisions of the Statutory Instrument.

The investigation therefore ended up assessing whether the Statutory Instrument is in harmony with the provisions of the Act. The Commission established that the Statutory Instrument provided for the security industry to charge minimum rates for their services.

The Commission also noted that since the publication of the inaugural statutory instruments on minimum rates, the Schedule of Rates has been amended twice.

The Commission’s analysis established that the setting of minimum prices is anti-competitive. The provisions of the Statutory Instrument result in a restrictive practice as enunciated in section 2(d)(iii) of the Act by way of enhancing the price of security services.

The price floor set by the Minister result in inefficient markets through restriction of competition amongst firms which end up charging above market equilibrium prices to the detriment of the consumer at large.

The Commission advocated for the repeal of Section 18 of the Statutory Instrument to promote effective competition amongst security guard companies. The Ministry of Home Affairs repealed the section and competition has been restored in the commercial securities market.
Image: Commissioner, Tembinkosi Bonakele, Competition Commission South Africa and Mihe Gaomab II, CEO of the Namibian Competition Commission at the 4th BRICS International Competition Conference, Durban, South Africa, 2015
ACF STUDIES AND REPORTS
The ACF has produced a series of studies and other reports on the status of competition in selected markets, including Construction, airlines and roaming charges in the telecommunication services.

The ACF is conducting, in collaboration with the World Bank, a research project on benchmarking for institutional design of competition agencies. Another ongoing project covers the exchange of experiences and knowledge sharing in case investigations.

These projects have significantly contributed to cooperation efforts among African competition agencies.

Notable achievements have been made with the support of the ICN in the areas of capacity building of newer agencies in merger review, anti-cartel enforcement, competition advocacy, and competition policy implementation, through a series of national and regional workshops. See below.

Importantly, the ACF continues to foster closer relations between trade and competition officials, leading to improved cooperation on policy coherence and a better understanding of each other’s policies and objectives.

Joint World Bank/ACF book on the status of competition is selected key sectors in Africa

The African Competition Forum (ACF) released a book on the status of competition in Africa. The book entitled Competition in Africa - Insights from Key Industries is the result of a study in six ACF member countries of Botswana, Kenya, Namibia, South Africa, Tanzania and Zambia maps out key issues in competition through four key studies in the cement, sugar, poultry and fertiliser industries across Southern and East Africa.

It considers the nature and extent of market power, the development of large firms, their production, investment and the prices of products across countries. The book draws out implications and policy recommendations for competition policy, regional integration and economic development.

Another joint report from the World Bank Group and the African Competition Forum, Breaking Down Barriers was completed in 2017. The report estimates the gains from tackling anticompetitive practices and reforming policies to enable competition.

For instance, it is estimated that reducing the prices of food staples by just 10 per cent, by tackling cartels and improving regulations that limit competition in food markets could lift 500,000 people in Kenya, South Africa, and Zambia out of poverty and save consumers more than $700 million a year.

Cartels are a serious cause of low competition levels in African countries and have been found to affect products in a variety of sectors, including fertilizers, food, pharmaceuticals, construction materials, and construction services. Evidence reveals that consumers pay 49 per cent more on average when firms enter these agreements.

Member News

South Africa

Proposed changes to South Africa’s competition law target economic concentration

On 1 December 2017 the Minister of Economic Development published the Competition Amendment Bill 2017 (Competition Bill) for public comment. A primary objective of the Bill is to address structural challenges that constrain the South African economy, namely high levels of concentration and racially skewed ownership patterns in the South African economy.

The Competition Bill seeks to address these challenges through various means, such as:
• strengthening the provisions of the Act relating to merger regulation and prohibited practices, with a particular focus on abuse of dominance;
• requiring special attention to be given to the impact of anti-competitive conduct on small businesses and firms owned by historically disadvantaged persons;
Image: Deputy Commissioner, Hardin Ratshisusu, Competition Commission South Africa, is participating in the UNCTAD Intergovernmental group of experts on Competition Law & Policy, Geneva, Switzerland, 2018

Image: ACF sideline meeting in Geneva Switzerland, 2018
• strengthening existing provisions relating to market inquiries so that consequential remedial actions effectively address market features and conduct that prevents, restricts or distorts competition in the relevant markets;

• providing the executive with more effective means of participating in competition-related proceedings and the power to initiate market inquiries; and

• Promoting the administrative efficacy of the Commission, market inquiries and the Tribunal.

South Africa revises its merger thresholds and filing fees

As from 1 October 2017, new thresholds for the mandatory notification of intermediate mergers to the Competition Commission and increased filing fees payable in respect of both intermediate and large mergers, will apply. This is the first time the thresholds and prescribed filing fees have been amended since 2009.

Only the thresholds for intermediate mergers have changed. The new thresholds for intermediate and large mergers are set out below.

<table>
<thead>
<tr>
<th>Threshold</th>
<th>Combined turnover or asset value</th>
<th>Target turnover or asset value</th>
<th>Size of the merger</th>
<th>Filing fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower threshold</td>
<td>R 600 000 000 ($41 666 666)</td>
<td>R 100 000 000 ($7 142 857)</td>
<td>Intermediate</td>
<td>R 150 000 ($11 164.05)</td>
</tr>
<tr>
<td>Higher threshold</td>
<td>R 6 600 000 000 ($490 776 666)</td>
<td>R 196 000 000 ($14 411 330)</td>
<td>Large</td>
<td>R 900 000 ($67 213.50)</td>
</tr>
</tbody>
</table>

The turnovers/asset values must be the gross amounts and the turnovers must be those generated in, into or from South Africa for the preceding financial year.

The thresholds are calculated with reference to the turnovers/asset values (whichever is greater) of:

(i) the acquiring firms together with the target firms; and

(ii) the target firms.

A large merger is where (i) the combined turnovers/asset values of the acquiring firms and the target firms exceeds the higher threshold therefor, and (ii) the turnover/asset values of the target firms exceeds the lower threshold therefor.

An intermediate merger is where (i) the combined turnovers/asset values of the acquiring firms and the target firms exceeds the higher threshold therefor, and (ii) the turnover/asset values of the target firms exceeds the lower threshold therefor, and the merger does not qualify as a large merger. The prescribed filing fee for an intermediate merger has been increased from R100 000 to R150 000 ($11 164.05), and for a large merger from R350 000 to R500 000 ($37 213.50).

**ENFORCEMENT ACTIONS**

South Africa’s statistics on abuse of dominance and restrictive vertical agreements for the year ended March 2018

| Complaints received from the public | 343 |
| Complaints initiated by the Commission | 5 |
| Screening cases carried over from last year | 53 |
| Complaints withdrawn | 8 |
| Complaints closed (non-referred) at screening stage | 196 |
| Complaints that became full investigations (excluding those referred to CD for full investigation) | 31 |
| Complaints closed (non-referred) after full investigation | 23 |
| Complaints referred to the Tribunal for adjudication after full investigation | 4 |
| Screening cases carried over to the next financial year | 36 |
| Complaints settled | 1 |

**Government partnerships help to uncover collusion**

One of the Commission’s strategic outputs for this and prior years was to establish working partnerships with relevant economic stakeholders. Pursuant to this goal the Commission has worked to promote awareness amongst Government agencies about collusive tendering and its detrimental effects on consumer welfare.
The Commission’s work in this area empowered stakeholders to identify collusive tendering and to refer suspicious cases to the Commission for investigation. As result, the Commission received more complaints from Government agencies, alleging that they may have been victims of collusive tendering. During 2017 two such cases were lodged, by Robben Island Museum and Eskom Holdings SOC Limited (Eskom) respectively.

The Commission also referred four companies to the Tribunal for prosecution after finding that they had tendered collusively for a R4.5 billion tender to supply scaffolding and thermal insulation for 15 Eskom coal-fired power stations. The Commission’s investigation found evidence of price fixing and collusive tendering on the part of Waco Africa (Pty) Ltd.

**MERGER REVIEW**

South Africa’s merger statistics for the year ended March 2018

<table>
<thead>
<tr>
<th>Classification</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Notified</strong></td>
<td>365</td>
</tr>
<tr>
<td>Large</td>
<td>155</td>
</tr>
<tr>
<td>Intermediate</td>
<td>203</td>
</tr>
<tr>
<td>Small</td>
<td>7</td>
</tr>
<tr>
<td><strong>Finalised</strong></td>
<td>388</td>
</tr>
<tr>
<td>Large</td>
<td>120</td>
</tr>
<tr>
<td>Intermediate</td>
<td>261</td>
</tr>
<tr>
<td>Small</td>
<td>7</td>
</tr>
<tr>
<td><strong>Approved without conditions</strong></td>
<td>321</td>
</tr>
<tr>
<td>Large</td>
<td>92</td>
</tr>
<tr>
<td>Intermediate</td>
<td>225</td>
</tr>
<tr>
<td>Small</td>
<td>4</td>
</tr>
<tr>
<td><strong>Approved with conditions</strong></td>
<td>52</td>
</tr>
<tr>
<td>Large</td>
<td>23</td>
</tr>
<tr>
<td>Intermediate</td>
<td>27</td>
</tr>
<tr>
<td>Small</td>
<td>2</td>
</tr>
<tr>
<td><strong>Prohibited</strong></td>
<td>12</td>
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<tr>
<td>Large</td>
<td>4</td>
</tr>
<tr>
<td>Intermediate</td>
<td>7</td>
</tr>
<tr>
<td>Small</td>
<td>1</td>
</tr>
<tr>
<td><strong>Withdrawn / No jurisdiction</strong></td>
<td>9</td>
</tr>
<tr>
<td>Large</td>
<td>4</td>
</tr>
<tr>
<td>Intermediate</td>
<td>5</td>
</tr>
<tr>
<td>Small</td>
<td>0</td>
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</table>
Commission grounds airline merger over competition concerns

SA Airlink, a South African airline, featured prominently as a respondent in the Commission’s activities during the 2017/18 financial year. The Commission referred SA Airlink to the Tribunal for prosecution on charges of excessive pricing and pricing below cost in February 2018. Together with South African Express Airways SOC Ltd t/a SA Express (SA Express) and South African Airways SOC Ltd (SAA), SA Airlink was alleged to be engaged in cartel conduct in that the respondents agreed to allocate flight routes between them. The Commission referred this matter to the Tribunal for adjudication. The Commission also prohibited a proposed merger between SA Airlink and Safair Operations (Pty) Ltd (Safair) as the transaction was likely to result in the removal of an effective competitor from the market and no suitable remedies to address these concerns could be identified.

Promoting healthy competition through merger regulation

The Commission recommended that the Tribunal prohibit a large merger between the Netcare Hospital Group (Netcare) and mental health care provider Akeso Group (Akeso). Both Netcare and Akeso were active in the provision of private healthcare in South Africa. The Commission initially recommended a prohibition. However, on receiving remedies tendered by the merging parties the Commission reversed its recommendation to an approval subject to conditions. Akeso also undertook to divest its Rand and Bell Street Hospitals. The merger was accordingly approved by the Tribunal subject to these pricing and divestiture conditions.

INTERNATIONAL COOPERATION

The tenth BRICS Summit took place from 25 to 27 July 2018. It was a milestone in the history of BRICS and was held under the theme “BRICS in Africa: collaboration for inclusive growth and prosperity in the 4th industrial revolution”.

The summit focused on the need to strengthen the relationship between BRICS and Africa. In this regard BRICS leaders interacted with African leaders on how best to bring about inclusive growth and shared prosperity through heightened collaboration.

In this context, leaders of the Republics of Namibia, Gabon, Angola, Senegal, Uganda, Togo and Rwanda participated in a BRICS-Africa outreach session.

The summit culminated in a declaration in which the heads of the BRICS members reaffirmed their commitment to enhanced cooperation and collaboration amongst the BRICS economies.

<table>
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<tr>
<th>UPCOMING EVENTS</th>
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<tr>
<td><strong>South Africa</strong></td>
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<tr>
<td>AGF/SADC Joint Workshop on Cartel Investigative skills</td>
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<tr>
<td>ICN unilateral conduct workshop</td>
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<td>12th annual competition conference</td>
</tr>
</tbody>
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KENYA

ECONOMIC ANALYSIS FOR REGULATION AND COMPETITION, 26th – 27th September 2018, Nairobi

This course is offered by the Competition Authority of Kenya, in collaboration with University of Nairobi (Centre for Competition Law and Economic Policy - CCLEP) and the Centre for Competition, Regulation and Economic Development (CCRED) at the University of Johannesburg, South Africa.

This two-day course in Economic Analysis for Regulation and Competition is designed for economists in competition authorities, sector regulators and government agencies, as well as those in private practice and competition experts.
Commissioner, Tembinkosi Bonakele is participating in the 10th BRICS Summit in Johannesburg, South Africa, 2018
Image: Commissioner, Tembinkosi Bonakele, Competition Commission South Africa and Francis Lebon, CEO, Fair Trading Commission Seychelles sign a Memorandum of Understanding during the 11th Annual Competition Law Economics & Policy Conference in Sandton, South Africa, 2017
Image: ACF members in a closed session with BRICS Competition heads of Authority at the 4th BRICS International Competition Conference, Durban, 2015
BOTSWANA

Botswana volunteer for a peer review of its competition law and institutions at UNCTAD

The Minister of Investment, Trade and industry Hon. Bogolo Ke- newendo led the Competition Authority team at the Intergovernmental Group of Experts (IGE) Voluntary Peer Review for Botswana which was held in Geneva, Switzerland on 12-13 July 2018.

The Voluntary Peer Review is a comprehensive exercise which is carried out under the United Nations Conference on Trade and Development (UNCTAD).

The main objective of the exercise was to identify areas for improvement in the legal and institutional framework, thereby contributing to enhancing the quality, efficiency and effectiveness of competition law enforcement. South Africa, Kenya and the United States were the peer reviewers at this session.

Related link

MAURITIUS

Law review

The CCM has embarked on a review of the Competition Act. The terms of reference of the review include assessing the merits of the introduction of a mandatory notification merger regime, the introduction of financial penalties for abuse of dominance and the introduction of a settlement mechanism for cartels. The review process is expected to be completed by April 2019.

RPM Amnesty

RPM is prohibited in Mauritius and can be sanctioned by fines. However, the CCM was of the view that such practice was common in Mauritius and the normal investigative route may not be the ideal solution to eliminate these RPM.

In 2017 the CCM offered a time-limited and one-off amnesty to enterprises who have been party to Resale Price Maintenance (RPM) on the condition that they report and amend their conduct. In return they were offered immunity from fines on the reported conduct.

The RPM Amnesty programme was highly successful generating 102 leniency applications. Several thousand products are concerned by the RPM Amnesty programme.

The programme was supported by the Mauritius Chamber of Commerce and Industry who facilitated its dissemination and encouraged enterprises to benefit from the RPM Amnesty. The RPM Amnesty applications is expected to boost competition in the retail sector.

Cartel Investigation

Cartel investigation in agro-chemicals. The case concerns a price fixing/ market sharing agreement between two of the largest producers of agro-chemical products in Mauritius.

The Executive Director has issued his final report of investigation where he is recommending combined financial penalties of over 2 million USD.

The recommendation includes a leniency discounts of 75% for one of the cartel participants. The applicant also applied for Leniency Plus for another cartel relating to bid rigging in the procurement of agro-chemical products in another market.
Cross-border money transfer

The CCM investigated Western Union and MoneyGram over exclusivity agreements that they have set with their respective agents. The agreements prevented their agents from offering competing services.

The CCM was concerned that such agreements may soften competition between the two players and also act as a barrier to entry into the market for cross-border money transfer services.

Both Western Union and MoneyGram offered the CCM undertakings that they will offer their agents the possibility to choose between an exclusive or non-exclusive agreement.

However, the non-exclusive agreement may be subject to lower commission rates. Following assessment, the CCM found that the undertakings would address the competition concerns raised by the CCM investigation.

The CCM accepted the undertakings of Western Union and MoneyGram and will continue to monitor the sector.

Public Hearings – Investigation into Payment Cards

The Competition Commission of Mauritius investigated concerns over the rates set as Issuer Interchange Fee (IIF) for Point of Sales (POS) transactions in Mauritius by both Visa and MasterCard.

The Final Report of the Investigation submitted to the Commissioners concluded that these IIF rates distorted competition by creating floor on the Merchant Service Commission on which acquiring banks compete.

The CCM recommended that these rates be lowered along with a series of informational remedies.

The CCM subsequently held a public hearing on 25th July 2018 on the findings of the report. MasterCard, Visa and two major local banks submitted written representations for the purposes of the hearing.
Competition Assessment in the Pharmaceutical Sector:

The pharmaceutical sector is part of the health sector which is a priority sector in the economy of Swaziland. It accounts for over 20% of the public health sector budget allocation—which is about 10% of the national budget, making government the biggest buyer of pharmaceuticals.

As government is the largest buyer of pharmaceuticals, there is potential amongst pharmaceutical wholesalers to enter into collusive tendering. This has led the Commission to prioritize a study in this sector.

The Impact Assessment of Ngwane Mills and Premier Swazi Bakeries merger

In 2013 the Board of Commissioners granted Premier Swazi Bakeries the right to acquire assets and business activities of Ngwane Mills (Pty) Limited.

The acquisition was agreed subject to certain conditions that relate to the supply of flour, and the production and supply of bread.

The Commission will take a study to analyse the impact of this transaction with regard to competition both in supply of flour and the production and supply of bread.

Market Studies:
- The banking market inquiry
- The Broiler Chicken Market inquiry

ZAMBIA

Enforcement

The Commission is currently investigating cases in the electricity and milling sectors with a view to restore competition in the same. There were allegations of exclusive dealing by ZETDC and CAFCA which are into electricity distribution and electricity cables manufacturing, respectively.

The case is at an advanced stage. In the milling sector, there are allegations of input foreclosure by vertically integrated milling firms who are also into baking. The case is at initial stages.

Mergers

Since January 2018 to date, the Commission examined mergers in the following sectors, insurance, fast moving consumer goods market, pharmaceutical, mining, health and industrial gases market.

International cooperation

The Commission continued to collate information on behalf of the COMESA Competition Commission for the assessment of regional mergers. It also examined and advised the COMESA Competition Commission on the likely effects of these mergers on the Zimbabwean market.

The Commission is in the process of amending the Act. It requested and received inputs from the South African Competition, COMESA Competition Commission and the Competition and Consumer Protection Commission of Zambia.

SEYCHELLES

Tour Operator and Taxi: The FTC investigated a matter concerning the transfers of tourists operated by tour agencies, which according to taxi operators was not fair competition.

Upon review of the licensing conditions for both taxi operators and tour operators and based on review of the current Tourism Policy, it was found that nothing precludes tour operators from providing transfers provided they are pre-booked guests.

Through information gathered it was found that that tour operators were transferring guests which were not pre-booked contrary to their license.

The matter was referred to the Seychelles Licensing Authority (SLA) being the competent authority in the issuance and enforcement of licenses in the country.
Unfair practices in the Seychelles mobile Network: Complaint was received by the FTC that a telecommunications company not registered nor licensed in Seychelles was illegally providing telecommunications services.

Upon liaising with the Department of Information, Communication and Technology (DICT) the sector regulator, it was found that the respondent had been authorized to operate a private mobile network with certain conditions.

Through its investigation, DICT found that the respondent was not adhering to the set conditions. As such necessary action is being taken against the respondent by the regulator. The matter was referred to DICT being the competent authority to handle the matter.

La Digue’s Land Transport Policy: The Department of Land Transport, sought an opinion from the Fair-Trading Commission regarding the proposed La Digue Island Land Transport Policy. The aim of the policy was to restrict the number of heavy machinery on the Island. Fair Trading Commission’s recommendations were that:

a. The government should opt for the most reasonable option in implementing the policy.

b. Owners of heavy machinery on the island should be free to set the prices for the use of their machineries without interference.

c. Individuals should have the option to source heavy machinery from others parts of Seychelles should they be dissatisfied with those on La Digue.

d. Prior to the finalization of the policy, all stakeholders (residents & businesses on La Digue) should be made aware of the changes and their opinions sought.

The FTC conducted advocacy activities including making speeches at a business summit, and presentations on how to detect and prevent bid-rigging.

ALGERIA

In September 2017, the Algerian Competition Council took part in a national survey on the implementation of measures related to the Prevention and Control of Corruption (ONPLC). This project is part of the reporting on the implementation of the United Nations Convention Against Corruption

The project relates to the role of administrative agencies, including the competition Council to the application to the following articles of the Convention:

- Policies and practices for the prevention of corruption - (Article 5 para 02);
- Public sector- (Article 7 paragraphs 01 and 04)
- Code of Conduct for Public Officials- (Article 8 paragraphs: 01 - 06.)
- Public tender Public Financial Management (Article 9 para 01)
- Information to the public- (Article 10 paragraphs a, b, c);
- Private sector - (Article 12 Paragraphs 01 and 02);

Related link

Regional African competition institutions

ECOWAS Regional Competition Authority (ECRA)

The Economic Community of West African States (ECOWAS) was established on May 28 1975 by the treaty of Lagos. ECOWAS is a 15-member regional group with a mandate of promoting economic integration and economic development.
After more than a decade of negotiations and intense preparatory work, the ECOWAS Regional Competition Authority (ERCA) was inaugurated on July 12th, 2018, in Banjul, Gambia. The ceremony was attended by the President of the republic of the Gambia, Ministers, and heads of agencies.

The ERCA is expected to be the central body that will promote fair trade, capital flow and private investment within the ECOWAS member states. It is vital for successful integration of and liberalisation ECOWAS markets, improving consumer welfare, creating employments and generating wealth in the region.

RELATED LINK:
One of the highlights of the day was His Excellency, Mr. Adama Barrow’s statement in which he emphasized that competition enforcement within the region can accelerate poverty eradication, improve infrastructure and industrialization and lead to the general improvement of the living conditions of citizens of all Member States.

**Competition development remains on the SADC agenda**

The Southern African Development Community (SADC) continued to dedicate resources to the promotion of competition law within its member states.

SADC’s Committee on Competition and Consumer Policy and Law, which South Africa is a member of, met in Botswana to discuss work related to competition and consumer protection matters within SADC.

Reports from each member state and the working groups on cartels, mergers and research were presented.

The meetings discussed recent developments on cartel enforcement in SADC member states; progress reports from the SADC cartels legal framework sub-group and the SADC cartels investigative techniques sub-group as well as enhancing cooperation on cross-border cartel enforcement activities.

Following the working group meeting, a joint capacity building workshop with the ACF was held on 19 – 20 September 2018. This was the second time that SADC and the ACF collectively designed capacity building.

The training was delivered by trainers from South Africa, Mauritius, Kenya and Botswana. The capacity building focused on investigative skills and preparation and execution of dawn raids.

It included a mock dawn raid exercise designed and led by the Commission. The capacity building workshop was attended by more than 50 participants.
Image: Deputy Commissioner, Hardin Ratshisusu, Competition Commission South Africa, is chairing the 19th meeting of the SADC Competition & Consumer Law & Policy Committee, Gaborone, Botswana, 2018.
As part of its effort to promote competition law and to build the capacity of competition practitioners in the region, SADC conducted a training course for judges and commissioners on 15 and 16 March 2018 in Johannesburg. The training was attended by 12 sitting commissioners from three jurisdictions, namely Tanzania, Botswana and Swaziland.

The principal objective of the training workshop was to familiarise judges with the economic principles underpinning national competition laws and to discuss the legal approach to enforcing competition policy to promote effective enforcement of competition legislation in SADC member states. The training programme was hosted jointly with UNCTAD’s competition and consumer programme.

Cooperation with international organisations

UNCTAD MENA-Sweden funded - capacity building Programme:

Under this project, UNCTAD organized Regional Workshops (May, 2018) on Competition neutrality, bid-rigging, agency effectiveness, and compliance programmes.

The participants included officials from Competition authorities, relevant Ministries and business representatives from Algeria, Egypt, Morocco, and Tunisia among other MENA countries.

A second set of training were organised February, in Cairo on the Newly adopted United Nations Consumer Protection Guidelines and the challenges for their implementation. UNCTAD and the host country inaugurated the Regional Training Centre for Consumer Protection which was established in Cairo.

UNCTAD-EU Project on strengthening institutional and enforcement capacity of competition and consumer institutions in central Africa:


OECD

While co-operation with the African Competition Forum is well established, co-operation with African authorities has been characterised to date by ad hoc capacity building and training seminars, such as on competition assessment in Egypt and South Africa; fighting bid rigging in public procurement in Morocco and Botswana.

The OECD is currently working with the Millennium Challenge Corporation to undertake a longer-term competition assessment project with Tunisia. Negotiations are underway regarding a potential peer review of competition law and policy of an African jurisdiction, which if successful would be the second one in region after the review of South Africa in 2003.

Furthermore, the OECD addresses competition issues in its Economic Surveys, as done in recent surveys of South Africa and Tunisia. African countries participate regularly in the OECD Global Forum on Competition (29-30 November 2018) providing substantive contributions that help frame discussions.

Once again, in 2018, the ACF will hold a daylong meeting of its members on the margins of the GFC (28 November). The OECD Competition Division looks forward to developing its activities further with authorities across Africa.

MEMBERS:

Do you have exciting news or upcoming events that you would like to share?

To get your news in the newsletter, please submit it to the ACF via email, with the subject line “Next Newsletter”, for it to be incorporated in the next newsletter. Ideally, the information should be written to fit under one of the newsletter headings. Information about annual reports and newsletters should be communicated by providing the URL links.