

**Changes to
the COMESA
Competition
Regime**



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01 What Has Changed?



- Adoption of the COMESA Competition and Consumer Protection Regulations (2025) ("**2025 Regulations**") and COMESA Competition and Consumer Protection Rules (2025) ("**2025 Rules**") by COMESA Council of Ministers on 4 December 2025, and repeal of the previous COMESA Competition Regulations (2004) ("**2004 Regulations**") and COMESA Competition Rules (2004). The 2025 Regulations and Rules are effective as of 5 December 2025.



- COMESA Competition Commission becomes COMESA Competition and Consumer Commission ("**CCCC**" or the "**Commission**"), representing its dual role and enhanced consumer protection mandate. This reflects a growing trend in several African jurisdictions, with the growing powers to enforce both competition laws and take on consumer protection matters.



- The 2025 Regulations modernises the regime, enhances enforcement the powers of the Commission and aligns it with international best practice. The merger control regime has been overhauled and a new mandatory and suspensory regime is now in place. The 2025 Regulations also introduce a heightened focus on mergers and prohibited practices in digital markets and an enhanced focus on public interest considerations.



- Companies should familiarise themselves with the 2025 Regulations, and align compliance programmes and deal planning to ensure alignment with the new regime.

02 Key Structural Changes

- **One-stop-shop enforcement:** The CCCC has exclusive authority on cross-border competition and consumer protection matters in the COMESA region. This means that national laws are subordinate to the 2025 Regulations for cross-border matters, ensuring a “one-stop shop” for regional transactions and competition and consumer protection enforcement.
- **Expanded scope of consumer protection:** In furtherance of the CCCC’s expanded focus on consumer protection, the 2025 Regulations introduce additional consumer protection provisions. This means businesses will face compliance obligations beyond competition law, including rules on unfair contract terms, product liability, and harmful digital content.



03 Merger Control Reforms

- **Definition of Merger:** The definition of a merger has been slightly narrowed to require the acquisition, establishment or change of control to occur on a lasting basis. This requires a merger to have a degree of permanence to trigger the merger control provisions of the 2025 Regulations.
- **Joint ventures:** The definition of a merger in the 2025 Regulations now includes joint ventures performing all functions of an autonomous entity on a lasting basis (i.e., full-function joint ventures). This aligns the CCCC's treatment of joint ventures with global jurisprudence and best practice.
- **Mergers in digital markets (including platforms):** Another key change that brings the COMESA merger review regime to consistency with some of the world's legacy competition regulators is the express reference to transactions in digital markets (including platforms) within the scope of merger control. Digital market mergers are now also explicitly included in the scope of notifiable mergers if the transaction value exceeds USD 250 million. While the New Regulations do not include a definition of digital markets yet, this inclusion is consistent with updates in the recent past in a number of jurisdictions, including South Africa, which seek to capture mergers in digital markets that may otherwise not be caught by the application of traditional merger control notifiability tests, particularly in nascent markets where a target has not generated turnover or has minimal turnover. The new threshold applicable to digital mergers, therefore, considers the transaction value as determinative of notifiability.
- **Notification thresholds increased:** The 2025 Rules introduce increased notification thresholds:
 - **Standard Mergers** are notifiable if combined annual turnover or asset value in the Common Market exceeds USD 60 million (up from USD 50 million), **and** at least two parties each exceed USD 10 million. The two-thirds rule continues to apply. Therefore, if parties derive at least two-thirds of their turnover or assets in the Common Market in one and the same COMESA Member State, the transaction does not need to be notified.
 - **Digital market mergers** are notifiable if transaction value **exceeds** COMESA \$250 million (USD 250 million).
- **Fees:** The 2025 Rules introduces updated merger notification fees:
 - **Standard mergers:** 0.1% of combined turnover/assets (maximum USD 300,000).
 - **Digital market mergers:** 0.05% of transaction value (maximum USD 300,000).
- **Mandatory & suspensory regime:** Shift to a standstill requirement. Merger notification and approval is now required before implementation of mergers. Previously, merging parties were required to notify the merger to the Commission within 30 days from the date of the 'decision to merge' (which date had generally been considered by the Commission to be the date any agreements underlying a merger were signed by parties). The previous regime was non-suspensory, which allowed parties to implement the merger provided that they had notified the Commission of the merger within 30-days of the decision to merge. With the introduction of a suspensory regime, the 30-day rule has fallen away completely, thereby alleviating the pressure off of merging parties to ensure timeous notification of a merger with the CCCC within the 30-day period.
- However, the new regime is both mandatory and suspensory. This means that merging parties are now required to notify mergers to the Commission and obtain approval before implementing a notifiable merger. A notifiable merger that is implemented prior to approval from the Commission is void, and can attract significant fines of up to 10% of the annual turnover of the parties in the previous financial year derived from the Common Market.
- **Review period:** The Commission has a period of 120 days from receipt of a complete notification to review a merger. The Commission now has the explicit power to "stop-the-clock" if any information is incomplete, until such time as the outstanding information is provided. The review period may also be extended by the Commission on a case-by-case basis.
- **Public interest:** Expanded list of public interest considerations in mergers (i.e., employment considerations, impact on small and medium enterprises, environmental protection / sustainability considerations, the ability for the COMESA market to compete with international markets and innovation considerations) will now feature in merger reviews. This expanded list of public interest is also important to align the regional regime with some of the national regulators' regimes that place a greater emphasis on public interest effects in merger control. Hence, this is also important from a Common Market harmony and convergence perspective. However, the 2025 Regulations still require the Commission to place a greater weight on the competition assessment, than on the public interest assessment.

04 Abuse of Dominance & Prohibited Practices

- **Abuse of dominance:** Additional listed abuse of dominance ground for applying dissimilar conditions to equivalent transactions. In addition, the addition of a catch-all provision allows the Commission to consider other kinds of abuse of dominance not listed in the 2025 Regulations. The abuse of dominance remains strictly prohibited, with no scope for efficiency defences.
- **Abuse of economic dependence:** The 2025 Regulations introduce provisions prohibiting the abuse of economic dependence that results in a substantial impact on competition. This is different from abuse of dominance, which remains strictly prohibited but requires a showing of dominance to sustain an allegation.
- **Prohibited practices by Gatekeepers:** The 2025 Regulations introduce a new definition of "Gatekeepers", being digital service providers operating a core, entrenched, durable platform service that serves as an important gateway for business users to reach end-users. New provisions prohibit Gatekeepers from engaging in self preferencing, anti steering, parity clauses, misuse of business user data, data combination across services, tie ins, unfair fees to SMEs, paid ranking exceeding organic, portability restrictions, etc.. This mirrors global trends under the EU's Digital Markets Act and similar initiatives in the UK, USA and Asia, underscoring COMESA's intent to tackle what has been considered as Big Tech issues.
- **Per Se prohibited practices:** Expanded list of *per se* prohibited practices, which now also include vertical restraints such as absolute territorial protections, passive sales, and minimum resale price maintenance. This brings the regime much closer, again, to international jurisprudence where for example, passive sales are generally considered to enhance stronger price competition and a wider choice of products for customers and, therefore, should not be prevented and minimum resale price maintenance is considered to be detrimental to consumers from a price standpoint in all instances and is, hence, usually outright prohibited.



05 Enhanced Enforcement & Institutional Powers

- **Leniency:** Introduction of leniency program for cartel conduct which will allow the Commission to grant leniency to companies that self-report *per se* prohibited practices and cooperate with the Commission's investigation. Parties granted leniency will also be granted immunity from prosecution under national legislation of COMESA member states arising from the same matter. The Commission must develop guidelines for implementation of its leniency programme.
- **Dawn Raids:** The 2025 Regulations grant the Commission the authority to enter and search any physical premises, including private dwellings, where the Commission reasonably suspects that information or documents relevant to its investigations will be found. This will allow the Commission to take, examine, or seal any business records that it deems necessary for its investigation. Additionally, the Commission has the power to interrogate individual representatives of the company during the raid. The Commission must exercise these powers in accordance with the laws and procedures in the relevant member state, and with the assistance of the competent authority of the relevant member state.
- **Market Inquiries:** The 2025 Regulations grant the Commission the power to conduct market inquiries. This includes the abilities to compel any person to furnish the Commission with information relevant to its inquiry, and to remedy structural issues that

it identifies without first finding an infringement. Based on the outcome of these market inquiries, the Commission may also initiate investigations, make policy recommendations, or perform any other act within its power.

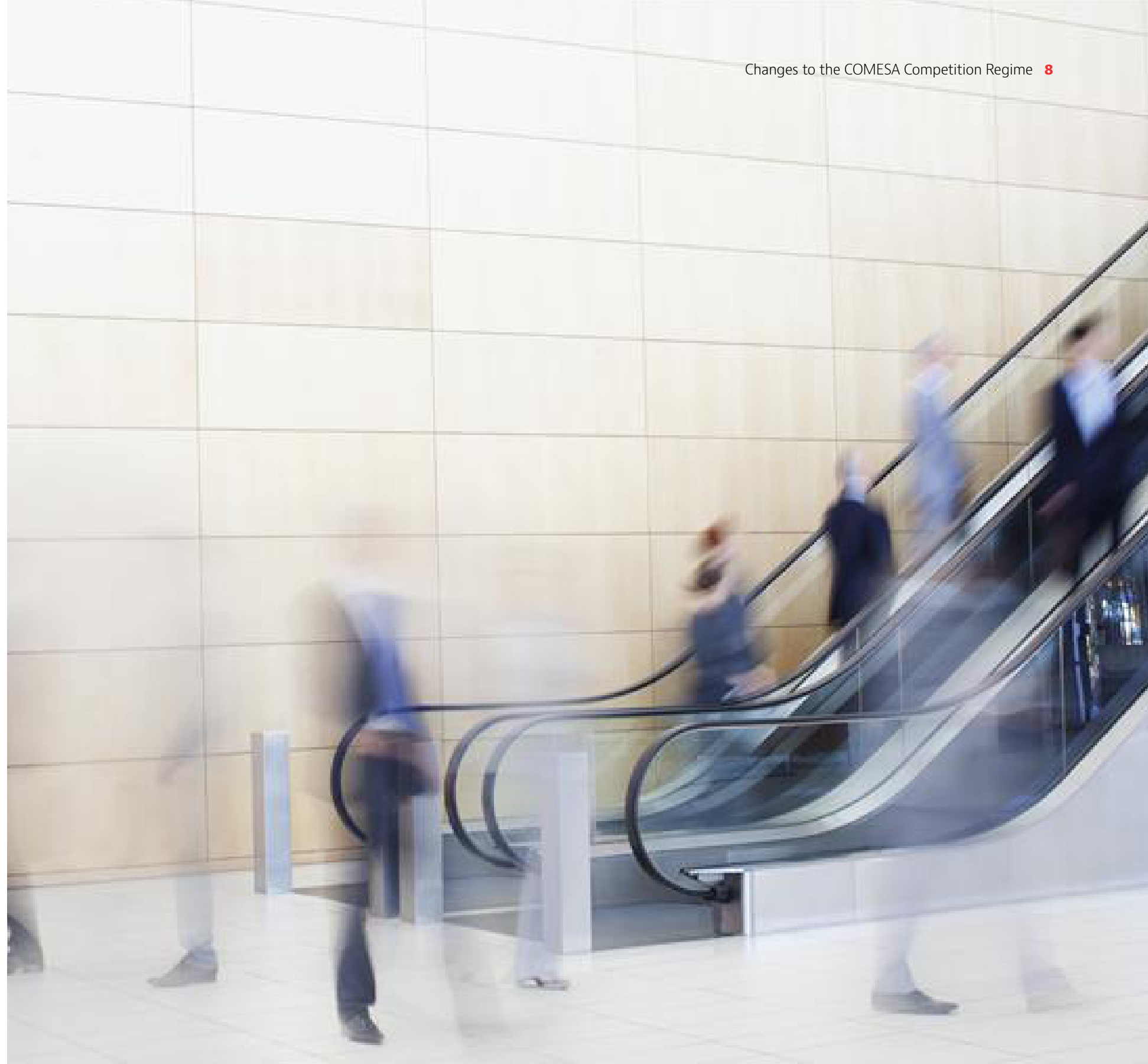
- **Settlement Agreements:** While this merely codifies what already occurred regularly in practice the Commission now formally has powers to negotiate binding settlement agreements with parties. Settlements may be concluded with or without admission of liability, and subject to payment of a fine determined by the Commission.
- **Interim orders:** If the Commission has reasonable grounds to believe that a company is engaging in, or intends to engage in, conduct that may breach the 2025 Regulations, and considers that urgent action is required to prevent serious harm to competition, consumer welfare, or the public interest—the Commission may issue a written order directing the company to immediately cease such conduct until the investigation is complete.
- **Cooperation with other Competition Authorities:** New provisions allow for enhanced cooperation with national, regional, and continental competition authorities to enhance regional cooperation and strengthen the “one-stop-shop” regime.

- **Fines and Penalties:** Contraventions of the 2025 Regulations carry significant penalties of up to 10% of the annual turnover in the Common Market for each party that infringes the Regulations. Failure to pay a fine within 45 days of imposition of the fine shall attract a penalty of 2% of the fine, per day, until the fine is paid in full.



06 Transitional Provisions

- The 2025 Regulations and Rules are effective from 5 December 2025, and repeal the 2004 Regulations and 2004 Rules in their entirety. However, in terms of the transitional provisions of the 2025 Regulations:
 - Any action undertaken under the repealed 2004 Regulations remains valid.
 - Existing rules and instruments under the 2004 Regulations remain in force unless amended, repealed or inconsistent with the 2025 Regulations.
 - All proceedings and processes commenced under the 2004 Regulations will continue to be guided and governed under the 2004 Regulations until their conclusion.
 - Any conduct, event, or action or incident arising on or after 5 December 2025 will be governed under the 2025 Regulations.

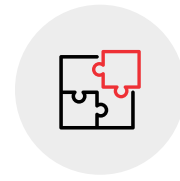


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Why it Matters – Key Takeaways:



One-stop-shop enforcement: The CCCC has exclusive authority on cross-border competition and consumer protection matters in the COMESA region. This means that national laws are subordinate to the 2025 Regulations for cross-border matters, ensuring a “one-stop shop” for regional transactions. While past compliance with this was uneven, currently most COMESA member states do apply the “one-stop shop” principle. However, there may be outliers, and proper competition assessments remain advisable.



Mandatory and suspensory merger regime: The mandatory and suspensory regime will have significant timing implications for parties contemplating mergers in the region. The 120-day review period (which is extendable on a case-by-case basis and may be paused by the CCCC), will significantly delay implementation of regional transactions notified to the CCCC. This will require businesses to carefully build-in the merger approval process into their transaction timelines and implementation planning processes.



Focus on digital markets: The new provisions targeting digital markets signal the Commission’s focus on conduct in digital markets. Mergers, abuse of dominance, and other allegations of anticompetitive conduct in digital markets are likely to attract heightened scrutiny and enforcement. Companies active in digital markets should proactively take steps to ensure alignment and compliance with these new provisions.



Public interest: While not elevated to the level of the South African Competition Act, public interest considerations will play a more substantial role in merger review and investigations into anticompetitive conduct. However, competition considerations will maintain precedence over public interest considerations under the COMESA regime. A proactive assessment on the impact of mergers or conduct on the public interest will be important for companies to navigate future proceedings before the Commission.



Enhanced enforcement powers: The CCCC will now enjoy enhanced enforcement powers that resemble EU and South African-style tools such as dawn raids, market inquiries, interim orders, and a leniency programme, positioning it as a far more assertive enforcer than before.

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