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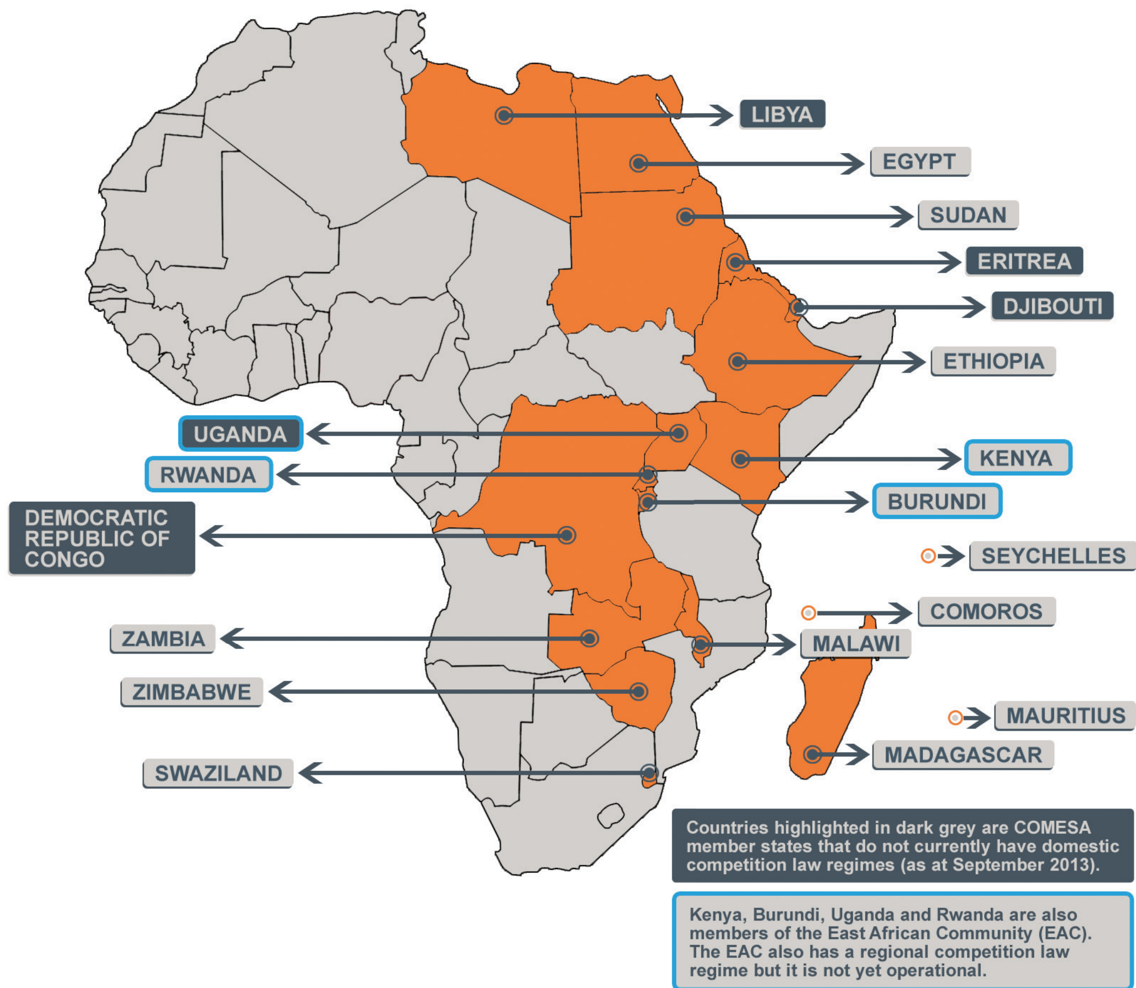
COMESA - A NEW REGIONAL COMPETITION LAW REGIME FOR EASTERN AND SOUTHERN AFRICA

The Common Market for Eastern and Southern Africa (COMESA) is a regional grouping of 19 African countries and is headquartered in Lusaka, Zambia.



Countries highlighted in dark grey are COMESA member states that do not currently have domestic competition law regimes (as at September 2013).

Kenya, Burundi, Uganda and Rwanda are also members of the East African Community (EAC). The EAC also has a regional competition law regime but it is not yet operational.

THE COMESA MERGER CONTROL BASICS

01 Who enforces the COMESA competition law regime?

The COMESA Competition Commission (CCC), which is based in Lilongwe, Malawi.

02 What types of mergers must be notified to the CCC?

A merger must be notified to the CCC if "both the acquiring and target firm or either the acquiring firm or target firm operate in two or more COMESA Member States". While the regulations make provisions for a financial threshold for notifiability, this notification threshold is currently set at zero.

03 What filing fees are payable for a merger notification to the CCC?

A filing fee of 0.5% of the merging parties' combined annual turnover or combined value of assets on the COMESA common market (whichever value is the highest) is payable. The fee is capped at USD 500,000.

04 What are the time periods for examining a merger?

The CCC has an initial period of 120 days within which to finalise its decision - but an extension of this period may be granted.

05 When must a merger be notified?

The parties must notify the CCC within 30 days of the parties "decision to merge".

06 May a merger be implemented prior to approval being obtained?

Yes. The merger control regime is non-suspensory.

07 What are the consequences for failing to notify?

A merger will have no legal effect and will be legally unenforceable. The CCC may also impose a penalty of up to 10% of the merging parties' turnover in the COMESA common market.

COMESA - A NEW REGIONAL COMPETITION LAW REGIME FOR EASTERN AND SOUTHERN AFRICA

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Key points:

- On 14 January 2013, a new regional competition law regime came into operation across the 19 African countries that constitute COMESA.
- Under that regime, mergers are notifiable where either or both the "acquiring firm" and the "target firm" operate in two or more COMESA Member States.
- A large notification fee of up to COM$500,000 (US$500,000) is payable to the CCC.
- It is not clear whether the new regime constitutes a one-stop-shop, or if parallel national notification of mergers that have a regional dimension is required.

I. INTRODUCTION

On 14 January 2013, a new regional competition law regime came into operation across the 19 African countries that constitute the Common Market for Eastern and Southern Africa (**COMESA**). This regime introduces new supra-national merger control, business conduct and consumer protection rules which must now be complied with and which are enforced by the COMESA Competition Commission (**CCC**), which is based in Lilongwe, Malawi.

The commencement of this regime may have major implications for firms that either do business generally in COMESA Member States and/or are considering undertaking acquisitions or disposals of assets in these states. This is because a failure to comply with the rules involves potentially significant penalties such as fines and the potential unwinding of transactions. The focus of this article is on the merger control rules.

While the new regime is already in force, there is significant uncertainty as to its interpretation and how it will operate in practice. It is also unclear to what extent the Member States have ceded sovereignty over transactions that affect their economies, and whether the CCC and the Member States will cooperate sufficiently with one another.

The first merger to be notified to the CCC was in March 2013. This involved the acquisition by Funai Electric Company Limited of the lifestyle entertainment business of Koninklijke Philips Electronics N.V. A few other mergers have subsequently been notified to the CCC. At the time of writing, none of these mergers have been decided. It is too early to comment on the CCC's investigation processes.

It is also not possible to predict whether other firms will readily comply with the merger control rules, alternatively seek to rely on interpretations that possibly exclude the application of these rules or their enforceability. Much will depend on a particular firm's appetite for legal and reputational risk.

II. BACKGROUND

A. What is COMESA?

COMESA is a regional grouping of 19 African countries (Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe) headquartered in Lusaka, Zambia. COMESA was established under the COMESA Treaty of 1994 (**Treaty**) but has its origins in a preferential trade area established by the Member States in 1981.

B. What are the COMESA competition laws and institutions?

Article 55 of the Treaty provides for the adoption of regulations to regulate competition within the Member States in order to strengthen the process of economic integration within the COMESA common market (**Common Market**).

The COMESA Competition Regulations (**Regulations**) were adopted by the Council of Ministers of the Common Market (**Council**) in 2004, but arguably only came into force on 20 November 2012, being the date of publication in the Official Gazette.[2] The Regulations provide that the Board of Commissioners of the CCC (**Board**) may make rules which become effective upon approval by the Council. Such Competition Rules (**Rules**) were adopted in 2004; however there is no publicly accessible record of their approval by the Council.

The Regulations and the Rules were not implemented immediately as there was no regional competition authority to enforce them. Only in 2008 did the Council appoint the first Board. In 2011, the Council appointed the first Director of the CCC, who then worked towards making the CCC operational.

In 2012 the Council approved amendments to the Rules (**Amendment Rules**), Rules on the Determination of Merger Notification Threshold (**Merger Threshold Rules**) and Rules on COMESA Revenue Sharing of Merger Filing Fees (**Revenue Sharing Rules**).[3] Various forms, guidelines and policies have been published, although it is unclear whether these have been approved by the Council.

At the beginning of this year the CCC announced that as from 14 January 2013, it would start receiving applications and notifications in relation to Part 3, 4 and 5 of the Regulations and would begin to enforce these parts of the Regulations. Part 3 deals with anti-competitive business practices and conduct, Part 4 with mergers and acquisitions, and Part 5 with consumer protection.

III. MERGER CONTROL REGIME

A. What constitutes a merger?

A "merger" is the direct or indirect acquisition or establishment of a "controlling interest" by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person. In relation to an undertaking, a controlling interest is any interest that enables the holder to exercise, directly or indirectly, any "control" whatsoever over the activities or assets of the undertaking. In respect of an asset, a controlling interest is any interest that enables the holder to exercise, directly or indirectly, any control whatsoever over the asset.

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[2] Article 12 of the Treaty provides that Regulations shall be published in the Official Gazette of the Common Market and shall enter into force on the date of their publication or such later date as may be specified in the Regulations.

[3] The Amendment Rules, the Merger Threshold Rules and the Revenue Sharing Rules were all published in the Official Gazette of the Common Market on 20 November 2012.

"Control" is not defined in the Regulations and the Rules; however the CCC recently published for comment a Draft Merger Assessment Guideline (April 2013) in which it states that control will be constituted by rights, contracts or any other means which confer the possibility of exercising decisive influence on an undertaking.[4]

B. What mergers are notifiable?

Mergers are notifiable where:

- both the "acquiring firm" and "target firm" or either the acquiring firm or target firm operate in two or more Member States; and
- the threshold of combined annual turnover or assets is exceeded.

An acquiring firm is a firm that directly or indirectly acquires or establishes direct or indirect control over the whole or part of the business of another firm, as well as firms that have direct or indirect control over the whole or part of the business of the primary acquiring firm. A target firm is a firm the whole or part of whose business will be directly or indirectly controlled by an acquiring firm, or which will directly or indirectly transfer direct or indirect control of the whole or part of its business to an acquiring firm. An apparent drafting oversight is that the definition of an acquiring firm does not include firms that are directly or indirectly controlled by either the primary acquiring firm or firms that directly or indirectly control it. Furthermore, the definition of a target firm does not exclude the seller of a business or those parts of its business that will not become controlled by an acquiring firm.

For the "two or more Member States" requirement to be met, the Regulations provide that "either or both" the acquiring and the target firms must operate in two or more Member States. This wording is ambiguous but the CCC, in its Draft Merger Assessment Guideline, has interpreted this to mean:

- where:
  - o the acquiring firm operates in two or more Member States and the target also operates in two or more Member States; or
  - o the acquiring firm operates in two or more Member States and the target has no operations in the Common Market and vice versa;
- but not where the acquiring firm operates in one Member State and the target operates in another Member State. [5]

The Draft Merger Assessment Guideline also provides that a party does not need to be domiciled in a Member State in order to be "operating" in such Member State. Generating turnover in or from a Member State, through exports, imports or subsidiaries, will be sufficient.[6]

The second requirement, i.e. the turnover or asset threshold, has been set by the Board at COM$ Zero (COM$ 1 = US$ 1).[7]

This arguably means that all mergers that meet the "two or more Member States" requirement are notifiable. However, some commentators suggest that since the Regulations explicitly refer to mergers that have an appreciable effect on trade between Member States and which restrict competition within the Common Market[8], a merger is not notifiable if there is no such effect or restriction. This interpretation of the Regulations may also form the basis for an argument that a merger where the acquiring firm operates in two or more Member States but the target has no operations in the Common Market does not require notification despite the "two or more Member State" requirement being met.

The CCC may require parties to a non-notifiable merger to notify a transaction if it appears to the CCC that such merger is likely to substantially prevent or lessen competition or is likely to be contrary to the public interest, provided that where both the acquiring firm and the target firm operate in a single Member State, the CCC must first consult the relevant Member State before requiring parties to the merger to file a merger notification.[9]

C. When must a merger be notified and what are the consequences for failure to notify?

A party to a notifiable merger must notify the CCC of the merger as soon as it is practicable but not later than 30 days of the parties' "decision to merge". It remains unclear as to whether this is 30 working or calendar days. The CCC is of the view that a decision to merge occurs when a concurrence of wills is established between the merging parties in the pursuit of a merger objective.[10]

The Notification Form published by the CCC requires that each party must individually submit a notification. However, this requirement does not appear anywhere else (i.e. in the Regulations and the Rules) and differs from the Draft Merger Assessment Guideline in which the CCC states that it will accept joint notifications.[11]

Any notifiable merger which has not been notified within 30 days of the decision to merge will have no legal effect and will be legally unenforceable in the Common Market. [12] The CCC may also impose a penalty not exceeding 10% of either or both of the merging parties' annual turnover in the Common Market.[13] The Regulations further provide that, for the recovery of such penalties, civil proceedings may be brought by the CCC against the concerned parties.[14] It is unclear whether this means that the CCC may enforce the Regulations in the national courts of the Member States. If so, it is still questionable to what extent the national courts will apply the Regulations, particularly where Regulations do not form part of a Member State's national law. However, the reputational consequences of non-compliance with the Regulations should be considered by undertakings operating within the Common Market.

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[4] CCC Draft Merger Assessment Guideline of April 2013, at paragraphs 2.2 to 2.8.
[5] CCC Draft Merger Assessment Guideline of April 2013, at paragraphs 3.2 to 3.9.
[6] CCC Draft Merger Assessment Guideline of April 2013, at paragraphs 1.5 and 3.10.
[7] See the Merger Threshold Rules, published in the Official Gazette of the Common Market of 20 November 2012.
[8] Interpretation derived from Article 3(1) of the Regulations.
[9] Article 23(6) of the Regulations and Rule 55(6) of the Rules.
[10] CCC Draft Merger Assessment Guideline of April 2013, at paragraph 4.2.
[11] CCC Draft Merger Assessment Guideline of April 2013, at paragraph 4.5.
[12] Article 24(1) of the Regulations.
[13] Article 24(4) of the Regulations.
[14] Article 24(6) of the Regulations.

D. Lastly, there is no prohibition on the implementation of a merger prior to approval by the CCC. How much is the merger notification fee?

A filing fee of 0.5% of the merging parties' combined annual turnover or combined value of assets in the Common Market (whichever is higher) is payable. The filing fee is however capped at COM$500,000 (US$500,000).[15] This interpretation has been confirmed by the CCC.[16]

E. What are the time periods for examining a merger?

Article 25 of the Regulations provides that the CCC must make a decision on the notification within 120 days after receiving it. The Regulations and the Rules do not specify what is meant by "day", but the CCC is of the view that it means a working day based on the Malawian calendar.[17] In addition, the CCC may seek an extension from the Board. There does not appear to be a limit on such extended time period.

The Draft Merger Assessment Guideline purports to introduce a Phase I / Phase II procedure. Once the CCC has decided to investigate a merger, the Director must within 60 working days carry out a preliminary assessment of whether the merger is likely to lead to any anti-competitive effects in the Common Market and submit a report to the Committee[18] which can then either decide to issue a no objection decision or decide to continue with the investigation. In the latter case, the parties must be notified within 5 calendar days of this decision.[19]

The Regulations also provide that for the purposes of determining whether or not to approve any merger, the CCC may undertake an inquiry to ascertain any competition concerns.[20] It is unclear whether such an inquiry is the same as or an alternative to the CCC examining a merger in terms of Article 25 of the Regulations; and in the latter case, whether the inquiry must be conducted subsequent to such an examination. Such an inquiry may lead to extensive delays in obtaining approval for a merger.

F. What factors are taken into account in examining a merger?

The CCC must initially determine whether the merger is likely to substantially prevent or lessen competition, taking account a number of factors listed in the Regulations.[21] If it appears that this is likely, the CCC must then determine whether:

- the merger is likely to result in any technological, efficiency or other pro-competitive gain that will be greater than and offset the anticompetitive effects of the merger and would not likely be obtained if the merger is prevented; and
- the merger can be justified on substantial specified public interest grounds.

From the wording of the Regulations and the Rules, there does not appear to be a significant difference between the competition and the public interest considerations. The Regulations state that any merger which leads to a substantial lessening of competition or results in the strengthening of a position of dominance is contrary to the public interest and further provide that, in order to determine whether a merger is or will be contrary to the public interest, the CCC must take into account all matters that it considers relevant in the circumstances, and must have regard to the desirability of:

- maintaining and promoting effective competition;
- promoting the interests of consumers, purchasers, and other users in the region; and
- promoting, through competition, the reduction of costs and the development of new commodities, and facilitating the entry of new competitors into existing markets.

The CCC has expressed the view that it considers competition (including efficiency and innovation) to be the "foremost public interest" and that, within the context of the merger control rules in the Regulations, public interest must be interpreted narrowly so that only market-related public interest considerations are to be taken into account in determining whether to prohibit or approve a merger.[22]
Finally, pursuant to the Regulations, if the CCC is satisfied that a merger is contrary to the public interest (i.e. is anti-competitive according to the above interpretation), it may make a number of orders aimed at addressing such effect.[23]

G. Are there transitional arrangements?

The Regulations do not provide for transitional arrangements dealing with mergers or proposed mergers that preceded the commencement of the operations of the CCC, i.e. 14 January 2013. However, the CCC has suggested that any transaction in which there was a decision to merge arguably as far back as 2004 - when the Commission contends that the Regulations were officially gazetted - must immediately be notified to the CCC, unless already approved by a National Competition Authority (**NCA**).[24] It is unclear what "immediately" is intended to mean, but the only acceptable interpretation would be within a reasonable time from the publication of the final Merger Assessment Guideline. It is questionable whether the CCC's stated transitional arrangement is lawful or practicable.

H. How are merger determinations enforced and what are the consequences of non-compliance with such a determination?

The Regulations and the Rules do not provide for any penalties in case of non-compliance with a merger determination. The Regulations merely provide that civil proceedings may be brought for the recovery of penalties for failure to notify a notifiable merger. Nevertheless, parties to a merger will need to be mindful of the possible reputational consequences of contravening a merger determination.

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[15] Paragraph 1 of the Amendment Rules.
[16] Interpretive meaning of the notification fee pursuant to Rule 55(4) of the amended COMESA Competition Rules, published on the CCC's website on 4 March 2013.
[17] CCC Draft Merger Assessment Guideline of April 2013, at paragraphs 5.6 and 5.7.
[18] The Committee is composed of three full-time Members of the Board and is in charge of initial determinations.
[19] CCC Draft Merger Assessment Guideline of April 2013, at paragraphs 6.1 and 6.2.
[20] Article 26(5) of the Regulations.
[21] Article 26(1) and (2) of the Regulations.
[22] CCC Draft Guidelines on the Application of Public Interest Criteria of April 2013, at paragraphs 2.1 and 2.2.
[23] Article 26(7) of the Regulations.
[24] CCC Draft Merger Assessment Guideline of April 2013, at paragraph 10.6.

IV. IS THE NEW REGIONAL REGIME A "ONE-STOP-SHOP"?

A. Referral to National Competition Authorities

Any Member State having attained knowledge of a notification submitted to the CCC and which is satisfied that the notified merger, if carried out, is likely to reduce competition to a material extent in its territory or any part of it, may request the CCC to refer the transaction for consideration under its own national competition law. [25] There is no requirement in the Regulations or Rules that a Member State must make its request within a specified period of time of attaining knowledge of a notification. The CCC has stated in the Draft Merger Assessment Guideline that a Member State must make this request as soon as it is practicable and no later than 30 calendar days of receiving notice of a merger from the CCC.

The CCC must consider this request and must inform the Member State concerned within 21 days of the receipt of the request that (a) it will deal with the case itself in order to maintain or restore effective competition on the market concerned and the region as a whole; or (b) it will refer the whole or part of the case to the NCA of the Member State concerned.[26] Although not expressly stated, the use of the alternative suggests that the initial and referred jurisdictions are mutually exclusive of one another.

B. Exclusive or concurrent jurisdiction?

The CCC is of the view that it has exclusive jurisdiction over mergers with a regional dimension. This view is supported by the provisions in the Regulations dealing with referrals by the CCC to a NCA. The view is also supported by the fact that merger filing fees must be shared between the CCC and the relevant Member States[27]; the sharing of filing fees arguably compensates the Member States concerned for the loss of jurisdiction and the filing fees they might otherwise have earned.

Notwithstanding this, the Regulations do not expressly exclude the jurisdiction of the NCAs over mergers with a regional dimension although they do refer to the CCC having "primary" jurisdiction.[28] While it might be argued that a NCA asserting jurisdiction over a merger that is notifiable to the CCC will breach Article 5 of the Regulations, which provides that Member States must abstain from taking any measure which could jeopardise the attainment of the objectives of the Regulations, it remains an open question how the NCAs will respond. Indeed, some NCAs have already declared that they do not share the view of the CCC.[29]

C. Are the Regulations applicable and enforceable?

Monism versus dualism

Even if COMESA merger control is a "one-stop-shop", the Regulations must be incorporated into a Member State's national law in order to be applied and enforced in a Member State. The manner of such incorporation depends on whether a Member State's constitutional order follows a monist or dualist system. These two systems describe different approaches to the relationship between international and national law within a state.

In terms of the monist system, national and international legal systems form a unity. In a pure monist system, international law does not need to be incorporated into national law and has automatic effect. Consequently, international law can be directly applied by national courts and directly enforced by litigants. In some states, international law has priority over domestic law; therefore the latter can be declared invalid where it contradicts international law. In other states, international and national law are of equal standing, which means that the one only takes precedence over the other according to the principle of *lex posteriori.*

Under a dualist system, international law must first be incorporated into national law before it can be applied and enforced. Although a dualist state may have signed or ratified a treaty, the latter cannot be applied by a national court or enforced by litigants until the state has incorporated it into its national law in terms of its own constitutional requirements. The fact that a national law contradicts international law does not affect the validity of the national law; all it means is that the state is in violation of international law.

The relevance of this for the COMESA competition law regime is clear. Where a Member State follows the dualist system, the Regulations cannot be applied by its national courts or enforced by the CCC until they have been incorporated into national law. While any failure by a Member State to do so might violate the Treaty, this remains a dispute between the Member States, to be resolved through political means or ultimately at the COMESA Court of Justice.

European Union law versus COMESA law

European Union (**EU**) law is no longer treated as any other form of international law in the EU member states. EU law comprises two main sources: primary sources - principally the Treaty on the EU (**TEU**) and the Treaty on the Functioning of the EU (**TFEU**) - which are directly applicable in each member state; and secondary sources - such as regulations, directives, recommendations, opinions, communications, etc.

Pursuant to the TFEU, regulations are of general application, binding in their entirety and directly applicable in all member states.[30] Directives on the other hand, are binding on the member states to which it they are addressed as to the result to be achieved, but national authorities may chose the form and methods for incorporation into national system.[31] Recommendations, opinions, communications, etc. only constitute guidelines and are not legally binding.

The fact that a particular EU member state follows a monist or dualist system now has a limited effect on the applicability of EU law in that member state. The same cannot be said of COMESA and its Member States, whose laws, institutions and practices are not as evolved as those of the EU and its member states. Although the Treaty in general appears to have been inspired by EU law (for example Article 10 of the Treaty provides that a regulation is binding on all Member States in its entirety) the Treaty expressly provides that:

[25] Article 24(7) of the Regulations.
[26] Article 24(8) of the Regulations.
[27] See the Revenue Sharing Rules.
[28] Article 3(2) of the Regulations.
[29] See more details below.
[30] Article 288 of the TFEU.
[31] Article 288 of the TFEU.

"*each Member State shall take steps* to secure the enactment of and the continuation of such legislation to give effect to this Treaty and in particular [...]; *to confer upon the regulations of the Council the force of law and the necessary legal effect within its territory"* (emphasis added).[32]

Accordingly, the fact that Member States follow a monist or a dualist system will substantially impact on the applicability and enforcement of COMESA law at a national level.

Monist and dualist Member States

Within COMESA, it appears that some Member States, such as Swaziland, Zambia, and Zimbabwe follow dualist systems, which means that the Regulations must first be incorporated into national law before they can be applied by national courts and enforced by the CCC. Other Member States follow the monist system, such as Ethiopia and Kenya, but some nonetheless require publication of the international law in the national official gazette.

The Treaty provides that Member States must make every effort to achieve and abstain from any measures that are likely to jeopardise the achievement of the aims of the Common Market or the implementation of the provisions of the Treaty.

Therefore, if a Member State has not taken the necessary steps to ensure that the Regulations have the force of law and the necessary legal effect in that Member State, such Member State would merely be in violation of the Treaty.[33]

What then are the implications for the COMESA merger control rules? Where the Regulations have not been incorporated into the national law of a Member State that follows the dualist system, that Member State could declare that it still requires mergers to be notified to its NCA in terms of its national merger control rules, notwithstanding that such mergers are also notifiable to the CCC in terms of the Regulations. This could result in unnecessary time and cost being spent on multiple merger notifications, conflicting decisions by the CCC and the NCAs, and legal uncertainty should parties elect to notify one but not the other authority. This may have a chilling effect on foreign investment in the Common Market and undermine the economic integration and development objectives of COMESA.

The possibility of such a conflict arising is not mere conjecture and has already happened. In Kenya, the Competition Act of 2010 extends and considers primary the jurisdiction of the Competition Authority of Kenya (**CAK**) to practices outside Kenya that affect competition in Kenya. This is clearly incompatible with Article 3(2) of the Regulations which suggests that the CCC has primary jurisdiction over mergers with a regional dimension. Earlier this year the CAK declared that local corporate lawyers should disregard the Regulations until the Attorney-General had opined on the extent to which the Regulations are applicable in Kenya.[34] The Attorney-General held that the CAK was the sole authority to approve mergers that were notifiable to both the CAK and the CCC. The head of Mergers and Acquisitions at the CCC has informed Member States that any such mergers that were concluded after 14 January 2013 and which were not notified to it would have no legal effect in the Common Market.[35] However, it is most unlikely that the provision of the Regulations that provide for this could ever be applied and enforced in a Member State that follows the dualist system.

D. Dispute settlement provisions

What are the possible sanctions against Member States that deny the jurisdiction of the CCC?

Sanctions may be imposed on a Member State that defaults in performing an obligation under the Treaty or whose conduct, in the opinion of the Authority of the Common Market (**Authority**)[36], is prejudicial to the existence or the attainment of the objectives of the Common Market. The Authority may:

- suspend the exercise by such a Member State of any of the rights and privileges of membership to the Common Market;
- impose a financial penalty on such Member State;
- suspend from the Common Market a Member State on such conditions and for such period as the Authority may consider appropriate; or
- expel a Member State, only if its rights and privileges have been suspended and if it failed to remedy the default leading to such suspension within the period specified therefor, or if it failed to pay a financial penalty imposed.[37]

However, it is unlikely that these sanctions will be imposed on a Member State that fails to incorporate into national law the Regulations, and which denies the jurisdiction of the CCC over mergers with a regional dimension.

V. CONCLUSION

The Commission is now operational, but it has yet to be seen how the COMESA competition law regime will operate in practice. A number of important questions remain.

- How far will Member States be willing to cede sovereignty over a range of practices that affect their economies to a regional authority such as the CCC?
- How effective will the co-operation between the CCC and the NCAs be?
- How will some of the more ambiguous provisions in the law be interpreted, applied and enforced?

Over-arching these questions is the potential conflict between the interests of different Member States in the way the law is applied and enforced, given their diversity, the different stages of their development, and the scarcity of resources, in particular human resources.

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[32] Article 5(2) of the Treaty.
[33] Article 5(1) of the Treaty.
[34] See "Conflict of local and COMESA laws holds up firm's mergers", posted on 28 January 2013 in the Business Daily, available at http://www.businessdailyafrica.com/Agency-turf-wars-with-Comesa-freeze-mergers/-/539546/1678308/-/107ygai/-/index.html.
[35] See "Githu hands dealmakers reprieve in war with COMESA over mergers", posted on 14 March 2013 in the Business Daily, available at http://www.businessdailyafrica.com/AG-hands-local-dealmakers-reprieve-in-merger-turf-war/-/539546/1720466/-/crrbq9/-/index.html.
[36] The Authority of the Common Market, which consists of the Heads of State or Government of the Member States and is the supreme policy organ of the Common Market.
[37] Article 171 of the Treaty.

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