

Rapid development of competition law across Africa

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Baker McKenzie's latest Africa Competition Report 2022 provides a detailed analysis and overview of recent developments in competition law enforcement and competition policy in 32 African jurisdictions and regional bodies. The report outlines how, over the past two years, African competition regulators have actively engaged in efforts to address pandemic-related challenges, but there has also been a general upward trend in competition policy enforcement across the continent. This trend is highlighted by a number of significant recent developments in competition law regulation across the continent. Countries and regions with recent competition law developments include the Common Market for Eastern and Southern Africa (Comesa), Egypt, Ethiopia, Ghana, Kenya, Mauritius, Mozambique, Namibia, Nigeria and South Africa.



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Comesa

There were various developments with regards to Comesa in 2021. In February 2021, the Comesa Competition Commission issued a Practice Note in which it amended the interpretation of the term "operate". Prior to this, a party "operated" in a Comesa Member State if it had turnover or assets in that Member State in excess of \$5m. This requirement has now been removed, effective from 11 February 2021, and a party will "operate" in a Comesa Member State merely if it is active in it (without a minimum turnover or asset threshold). The impact of this will be to make it easier for a transaction to fall within the scope of the Comesa merger control regime.

The Comesa Commission has also recently issued Draft Guidelines on Fines and Penalties, Draft Guidelines on Settlement Procedures and Draft Guidelines on Hearing Procedures.

In September 2021, the Comesa Commission issued its first penalty for failure to notify a transaction within the prescribed time periods, which penalty amounted to 0.05% of the parties' combined turnover in the Common Market in the 2020 financial year. This was imposed in relation to the proposed acquisition by Helios Towers Limited of the shares of Madagascar Towers SA and Malawi Towers Limited.

In December 2021, the Comesa Commission imposed a fine for failure to comply with a commitment contained in a merger clearance decision.

The Comesa Commission also conducted eight investigations into restrictive business practices in 2021.

Egypt

There were numerous recent developments in Egypt, including in November 2020, when the Competition Authority announced that the Egyptian Prime Ministry had approved the Prime Minister's draft law amending certain provisions of the Egyptian Competition Law 3/2005. In February 2021, the Egyptian parliament's Economic Affairs Committee started the discussions on the new amendments. The Competition Authority has also recently initiated market inquiries in relation to multiple sectors including healthcare, food, electronic and electrical appliances, automotive, real estate, media and petroleum sectors.

In April 2021, the Economic Court of Cairo issued a ruling in a criminal case brought in March 2020 by the Competition Authority, against five individual poultry brokers for colluding to fix the price of chicken to the detriment of consumers and chicken breeders. The court fined each broker 30 million Egyptian pounds (approx. \$1.6m) for agreeing to fix the price of a kilogram of chicken.



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In July 2021, the Competition Authority initiated a criminal case against two companies who agreed to submit identical offers in one of the practices of the General Authority for Veterinary Services, in violation of Egyptian competition law.

The head of the Competition Authority announced plans for the creation of an Arab Competition Network to enhance cross-border cooperation between antitrust enforcers in the Middle East. The ACN would be the first to provide Arab competition authorities with an official platform to meet and discuss prominent issues and impending changes to antitrust law. The network would be run by the 22 members of the League of Arab States, which includes Egypt, Syria, Lebanon, Iraq, Jordan and Saudi Arabia, among others.

Ethiopia

In Ethiopia, the Trade Competition and Consumer Protection Authority is working on regulations to provide guidance on the application of the Trade Competition and Consumer Protection Proclamation (No 813/2013). Proclamation No. 1263/2021, which is expected to be enacted and come into force in 2022, transfers the powers of the Trade Competition and Consumer Protection Authority to the Ministry of Trade and Regional Integration.

Ghana

In Ghana, a draft Competition and Fair Trade Practices Bill is before parliament for consideration.

Kenya

The Competition of Authority in Kenya finalised its study into the regulated and unregulated credit markets in the country and issued its report in May 2021. The Authority further developed the Retail Trade Code of Practice 2021, in consultation with stakeholders in the retail sector, to address the abuse of buyer power issues arising from the sector. Also in 2021, the Competition Authority conducted a dawn raid in the steel industry and issued draft joint venture guidelines, to clarify the rules and filing requirements of joint venture arrangements.



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Mauritius

The Competition Commission in Mauritius concluded a market study in the pharmaceutical sector on 8 June 2021.

Mozambique

There were numerous developments in competition law in Mozambique in 2021, including that the Competition Regulatory Authority became operational in January 2021. Regulations on Merger Notifications Forms were enacted by means of Resolution No. 1/2021 of 22 April 2021. The Regulations prescribe the different forms to be completed for merger notifications, as well as the details of the information and documentation required. Regulations on Filing Fees were enacted by means of Ministerial Diploma No. 77/2021 of 16 August 2021. Filing fees are currently set at 0.11% of the turnover of the parties in the previous year, up to a maximum of MZN 2,250,000 (approx. \$35,000). Amendments to the Competition Regulations were enacted by means of Decree No. 101/2021 of 31 December 2021.

Namibia

A Competition Bill is in progress in Namibia, and the Competition Commission expects to submit the final version of the Competition Bill to the Ministry of Industrialisation and Trade by the end of June 2022.

Nigeria

On 2 August 2021, Nigeria adopted the Merger Review (Amended) Regulations 2021, which set out new fees applicable for merger filings. The Federal Competition and Consumer Protection Commission launched and publicised an investigation into the alleged anticompetitive conduct of five companies in the shipping and freight forwarding industry in October 2021.

South Africa

There were various developments in South Africa in 2021, including in May 2021, when the Competition Commission launched the Online Intermediation Platforms Market Inquiry, focusing on four broad online intermediation platforms and market dynamics that specifically affect business users – e-commerce marketplaces, online classified marketplaces, software app stores and intermediated services (such as accommodation, travel, transport and food delivery). The Inquiry is ongoing with a provisional report scheduled for release on 10 June 2022, and the final report scheduled for release in November 2022.

In April 2021, the Commission released its market inquiry reports on Land Based Public Transport. Furthermore, in April 2021, the Commission published its final report on an impact assessment study it conducted in relation to Covid-19. The

report sets out the findings of the Competition Commission regarding the impact of the Covid-19 block exemptions and the enforcement work done by the Competition Commission during the pandemic. The Competition Commission's fifth Essential Food Pricing Monitoring Report, which is released quarterly, focused on tracking the impact of the Covid-19 pandemic and consequent economic crisis on food markets.



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In May 2021, the Commission issued, for comment, draft guidelines on Small Merger Notifications, which contain specific guidance applicable to the assessment of digital mergers.

Notably, 2021 was the year when the Commission prohibited a merger solely on public interest grounds, making it the first transaction to be prohibited on non-competitive grounds. Ultimately, however, the merger was conditionally approved before the Competition Tribunal.

In November 2021, the Commission released its Economic Concentration Report, which highlighted patterns of concentration and participation in the South African economy. The report includes details on the Commission's power to launch market inquiries into highly concentrated industries, as well as its increased authority to impose structural remedies on businesses in these sectors.

In March 2022, the Commission issued Guidelines on Collaboration between Competitors on Localisation Initiatives, which are aimed at providing guidance to industry and government on how industry players may collaborate in identifying opportunities for localisation and implementing commitments related to localisation initiatives in a manner that does not raise competition concerns.

In March 2022, the Commission launched a market inquiry into the South African fresh produce market, which will examine whether there are any features in the fresh produce value chain, which lessen, prevent or distort the competitiveness of the market.

The Commission concluded various settlement agreements with market players (eg. grocery retailers and laboratories) to reduce the prices of goods and services.

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