



AFRICAN ANTITRUST & COMPETITION LAW NEWS & ANALYSIS

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African Antitrust Developments: A WRAP from the *Comp-Corner*

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The editors and authors at AfricanAntitrust.com welcome you to the third instalment of “*The WRAP.*” In this instalment, Senior Contributor **Michael James Currie** takes a look back at the developments from the COMESA region in 2016.

COMESA

What has taken place in past 10 months?

The COMESA Competition Commission (CCC) recently announced the milestone of having received over US\$3 million in merger filing fees since December 2015.

Although filing fees were, at one stage, US\$500,000, this figure may seem surprisingly low. The CCC did, however, recently adjust the filing fee which is now calculated at 0.1% of the firms’ annual turnover, subject to a US\$200,000 cap.

The CCC has already assessed 24 cases in 2016 so far which is an increase from the 18 reported mergers in the 2015 FY. This may be as result of the reduction in the filing fees.

The financial services sector was responsible for the most merger notifications followed by mergers in the construction, insurance, telecommunications, energy and agriculture sectors.

Furthermore, the CC's assessment focused primarily on Zambia, Kenya, Mauritius, Zimbabwe, and Uganda.

As to the filing fees collected, the CCC indicated that they intend allocating half of the filing fees back to the respective national agencies and that this would be done on a pro-rata basis based on how much turnover each member state generates *vis-à-vis* the common market.

Ensuring that national agencies don't 'miss out' on filing fees is an important factor in advancing the CCC's exclusive jurisdiction in respect of mergers which satisfy the CCC's merger thresholds. This appears so as a number of member states have previously, despite the recognition of the CCC's exclusive jurisdiction, nevertheless required merging parties to file separate filings before the relevant national agency.

In light of the CCC's growing stature, the indications are that the CCC is actively looking to increase its presence as an enforcement agency and does not want to merely be seen as an administrative body which simply 'rubber stamps' merger notifications, particularly planning to become more active in the restrictive practices arena. Click here to see [more](#).

This is further highlighted by the number of **Memoranda of Understanding** which the CCC has recently concluded with certain of its member states. These MoU's amongst others aim to promote information exchanges and provide assistance to national agencies in respect of common investigations.

In addition, we have previously noted on www.AfricanAntitrust.com that the CCC intends conducting market enquiries in respect of the common market in an effort to identify competitive dynamics or constraints between member states. Although the CCC has not yet formally identified priority sectors, we note that the CCC has indicated that it will conduct its market inquiry into shopping malls, by gathering information from member states.

In light of the CCC's clear ambitions, it does beg the question as to where the CCC will obtain the requisite funding to conduct market inquiries which are inherently resource intensive. The CCC has not, to date, imposed an administrative penalty on a respondent, although in light of recent calls by the CCC for firms who may be engaging in anticompetitive conduct to come forward and engage the CCC for purposes of obtaining *inter alia*, exemptions, the first administrative penalty may not be that far away.

In addition to assessing merger, conducting market inquiries and gaining traction in investigations, the CCC also envisages a greater advocacy role to play.

In this regard, the CCC's CEO Mr George Lipimile stated that the *"commission intends to intensify its technical assistance and capacity building in member states, with particular focus on the training of the national competition authorities on the enforcement of the regulations.*

Our focus in 2017 shall be on advocacy in order to sensitise national governments and other stakeholders on the provisions of the regulations and the need for domestication of the COMESA Treaty and Regulation".

As always, thank you for reading the WRAP, and remember to visit <http://www.AfricanAntitrust.com> for up-to-date competition-law news from the African continent.

--Ed.