Baker McKenzie.

An Overview of Competition & Antitrust Regulations and Developments in Africa: 2021

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The material in this report is of the nature of general comment only. It is not offered as legal advice on any specific issue or matter and should not be taken as such. Readers should refrain from acting on the basis of any discussion contained in this report without obtaining specific legal advice on the particular facts and circumstances at issue. Whilst the authors have exerted every effort to provide accurate and up-to-date information on laws and policy, these matters are continuously subject to change. Furthermore, the application of these laws depends on the particular facts and circumstances of each situation, and therefore, readers should consult their lawyer before taking any action.

Information contained herein is as at December 2020 (except for the Mozambique Chapter, which was updated in January 2021).

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PREFACE

With the growth of economies across the continent, competition law has remained one of the key drivers for effective market participation, consumer protection and fair business practices. The global pandemic introduced new challenges for competition authorities in Africa and abroad, with each enforcer pursuing the most beneficial enforcement method for its national or regional jurisdiction. These efforts were aimed at curbing the persistence of unjustified price hikes, anticompetitive cooperation between competitors and other harmful business practices that sought to undermine competition, while exploiting the global crisis brought about by COVID-19.

In as early as March 2020, competition authorities across the continent had already established strategies for maintaining competition and limiting instances of customer exploitation in their respective countries. For instance:

1. **Kenya:** The Competition Authority of Kenya ("**CAK**") published a cautionary note warning manufacturers and retailers that were implicated in price fixing, or any sort of price manipulation behaviour, that they would be subject to an administrative penalty of up to 10% of their turnover. Further, the CAK ordered the removal of exclusivity clauses in agreements between manufactures and distributors of maize flour, wheat flour, edible oils, rice, sanitizers and toilet paper. Exclusive distribution agreements between market players interfere with the allocation of favorable prices in relation to essential goods. The CAK highlighted that the negative effects of such agreements may be further exacerbated during a pandemic. In addition, distributors who also operate in the downstream retail market were requested to provide these essential goods to other retailers on non-discriminatory terms.
2. **Malawi:** The Competition and Fair Trading Commission ("**CFTC**") of Malawi published a cautionary note advising firms to refrain from excessive pricing during the COVID-19 pandemic. The Malawian President issued a warning to traders against consumer exploitation and directed the CFTC to step up market surveillance and protect consumers from unfair trading practices in the supply of essential goods in the management of COVID-19.
3. **Mauritius:** The Mauritian Competition Commission ("**MCC**") was tasked with monitoring markets in order to detect unjustified price escalations of essential goods, and prosecuting businesses found to be engaging in such restricted trade practices. The MCC clarified that it would not unduly constrain or impede necessary and critical cooperation between businesses, where such cooperation was in the interests of consumers and the public, and did not go further or last longer than necessary. Opportunistic conduct by dominant firms was however discouraged.
4. **Namibia:** The Namibian Competition Commission ("**NaCC**") concluded a market analysis, which revealed that the price of immune boosters, hand sanitizers and 3-ply facemasks had substantially increased due to growing demand for these essential products. In response to these findings, the NaCC formed a dedicated task team under its Enforcement, Exemptions & Cartels Division, which continues to investigate and prioritise price exploitation complaints in relation to essential healthcare and hygiene products during the COVID-19 crisis.
5. **Nigeria:** The Federal Competition and Consumer Protection Commission ("**FCCPC**") published a cautionary notice to suppliers, retailers and online shopping platforms, warning them against irregularly increasing prices of essential hygiene products in response to increased demand caused by the COVID-19 epidemic. To facilitate compliance with the Nigerian government's containment measures, which resulted in limited movement and restricted human resource capacity, the FCCPC published a guidance document titled "*Business Guidance Relating to COVID-19 on Business Co-operation/Collaboration and Certain Consumer Rights Under the FCCPA*" ("**Business Guidance**"). The Business Guidance was intended to assist businesses in ensuring compliance with competition and consumer protection regulations. In addition to the above efforts, the FCCPC introduced an electronic merger filing process, specifying the type of mergers it would accept through electronic filing.
6. **South Africa:** South Africa's Department of Trade, Industry and Competition introduced new regulations, which together with existing competition regulations on excessive pricing, catered for pricing and supply matters during the national disaster. While market players were not prevented from implementing necessary price adjustments, the regulations sought to prohibit unjustified price hikes and facilitate the collaboration of essential service providers in a regulated manner. Further, essential service providers – the private healthcare sector, hotel industry, banking sector and retail property sector – were granted block exemptions from certain provisions of the South African Competition Act, thereby enabling them to coordinate resources and infrastructure for the benefit of consumers during the period of the national disaster.

PREFACE

New and amended competition legislation

Various jurisdictions strengthened their competition law regime by way of amendments to the existing legislation or by introducing entirely new laws that will facilitate their enforcement efforts. These included:

1. **Botswana:** Introduced a new legislation, the Competition Act, 2018 ("**2018 Act**"), which came into force on 2 December 2019. The 2018 Act repeals the Competition Act, 2009 and introduces significant changes, including changes relating to the introduction of criminal liability for prohibited horizontal conduct, introduction of personal liability in relation to resale price maintenance, introduction of financial penalties for failure to notify a merger or for pre-implementation of a merger, expansion of the prohibition in relation to abuse of dominance by introducing creating specific abusive conduct that is prohibited.
2. **CEMAC:** In 2019, the Economic and Monetary Community of Central Africa ("**CEMAC**") revised its competition regulations to provide useful clarifications on the relationship between CEMAC and national competition authorities, including the division of competence in the application of regional competition law and obligations relating to collaboration between these bodies. According to the new regulations, any merger or acquisition, which involves two or more CEMAC member states, shall be notified to the CEMAC authority. The regulations also amended the thresholds for notification of mergers to the CEMAC authority.
3. **Egypt:** Amended its competition legislation to include the imposition of criminal liability for any violation of decisions issued by the Council of Ministers in relation to price fixing.
4. **Ghana:** The Draft Competition Bill is still before parliament and has not been passed.
5. **Kenya:** A host of new laws, rules and guidelines relating to competition law were introduced, which relate to: buyer power; the valuation of assets in merger transactions; block exemption of certain mergers from notification; merger thresholds and filing fees; market definition; and new guidelines for the determination of administrative penalties and the procedure for pursuing settlements as provided for under the Kenyan competition legislation.
6. **Mauritius:** A new provision to the Mauritius Competition Act was introduced, which provides that an officer of the Competition Commission of Mauritius is a "public officer", so that he may enjoy additional immunity against legal liability under the Public Officers Protection Act.
7. **South Africa:** Price discrimination and buyer power provisions that were previously introduced by the Competition Amendment Act came into effect. Regulations were also issued, to facilitate the interpretation and application of these provisions.

PREFACE

The Regulators

Africa's competition regulators are gaining momentum and becoming more sophisticated in the analysis of mergers and understanding of prohibited practices. Over and above specific country regulation, Africa has a number of regional competition regulators, including the West African Economic Monetary Union ("**WAEMU**"), the East African Community ("**EAC**"), the Common Market for Eastern and Southern Africa ("**COMESA**"), the Economic Community of West African States ("**ECOWAS**") and the Economic and Monetary Community of Central Africa ("**CEMAC**").

While not a regional regulator, it is worth noting that the African Competition Forum, an association of African competition agencies, exists to promote competition policy awareness in Africa and the adoption of competition policies and laws. The forum also facilitates regular contact between authorities, creating a platform for the sharing of best practice and domestic competition trends.

This publication

This publication engages with these developments at a domestic level, itemising relevant amendments and approaches of competition authorities on topical issues.

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GEOGRAPHICAL OVERVIEW

KEY

- Jurisdictions covered by this publications
- Countries with antitrust laws

ALGERIA

ALGERIA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

We are not aware of any amendments or guidelines to the Competition Ordinance No. 03-03 of 19 July 2003, as amended in 2008 and 2010, ("**Competition Law**"). In 2017, amendments to the Competition Law were proposed by the Competition Council in order to adapt the Competition Law to the current domestic and international position; however, the Ministry of Commerce has not yet drawn up the amendments.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

A market study regarding the pharmaceutical sector was initiated by the Competition Council and is still ongoing. On 21 May 2020, the Competition Council announced that it had also launched a thematic study on competition in the maritime transport sector in Algeria.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

The Competition Council has expressed concern regarding the pharmaceutical sector, including the creation of monopoly situations.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No, dawn raids are currently not a high risk in Algeria. We are not aware of any reported dawn raids conducted by the Competition Council since January 2019.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

No.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

The Competition Law has provisions prohibiting the abuse of economic dependence by a buyer vis-à-vis a supplier.

Economic Dependence is defined as a "***...commercial relationship in which one of the enterprises has no comparable alternative solution if it wishes to refuse to contract under the conditions imposed on it by another enterprise, customer or supplier.***"

Pursuant to Article 11 of the Competition Law, the abusive exploitation by an enterprise of the state of dependence of another enterprise, customer or supplier shall be prohibited if it is likely to affect the free play of competition. Such abuse may consist of:

a) a refusal to sell, without legitimate reason for the refusal;

b) concomitant or discriminatory selling;

c) sale that is conditional on the acquisition of a minimum quantity;

d) the obligation to resell at a minimum price;

e) the termination of a commercial relationship on the sole ground that the partner refuses to submit to unjustified commercial conditions; and

f) any other act that would reduce or eliminate the benefits of competition in a market.

The Competition Council has not brought any case against entities accused of abusing buyer power.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

We are not aware of any notified transactions that have been prohibited by the Competition Council since January 2019.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

We are not aware of any proposals of this nature.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

The submission of a merger notification is not suspensory in Algeria. However, during the period in which the Competition Council is making its decision, the stakeholders of the transaction cannot implement any part of the transaction that is irreversible. We are not aware of any cases that have been brought against an entity for gun-jumping and / or prior implementation of a notifiable transaction.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of any cases, since January 2019, in which the Competition Council fined an entity for failing to comply with merger conditions.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

We are not aware of any merger approvals, since January 2019, that have been subject to novel or noteworthy conditions.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

According to the Competition Law, the Competition Council must respond to a merger filing within a period of three months from the date of notification. In a more complex transaction, the Competition Council may require the advice of another relevant administration, authority or ministry prior to approving the transaction. This may cause the approval process to take longer. In practice, the process generally takes between three and six months.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

Since January 2019, the Competition Council imposed a daily penalty of DZD 500,000 (approximately USD 3,850.00) on a supplier, which persisted until the cessation of an abuse of dominant position and refusal to sell (*Archipel vs. United Tobacco Company*).

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

We are not aware of any cases relating to infringements of competition legislation by parties in a vertical relationship since January 2019.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Algeria has a broad prohibition on exclusivity, which applies to production, distribution and service operations. Under the terms of Article 10 of the Competition Law: "***A practice shall be deemed to have the effect of preventing, restricting or distorting free competition and shall prohibit any act and/or contract, whatever its nature and purpose, which confers on an undertaking exclusivity in the exercise of an activity falling within the scope of this Order.***"

Non-compete restraints are not expressly regulated under Algerian law. Therefore, they are not prohibited, insofar as they have no impact on the free play of competition in Algeria.

We are not aware of prosecutions by the Competition Council since January 2019, against entities for implementing exclusivity clauses or non-compete restraints.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

We are not aware of any new investigations in this regard.

18. Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, cartel conduct/anti-competitive conduct is criminalised in Algeria. Apart from the above-mentioned Competition Council decision, we are not aware of any criminal charges brought, or convictions made, against any persons and/or entities for engaging in anti-competitive conduct since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Algeria is not a member of any regional body with a competition law regime. However, since 2016, Algeria has contributed to the African Competition Forum ("**ACF**").

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

We are not aware of any investigations by the Competition Council since January 2019.

21. Do you have any views on the level of enforcement of the regional body?

Not applicable.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Not applicable.

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ANGOLA

ANGOLA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

The legal framework on competition includes the Competition Act, approved by Law No. 5/18 of 10 May 2018, and the Competition Regulations, approved by Presidential Decree No. 240/18, of 12 October 2018. These legislative developments have been strengthened by the establishment of the Angolan Competition Regulatory Authority ("**CRA**"), which recently became operational following Presidential Decree No. 313/18 of 21 December 2018, which approved bylaws of the CRA and the presidential appointment of its board of directors ("**Board**").

No other amendments or guidelines on the competition legislation have been proposed or enacted since January 2019.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The CRA is relatively new; hence, no market inquiries have been initiated.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

No.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

The Angolan Competition Act permits dawn raids; however, the CRA is relatively new, hence it has not yet conducted any dawn raids.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No new regulations or measures related to competition enforcement in response to the COVID-19 pandemic have been introduced by the CRA, to the best of our knowledge.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

We are not aware of actions against any entities for infringing competition legislation having been taken during the COVID-19 pandemic.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

The Competition Act does not contain specific provisions on the abuse of buyer power, however the conduct could be caught by the prohibitions of abuse of a dominant position and or abuse of economic dependence. In the absence of a dominant position or economic dependence the abuse of buyer power is off the scope of the competition legislation.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

We are not aware of any notified transactions that have been prohibited since January 2019.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes, the submission of a merger notification is deemed suspensory. A merger cannot be completed until clearance is received from the CRA.

Given the infancy of the CRA, no cases have been brought against any entities for gun-jumping or pre-implementation.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

Given the infancy of the CRA, no entities have been fined due to failure to comply with merger conditions.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

Given the infancy of the CRA, no merger notifications have been accepted and/or analysed by the CRA.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

We cannot estimate the timeline for merger approval by the CRA as it has not been in existence for long enough for us to observe its process.

However, under the Competition Act, the CRA has a 120 days to decide on transactions filed. If the referred time limit for the CRA to make a decision lapses without any decision being issued, the transaction will be considered to have been tacitly approved by the CRA.

Where an in-depth investigation is initiated by the CRA (to investigate whether the merger is considered likely to create or reinforce a dominant position in Angola, resulting in significant impediments to competition in the market or in a substantial part of it), a final decision must be issued within 180 days from commencement of the investigation.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

No prohibited practices have been investigated, and no penalties have been imposed as yet.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

According to information on its website, the CRA opened one investigation in 2019, on alleged anticompetitive practices.

No further information has been provided (e.g., whether in the context of a vertical relationship).

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Exclusivity clauses and non-compete restraints are not expressly treated in the Competition Act and will therefore be assessed on a case-by-case basis. Exclusivity clauses and non-compete restraints may be deemed an infringement of competition rules if, in the specific case, they are likely to constitute practices which restrict competition, notably by restraining market entry.

To the best of our knowledge, no prosecution has been launched against entities for implementing these type of clauses.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Cartel conduct/anti-competitive conduct is not criminalised, but is rather defined as an administrative offence that is subject to a fine. However, criminal liability may arise where the relevant anti-competitive conduct involves actions that may be deemed a crime, such as fraud, embezzlement, and abusive conduct, etc. Accordingly, even though the legislation does not expressly provide for specific types of crimes expressly related to anti-competitive conduct, the actual conduct/practice may entail certain actions that are criminalised.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Angola is a member of the Southern African Development Community ("**SADC**"), whose members signed and approved the Declaration on Competition and Consumer Policies in 2009 ("**Declaration**"). Under the Declaration, SADC members undertook to set up a system for effective cooperation in the application of the competition and consumer protection laws of each member state. The Competition and Consumer Policy and Law Committee ("**CCOPOLC**") was established under the Declaration, and is tasked with fostering cooperation and dialogue among competition authorities and encouraging the alignment of legislation. The CCOPOLC facilitates cooperation and consultation in competition-related matters, but does not operate as a regional body aimed at controlling anti-competitive practices within the SADC area.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

21. Do you have any views on the level of enforcement of the regional body?

Not applicable as Angola is not a member of a regional competition law regulatory body.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Mergers are notifiable domestically, where they meet the relevant thresholds for notification.

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BOTSWANA

BOTSWANA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

The Competition Act, 2018 ("2018 Act") came into force on 2 December 2019. The 2018 Act repeals the Competition Act, 2009 and introduces the following significant changes:

a) With effect from 2 December 2019, the competition authority has been renamed the Competition and Consumer Authority ("**CCA**");

b) The Competition and Consumer Board was established as the governing body of the CCA, responsible for its affairs and policy direction;

c) The Competition and Consumer Tribunal was established to adjudicate over breaches of the 2018 Act or any appeal brought in terms of the provisions of the 2018 Act;

d) Criminal sanctions now apply to any officer or director of an enterprise who contravenes the horizontal restrictive practice provisions of the 2018 Act. An officer or director may be liable for a fine of up to BWP 100,000 (approximately USD 9,033.11) or imprisonment for up to five years, or both;

e) Personal liability may be imputed to any director or officer contravening the resale price maintenance provisions of the 2018 Act. A fine of up to BWP 50 000 (approximately USD 4,516.56) may be imposed;

f) The 2018 Act expands the general prohibition against abuse of dominance, by introducing specific conduct that amounts to abuse, including : predatory conduct, tying and bundling of products, loyalty rebates, margin squeeze, refusal to supply or deal with other enterprises (including a refusal to grant access to an essential facility), requiring or inducing any customer to not deal with other competitors, discriminating in terms of price or other trading conditions and exclusive dealing; and

g) Introduction of a financial penalty for failing to notify a merger or for prior implementation of a merger, calculated as a fine not exceeding 10% of the consideration or the combined turnover of the parties involved in the merger, whichever is greater.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

Where the CCA has reasonable grounds to suspect that in light of observed price rigidities or other circumstances, a restriction or distortion of competition may be occurring within a particular sector of the economy or within a particular type of agreement occurring across various sectors, the CCA may initiate a market inquiry.

During the 2018/2019 financial year, the CCA undertook the following market inquiries:

a) A market inquiry in the liquefied petroleum gas market - in collaboration with other agencies in the SADC region and through the African Competition Forum. The findings of the study indicated that there is extreme market concentration in the upstream market, with high profit margins; and

b) An inquiry (which is ongoing) into the pharmaceutical sector in Botswana. The objectives of the inquiry are:

- to identify competition issues that need to be addressed in Botswana's pharmaceutical sector;
- to understand the landscape of the pharmaceuticals sector in Botswana;
- to understand the relationship between stakeholders within the pharmaceuticals sector subject to the value chain; and
- to assess potential barriers to entry that may prevail along the pharmaceuticals supply value chain in Botswana.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

The CCA has expressed concern in relation to the cement and commercial poultry meat (chicken) market. Investigations are currently ongoing in these markets.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No, dawn raids are a low to medium risk in Botswana. The CCA has not conducted any dawn raids since January 2019.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

During periods of national lockdown, the CCA permits electronic filing of merger applications.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

The CCA is currently investigating businesses and persons alleged to be involved in deceptive practices or any other trade malpractices in the supply of products intended to fight against COVID-19.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

No.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

No.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes, merger submission is suspensory; however, there have been no cases against entities for prior implementation since January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

None.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

No.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

For non-complex mergers, the CCA finalises its assessment within 20 business days. In relation to complex mergers, the assessment period takes 45 business days.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

None.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

No.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

The CCA has only considered exclusivity clauses in the context of retail lease agreements. An inquiry into the shopping mall retail property market, concluded by the CCA in 2019, held that anti-competitive foreclosure may arise through exclusive dealing – preventing competitors from selling to customers, through the use of exclusive purchasing obligations and rebates. Therefore, exclusive dealing is a form of abuse of market power, since anti- competitive foreclosure may arise through such a practice.

To date there have been no prosecutions.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes. No criminal charges have brought/convictions made against persons and/or entities engaging in any anti-competitive conduct.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Botswana is not a member of any regional body with a competition law regime.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

21. Do you have any views on the level of enforcement of the regional body?

Not applicable.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Not applicable.

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BURUNDI

BURUNDI

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

No amendments nor guidelines have been proposed or enacted since January 2019.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

No. The competition authority is not yet operational, despite the existence of the Competition Act, which was enacted in 2010.

However, a draft decree relating to the establishment of the competition authority was submitted to the president of Burundi on 20 April 2017. The signature to the decree and approval of the decree is still pending.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

No, the competition authority is not yet operational.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

No.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

The Competition Act has no provisions relating to the abuse of buyer power.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

No, the competition authority is not yet operational.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes, the submission of a merger notification is suspensory, according to Article 49 of the Competition Act. Parties to a merger are prohibited from implementing the merger for a period of three months pending assessment and approval by the competition authority.

No cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction have ever been initiated, given that the competition authority is not yet operational.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

No such cases exist, given that the competition authority is not yet operational.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

No.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

We are not in a position to advise on timing for merger assessments and approvals given that the competition authority is not yet operational.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

No such information exists given that the competition authority is not yet operational.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

No.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Exclusivity clauses and non-compete clauses are not prohibited *per se*, but should comply with a number of conditions depending on the context of each case. There has not been any prosecution against entities in this regard, since January 2019.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No, the competition authority is not yet operational.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

There are criminal and civil sanctions against cartel conduct and anti-competitive conduct in Burundi. The sanctions include administrative penalties, damages, suspension of activities, fines, jail sentences, and the withdrawal of licenses for a certain period, etc.

As the competition authority is not yet operational, such sanctions/penalties are not yet applicable. However, theoretically, a judge may impose such sanctions/penalties during a trial before the civil, criminal or administrative courts in Burundi.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Burundi is a member of the EAC, COMESA and CEMAC. Therefore, activities in Burundi should be conducted with these three regional bodies in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

21. Do you have any views on the level of enforcement of the regional body?

No. However, we note that even although the competition authority of Burundi is not yet operational, parties must always consider the COMESA, CEMAC and EAC competition laws and regulations when conducting activities in Burundi or activities outside of Burundi that have an effect in Burundi, or in the regional common market.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

According to Burundian laws (including regional treaties), a merger may be notifiable to regional competition authorities. Given that the national competition authority of Burundi is not yet operational, no notifications have been made domestically.

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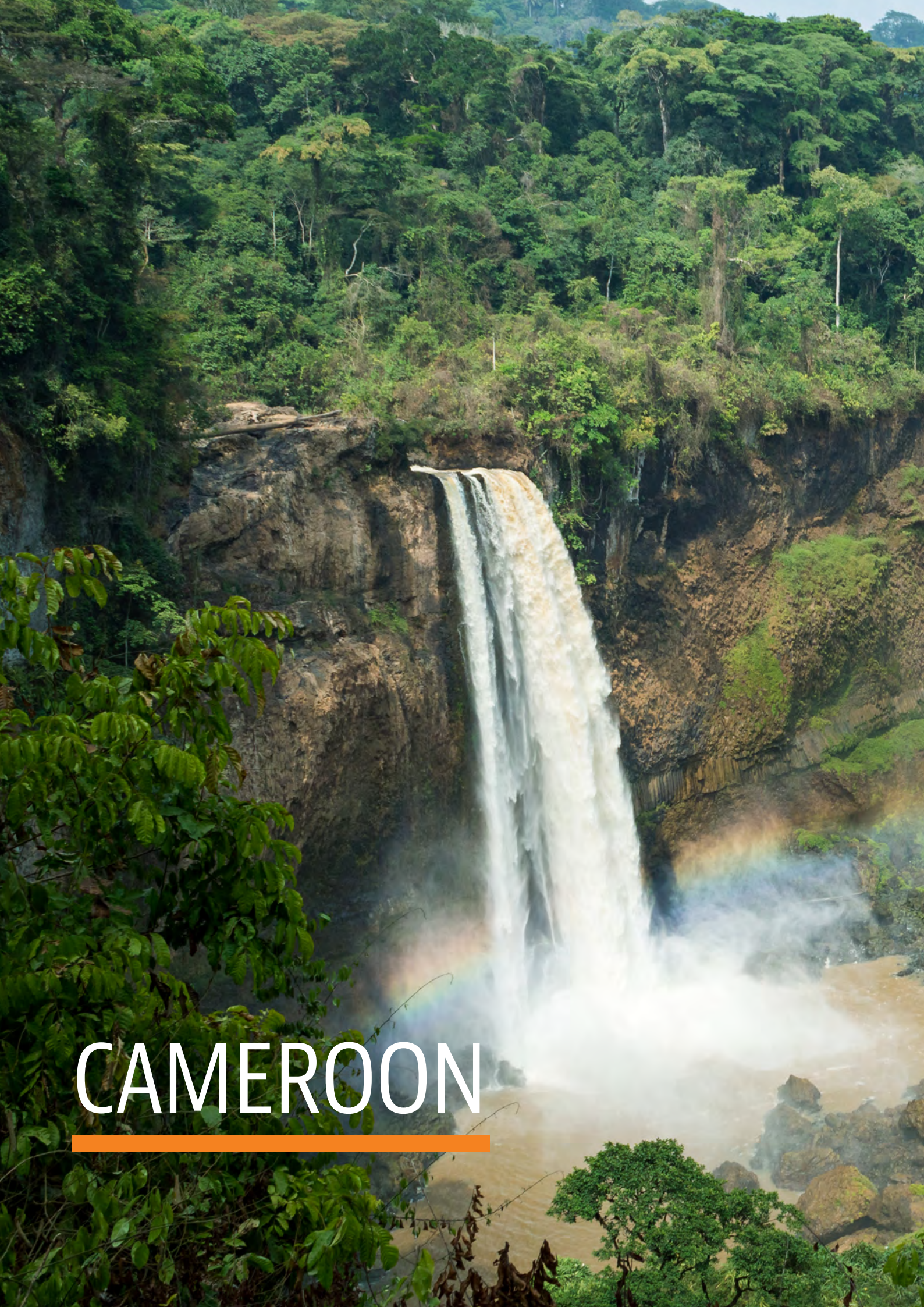

CAMEROON

CAMEROON

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

There has been no change to the national competition legislation since January 2019.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The National Competition Commission ("**NCC**") has previously carried out inquiries in several sectors of the economy, either at the request of a public administration body or on its own initiative, when the practices of certain companies were likely to affect fair competition. These inquiries were conducted in; *inter alia*, the energy, telecommunications, port and airport, and money transfer sectors. Currently, there is no plan to initiate any market inquiries in relation to any other sector/industry.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

No. The NCC generally does not issue public statements expressing concerns in relation to any sector/industry. However, the NCC usually notifies the relevant sector/industry representatives directly in the event of any specific concerns that the NCC might have.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No, dawn raids are not a high risk in Cameroon. There have been no dawn raids conducted by the NCC since January 2019.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic

No.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

Yes, the legislation does contain provisions on the abuse of buyer. However, we are not aware of cases brought by the authority against accused entities.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

No. Such information is not publicly available.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

There are no official proposals to amend merger filing fees and/or monetary thresholds.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

The filing of a merger notification is not suspensory. We are not aware of cases involving entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of such cases; as such information is not publicly available.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

No. In Cameroon, mergers are generally not approved with conditions. Where, upon the review of a merger notification, the Commission is in doubt of a fact, it will generally request the parties to provide justifications or further particulars.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

There is no distinction, in terms of the competition laws of Cameroon, between complex and non-complex transactions. Generally, a merger must be approved within a maximum period of six months from the date of notification; otherwise, the merger will be deemed to be approved. In practice, transactions are approved by the NCC within a minimum period of three months from the date of notification. However, approval may be delayed in the event of a request from the NCC for additional information.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

There have been no noteworthy penalties since January 2019. In addition, such information is not publicly available.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

Such information is not publicly available.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Exclusivity clauses and non-compete restraints are null and void in terms of Article 9 of the 1998 Law on Competition in Cameroon. This law entitles any interested person the right to apply to the CNC for purposes of canceling exclusivity clauses or non-compete restraints.

Moreover, these practices are punishable by a fine equal to 50% of the profit derived by the relevant entity or 20% of the turnover derived in the Cameroonian market in the financial year preceding the year during which the infringement was committed. In addition, the CNC can order companies to cease the conduct or order them to pay damages and interest.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes, the NCC has launched new investigations since January 2019, against entities engaging in prohibited practices in the money transfer, energy and telecommunication sectors. Unfortunately, the NCC has not published detailed information in relation to these investigations.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, cartel conduct/anti-competitive conduct is criminalised in Cameroon. However, no criminal charges have been brought or convictions made against any persons and/or entities for engaging in anticompetitive conduct since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Cameroon is a member of the CEMAC. Accordingly, activities in Cameroon should be conducted with the CEMAC in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

21. Do you have any views on the level of enforcement of the regional body?

We understand that the CEMAC frequently consults Cameroon on competition issues, as the Cameroonian legislation is more elaborate than those of other CEMAC member states.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Merger notifications are filed both domestically and regionally, provided that the relevant thresholds and conditions are met.

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CAPE VERDE

CAPE VERDE

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

The legal framework on competition is the Competition Act, approved by Decree-Law No. 53/2003 of 24 November 2003. According to the Competition Act, the bodies responsible for the enforcement of competition rules are the Minister for Industry, Trade and Energy ("**MITE**") and the National-Directorate for Industry, Trade and Energy ("**NdITE**"). A Competition Council is foreseen to take up an executive role as the relevant competition authority with regard to restrictive practices and an advisory role in support of the MITE with regard to merger control.

The Government, on multiple occasions, has announced the effective setting up of a Competition Council, but it has not yet been created. A few regulatory bodies have been set up, with limited powers on competition matters. The most important by reach is Agência de Regulação Multissectorial da Economia ("**ARME**"), the multi-sector Regulatory Agency for the Economy, created by Decree-Law No. 50/2018, of 20 September 2018. ARME is tasked with economic and technical regulation over the business sectors of communications, energy, water and passenger transport.

Until the Competition Council is in place, ARME is empowered to enforce rules on restrictive practices in these sectors, and takes up an advisory role on merger control. In addition, ARME will coordinate with the Competition Council, once this is set up, on all matters relating to competition in the business sectors within its oversight purview.

No amendments or guidelines relating to the competition legislation have been proposed or enacted since January 2019.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

According to the Competition Act, the NdITE is empowered to undertake market enquiries whenever it deems necessary. To the best of our knowledge, no market inquiries have been initiated in relation to any sector/industry.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

To the best of our knowledge, no concerns have been publicly expressed in relation to any industry/sector.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No. Under the Competition Act, the NdITE is competent to conduct dawn raids (the ARME in relation to the business sectors under its oversight purview) but, to the best of our knowledge, none have been conducted.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

To the best of our knowledge, no new regulations or measures on competition enforcement in response to the COVID-19 pandemic have been introduced by the competition authority.

Cape Verde's electronic communications operators have been barred from launching new offers or changing their existing tariffs, by the ARMEs decision of 27 May 2020. The decision was aimed at creating the necessary conditions for the development of healthy competition in the sector, particularly in view of the current scenario in the country and the world due to COVID- 19. The suspension applies to all operators active in the electronic communications sector and will persist until the completion of the ARMEs plan for the sector, which should take place within a maximum of 120 days.

Moreover, some regulations have been adopted by the government in relation to price setting (e.g., for COVID-19 screening tests and for non-medical masks for social or community use, and medical devices and personal protective equipment).

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

We are not aware of any action taken against any entities for infringing competition legislation during the COVID-19 pandemic.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

The Competition Act does not contain specific provisions on the abuse of buyer power.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

The MITE is the competent entity to approve (with or without remedies) or to prohibit notified transactions. To the best of our knowledge, no transactions have been prohibited since January 2019.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

Merger filing fees have not yet been set and we have no information regarding their approval.

In practice, no filing fees are required when filing for a merger.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

The submission of a merger notification is deemed suspensory, and therefore a merger subject to notification cannot be implemented before being notified to and cleared by the MITE, or being cleared through implied consent after a certain term has lapsed (please refer to question 13 below).

To the best of our knowledge, no cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction have been brought by the authority since January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of any entity that has been fined for failure to comply with merger conditions.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

We are not aware of any merger that has been approved subject to novel or otherwise noteworthy conditions. Our experience has shown that merger filings tend to be cleared through implied consent, rather than being screened and decided upon.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The filing must be made prior to the closing of the transaction. Upon receiving the notification and (in theory) gathering other data it may deem appropriate, the NdITE sends the file to the MITE for final decision. The NdITE has 30 calendar days to hear the applicants in relation to any particular issue, to carry out any other due diligences it (or the applicants) may deem relevant, and then submit the file to the MITE for decision. The 30-day term may be suspended if additional information is requested from the merging parties.

The MITE then has 30 days, counted as from the filing of the notification. In practice, this has been interpreted as counting from the date when the MITE receives the file from the NdITE), to either approve the proposed transaction or submit the notification to the Competition Council for advice (which is not yet operational).

The MITE is empowered to grant or refuse approval. If the MITE, directly or through the NdITE, fails to issue a decision within the 30-day deadline, i.e., 60 days in total, from the date of filing, the transaction is deemed cleared through implied consent.

In light of the above, we would expect the formal or tacit approval to take between 60 to 90 days (without taking into consideration possible suspensions, as mentioned above).

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

The Competition Council is empowered to impose fines on entities engaged in prohibited practices such as cartel conduct, abuse of dominance etc. The Competition Council is not yet operational, therefore, no prohibited practices have been investigated or penalties imposed in this regard.

ARME is empowered to impose fines in the communications, energy, water and passenger transport sectors. We are unaware of any penalties having been imposed.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

We are not aware of any cases, since January 2019, that have been brought against parties in a vertical relationship for infringing the competition legislation.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Exclusivity clauses and non-compete restraints are not expressly regulated under the Competition Act and would therefore be assessed on a case-by-case basis. Exclusivity clauses and non-compete restraints may be regarded as an infringement of the competition rules if, in the specific case, they are likely to constitute practices that restrict competition, notably by impeding the entry or expansion of new competitors in a specific market.

We are not aware of any prosecution that has been pursued since January 2019, against entities for implementing exclusivity clauses or non-compete restraints.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

The Competition Council is not yet operational. We are also not aware of any investigations that have been launched in the sectors subject to the ARMEs oversight powers.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Cartel conduct/anticompetitive conduct is not criminalised, however it is categorised as an administrative offense subject to fines only.

Criminal liability may arise where the anticompetitive conduct involves actions that may be deemed a crime, such as fraud, embezzlement, abusive conduct, etc. Therefore, even though the legislation does not expressly provide for specific types of crimes expressly related to anticompetitive conduct, the actual conduct/practice may entail certain actions that are criminalised.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Cape Verde is a member of the Economic Community of West African States ("**ECOWAS**"). The ECOWAS Supplementary Act A/SA.1/06/08 on Community Competition Rules and the Modalities of their application, and Supplementary Act A/SA.2/06/08 establishing a Regional Competition Authority to cooperate with national competition authorities, apply.

The ECOWAS Regional Competition Authority was launched on 12 July 2018 (hosted by the Gambia), but its operation and effectiveness remain unclear with regard to most areas.

Nonetheless, activities in Cape Verde should be conducted with ECOWAS in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

To the best of our knowledge, since January 2019, no new investigations have been launched against any entity, for engaging in prohibited practices.

21. Do you have any views on the level of enforcement of the regional body?

Having been launched on 12 July 2018, the level of enforcement of the Regional Competition Authority for ECOWAS is unclear.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

A merger is notifiable regionally before the ECOWAS Regional Competition Authority if it affects trade between member states of ECOWAS. There are no explicit rules defining the allocation of jurisdiction between the national and ECOWAS levels.

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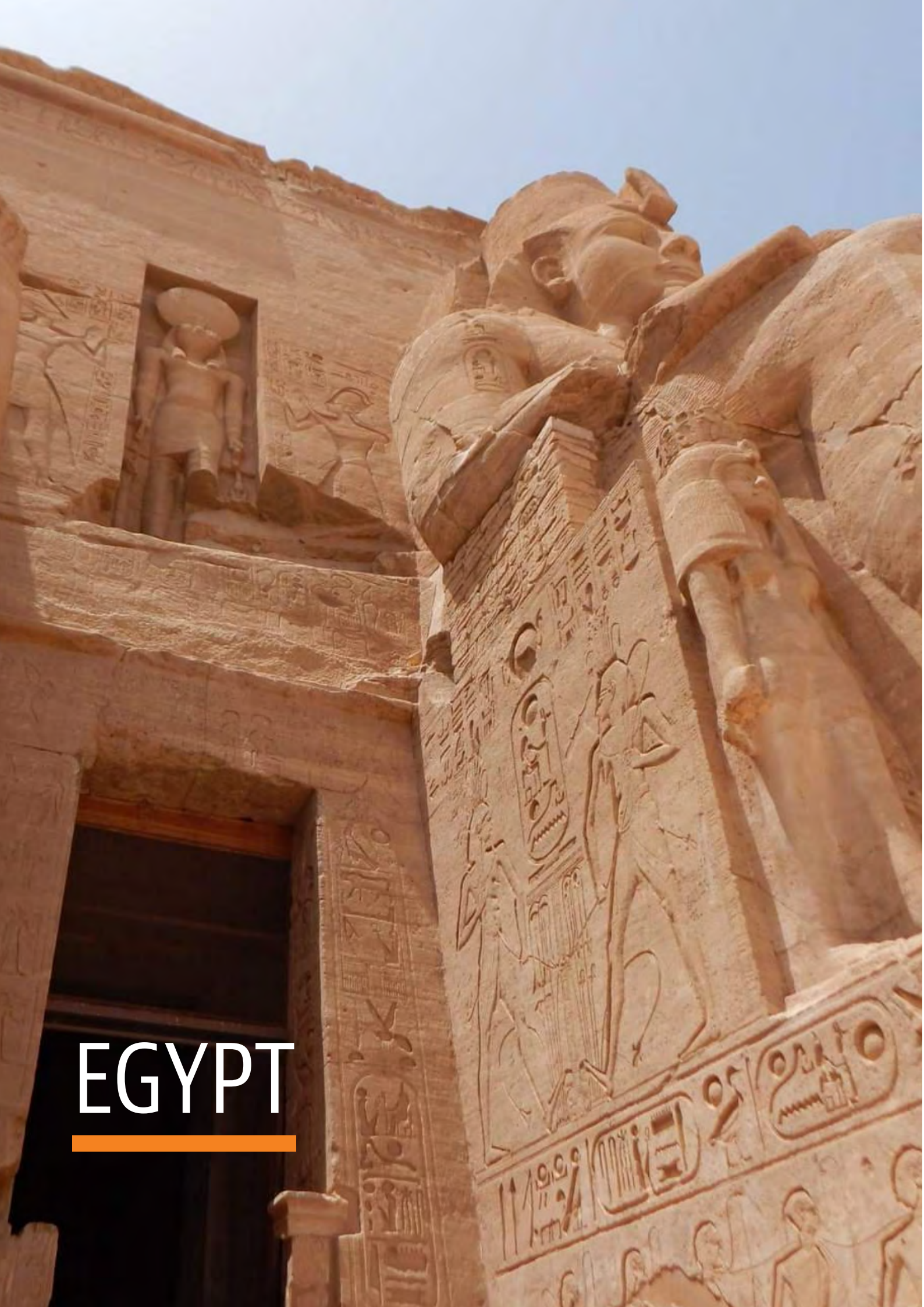

EGYPT

EGYPT

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

Article 10 of the Egyptian Competition Law, Law No. 3 of 2005 ("**ECL**") was amended in 2019 to include the imposition of criminal liability for any violation of decisions issued by the Council of Ministers relating to price fixing. In addition, the said decision no longer requires a recommendation from the Chairperson of the Egyptian Competition Authority ("**ECA**").

In practice, this decision was implemented in the healthcare industry during the peak of the COVID-19 pandemic.

In January 2020, the Egyptian Prime Minister established a Ministerial Committee under the Intellectual Property Law No. 82/2002 ("**IP Law**") for compulsory licensing. The establishment of this committee is an indication that the government will start implementing enforcement tools that existed in the law but remained unused for years. Moreover, pursuant to IP Law, anticompetitive practices are sufficient reasons for compulsory licensing. Together with the appointment of the chairperson of the ECA on this committee, this indicates the close overlap between IP Law and the ECL.

More recently, the ECA has published a paper outlining its understanding and policy in compulsory licenses and it cited examples related to media and broadcasting rights.

In July 2020, the Personal Data Protection Law was issued and introduced several obligations that aim to protect personal data in Egypt. Under the Personal Data Protection Law, public authorities (including the ECA) are entitled to request and collect data and documents from companies or their employees, for example during requests for information or dawn raids. Therefore, employees will not be able to use the Personal Data Protection Law in order to resist cooperating with the ECA. In addition, the violation of personal data might result in a simultaneous investigation under the ECL and the Personal Data Protection Law.

In July 2020, the ECA issued guidelines regarding the scope and procedures relating to the leniency regime as stated in Article 26 of the ECL. The new guidelines introduce new elements, such as informal discussions with the regulator and a marker system, in an attempt to increase transparency and the efficiency of the regime. The existing leniency regime under the ECL is only applicable to horizontal agreements. These new guidelines highlight the detailed requirements for a successful leniency application and introduce a marker system, along with a process to informally discuss any potential application (on a no names and no relevant market basis).

The guidelines also confirm the possibility to obtain corporate leniency along with individual leniency. Moreover, the guidelines expand the definition of corporate leniency to include current and previous board members, employees, and more importantly independent agents. The ECA has also introduced a marker system whereby if a company/individual has incomplete information about the cartel, it may still apply for a marker to reserve first place as a potential leniency applicant. However, the person will need to complete the said application within 30 days from the date of the marker.

In addition, the ECA has established an informal discussion mechanism. Under this system, parties or their representatives can explore with the ECA the possibility of submitting a leniency application while maintaining the anonymity of the potential applicant and the relevant market concerned.

Finally, the ECA confirmed the main benefits of the leniency regime to companies, which are the following:

- Total individual and/or company immunity from criminal liability;
- Protection of the reputation of the applicant, as the applicant will be treated as a witness rather than a defendant and, consequently, its name will not be mentioned as a defendant in the published court decision;
- No risk of losing its imports license; and
- No risk of facing other sanctions under public tender laws and regulations.

On 25 November 2020, the ECA announced that the Egyptian Prime Ministry approved the Prime Minister's draft law ("**draft law**") amending certain provisions of the ECL. The draft law adds the definition of concentration to the ECL, whereby a concentration shall be deemed to have occurred whenever there has been a change in the control of a firm or upon the establishment of a material influence on a lasting basis. Situations that could give rise to the change in control include:

- the merger of two or more previously independent persons or parts of these persons;
- the acquisition of the ability of one or more persons to exercise control or material influence, directly or indirectly, over the whole or parts of one or more other persons, whether by the purchase of securities or assets, by contract or by any other means; or
- the establishment or acquisition of a joint venture by two or several other persons, performing (on a lasting basis) all the functions of an autonomous economic entity.

The draft law further lists certain transactions that are exempt from the definition of a concentration, offers clear definitions of control and material influence and mandates the notification of concentrations to the ECA, prior to the conclusion of the agreement in order to attain clearance on the concerned transaction.

Furthermore, the draft law prohibits concentrations where they are likely to significantly restrict or harm the freedom of competition in a particular market or part of it, and especially when the concentration creates or entrenches a dominant position or facilitates a violation of the ECA.

During its assessment, ECA should consider defences submitted by the concerned parties, such as the failing firm defence and any economic efficiencies resulting from the concentration. The ECA reserves the right to approve otherwise anticompetitive concentrations if it is likely that one of the notifying parties will exit the market absent the transaction and the procompetitive effects of keeping the firm's assets in the market outweigh the anticompetitive effects of the transaction. Possible efficiency claims will also be considered by the ECA when evaluating concentrations.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

It has been announced that the ECA is currently conducting market studies in the automotive and information technology sectors. According to the ECA, as referenced in a news report related to the market study in the automotive sector, the authority is concerned about, among other things, exclusive distribution agreements with car manufacturers and challenges causing the lack of competition leading to price "overcharges".

It is also worth mentioning that the ECA has established sectoral divisions of its case handlers. A special unit is now responsible for ECL matters related to each industry.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

The ECA has published a press release in relation to the real estate sector, to alert the market players about certain competition concerns.

In the automotive sector, the ECA was concerned about the marketing and selling policy of a car distributor.

Previously, the ECA Chairman publicly made a statement that he believes that the pharmaceutical sector is particularly prone to anticompetitive practices.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

Dawn raids became a high risk in Egypt after the appointment of the new Chairman as the number of dawn raids have increased since then.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

The ECA undertook an initiative to provide free economic and legal consultations to companies operating in different markets, regarding the compliance of their decisions with the ECL during the COVID-19 pandemic, and the exemption conditions stated in Article 6 paragraph 2 of the ECL.

The ECA highlighted that in light of the exceptional circumstances brought about by COVID-19, it is fully aware of the importance of facilitating and enabling innovation and necessary technologies. This can be through collaboration on innovative efforts by and between competitors and fostering any necessary coordination among them to achieve more efficient means of producing scarce or fundamental products necessary to combat the spread of the virus, especially in the medical supplies sector or the pharmaceutical and health care sectors.

The ECA, together with the Prime Minister of Egypt, arranged for the fixing of prices in relation to certain medical supplies required for health and safety during the COVID 19 pandemic. However, the said decision was suspended afterwards.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

To date, the ECA has not taken any action against any entities for infringing the ECL during the COVID-19 pandemic.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

Yes, the ECL contains provisions relating to the abuse of buyer power. These provisions have been commonly applied in cases involving buying cartels (attempting to lower prices from suppliers).

We are also aware of at least one investigation that took place in relation to abuse of dominance by a dominant buyer.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

The ECL only requires post-merger notification; therefore, the ECA does not have the authority to prohibit a transaction. However, please refer to the response to question 12 below.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

Yes.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

No, but please refer to the response to question 12 below.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are aware of several investigations that are taking place but no infringement decisions have been publicly announced since January 2019.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

In December 2019, the ECA issued its decision on the proposed acquisition of Careem, Inc. ("**Careem**") by Uber Technologies, Inc. ("**Uber**"). The decision marked the first pre-merger notified merger under the exemption procedure for horizontal cooperation agreements. The decision further expanded the authority of the ECA to review mergers & acquisitions and cooperation agreements. Therefore, parties to a horizontal cooperation agreement and potentially parties to certain horizontal mergers or acquisitions may

be required to obtain prior approval from the ECA. This case revealed the level of cooperation between competition authorities in the region, as the ECA announced that it has cooperated with the authorities of Pakistan, COMESA, Saudi Arabia and others. The ECA is also intervening in three more transactions and requiring the parties to the transaction to approach it and apply for pre-merger approval.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

As mentioned in the response to question 10, merger notification in Egypt is non-suspensory. The ECL only requires post transaction notification. However, when the ECA undertook an exceptional assessment of the Careem and Uber transaction, it took 8 months to issue its final decision regarding the transaction, with only one extension requested during the period.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

In November 2019, the Economic Court issued its decision upholding the ECAs cartel decision in the market for chicken brokers. In this case, the exchange of pricing information was conducted through Facebook pages of the three cartelists. This was deemed an implicit agreement and the three implicated companies were fined the amount of EUR 3.7 million. On appeal, the Economic Criminal Court of Appeal acquitted the three defendants.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

Resale price maintenance ("**RPM**") has not been a priority to the ECA in the past, but the new management of the ECA has adopted a stricter enforcement policy with regards to RPM. To date, the ECA has still not issued any decision regarding its inspections, however, it seems that it is inspecting several markets for RPM violations.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

In the case of dominance, exclusivity and non-compete clauses are prohibited *per se* under the ECL. However, if there is no dominance, the ECA will seek to establish the anticompetitive effect to the said restrictions. There have not been any prosecutions against entities for implementing exclusivity clauses or non-compete clauses, since January 2019.

However during April 2020, in a case regarding non-compete restraints, an expert report was submitted, which is usually highly persuasive to courts, where the court upheld a non-compete obligation. While this case is different from the non-compete obligation mentioned in this question, it is still relevant as it relates to a shareholder who opened an independent company and started competing with the original company on the same business. The expert concluded that the claimant (original company) is entitled to damages arising from this form of competition and that the claimant is entitled to restrict the ability of the shareholders in competing with its business under the ECL.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No, the ECA has not launched nor published any new investigations against entities for engaging in prohibited practices, since January 2019. However, the ECA has issued several press releases indicating that it is conducting market studies in different sectors such as the automotive and real estate sectors. These market studies can easily result in formal investigations.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, cartel conduct/anti-competitive conduct is criminalized under the ECL.

In November 2019, the Economic Court issued its decision, upholding a previous decision by the ECA in relation to cartel activity in the market for chicken brokers. In this case, the exchange of price information was through the Facebook pages of the three cartel members. This was deemed an implicit agreement and the three companies were fined the amount of EUR 3.7 million. Criminal charges were also laid against individual brokers who participated in the cartel activity. On appeal, the Economic Criminal Court of Appeal acquitted the three defendants.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Egypt is a member of the COMESA. Therefore, activities in Egypt should be conducted with COMESA in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes, there has been an abuse of dominance case but it was later abandoned as no violation was proved.

21. Do you have any views on the level of enforcement of the regional body?

The new management of the ECA, appointed in 2018, is cooperating with the COMESA Competition Commission and has established a cooperation system that enables it to enforce competition law provisions and penalize competition law violations.

We understand that the COMESA Competition Commission is moderately active in antitrust enforcement.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Yes.

Baker McKenzie.

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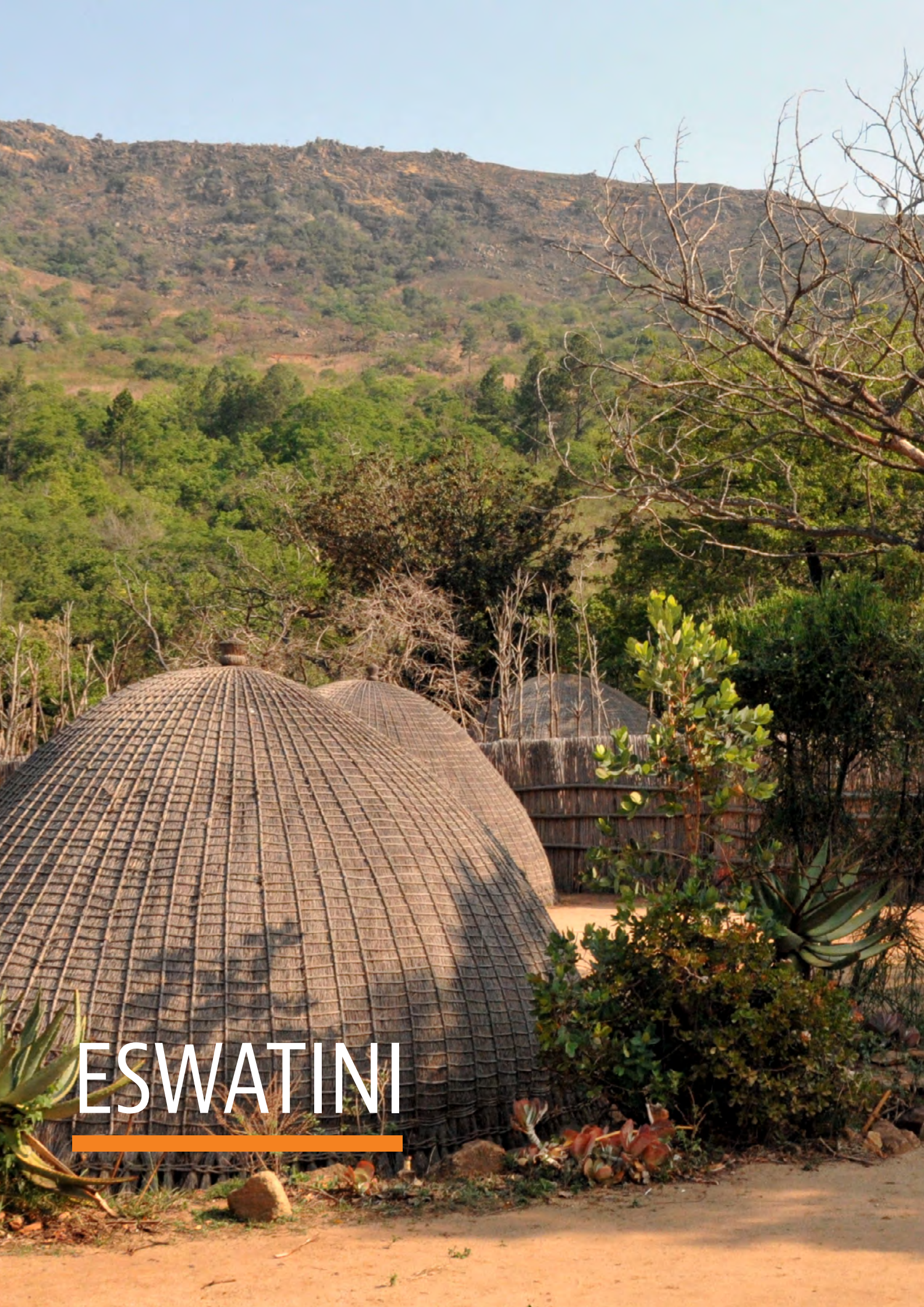

ESWATINI

ESWATINI

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

The Eswatini Competition Commission ("**ESCC**") published a Competition Bill ("**Draft Bill**"), 2020 on its website, which is intended to be presented to the Minister of Commerce, Industry and Trade. The object of the Draft Bill is to increase effectiveness, consistency, predictability and transparency in the enforcement and administration of competition law in Eswatini. It also aims to give effect to regional frameworks such as COMESA Competition Regulations and international best practices. The Draft Bill, once promulgated into law, will therefore provide for:

- the prevention of anti-competitive trade practices;
- the establishment of a more effective and efficient merger review and control;
- better coordination with sector specific regulators;
- the promotion of competition in the national economy;
- the promotion of fair trading and consumer protection;
- the imposition of fines, penalties and sanctions;
- clarity on the powers, duties and functions of the Eswatini Competition Commission;
- the establishment of the Competition Tribunal;
- repeal of the Competition Act, 2007; and
- other incidental matters.

The ESCC further published guidelines to assist it in imposing appropriate administrative penalties, which will ensure that it uses a consistent, fair and certain process.

According to the Guidelines, the ESCC has a discretion on whether to take into account certain aggravating factors listed under regulations to the Eswatini Competition Act. In the event that the ESCC does consider these factors, it must take into account all the identified factors to maintain uniformity in penalty setting.

The identified aggravating factors should be weighted in order to have some semblance of objectivity putting value to them. There must be consideration for mitigating factors and the principle of proportionality. There should also be base penalties i.e., the lowest penalty percentage or starting point for a penalty and there should ultimately be a formula to assist the ESCC on how it will arrive at a specific figure for a penalty.

The ESCC will consider the following mitigating factors:

a) The role of the enterprise, for example, that the enterprise was acting under duress or pressure;

b) The fact that the alleged offender has not been the subject of previous enforcement action on similar conduct;

c) Whether the alleged offender is willing to accept lesser enforcement options e.g. giving undertakings or entering into consent agreement; and

d) The level of cooperation with the ESCC in expeditiously concluding its investigation.

In terms of the Guidelines, the ESCC may proportionately reduce the penalty imposed in cases where a company is facing commercial challenges, where there was a lesser degree of harm to the market or where continued existence of a company serves the public interest by ensuring that there is a viable and effective competitor in the market. The ESCC may only consider using the principle of proportionality after the calculation of the administrative penalty.

The Guidelines set the base penalty for cartel activity and abuse of dominance at 1% of the turnover of the infringing firm. In relation to anticompetitive trade practices, consumer protection infringements and implementation of mergers without notification, the base penalty is set at 0.5% of the infringing firm's turnover. The Guidelines further contain a formula for penalty calculation, including a scorecard for mitigating and aggravating factors.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

In January 2019, the ESCC published its findings on the Retail Banking Market Inquiry, which analysed the state of competition in the banking industry, following public concerns regarding prices for banking services in the country.

The ESCC also published its Draft Report on the Broiler Chicken Market Inquiry, which revealed that:

- there are no significant barriers to entry, except that new prospective entrants will have to face inherent costs of start-up and doing business in this market;
- there is a 27% levy imposed on broiler chicken meat and some broiler chicken meat products imported from outside the Southern African Customs Union countries. Furthermore, there is 15% value added tax imposed to all poultry imports, including processed meat. The ESCC was concerned that these levies limit import competition and competition in general, and recommended that they be lowered for processed broiler chicken meat products in order to encourage import competition;
- members/shareholders of Kikilikigi (one of the three major firms in the broiler growing market) are prohibited from selling shares to non-members/non-shareholders. According to the ESCC, this conduct may be anticompetitive as the shares are not openly sold to the public and as such, the prohibition forecloses new entrants into the market. The ESCC recommended that Kikilikigi should desist from compelling existing shareholders to sell their shares to existing shareholders only;
- contract growers are mostly shareholders of the processing firms, where they produce and supply processing firms according to set quotas, which are mainly proportional to their shares. They also supply the live market with chickens. According to the ESCC, the practice of contract growing is not unique to Eswatini as it is applied in other countries such as Brazil, Zimbabwe, Zambia and South Africa. The ESCC made no recommendations in this regard; and
- the slaughtering and processing market is oligopolistic as it has only three players that have the capacity to supply the whole nation with broiler chicken meat and products, although small abattoirs exist, who supply small restaurants, schools and individual customers in small communities. The ESCC found that there are no significant barriers to entry into the slaughtering and processing market.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

Not that we are aware of.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

The ESCC has not publicised any information in relation to dawn raids since January 2019.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

Yes. In March, the Deputy Prime Minister published Coronavirus (COVID-19) Regulations, 2020 ("COVID-19 Regulations"). The COVID-19 Regulations facilitate various issues that are incidental to the COVID-19 pandemic, including the regulation of prices, unfair practices and the supply of goods during the pandemic.

Price control

- The price control provisions prohibit firms from implementing g price increases that are detrimental to consumers, particularly where:
  - the price does not correspond to or is not equivalent to the increase in the cost of providing that good or service;
  - the new price increases the net margin or mark-up on that good or services, above the average margin or mark-up for that good or service; or
  - the offer to supply, or enter into agreement to supply any goods and services at a price that is unfair, unreasonable or unjust.

Unfair practices

- This provision prohibits suppliers from:
  - engaging in undesirable conduct, including the use of unfair tactics when marketing their goods or service and when supplying goods or services to a consumer; and
  - offering to supply, or enter into agreement to supply any goods and services at a price that is unfair, unreasonable or unjust.

Supply of goods

- In terms of this provision, suppliers are required to develop and implement reasonable measures to:
  - ensure reasonable and equitable access of goods to customers, which may include limiting the number of items which a consumer may purchase; and
  - maintain adequate supply of stock.
- Where there are restrictions on the purchase of supplies, suppliers are required to prominently display a notice in their outlet pertaining to such restrictions.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

The ESCC has not publicised any information on cases that it has launched or finalised in relation to a breach of the COVID-19 Regulations. However, the ESCC has issued notices to businesses, cautioning them to desist from anti-competitive behaviour during the COVID-19 pandemic. The ESCC has been particularly concerned with excessive pricing during the COVID-19 pandemic, and has stressed the penalties that businesses will incur if found to have engaged in unfair trading practices.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

No.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

We are not aware of any publicised cases involving transactions that were prohibited by the ESCC since January 2019.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

We are not aware of any proposals to amend the merger filing fees. In relation to the monetary thresholds, the Eswatini competition regime does not have thresholds for the notification of mergers and all mergers are notifiable regardless of the size of the firms/transaction. There are however thresholds for determining the filing fees applicable to a notified merger. These have not been amended as well.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes. Approval from the ESCC is required before notifiable merger may be implemented. We are not aware of firms being prosecuted for gun-jumping or pre-implementation since January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of any cases involving firms that have breached merger conditions that were imposed on them since January 2019.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

We are not aware of any mergers that have been approved with noteworthy conditions by the ESCC since January 2019.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The ESCC has 90 days to review a merger notification, calculated from the date of receipt. The initial 90-day period may be extended for a period not exceeding 60 days, however the Eswatini Competition Act does not contain provisions relating to instances where the ESCC fails to issue a determination within the initial or after the expiry of the extended period.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

Since January 2019, there have been no publicised noteworthy penalties that have been imposed on any entities for engaging in prohibited practices.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

Yes. In May 2020, the ESCC issued its decision on the School Uniform Suppliers case. The case relates to conduct by various suppliers in terms of which they concluded exclusive supply agreements with some schools for the supply of school uniforms. The ESCC found that these agreements had the object or effect of restricting competition in the market for the supply of school uniforms. The ESCC also found that the exclusive supply agreements created barriers to entry for new participants, and were detrimental to consumers as they increased prices for school uniforms, which would otherwise be lower in a competitive environment.

The ESCC further found that certain suppliers engaged in discussions on prices to be charged for school uniforms and the price increases to be implemented, which further distorted competition in the market. The above non-compete conduct was deemed inconsistent with the Competition Act and various directives were issued against both the schools and the uniform suppliers in order to remedy the effects of the conduct.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Exclusivity clauses

The ESCC applies a "rule of reason" approach when assessing exclusivity clauses in Eswatini. In terms of the Competition Act, agreements, decisions or concerted practices that seek to distort or have the effect of significantly distorting competition in the country or a particular part of it are prohibited. The ESCC will therefore seek to establish the following elements in an inquiry relating to the legality exclusivity clauses:

- whether an agreement exists;
- the object or effect of that agreement; and
- if the object or effect is the distortion or prevention of competition, whether it does so to an appreciable extent.

In August 2019, the ESCC published a report on its investigation into exclusivity agreements between various schools and school uniform suppliers. The findings revealed that 192 schools, both public and private, concluded exclusive supply agreements with suppliers of school uniform, which in turn compelled parents to purchase school uniform from only that supplier.

The ESCC, in assessing the agreements considered various aspects of the market for school uniforms, applying the above methodology and an effects analysis, which looked at:

- the foreclosure effects of the exclusivity clauses;
- the exit of certain suppliers from the market for school, uniforms as a result of the exclusivity arrangements;
- the limited choice of suppliers for consumers seeking to procure uniforms;
- limited access to the market by competitors; and
- the barriers to entry in the market for school uniforms.

The ESCC concluded that the agreements entered into by the schools and school uniform suppliers have the effect of restricting, preventing or distorting competition to an appreciable extent and that the adverse effects of the supply agreements outweigh the pro-competitive effects in the market. The ESCC also found that the supply agreements resulted in the creation of barriers to entry, foreclosed competitors in the market, limited access of competitors in the market and limited choice of school uniform suppliers to consumers in the market.

Non-compete restraints

Non-compete clauses will be analysed on a case-by-case basis. Where non-compete clauses are aimed at market allocation or division, these will be automatically prohibited; however, where these clauses exist in the context of a sale of business, these clauses may be justifiable.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes. Please refer to our response to question 15 above.

18. Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Yes. Eswatini is a member of COMESA. Therefore, activities in Eswatini should be conducted with COMESA competition laws in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No. We are not aware of any cases in this regard.

21. Do you have any views on the level of enforcement of the regional body?

No.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Mergers are notifiable domestically where they affect Eswatini. If the merger affects two or more member states, notification will be required at COMESA level and at a domestic level.

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ETHIOPIA

ETHIOPIA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

There have been no new amendments or guidelines relating to the competition legislation, although certain provisions of the Competition Law of Ethiopia ("**CLE**") have been under review even before 2019.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

Although the CLE has no express provision relating to market inquiries, the Ethiopian Trade Competition and Consumers Protection Authority ("**Authority**") may conduct market inquiries since the Trade Competition and Consumers Protection Proclamation No 813/2013 empowers it to perform any activity with to attain its objectives. In practice; however, there have not been any formal market inquiries initiated by the Authority in any sector/industry.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

No.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

Yes. The Authority has carried out dawn raids, particularly in the cement, brewery and pharmaceutical sectors, and has given warnings to the entities. Dawn raids have been largely undertaken in businesses that are alleged to be engaged in price-fixing.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

No.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

No.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

No.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

To date, there has been no amendment to the merger filing fees or the monetary thresholds.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes, however, no case has been brought against any entity accused of gun-jumping since January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

The Authority has not pursued any case in relation to failure to comply with merger conditions and therefore, no fines have been imposed in this regard.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

No.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The assessment of a non-complex transaction takes between 10 to 15 days. Complex transactions take between 30 to 45 days to be approved.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

The Authority imposed a penalty on two entities in the cinema and pharmaceutical sectors for cartel conduct.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

No.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

The competition law does not contain specific provisions relating to exclusivity clauses and non-compete restraints. However, since merger applicants are required to provide conditions attached to the transaction in their merger notification, the Authority would assess the implications of exclusivity clauses and non-compete restraints on competition in the relevant market. If such conditions constitute restraints and have the effect of prohibiting or significantly lessening competition in the relevant market, the Authority will reject the restraints while approving the merger.

No prosecution has been instituted against entities for implementing exclusivity and non-compete restraints since January 2019.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

There is no publicised information relating to investigations against firms alleged to have engaged in prohibited practices.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Cartel conduct and other forms of anti-competitive conduct are criminalised in Ethiopia. However, there has been no criminal charge or conviction made against any person/entity for engaging in anti-competitive conduct since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Ethiopia is a member of COMESA. Therefore, activities in Ethiopia should be conducted with COMESA in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

There is no publicised information relating to investigations launched by the COMESA Competition Commission against entities based in or operating in Ethiopia.

21. Do you have any views on the level of enforcement of the regional body?

In respect of merger notifications submitted to the COMESA Competition Commission by entities that have business interest/activities affecting Ethiopia, it is common that COMESA Competition Commission will inform the Authority and seek the opinion of the Authority.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Yes, a merger will be notifiable both domestically and regionally (where the merger may have cross-border effect).

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GHANA

GHANA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

There is no overarching competition legislation or regime in Ghana. The various sectors of the economy are regulated by industry-specific regulators/regulatory bodies that serve as competition authorities to promote competition and prevent anti-competitive behavior.

A draft Competition Bill has been tabled before parliament but has not yet been passed. The principal objective of the bill is to maintain and encourage competition in markets, to promote and ensure fair and free competition, and to protect the welfare and interests of consumers.

Under the draft Competition Bill, provision is made for the establishment of a Competition Commission of Ghana, with a mandate to monitor trading practices in the country to ensure fair trade practices and of preventing restrictive trade practices.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

We are not aware of any plans by any industry regulator to initiate any market inquiry in any sector in Ghana.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

We are not aware of any publicly expressed concerns by any industry regulator in relation to any industry/sector.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No. There is no competition law regulator in Ghana.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

N/A

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

N/A

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

N/A

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

We are not aware of any notified transactions that have been prohibited by industry specific regulators in Ghana since January 2019.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

We are not aware of official proposals to amend merger filing fees or whether such amendments have been affected since January 2019.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes.

- In the banking sector, the Bank of Ghana must be notified, and its prior approval should be obtained, in relation to an acquisition or sale of shares of more than 5%, or the merger, of a bank, specialised deposit-taking institution or financial holding company with another bank or other specified institution.
- In the mining industry, the Minister's prior approval is required for mergers involving share transactions.
- In the telecommunications industry, a merger that is likely to result in a change of control of a licensed company must be approved by the National Communications Authority before the transfer can proceed.
- In the insurance industry, the National Insurance Commission must give its prior written approval, in relation to an acquisition, transfer, or sale of shares of more than 10%.
- The prior written approval of the Securities and Exchange Commission is necessary for the acquisition of 30% or more of the shares of a company listed on the Ghana Stock Exchange or its holding company.

We are not aware of any industry-specific regulator bringing cases of gun-jumping and/or prior implementation of a notifiable transaction against regulated entities since, January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of any such cases since January 2019.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

We are not aware of any mergers that were approved subject to novel or noteworthy conditions since January 2019.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Industry-specific notifications vary in terms of approval. We are not in a position to advise on the timing of such industry-specific approvals.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

We are not aware of any such penalties since January 2019.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

We are not aware of any such investigations by any regulatory authority in Ghana since January 2019.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

We are not aware of any case law in which an exclusivity and non-compete restraint was addressed. We are also not aware of any prosecutions against entities since January 2019.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

We are not aware of any new investigations launched by the regulators since January 2019, in relation to prohibited practices.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, the overarching law that criminalises anti-competitive criminal conduct in Ghana is the Protection Against Unfair Competition Act, 2000 ("**Unfair Competition Act**").

The Unfair Competition Act criminalises behavior that is likely to cause confusion and be misleading in terms of others' business goodwill, reputation, and proprietary information.

The National Petroleum Authority Act, 2005 ("**NPA Act**") criminalises the formation of cartels, monopolies, and unfair competition in the petroleum industry, as well as cartelisation in the petroleum downstream industry. "Cartelisation" refers to an agreement, combination of or concerted action by refiners, importers or dealers or their agents, to fix prices, restrict output, divide markets either by allocating products or areas to restrain trade or free competition.

The penalty for forming a cartel or a monopoly is imprisonment for a minimum of 10 years, or a minimum fine of GHS 60,000 (approximately USD 10,378.97), or both. The minimum fine in the case of cartelisation is GHS 180,000 (approximately USD 31,136.92).

We are not aware of criminal charges or convictions that have been made under either the Unfair Competition Act or the NPA Act since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Ghana is a member of ECOWAS. Ghana is mandated by its membership of ECOWAS, the World Trade Organisation ("**WTO**"), the United Nations Conference on Trade and Development, and the African Continental Free Trade Area ("**AfCFTA**") to have a competition policy in place.

Activities in Ghana should be conducted with ECOWAS in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

We are not aware of any investigation that has been launched since January 2019, against entities for engaging in prohibited practices.

21. Do you have any views on the level of enforcement of the regional body?

The ECOWAS Regional Competition Authority is relatively new. A relatively significant level of enforcement by the ECOWAS Regional Competition Authority in Ghana is expected, given that Ghana signed the ECOWAS Supplementary Act on Competition Rules in 2008 and the Further Supplementary Act in 2013.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Certain industry-specific regulators in Ghana must be made aware of notifiable transactions. In addition, the ECOWAS Regional Competition Authority must be notified of a merger if it affects two or more ECOWAS member states. To the extent that the merger will only affect Ghana, the notification requirements of the ECOWAS will not be triggered.

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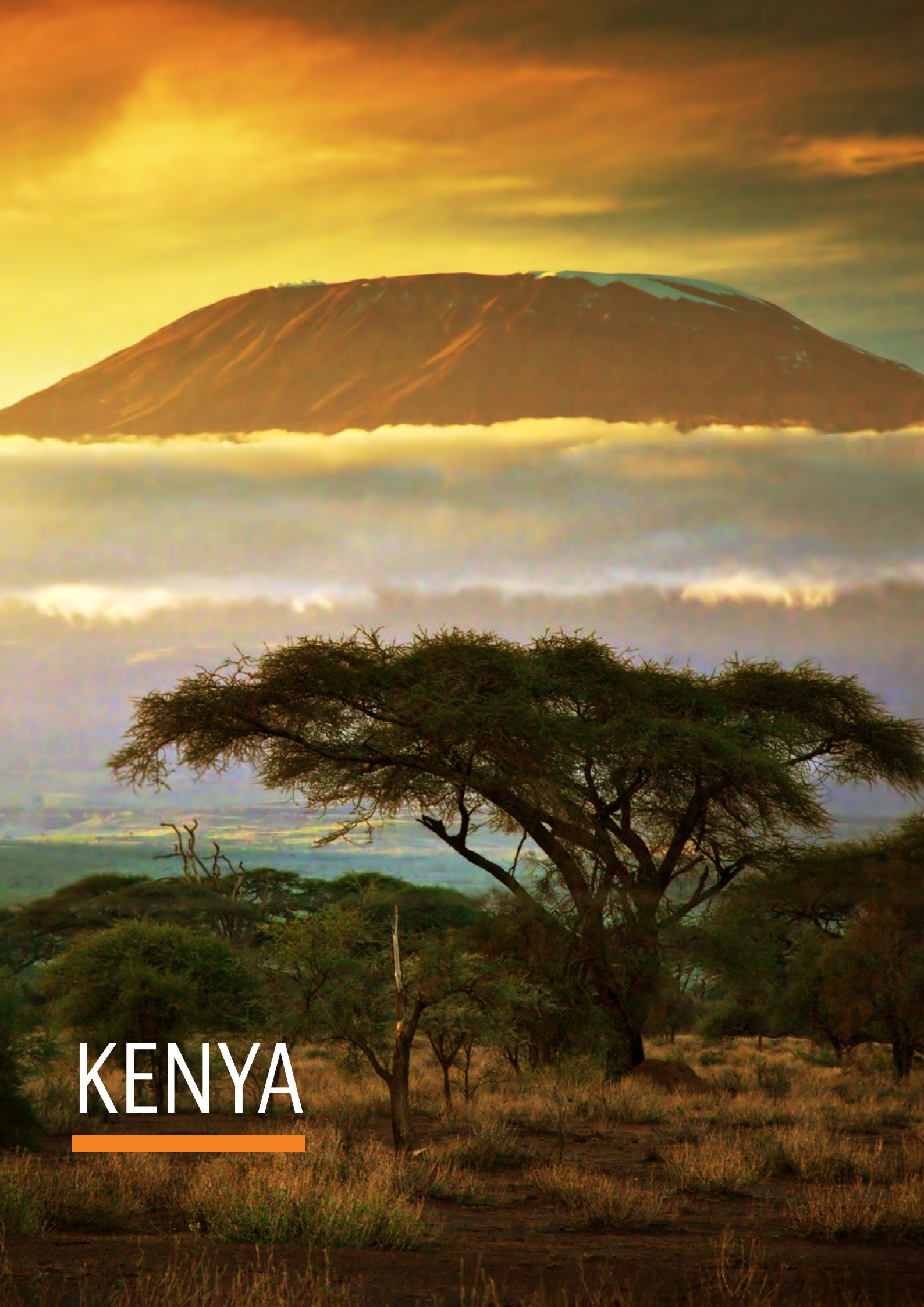
KENYA

KENYA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

Since January 2019, a number of new laws, rules, and guidelines relating to competition law have been enacted. These include:

a) The Competition Amendment Act, 2019 ("**Competition Amendment Act**")

The Competition Amendment Act, which came into force on 31 December 2019, amends the Competition Act, 2010; to create a more robust framework for the regulation, monitoring, assessment, and review of abuse of buyer power. The key change introduced by the Competition Amendment Act is a provision empowering the CAK to investigate and take action against conduct amounting to an abuse of buyer power. Provisions relating to buyer power were initially introduced into the Kenyan competition regime in 2017 by the Competition Amendment Act, 2016 ("**2016 Amendment Act**"). However, the 2016 Amendment Act did not specifically grant the CAK powers to monitor and investigate abuses of buyer power. Pursuant to the Competition Amendment Act, the CAK is now empowered to investigate abuses of buyer power and to also conduct market inquiries into any matter relating to abuse of buyer power. The CAK is further empowered to monitor sectors that are experiencing or likely to experience incidences of abuse of buyer power.

b) The Competition General Rules, 2019 ("**Competition General Rules**")

The Competition General Rules, which came into force on 6 December 2019, have introduced changes to the merger notification thresholds, requirements, and filing fees. They further clarified certain procedural aspects of Kenya's competition law regime relating to merger control, restrictive trade practices ("**block exemptions**") and consumer welfare. The key changes introduced by the Competition General Rules are summarised below:

i. **Value of assets (not just turnover) to be considered**

The test on whether and what form of merger notification is required for a transaction is now based on the higher of the combined turnover or value of assets of the merging parties in Kenya. This is a departure from the previous requirements where the value of assets was only considered where the merging parties did not have any turnover in Kenya. This change may lead to merger filings being required for transactions that would otherwise not have been caught based on turnover alone.

ii. **Block exemption of mergers**

The following transactions will not require notification to the CAK:

- Transactions which are wholly outside Kenya with no local nexus. However, it remains unclear whether the local nexus requires the parties to have subsidiaries or branches in Kenya or whether merely deriving turnover and/or having assets in Kenya with no physical presence will suffice;
- Where the higher of the combined turnover or value of assets of the merging parties in Kenya is KES 500 million (approximately USD 5 million) or less. The block exemption for small transactions is long overdue and will provide significant respite for small investments in Kenya; and
- Where a COMESA merger filing has been made and at least two-thirds of the higher of the turnover or value of assets is not derived from Kenya. Parties are now required to only inform the CAK within fourteen days of submitting a COMESA merger filing. This is a welcome change as it removes the previous mandatory requirement for dual-notification of the same transaction to the CAK and COMESA and promotes the COMESA Competition Commission's objective of being a one-stop-shop for regional competition matters.

iii. **Revised merger thresholds and filing fees**

The Competition General Rules provide revised merger notification thresholds and merger filing fees, which are set out in the table below.

Merger notification thresholds (higher of combined turnover or value of assets of merging parties)	Type of merger application	Merger filing fee	Comments
A. Combined: KES 0 – KES 500 Million.	Excluded from notification.	None.	A merger notification is not required (i.e., there is a block exemption) if the higher of the combined annual turnover or value of assets of the acquirer and the target is less than KES 500 million.
B. Combined: KES 500 Million – KES 1 Billion Target is above KES 500 Million.	Exclusion application.	None	An exclusion application is required where the higher of the combined annual turnover or value of assets of the acquirer and target is more than KES 500 million but less than KES 1 billion.
C. Combined: Over KES 1 Billion – KES 10 Billion. Target is above KES 500 Million.	Merger filing required.	KES 1 Million.	There is a mandatory requirement to make a notification where the higher of the combined annual turnover or value of assets of the acquirer and the target is above KES 1 billion and the higher of the target's annual turnover or value of assets is above KES 500 million.
D. Combined: Over KES 10 Billion – KES 50 Billion Target is above KES 500 Million.	Merger filing required.	KES 2 Million.	
E. Combined: Over KES 50 Billion. Target is above KES 500 Million.	Merger filing required.	KES 4 Million.	

iv. **Extension of merger notification forms**

The merger notification forms have been amended, with merging parties now required to provide additional information including:

- details of previous merger filings made by the merging parties and their affiliates;
- other entities where directors of the merging parties hold the positions of directors and/or shareholders; and
- nationalities of the directors of the merging parties.

c) The Revised Guidelines on Relevant Market Definition ("**Revised Market Definition Guidelines**")

In July 2019, the CAK published the Revised Guidelines on Relevant Market Definition to update the previous Guidelines on Relevant Market Definition, which have been in place for several years ("**Previous Market Definition Guidelines**"). The Revised Market Definition Guidelines seek to provide clarity on the approach the CAK takes when defining markets in Kenya and when determining what constitutes market power. The definition of a relevant market under the Revised Market Definition Guidelines is similar to the definition under the Previous Market Definition Guidelines, save for the addition of the production methodologies involved, raw materials used, and route-to-market considerations to the product market definition.

d) The Fining and Settlement Guidelines, 2020 ("**Fining and Settlement Guidelines**")

The Fining and Settlement Guidelines set out the principles for the determination of administrative penalties and the procedure for pursuing settlements as provided for under the Competition Act in relation to:

- contraventions relating to restrictive agreements, decisions and practices by undertakings or associations of undertakings, abuse of dominance, and abuse of buyer power; and
- mergers implemented without prior authorisation by the CAK.

The Fining and Settlement Guidelines provide that the CAK will work from a starting point known as a base amount, which may be adjusted based on aggravating and mitigating factors. The proportion of adjustment of the base amount under the Fining and Settlement Guidelines will be based on factors such as:

- the nature, duration, gravity, and extent of the contravention;
- any loss or damage suffered as a result of the contravention; and
- the market circumstances in which the contravention took place.

The following guidelines, which were proposed by the CAK in January 2018, have not yet been finalised and published:

i. The Competition (Abuse of Buyer Power) Rules;

ii. Revised Consolidated Guidelines on the Substantive Assessment of Mergers under the Competition Act;

iii. Search and Seizure Guidelines; and

iv. Consumer Protection Guidelines.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

On 21 February 2020, the CAK notified the public that it would carry a sector study into the regulated and unregulated digital credit markets in Kenya, under financial and technical support from organisations known as Innovation for Poverty Action and Financial Sector Deepening Kenya. The CAK indicated that the main objective of the study is to identify and address potential consumer protection concerns in the regulated and unregulated digital credit markets.

This study is still ongoing and a report of the CAKs findings has not yet been published. The reports relating to the previous market inquiries and sector studies conducted by the CAK in previous years are accessible under the "Planning, Policy and Research" tab on the CAKs website.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

The CAK has not publicly expressed concern in relation to any industry/sector. However, on 13 March 2020 after the first case of COVID-19 was reported in Kenya, the CAK issued a cautionary notice to the public on the intention of some manufacturers and retailers to collude to increase prices and/or hoard various consumer goods.

In addition, the CAK initiated investigations on bread suppliers in 2019. The CAK was investigating compliance with product standards, such as labelling requirements set by the national standards body (Kenya Bureau of Standards). Most of the retailers that were subject of the CAKs investigation were asked to amend their bread labels and the matters were closed.

Further, the CAK initiated investigations in April 2020, in relation to delays by some retailers in paying their suppliers. The CAK initiated the prompt payments investigation on grounds of the buyer power provisions of the Competition Act.

Overall, the CAK appears to be paying a lot of attention to the activities of retailers in the country.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

The risk of dawn raids by the CAK in Kenya is moderate. As far as we are aware, there have only been two dawn raids undertaken – one back in 2015 in the fertiliser sector, at least two companies were raided. More recently, in 2018, several paint manufacturing and distribution companies in Kenya were raided. We are not aware of any dawn raids that have been conducted by the CAK in 2019 or in 2020.

Additionally, the CAK has been successful in gathering evidence using more conventional methods of investigation. In Kenya, dawn raids are normally used as a last resort as they are quite disruptive and are subject to the CAK obtaining search warrants in some cases. We expect that the CAK may undertake more dawn raids in future once the Search and Seizure Guidelines proposed by the CAK are promulgated into law.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

The CAK has not introduced any specific competition enforcement regulations on in response to the COVID-19 pandemic. However, the CAK has implemented measures to ensure ease of correspondence and filing of documents with the CAK during this period. The CAK issued a notice that all applications should be made through its E-Filing Portal, which is accessible on its website.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

On 16 March 2020, the CAK penalised a retailer for raising the price of its hand sanitizers from the usual selling price of KES 800 (approximately USD 8.00) to KES 1,000 (approximately USD 10.00). The CAK treated this matter as one of unconscionable conduct that is contrary to the provisions of section 56 of the Competition Act. The CAK ordered the retailer to contact and refund all the customers who purchased 960 pieces of the hand sanitisers above the usual selling price, and submit evidence confirming that the funds had been returned by 26 March 2020.

The CAK also issued cease and desist orders in March 2020 to various manufacturers and distributors who had entered into exclusive agreements relating to brand exclusivity, allocation of territories, and allocation of quantities supplied.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

Yes, as mentioned in question 1 above, the Kenyan Competition Act, as amended by the Competition Amendment Act, contains provisions on the abuse of buyer power. The Competition Amendment Act defines buyer power as the influence exerted by an undertaking or group of undertakings in the position of purchaser of a product or service to:

a) obtain from a supplier more favorable terms; or

b) impose a long-term opportunity cost including harm or withheld benefit, which, if carried out, would be significantly disproportionate to any resulting long-term cost to the undertaking or group of undertakings.

Abuse of buyer power is considered an offence under the Competition Amendment Act and the relevant penalties are imprisonment for a term not exceeding 5 years or a fine not exceeding KES 10 million (approximately USD 92,133.78), or both. In addition, the CAK can impose a financial penalty of up to 10% of the infringing undertaking's gross annual turnover for the previous year.

The CAK has investigated various retail companies accused of abusing buyer power by their suppliers, on the basis of failing to settle their invoices promptly or imposing other conditions for the supply of goods which the suppliers believe are unfair. From the information that is publicly available, the CAK has fined one retailer KES 124,767 (approximately USD 1,133.01) for alleged abuse of buyer power against one of its suppliers. The fine is equivalent to 10% of the sales generated by the products sold to the retailer by the supplier.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

We are not aware of any notified transactions that have been prohibited by the CAK. Typically, the CAK does not withhold its approval, but where there are significant competition concerns, it can grant approval subject to the fulfilment of certain conditions by the merging parties. The conditions imposed may largely relate to public interest concerns such as restrictions on the termination of employees. We are, however, aware of transactions in which the CAK has approved subject to a condition that the merging parties dispose of certain sections of their business or outlets in certain geographic regions within a specified period of time post-closing. This was to address concerns identified by the CAK in its merger analysis, that the transaction could result in the parties becoming dominant in certain geographic regions following the merger.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

Yes, the Competition General Rules amended the merger filing thresholds and fees as indicated above in question 1.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

The Kenyan competition regime is suspensory and parties are prohibited from implementing a notifiable transaction until the CAK grants its approval.

Yes, the CAK has penalised parties for consummating notifiable transactions without obtaining prior CAK approval. The penalties imposed so far have generally ranged between 3% and 7% of the parties' combined turnover derived from Kenya. Based on publicly available information, in 2020, the CAK imposed a penalty of KES 549,019 (approximately USD 5,490) on an entity that had implemented a notifiable transaction without obtaining approval from the CAK. However, not all information on fines and penalties imposed is publicly available.

The maximum financial penalty that can be imposed is 10% of the parties' combined turnover derived from Kenya. In addition, there are criminal sanctions that attract a fine of up to KES 10 million and/or imprisonment of up to five years.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of any cases in which the CAK has fined any entities for failing to comply with merger conditions.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

Most of the conditions imposed by the CAK relate to the retention of employees and restrictions against amending the terms of supplier and distributor contracts for a specified period of time. However, more recently, the CAK has imposed noteworthy conditions on KenolKobil Plc in its acquisition of Gulf Energy Holdings Limited. The acquisition was approved on condition that:

i. in addition to the retention of 102 employees of Gulf Energy Holdings Limited for a period of 24 months, the basic remuneration for all employees transferred to the merged entity should not be reduced for 24 months, and other employment benefits shall, taken as a whole, be no less favorable than those provided as at the date of the signing of the agreement; and

ii. for the duration of the existing contracts between Gulf Energy and the small and medium enterprises ("**SMME**") operating within the retail stations, the merged entity shall ensure that these enterprises enjoy the same benefits within the contract as provided at the signing of the contract.

Further, in a transaction involving the acquisition of a minority stake in retail chain Naivas Supermarkets by French private equity fund Amethis Finance, the CAK required the merged entity to ensure that all the reconciled and agreed outstanding debts owed to the supermarket's suppliers are paid to the extent permitted by the contracts entered into between the parties. The CAK required this to be done prior to the implementation of the proposed transaction.

In relation to the proposed merger between Telkom Kenya Limited ("**Telkom**") and Airtel Networks Kenya Limited ("**Airtel**"), the CAK had imposed 8 conditions in its merger determination, 7 of which the parties considered onerous. The parties filed the first-ever merger review application to the Competition Tribunal (since its establishment) challenging the conditions imposed by the CAK as part of its approval of the transaction.

The conditions imposed by the CAK included:

i. a requirement for the spectrum in the 900 MHz and 1800 MHz acquired by the merged business from Telkom, to revert back to the Government of Kenya;

ii. a blanket prohibition from selling or transferring any of the parties' operating licences and spectrum licenses; and

iii. a blanket prohibition on the merged entity from entering into any form of sale agreement within 5 years, which would have had the effect of restricting the merged business from even selling shares to raise further capital or any commercial sale of assets in the ordinary course of business.

The application at the Competition Tribunal successfully challenged the merger conditions, with the Kenya Competition Tribunal finding it necessary to either overturn/amend 6 of the conditions. The Kenya Competition Tribunal ruled that the CAKs conditions relating to spectrum and licenses did not address any competition law concerns and were an unreasonable and unjustified curtailment of the merged entity's right to property. It also held that instead of a blanket ban against entering into any form of sale agreement, the merged entity could dispose up to 40% of its shareholding at any time during a five-year period. Further, the ruling clarified that the merged entity was not to be restricted from disposing of its assets and shares in the ordinary course of business.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The CAK is required to make a determination within 60 days of receipt of a notification, or of further information (as the case may be); and where there is a hearing conference, the CAK must give its decision within 30 days after the hearing conference. If the CAK deems the issues raised by the merger to be complex, it can extend the timeline by a further 60 days. The time starts running from the date on which a complete merger notification or application for exclusion is received together with the appropriate fee, if applicable. On average:

i. the CAK generally takes 2 - 3 weeks to approve exclusion applications;

ii. between 40 - 75 days to approve full non-complex merger filings; and

iii. between 60 - 120 days to approve full complex mergers.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

Penalties imposed by the CAK are not publicly disclosed in all cases. However, based on publicly available information, the highest penalty we are aware of in respect of prohibited practices was a fine of KES 20.799 million (approximately USD 191,629.05). The fine was imposed on Basco Paints for engaging in alleged collusive conduct with other manufacturers and distributors of paint products. In 2020, the CAK imposed penalties ranging from KES 47,711 (approximately USD 439.58) to KES 776,025 (approximately USD 7,149.81) on juice companies for misrepresenting the quality of their products on their packaging.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

We are not aware of any investigations instituted by the CAK in relation to parties in a vertical relationship since January 2019. However, from the penalty highlighted under paragraph 14 above, imposed on Basco Paints, it appears that the CAK may have instituted such investigations privately.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Exclusivity and non-compete clauses are treated as restrictive trade practices in Kenya. This is pursuant to the provisions of section 21 of the Kenya Competition Act, which covers:

i. agreements between undertakings;

ii. decisions by associations of undertakings;

iii. decisions by undertakings; or

iv. concerted practices by undertakings,

that have as their object or effect the prevention, distortion, or lessening of competition in trade of any goods or services in Kenya, or a part of Kenya.

We are not aware of any prosecutions by the CAK since January 2019, against entities for implementing exclusivity clauses or non-compete restraints.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes, the CAK has launched investigations in relation to abuse of market power by retailers and has imposed fines in relation to the same. The CAK has also conducted investigations in relation to various anti-competitive practices among players in the paints industry. This investigation resulted in the highest penalty ever imposed by the CAK, of KES 20.799 million (approximately USD 191,629.05), imposed on Basco Paints.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes. Cartel conduct is criminalised under section 21 of the Kenya Competition Act. Section 21 prohibits restrictive trade practices (i.e. agreements between undertakings, decisions by associations of undertakings, decisions by undertakings, or concerted practices by undertakings, that have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya, or a part of Kenya).

Types of conduct listed in the Kenya Competition Act that would apply to cartels or be termed anti-competitive include:

i. directly or indirectly fixing purchase or selling prices or any other trading conditions;

ii. dividing markets by allocating customers, suppliers, areas or specific types of goods or services;

iii. collusive tendering; and

iv. otherwise preventing, distorting, or restricting competition.

In addition to financial penalties, the Competition Act provides for imprisonment for a term not exceeding five years and a fine not exceeding KES 10 million (approximately USD 92,133.78) as the criminal penalties for engaging in cartel or anti-competitive conduct. We are not aware of any instances where criminal sanctions have been imposed on any person or undertaking in respect of cartel or anticompetitive conduct. We are also not aware of any criminal charges brought or convictions made against any persons and/or entities for engaging in any anticompetitive conduct since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Kenya is a member of the COMESA and the EAC, both of which have competition law regimes (the EAC Competition Act is, however, only partially operational). In addition, Kenya is a member of the AfCFTA, which entered into force on 30 May 2019.

Therefore, activities in Kenya should be conducted with COMESA and EAC in mind.

20. Has the authority launched and publicized any new investigations since January 2019 against any entities for engaging in prohibited practices?

The COMESA Competition Commission launched an investigation relating to anti-competitive conduct by Shoprite Holdings Limited ("**Shoprite**") and GS1 Kenya Limited ("**GS1**") in November 2019. The COMESA Competition Commission published an information note on its website, indicating that Shoprite and GS1 Kenya were alleged to have entered into an agreement in terms of which suppliers who sought to merchandise their products in Shoprite supermarkets in Uganda were required to obtain their barcodes from GS1 Kenya. The information note explained that since February 2019, Shoprite had refused to receive products that do not have GS1 barcodes and further directed its suppliers to obtain barcodes from GS1 Kenya. The COMESA Competition Commission's determination, dated 8 July 2020, stated that the conduct by Shoprite did not have the effect of preventing, restricting, or distorting competition in the Common Market.

Based on the information published on its website, it appears that the COMESA Competition Commission has not launched any new investigation relating to anti-competitive business practices so far in 2020.

As mentioned in paragraph 19 above, the EAC Competition Authority has not commenced full operations; therefore, there have been no investigations launched against any entities for engaging in prohibited conduct. However, we understand that the EAC Competition Authority is undertaking market studies in selected sectors for purposes of understanding the prevalent malpractices in those sectors. It is likely that the EAC Competition Authority may launch investigations after completing the market studies.

21. Do you have any views on the level of enforcement of the regional body?

The COMESA Competition Commission has been vigilant in enforcing the COMESA competition regime. Based on our interactions, the COMESA Competition Commission keeps abreast of current business transactions in COMESA member states and has sometimes written to parties who have implemented mergers without notification based on information made public in the media or other public information channels.

As mentioned in paragraph 19 above, the EAC Competition Authority has not commenced full operations. Therefore, we do not have any comments on its level of enforcement at this time.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

In respect of the COMESA competition regime, a merger would only be notifiable the COMESA Competition Commission if it met the requirements for notification under both the COMESA and CAK regime, pursuant to the provisions of the recently promulgated Competition General Rules. Once the merging parties have made the notification to the COMESA Competition Commission, the Proposed Competition General Rules stipulate that they only inform the CAK in writing of the notification.

As for the EAC regime, mergers are notifiable both to the CAK and the EAC Competition Authority.

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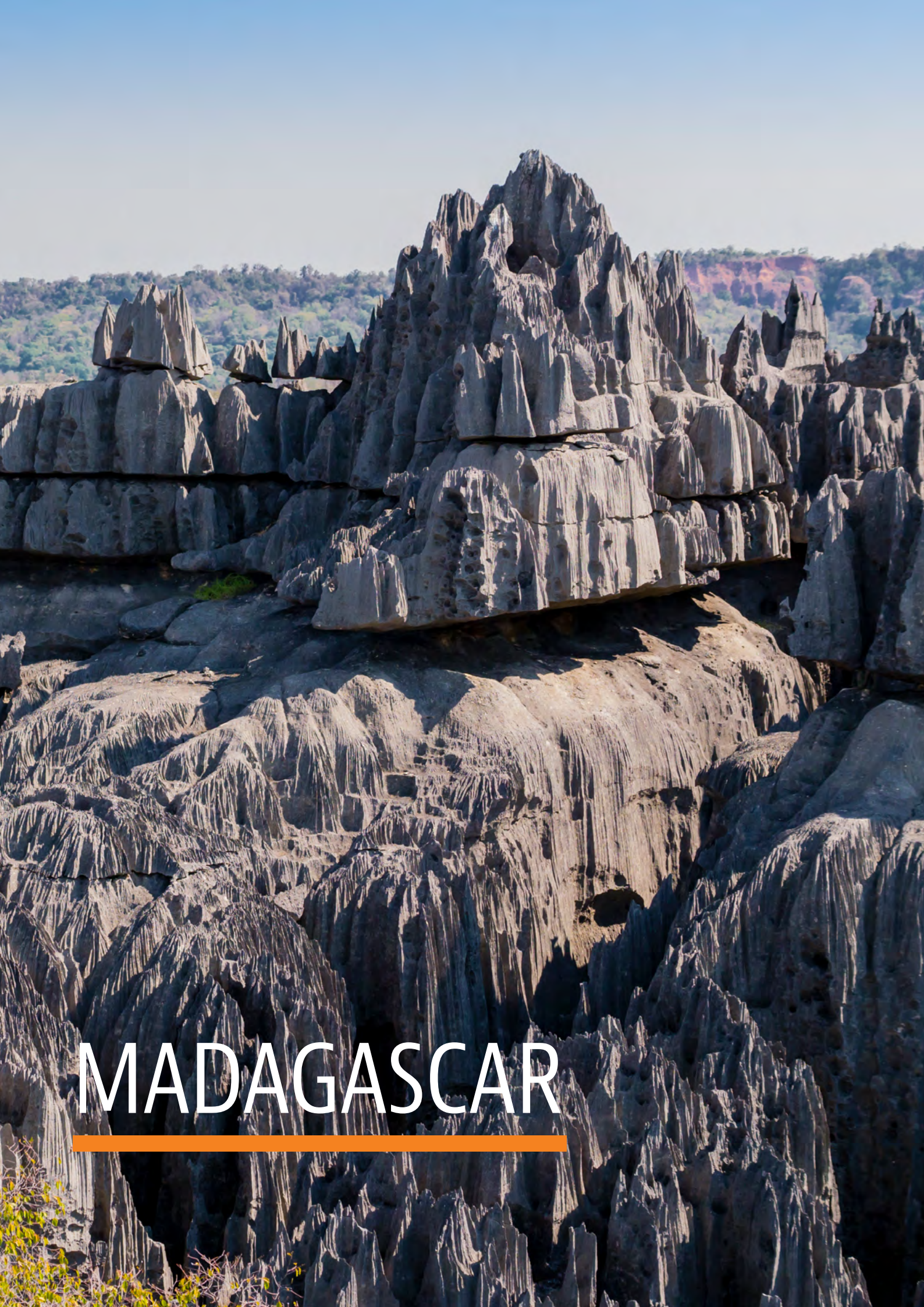

MADAGASCAR

MADAGASCAR

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

The Madagascar competition regime comprises the Competition Law No. 2005-020 of 17 October 2005 and Decree No. 2008-771 of 28 July 2008, which applies the provisions of the Code. The Code has recently been amended by Law No. 2018-020 of 29 June 2018, which has been published in the official gazette on 11 February 2019.

However, there have not been new amendments enacted since January 2019.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The National Authority responsible for Corrective Commercial Measures ("**National Authority**") is currently investigating the pasta and blanket industries. The National Authority, established by Decree No. 2014-1726, is an administrative public institution attached to the Ministry of Trade. The National Authority is authorised to make inquiries into unfair commercial practices that are disruptive to the national economy. In addition, it can take corrective measures to stabilise any industry/sector in accordance with the rules of the World Trade Organisation.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

On **6 June 2019**, the National Authority publicly expressed concern in relation to the detergent powder industry. The market was deeply destabilised by unregulated imports from China, which endangered the local firms. The National Authority has temporarily added additional taxes on the importation of powder detergent in order to restore balance in the market.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No. As far as we know, the Competition Council ("**Council**") has not conducted any dawn raids since **January 2019**. The Council has jurisdiction to hear all cases relating to competition, including monopolies, concentrations, abuses of a dominant position and potentially anti-competitive agreements. The Council is empowered to examine anti-competitive practices that may prevent, restrict or distort competition significantly in a market located within the territorial scope of the Unfair Competition Act. Furthermore, the Council is empowered to implement competition policy through market surveillance missions and investigations relating to anticompetitive conduct.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

No. We are not aware of any action taken against any entity during the COVID-19 pandemic.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

The current legislation does not contain specific provisions relating to the abuse of buyer power.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

As far as we know, since January 2019, the Council has not prohibited any transaction.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

According to Article 27 of Decree No. 2008-771, implementing Law No. 2005-020, the submission of a merger notification to the Council is suspensory and the merger cannot be implemented in Madagascar prior to the parties receiving approval.

We are not aware of any entities prosecuted for gun-jumping or pre-implementation, since January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

As far as we know, since January 2019, the Council has not fined any entity for failing to comply with merger conditions.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

As far as we know, since January 2019, the Council has not approved any mergers subject to novel conditions.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

On average, the Council takes two to three months to approve a non-complex transaction. Complex transactions; normally receive approval within six months.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

As far as we know, since January 2019, neither the Council nor the courts of Madagascar have imposed any penalties on entities engaged in prohibited practices. Please also note that decisions by the courts are not systematically published and therefore, there is a lack of information available in this regard.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

We are not aware of any cases against parties in a vertical relationship, relating to the infringement of the competition legislation, since January 2019. Please also note that decisions by the courts are not systematically published and therefore, there is a lack of information available in this regard.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Due to a lack of information on the treatment of exclusivity clauses and non-compete restraints in our jurisdiction, we are unable to confirm any cases brought against entities in that regard. As noted above, decisions by the courts are not systematically published.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

As far as we are aware, no investigation has been initiated or made public by the Council since January 2019.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

No.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Madagascar is a member of COMESA. Accordingly, activities in Madagascar should be conducted with COMESA competition laws in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

According to the COMESA website, there have been investigations into anti-competitive business practices in relation to allegations of anti-competitive conduct by Shoprite Holdings Limited and GS1 Kenya Limited, whose decision was issued on 10 June 2020.

21. Do you have any views on the level of enforcement of the regional body?

The COMESA Competition Commission often seeks advice from the Council when merger notifications are tabled before the COMESA Competition Commission and have a bearing on Madagascar.

Also, the Council relies on the COMESA Competition Commission's decisions as the basis for its decisions on regional anti-competitive practices.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Yes, a merger will be notifiable both domestically and regionally, provided that the notification requirements are met. The Council issued a notice on 27 March 2018, stating that the notification of a merger to the Council does not preclude or oust the competence of the COMESA Competition Commission to assess the merger transaction.

Baker McKenzie

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MALAWI

MALAWI

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

We are not aware of any new amendments or guidelines relating to competition legislation in Malawi that have been enacted since January 2019. Please take note that amendments to both the Competition and Fair Trading Act ("**CFTA**") and the regulations have been proposed and submitted to the Ministry of Justice; however, we do not expect them to be ready for enactment any time soon. Further, we understand that the Competition and Fair Trading Commission ("**CFTC**") has drafted new guidelines on various topics, including abuse of dominance, tying and bundling, predatory conduct etc. These guidelines have not yet been published.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The CFTA contains the following market enquiry provisions:

(i) According to section 42 of the CFTA, the CFTC is required to keep the structure of production of goods and services in Malawi under review to determine where concentrations of economic power or anti-competitive trade practices exist, whose detrimental impact on competition and the economy outweigh the efficiency advantages, if any.

(ii) Under section 37(1) of the CFTA, where an application for authorisation of a merger or takeover is made to the CFTC, the CFTC is entitled to require any participant in the market within which the merger or takeover will occur, to grant to the CFTC access to records of sales accounted for by the merging parties, or by other leading enterprises in that relevant sector.

We understand that the CFTC has recently concluded a market inquiry in the poultry sector.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

In August 2020, the CFTC indicated that it plans to carry out a study on the poultry sector, following complaints of anti-competitive practices among players. We understand that this study has just been concluded.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

We do not have any publicly available information/reports regarding dawn raids conducted by the CFTC since January 2019.

However, please note that section 46 of the CFTA empowers CFTC officers to enter any premises and to require any person in the premises to disclose all information at his disposal relating to any anti-competitive trade practice or unfair trade practice or any actual or potential merger, takeover or monopoly situation. The CFTC may exercise these investigative powers at all reasonable times and on the production of a search warrant obtained from a court of law. The CFTA does not define "reasonable times".

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

Various pharmacies have been fined by the CFTC for overpricing COVID-19 prevention supplies. The fines ranged from MK 500,000 (approximately USD 663) to MK 2,000,000 (approximately USD 2,650). The CFTC also cautioned bus operators against excessive pricing of bus services during the COVID-19 pandemic.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

We are not aware any specific provisions on abuse of buyer power. However, we understand that the CFTC has engaged with buyers in the tobacco industry, following complaints from tobacco farmers, in a bid to ensure fair prices.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

As far as we are aware, no.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

As far as we are aware, no.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

The submission of a merger notification is not suspensory. However, section 35 of the CFTA makes it an offence for any person to participate in effecting a merger or takeover that is likely to result in substantial lessening of competition in any market in Malawi, in the absence of authority from the CFTC. In addition, no merger or takeover made in contravention of the CFTA shall have any legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger or takeover shall be legally enforceable.

The consequences of participating in a merger or takeover that is likely to result in substantial lessening of competition, without prior approval from the CFTC, are severe. Therefore, it is advisable for parties to apply for approval and await clearance before effecting such a merger or takeover.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

To our knowledge, there have been no such cases.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

One of the conditions imposed in the SS Poultry Agrotech and Central Poultry merger was that Central Poultry would uphold their commitment to enter into contracts with small scale producers for technical and training assistance in the production of broilers.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

In terms of section 39 of the CFTA, the CFTC is required – within 45 days of receipt of an application or the date on which the applicants provide the information sought by the CFTC, if that date is later – to make an order concerning an application for authorisation of a merger or takeover.

We note that the CFTC has sometimes "requested" permission to extend the review period even where the parties have submitted all the required information. The CFTC has requested this on the basis that it had not yet concluded its investigations.

In practice, the CFTC can take up to three months to issue a decision (regardless of the complexity of the transaction). This is normally because the CFTCs board only meets quarterly and in some cases, where the Government delays to appoint a board, there is no board to issue a decision. In certain circumstances the CFTC may, at the request of the parties, issue conditional or temporary authorisation, which allows the parties to proceed with the merger until the final approval is issued by the board.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

We are not aware of any noteworthy penalties that have been imposed since January 2019.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

As far as we are aware, no.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

The CFTC normally requests parties to notify it of any exclusivity clauses and non-compete restraints. Earlier in 2020, the CFTC ordered Seedco (Malawi) Limited to apply for authorisation of their exclusive distributorship and resale price maintenance schemes. Neither the exclusive dealing arrangement nor the resale price maintenance were approved by the CFTC but as far as we are aware, no fines were imposed. We are not aware of specific prosecution against entities for implementing these clauses.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

The CFTC has launched several investigations over the past year, including investigations on restrictive business practices in the supply of school uniforms, suspected exploitation of small enterprises in the second hand clothing business, alleged supply of products likely that are to cause injury to health or physical harm to consumers and non-compliance with labelling standards. The CFTC also conducted investigations into alleged unconscionable conduct by cross-border bus operators.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Cartel conduct/anti-competitive conduct is criminalised in Malawi. We have no information on any criminal charges/convictions made against any persons/entities since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Malawi is a member of COMESA. Therefore, activities in Malawi should be conducted with COMESA competition laws in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

We understand that the CFTC referred an investigation on alleged pyramid selling by Alliance In Motion ("**AIM**") to the COMESA Competition Commission, as AIM apparently operates in various COMESA Member States. We are not aware of any other investigations launched/publicised by the COMESA Competition Commission concerning Malawi.

21. Do you have any views on the level of enforcement of the regional body?

No.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

According to the COMESA Competition Regulations and the COMESA Competition Rules on the Determination of Merger Notification Thresholds and Methods of Calculation, 2015; a merger is notifiable to the COMESA Competition Commission if it has a regional dimension (i.e., where both/either the acquiring entity and/or the target entity operate in two or more COMESA Member States) and if the merging entities' combined annual turnover or combined assets, meet prescribed thresholds. If a merger is notifiable to the COMESA Competition Commission, there is no requirement to also notify domestically.

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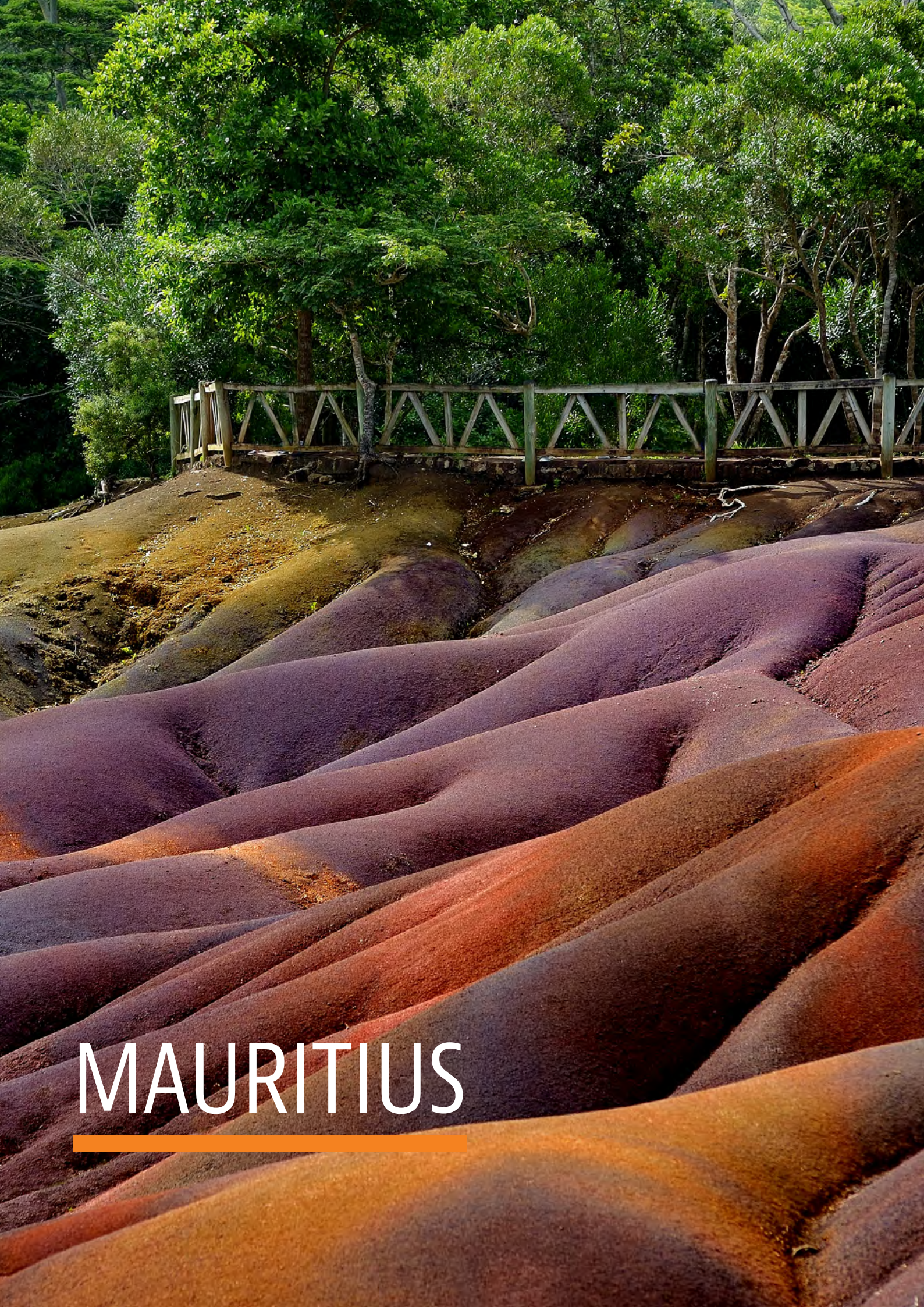

MAURITIUS

MAURITIUS

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

The Competition Act 2007 ("**Act**") was amended in July 2019 to add a new subsection 39 (2), which provides that an officer of the Competition Commission of Mauritius ("**CCM**") is a "public officer", so that he may enjoy additional immunity against legal liability under the Public Officers Protection Act.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

Yes. The Executive Director ("**ED**") of the CCM (investigative arm) may undertake a market study to examine the conditions of competition in a particular sector. The ED may also conduct an enquiry to determine whether there are reasonable grounds to believe that a restrictive business practice is occurring or about to occur and where such reasonable grounds exist, the ED may initiate an investigation.

Since 2019, the CCM has initiated a market study in the pharmaceutical sector and the study is still ongoing. It has enquired in various traditional and modern sectors of the Mauritian economy and since 2019, it has investigated several sectors of the economy with regard to abuse of monopoly, mergers, and collusive agreements.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

Yes, in the banking sector with regard to payment cards.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

Dawn raids are a high risk. Where the ED considers it necessary to investigate without giving a warning, the ED might consider carrying out an entry and search exercise in order to find evidence. The investigative route chosen is at the EDs discretion and will depend on the allegations and the particular circumstances. However, the Act requires that the ED obtain a search warrant from the Magistrate before carrying out such exercise. Once the search warrant is obtained, the ED is under no obligation to give advance notice of the dawn raid to the parties concerned. A raid team will usually consist of officers of the CCM, IT experts trained in IT forensics, and police officers (if authorized by the Magistrate in the search warrant). We are not aware of any dawn raids conducted by the CCM since 2019.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

Yes, the CCM released guidance to businesses on COVID-19-related collaboration ("**Guidance Programme**"). The Guidance Programme was introduced amidst the current COVID-19 pandemic to spur the recovery of the economy in general and to ensure that markets continue to deliver for consumers.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

We are not aware of any enforcement action by the CCM against entities for infringing competition legislation during the COVID-19 pandemic.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

The Mauritius competition regime does not have provisions dealing specifically with the abuse of buyer power; however, such cases may be assimilated as abuse of monopoly.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

No.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

No. There is no legal obligation on merging parties to notify or seek the approval of the CCM before implementing a merger transaction. Nonetheless, the Act provides parties to a merger situation with the possibility of seeking the guidance of the CCM on whether or not the merger may substantially lessen competition, and as such, whether or not the merger is in conformity with the Act. Such application for guidance is voluntary, but commonly referred to as merger notification. The parties would invariably wait for a decision of the CCM before embarking on the proposed merger.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

None. A fine is not applicable for failure to comply with merger conditions.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

Yes, the CCM approved two mergers in June 2019 and July 2020 respectively, subject to undertakings given by the parties, which satisfy the CCM that they address all concerns about any prevention, restriction, distortion or substantial lessening of competition.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Each case will depend upon its own merits and is entertained diligently. For example, an application for guidance may be disposed of within a period of six months. Complex cases include those which are the subject of an investigation by the ED, followed by a decision by the Commissioners of the CCM (Adjudicative arm), which generally take much longer.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

The ED has completed two investigations in the supply of chemical fertilisers in Mauritius. The findings of the ED were that two domestic companies that are the two main suppliers of fertilisers in Mauritius and have operated a cartel to fix prices, allocate the market and have participated in bid rigging. Such conduct (collusive agreements) is illegal and in breach of the Act. The ED recommended the imposition of financial penalties totalling MUR 76.4 million (approximately USD 1,928,776.83) on the enterprises concerned and a decision by the CCM is still pending.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

Yes, the CCM has brought cases against two payment card companies for abuse of monopoly. In June 2019, the CCM endorsed the recommendation of the ED to reduce the current level of the Issuer of Interchange Fee ("**IIF**") from 1% to a capped fee of 0.5% to make the upstream network market (dominated by the two payment card companies) and the downstream issuing and acquiring markets (dominated by two banks) more competitive. The aggrieved parties have given notice of appeal.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Exclusivity clauses and non-compete restraints may be treated as a collusive agreement if they restrict, prevent or distort competition significantly, as defined under sections 41 to 43 of the Act. These are the only breaches for which financial penalties may be levied, where the CCM is satisfied, on a balance of probabilities, that the breach was intentional or negligent.

Yes, there have been several cases brought before the CCM but in almost all of these cases, the defaulting enterprise has pleaded for immunity or leniency, as provided for by section 59(7) of the Act.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes, the CCM initiated and completed several such investigations. These investigations are accessible on the CCMs website.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

No, these are dealt with by the CCM, which only has civil jurisdiction, as pointed out in the answer to question 16 above. The ED has statutory powers under Part IV of the Act to investigate cartel and anti-competitive conduct. The CCM may consider a report drafted by the ED pursuant to an investigation, with the view of confirming or setting aside the findings of the ED. In addition to imposing financial penalties, the CCM may give the defaulting enterprise directions where it considers it necessary, reasonable and practicable to – (i) remedy, mitigate or prevent the adverse effects on competition that the CCM has identified; or (ii) remedy, mitigate or prevent any detrimental effects on users and consumers so far as they have resulted from, or are likely to result from, the adverse effects on, or the absence of, competition.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Yes, Mauritius is a member of the COMESA and the SADC.

Therefore, activities in Mauritius should be conducted with the COMESA and SADC in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes. Please refer to the response to question 17 above.

21. Do you have any views on the level of enforcement of the regional body?

No.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

No, mergers in Mauritius are not notifiable domestically. Please refer to the response to question 10 above.

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MOROCCO

MOROCCO

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

There have been no amendments to the competition legislation since January 2019, however, the Competition Council published a report in 2019 in which it clarified the criteria for merger filings.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

No.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

Yes. Concern has been expressed regarding the following industries;

- Telecommunications;
- Energy and environmental operations;
- Pharmaceuticals; and
- Agriculture and fisheries.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No. The competition authority has not conducted any dawn raids since January 2019.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

The Competition Council has given advice to firms on the regulation of the prices for hydro-alcoholic gels and protective masks.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

No.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

No.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

No.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes, merger notification is suspensory in Morocco. Accordingly, the parties to a proposed transaction cannot implement the transaction without the prior approval of the Competition Council.

We are not aware of any cases of gun-jumping since January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

To our knowledge, there have been no cases of this nature since January 2019.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

No.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The review process generally takes less than 60 days, except in the case of Phase 2 mergers, which take longer. So far, only one notified transaction has been assessed as a Phase 2 merger, but no information on the timing of its assessment has been published.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

The Competition Council previously sanctioned a telecommunications company for unfair competition and fined the firm DHS 3.3 billion (approximately USD 368,139,222.00).

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

No.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

There is no specific definition under Moroccan law for exclusivities or non-compete restraints. We are also not aware of any prosecutions against entities for implementing exclusivity clauses or non-compete restraints.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes, the Competition Council has launched investigations into the telecommunications, insurance and fuel sectors.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, anti-competitive conduct is criminalised in Morocco. However, we are not aware of any criminal charges that have been brought, or convictions made, against any persons or entities for engaging in any anti-competitive conduct since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

No.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

21. Do you have any views on the level of enforcement of the regional body?

N/A.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

The merger must only be notified domestically.

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MOZAMBIQUE

MOZAMBIQUE

current as of January 2021

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

No amendments or guidelines relating to the competition legislation have been proposed or enacted since January 2019.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The Competition Regulatory Authority became operational in January 2021. Therefore, no market inquiries have been initiated.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

No. The Competition Regulatory Authority became operational in January 2021.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

No.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

The competition legislation does not contain specific provisions relating to the abuse of buyer power, instead, it provides for some general rules on economic dependency. Given than the Competition Regulatory Authority became operational in January 2021, no cases were brought against any entities since January 2019.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

There have been no prohibited transactions since January 2019, as the Competition Regulatory Authority became operational in January 2021.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No. The fees payable to the Competition Regulatory Authority, notably merger notification filling fees, were approved under Ministerial Decree No. 79/2015, of 5 June 2015. No amendments in this regard have been approved since 2015.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes, a merger notification is deemed suspensory to the extent that merger transactions that require prior approval cannot be implemented until the Competition Regulatory Authority's approval has been obtained. That said, the Competition Regulatory Authority became operational in January 2021, thus no cases have been brought against any entities for failure to comply with competition related requirements, including gun-jumping.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

Since the Competition Regulatory Authority became operational in January 2021, no merger notifications have been accepted and/or analysed, nor have entities been fined due to failure to comply with merger conditions.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

No.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The Competition Regulatory Authority became operational in January 2021, thus there is no official local practice as yet on implementing merger control provisions.

However, it is worth noting that under the competition legal framework, the Competition Regulatory Authority has 60 days to decide on transactions submitted for analysis. The legal framework does not prescribe different timeframes for complex transactions. Further, failure to issue a decision within the referenced 60-day period is deemed to constitute tacit approval.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

The Competition Regulatory Authority became operational in January 2021. Therefore, no prohibited practices have been investigated / penalties imposed in connection with abuse of dominance by any particular firm.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

No.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

The competition legislation is silent on this matter. However, under the principle of contractual freedom - and save for certain sector-specific provisions stating otherwise - parties to a contract are, in principle, free to agree on exclusivity clauses and non-compete restraints provided that this does not contravene public policy principles or amount to an abusive clause under the general laws in force. Thus, the specific contents of exclusivity clauses and non-compete restraints shall be assessed on a case-by-case basis.

Given that the Competition Regulatory Authority became operational in January 2021, no prosecutions have been pursued against entities for implementing exclusivity clauses and non-compete restraints. There is limited information on case law publicly available, but we are not aware of such claims being brought before civil courts either.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Neither the competition legal framework, nor the Criminal Code expressly criminalises cartel conduct/anticompetitive conduct. Under the law, these practices are deemed administrative offenses subject to the payment of fines. However, one must stress that criminal liability may arise where the relevant anticompetitive conduct encompasses any action or omission which may be deemed a crime under the Mozambican Criminal Code and/or any other ancillary legislation – such as fraud, embezzlement, abusive conduct, etc. Hence, even though the law does not expressly provide for specific types of crimes expressly related to anticompetitive conduct, the actual conduct/practice may entail certain actions / omissions that are criminalised.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Mozambique is a member of the SADC, whose members signed and approved the Declaration on Competition and Consumer Policies back in 2009 ("**Declaration**"). Under the Declaration, SADC members undertook to establish a system for effective cooperation in the application of competition and consumer protection laws of each member State. In accordance with the Declaration, the CCOPOLC was established in order to, amongst other, foster cooperation and dialogue among competition authorities and encourage convergence of laws.

CCOPOLC aims to facilitate cooperation and consultation in competition-related matters, but does not operate as a regional body aimed at controlling anticompetitive practices within SADC area.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

21. Do you have any views on the level of enforcement of the regional body?

N/A.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Mergers are notifiable domestically only

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NAMIBIA

NAMIBIA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

No new amendments have been issued since January 2019. A Competition Policy was tabled for approval by Cabinet and the Competition Bill is being circulated for comment.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

In terms of the current Namibian Competition Act, the NaCC does not have the power to initiate market enquiries, although the Competition Bill makes provision for these powers.

The NaCC has previously conducted market studies on the automotive, franchising, and retail industries in Namibia. We understand that during 2019, the NaCC researched the banking and housing industries. The NaCCs Research Division completed the following studies:

i. Franchising study;

ii. Automotive study;

iii. Administered prices study (which considered the electricity, port, water and transport sector pricing strategies); and

iv. Land study (which considered the trend in merger activities in land acquisitions by non-Namibians over the past five years).

Furthermore, the NaCCs Research Division is undertaking studies concerning the following industries:

i. banking sector (considering pricing strategies by banks in Namibia);

ii. construction sector (considering the role of procurement and collusive practices);

iii. health study (the impact of the *Namaf* judgement and the role of health practitioners in pricings in the market); and

iv. price reports on the poultry sector and price changes caused by COVID-19 on a basket of goods.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

No, but we are of the view that the research studies are indicative of areas of possible concern for the NaCC.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No. The first, and to date only, dawn raid undertaken by the NaCC occurred between 15 and 17 September 2016 when the NaCC searched and seized data from Puma Namibia at their main office in Windhoek and their refuelling facility at the Eros Airport in Windhoek. The investigation concerned a complaint of excessive pricing by Puma Namibia with regard to jet fuel and avgas products sold at the Eros Airport and Ondangwa Airport refuelling facilities. Puma Namibia objected to the issue and execution of the warrant in question. The High Court of Namibia heard the main matter on 6 September 2018 and issued judgment on 8 November 2018. The Court ordered that the warrant issued previously be set aside with costs and that all hard copy documents seized as well as all electronic data seized/copied be returned to Puma Namibia within two days of the order. The NaCC appealed to the Supreme Court of Namibia against the judgment by the High Court. The Supreme Court, on 8 September 2020, ordered that the appeal be dismissed with costs.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

We are not aware of any enforcement action taken against entities for infringing competition legislation during the COVID-19 pandemic.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

Not that we are aware of to date.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

Yes.

West China Cement Limited / Schwenk Namibia Pty Ltd

i. The NaCC ruled that the relevant market is highly concentrated with only two players with insignificant import competition. It considered that links/relationships between Whale Rock Pty Ltd and the acquiring group was likely to substantially lessen or prevent competition in the relevant market.

ii. The implementation of the proposed merger was highly likely to lead to the acquisition and strengthening of a dominant position in the relevant market.

iii. The NaCC could not identify any concrete benefits that would outweigh the detrimental effects that will result from the implementation of the proposed merger.

Barriers to entry in the relevant market are considered to be high and it is not likely that a small undertaking, in particular small undertakings owned or controlled by historically disadvantaged persons ("**HDP**"), will gain access to or be competitive in the relevant market.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No amendments to merger filing fees and/or monetary thresholds have been effected since January 2019.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

The filing obligation is mandatory, pre-closing, and suspensory. Implementation of a merger prior to approval by the NaCC is prohibited under the Namibian Competition Act (section 44(1) read with section 51, as well as section 53).

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

During July 2019, some 9 years after a merger involving Frans Indongo Investment Trust ("**FIIT**") and Brukkaros Meat Processors (Pty) Ltd ("**Brukkaros**") was concluded and implemented, the NaCC made an application for:

i. a declaration that the merger was implemented prior to approval by the NaCC; and

ii. the imposition of a penalty in the amount of NAD 2,733,018.28 (approximately USD 162,970.68) or another amount as determined by the Namibian High Court.

The NaCC came to know of the implementation without approval when FIIT self-reported this fact to the NaCC some 5 years ago, after receipt of counsel's opinion that the transaction ought to have been notified to the NaCC. Prior to that opinion, and over the course of time, FIIT had received divergent legal opinions on notifiability and had unsuccessfully sought to obtain guidance from the NaCC on a no-name basis.

The transaction was notified to the NaCC and approved unconditionally on 7 October 2014, in circumstances where it was established that the transaction had raised no competition concerns. Moreover, by the time the NaCC launched the application, FIIT had disposed of its interest in Brukarros, in a transaction also approved by the NaCC.

FIIT does not dispute that the failure to notify the NaCC of the merger prior to its implementation in 2010 constitutes a contravention of section 44 of the Competition Act. FIIT accepted that a penalty may be imposed for such contravention, but in opposing this application, FIIT submitted that the penalty sought by the NaCC is wholly inappropriate in the circumstances of the case and that it does not meet the requirements of proportionality and rationality. Moreover, FIIT advanced the case that the NaCCs formula for penalty calculation as proposed impermissibly fetters the discretion of the Namibian High Court in the determination of an appropriate penalty.

The matter has been set down for hearing on 3 November 2020.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

Yes.

a) *Rio Tinto Namibia Holdings Limited / China National Uranium Corporation* ("**CNUC**") in relation to Rössing Uranium Limited ("**RUL**")

Employment

i. There shall be no merger specific retrenchments of employees of RUL for a period of 2 years from the implementation date.

ii. RUL shall maintain a ratio of at least 95% local employees to 5% foreign employees until the expiry of the current life of the RUL mine. This ratio is determined based on an average percentage calculated over the applicable reporting period.

iii. RUL shall maintain a ratio of at least 95% local employees to 5% foreign employees at management level until expiry of the current life of the RUL mine. This ratio is determined based on an average percentage calculated over the applicable reporting period and shall, at all relevant times, be calculated in relation to the management compliment.

iv. RUL shall not employ any non-Namibian person at management level on any basis other than on a two-year fixed term contract.

v. The terms and conditions of employment of the employees of RUL pre-merger shall not be altered to be less favourable post-merger.

Procurement

i. RUL shall not implement any changes to its 30 July 2013 Procurement Policy without the prior consent of the NaCC, if such changes will have the effect of providing for less favourable terms to local suppliers. This condition will persist until the expiry of the current life of mine.

ii. The merged undertaking shall procure a minimum of 80% of any services, goods, or products below a value of NAD 250 000 per project from companies which:

a) are majority Namibian owned and registered; and

b) employ a minimum of 75% Namibian citizens.

Transfer pricing

i. RUL shall conduct all transactions with a Connected Person in accordance with the arm's-length principle and furthermore in accordance with section 95A of the Income Tax Act No 24 of 1981 (as amended, and as may be amended from time to time) read with Practice Note No 2 of 2006 and any determination, directive, rules, or regulations which may become applicable in this regard.

ii. If and when RUL is audited by the Department of Inland Revenue in respect of allegations of transfer pricing, as provided for in section 95A of the Income Tax Act 24 of 1981, RUL shall submit the outcome of such audit to the NaCC within 10 business days of the report becoming available to RUL.

Future notification

Any member of the acquiring group who wishes to acquire a controlling interest in a company which is the holder of an exclusive prospecting licence or mining licence (target undertaking) ("**Proposed Transaction**") and the Proposed Transaction's thresholds falls below the requisite thresholds, shall notify the NaCC of the Proposed Transaction before the implementation thereof. On 5 August 2019, CNUC requested a review of the NaCCs decision.

b) *Inihc Limited / China Africa Resources Namibia Limited*

Post-merger, there will be no adverse changes to the water supply during the acquiring undertaking's ownership of the Berg Aukas Project and that Namwater will continue to source water from the Berg Aukas mine uninterrupted.

c) *Commercial Investment Corporation (Pty) Ltd / Geka Pharma (Pty) Ltd*

i. In the event that any entity of the acquiring group is a master distributor and appoints any entity within the group as a distributor, it may not withhold supplies in relations to scheduled medicines to its competitors in Namibia.

ii. In the event that the acquiring group and any of its affiliate(s) is a master distributor who appoints any entity within the group as a distributor, those entities of the acquiring group must maintain the single exit price ("**SEP**") at which the acquiring group buys scheduled medicine related to the master distributor agreement for further distribution in Namibia.

iii. In the event that any entity of the acquiring group is a master distributor who appoints any entity within the group as a distributor, those entities of the acquiring group must maintain the SEP or any other price recommended/set by principals/ agents/ manufactures when selling scheduled medicines related to the master distributor agreement, as identified by NMRC or any other competent body responsible for defining scheduled medicines in Namibia from time to time.

iv. In terms of the selling of such scheduled medicine, the acquiring group or any of its affiliates are allowed to deviate from the SEP and offer discounts to pharmaceutical outlets as agreed upon with manufacturers/principals from whom they buy or on behalf of whom they sell such medicine. The acquiring group may offer discounts in relation to scheduled medicine that it sells, which are nearing their expiration date.

v. If any pharmaceutical wholesalers/competitor to the acquiring group, at the pharmaceutical wholesale level in Namibia, places an order for scheduled medicine related to the master distributor agreement with a master distributor or any entity within the group appointed as a distributor and is informed that there is no stock of such ordered medicine, but any entity within the acquiring group has stock of the medicine so ordered, then those members of the acquiring group must supply the medicine to that pharmaceutical wholesaler/ competitor at the delivered price.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Approximately 6 weeks.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

Please see the response to question 17 below.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

Yes – Please see response to question 17 below (auto-parts investigation).

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

See response to question 17 below (auto-parts investigation).

Namib Mills case

The NaCC ruled that Namib Mills (Pty) Ltd ("**Namib Mills**") abused its dominant position in the market for the production of supply of wheat flour, by concluding loan agreements with certain bakeries, which loan agreements included a clause requiring the bakeries to purchase their wheat flour requirements from Namib Mills for the duration of the loan. The Court had to determine was whether section 26(1) of the Namibian Competition Act should be interpreted

i. on a *per* se basis (i.e. that the NaCC need not prove that alleged conduct had an anti-competitive effect in order to be unlawful); or

ii. as requiring an effects-based assessment (i.e. conduct must have an anti-competitive effect in order for to be deemed unlawful).

The High Court ruled that section 26 of the Competition Act falls within the *per* se rule approach, in that "*it allows courts to presume that certain types of conduct have anticompetitive effects without engaging in a detailed analysis to ascertain whether the conduct in fact had such an effect and should be prohibited as opposed to an effects-based approach which involves a detailed inquiry into the harm to competition flowing from a particular business practice and then balancing it against any pro-competitive benefits that may result.*"

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes.

Auto-parts investigation

On 31 December 2019, the NaCC gave notice of its preliminary decision that vertical agreements entered into between certain insurance companies and certain contracted automotive windscreen retailers ("**Respondents**") are anti-competitive. The NaCC found that the agreements facilitate exclusivity in favor of the contract windscreen retailers and incentivize policyholders to procure windscreens from the contracted automotive windscreen retailers; steer policyholders to the contracted automotive windscreen retailers; and create a stream of business from the insurance companies to the contracted automotive windscreen retailers. This favors the contracted windscreen retailers over the non-contracted retailers. The NaCC is further of the view that the agreements were anti-competitive by object and that, therefore, there is no need to have regard to any effects.

Insurance investigation

On 2 May 2018, the NaCC gave notice of its preliminary decision that section 23(1) read with section 23(2)(a) and section 23(3)(a) of the Namibian Competition Act was contravened by various firms. Before the NaCC made its final decision, it entered into consent agreements with Santam Insurance and Hollard Insurance. The NaCC is of the view that Old Mutual Short-term Insurance, Outsurance, Phoenix Assurance, and Momentum Short-term Insurance ("**insurance companies**"), being undertakings trading in competition with each other, participated in discussions and/or agreed on:

i. the setting of maximum mark-ups that panel beaters should charge for vehicle repairs where part replacement is required; and

ii. the setting of maximum rates that panel beaters should charge for their labour in the repair of vehicles.

Several other insurance companies have admitted to engaging in the above-mentioned conduct and have consequently implicated the Respondents therein. The NaCC is further of the view that at all relevant times since the Namibian Competition Act came into operation and beyond the initiation of the Commission's investigation:

i. there has been an agreement and/or concerted practice between the insurance companies, in terms of which the insurance companies discussed and agreed on the applicable panel beater rates and mark-ups and further agreed that the rates would be increased annually, taking into account factors such as the prevailing inflation rate;

ii. the insurance companies facilitated their collusive conduct and enhanced their bargaining power against the panel beaters by discussing, making suggestions and agreeing with each other regarding the prices that would be offered to the panel beaters. The discussions took place at various platforms, including the Namibia Insurance Association and Claim Managers Forum meetings, through off-the-record discussions after meetings and through the exchange of e-mails and letters. In particular, the Respondents shared the prices that had been offered by the panel beaters and then agreed amongst themselves on appropriate prices to be charged by panel beaters; and

iii. when new insurance companies entered the market over the years, the price fixing arrangement remained intact and they relied on the prevailing panel beater prices in determining their prices.

The NaCC, on 5 September 2019, gave notice of its intention to institute proceedings in the High Court of Namibia, against the insurance companies for an order:

i. declaring that the insurance companies have contravened section 23(1) read with section 23(2)(a) and section 23(3)(a) of the Namibian Competition Act;

ii. restraining the insurance companies from engaging in the conduct in question (i.e. interdicting them from participating or engaging in any process whereby pricing is discussed, determined, recommended or implemented in a manner that infringes the Namibian Competition Act);

iii. seeking an appropriate pecuniary penalty against the insurance companies; and

iv. ordering the insurance companies to pay the costs of the proceedings and such further and/or alternative relief as the Namibian High Court may consider appropriate.

Predatory pricing investigation

The NaCC, upon receipt of a complaint by SA Airlink, initiated an investigation against Air Namibia (Pty) Ltd ("**Air Namibia**") on 25 October 2016. The NaCC resolved to proceed with the investigation despite SA Airlink's withdrawal of its complaint on 20 February 2018 and despite the South African Competition Commission deciding to not refer the matter to the South African Competition Tribunal. The NaCC is of the view that Air Namibia is dominant on the Windhoek / Cape Town route, in terms of both aircraft capacity and the number of passengers flown. The NaCC alleges that Air Namibia abused its dominance through profit sacrifice, by pricing at a per flight and at a per passenger level, below its costs on both an average avoidable cost ("**AAC**") and average variable cost ("**AVC**") criteria ("**conduct**").

Air Namibia engaged in the conduct since the entry of SA Airlink on the route in October 2014. On 31 December 2019, the NaCC gave notice of its intention to institute proceedings in the Namibian High Court against Air Namibia, for an order:

i. declaring that Air Namibia contravened section 26(1) and/or section 26(1) read with section 26(2)(a) of the Namibian Competition Act;

ii. restraining Air Namibia from engaging in the conduct in question (i.e. interdicting Air Namibia from abusing its dominance by participating or engaging in any predatory pricing conduct that infringes the Namibian Competition Act);

iii. seeking an appropriate pecuniary penalty against Air Namibia; and

iv. ordering Air Namibia to pay the costs of the proceedings and other relief as may be appropriate.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Conduct prohibited under the Namibian Competition Act does not give rise to criminal liability. However, by way of an example, cartel conduct or anticompetitive conduct with an element of corruption or bribery may give cause to prosecution and conviction under the Namibian Anti-Corruption Act, the Prevention of Organised Crime Act, and other similar legislation.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

The NaCC is not a member of any regional competition law body or regime.

It is worth noting, however, that the NaCC has entered into memoranda of understanding with the South African Competition Commission, and is a member of the Southern African Development Community Secretariat working group for competition law, whereby the relevant authorities undertake to - *inter alia* - cooperate in matters that have or may have cross border effects on competition.

20. Has the regional authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Not applicable.

21. Do you have any views on the level of enforcement of the regional body?

Not applicable.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Not applicable.

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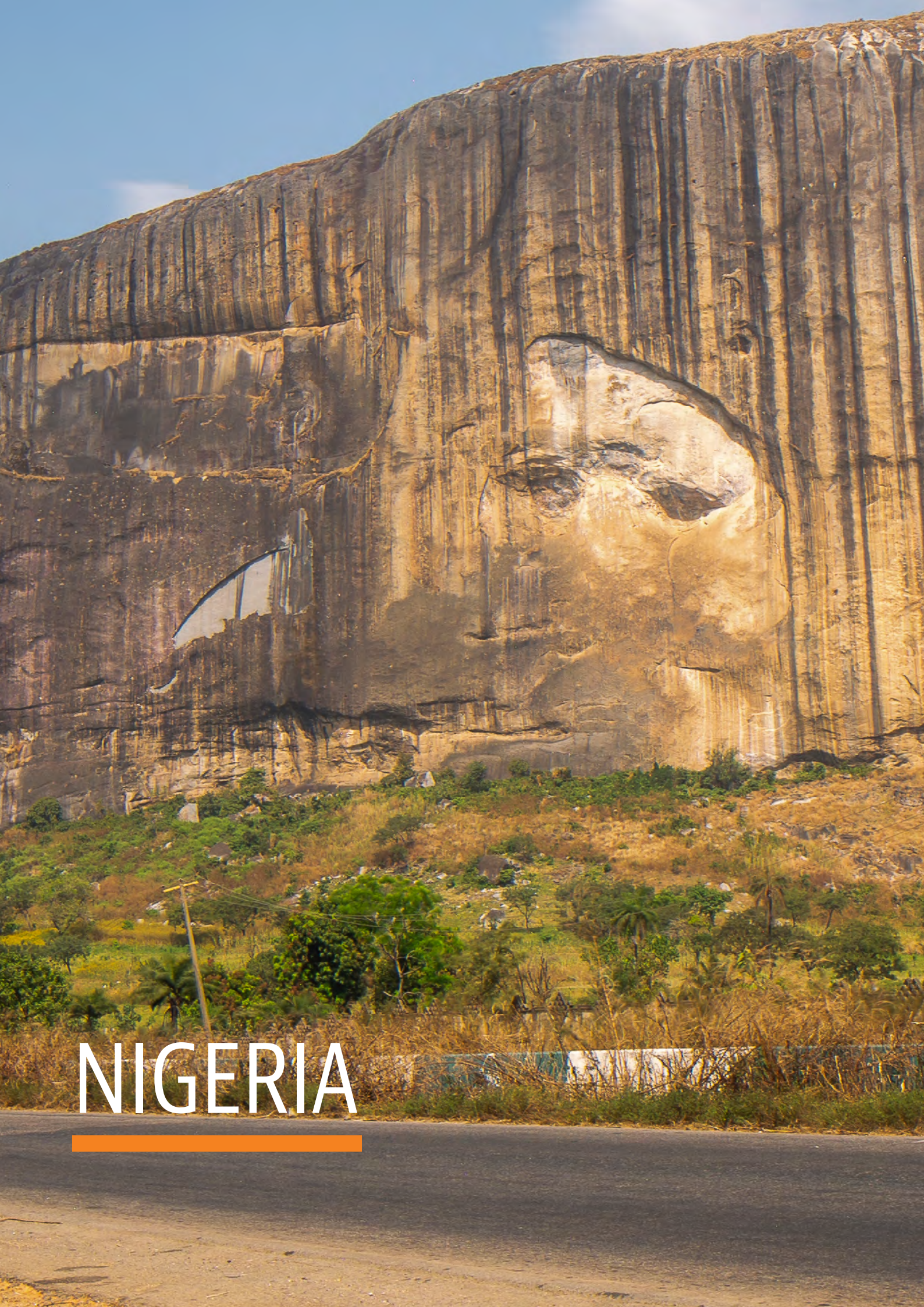

NIGERIA

NIGERIA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

The Federal Competition and Consumer Protection Bill 2018 was signed into law by the President of Nigeria on 30 January 2019 ("**FCCPA**"). The FCCPA repealed the Consumer Protection Act and the provisions of the Investment and Securities Act relating to merger control. The FCCPA also established the FCCPC with the responsibility of reviewing all mergers and other business combinations or arrangements, among other functions.

Between 3 May 2019 and March 2020, merger notifications and filings were jointly reviewed by the Securities and Exchange Commission ("**SEC**") and the FCCPC, but from April 2020, merger control notifications and filings are to be submitted to the FCCPC. The SEC, however, reviews mergers and acquisitions by or involving public companies as well as transactions involving a change of shareholding of capital market operators.

Furthermore, the Companies and Allied Matters Act, 2020 ("**CAMA 2020**") was enacted on 7 August 2020, which repeals and replaces the Companies and Allied Matters Act, 1990. The CAMA 2020 permits the merger of incorporated trustees with similar aims and objects, under the terms and conditions prescribed in regulations made by the Corporate Affairs Commission ("**CAC**"). CAMA 2020 also provides a legal framework for mergers involving of two or more companies, as well as compromise, arrangement or reconstruction between two or more companies.

The Nigerian Communications Commission ("**NCC**") published the NCC Licensing Regulations 2019 ("**NCC Regulations**") which became effective on 11 January 2019. The NCC Regulations prohibit the issuance of an individual license to an applicant that has a controlling interest in another licensee, where the NCC is satisfied that anticompetitive issues would likely arise upon grant of such licence. Furthermore, where a licensee wishes to transfer ownership or control of more than 10% of its total share capital, it is required to apply to the NCC for an approval of the transfer, 90 days prior to the proposed date of such transfer, or such other period stated in the licence conditions or determined by the NCC. The NCC is mandated to refuse the transfer where it makes a determination that the acquisition of ownership or control of the licensee is likely to lead to anti-competition issues in that segment of the telecommunications market.

The National Broadcasting Commission ("**NBC**") published certain amendments to the 6th edition of the Nigeria Broadcasting Code ("**NBC Code**") on 26 March 2020. The NBC Code prohibits a broadcaster or a licensee from entering into any form of agreement, contract or arrangement that is intended to prevent, restrict or distort competition in the broadcast media industry in Nigeria. Based on the above, a broadcaster or a licensee is prohibited from entering into any form of broadcasting rights acquisition either in Nigeria or anywhere in the world to acquire any broadcasting right(s) in such a manner as to exclude persons, broadcasters or licensees in Nigeria from sub-licensing the same. Any such agreement entered in contravention of the NBC Code is void. There are, however, concerns around the power of the Director-General of the NBC and the Nigerian Minister of Information to issue the NBC Code without recourse to the board of the NBC. In the event that the NBC Code is found to be issued without recourse to the due procedure for issuance of guidelines or codes under the NBC Act, the NBC Code will be deemed void.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The FCCPC has conducted the of market inquiries and investigations listed below:

i. Investigation of competition and possible consumer rights violations by dominant PayTV service providers; and

ii. Surveillance regarding price gouging and arbitrary increases in prices of protective and hygiene products on account of COVID-19 concerns.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

Yes. The FCCPC expressed concerns over competition and possible consumer rights violations by dominant PayTV service providers and price gouging by suppliers and retailers of protective and hygiene products during the COVID-19 pandemic.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

Yes, dawn raids are a high risk in Nigeria. We are not aware of any dawn raids that are relevant to competition and antitrust as the dawn raids conducted by the FCCPC so far are in relation to quality control and consumer protection.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

Yes. The FCCPC released a publication titled "*Business Guidance Relating to COVID-19 On Business Co-operation / Collaboration and Certain Consumer Rights Under the Federal Competition and Consumer Protection Act*" in April 2020. The publication provides clarity for businesses and consumers regarding authorisations for cooperation among businesses during the COVID-19 pandemic, and regarding consumer rights under Part XV of the FCCPA during the COVID-19 pandemic.

The FCCPC released an additional publication titled "*Guidance Regarding FCCPC's Merger Notification Process / Interpretation of the Law on Other Competition Issues Under the FCCPA During COVID-19 Pandemic*", in April 2020, in relation to continuing operations regarding certain competition and consumer protection regulations during the Pandemic.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

Yes. In June 2020, the FCCPC filed an action against four major pharmacies and supermarkets at the Federal High Court, for allegedly taking advantage of the COVID-19 outbreak in the country by increasing the prices of key hygiene products. Furthermore, in August 2020, the FCCPC conducted investigations on various pharmacies, in response to multiple social media posts about alleged excessive pricing by the pharmacies, of hydroxychloroquine, which was considered effective for managing COVID-19.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

No, the FCCPA contains no provisions on the abuse of buyer power. Instead, it provides for abuse of dominant market position.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

We are not aware of any prohibited transactions since January 2019.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Parties are required to submit merger notifications prior to implementing their mergers, with the exception of small mergers, in which case prior notification is not required unless expressly demanded by the FCCPC.

We are not aware of any cases of gun-jumping and/or prior implementation since January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of any such cases since January 2019.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

We are not aware of any mergers that have been approved subject to novel or noteworthy conditions since January 2019.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

For small mergers notified upon demand by the FCCPC, the timeline for approval is typically about 20 to 40 business days from the date on which all merger notification requirements are met. For large mergers, as well as foreign to foreign mergers with Nigerian component, the timeline is approximately 60 to 120 business days. However, for foreign to foreign mergers with Nigerian component, there exists a fast-track process under which applicants who pay an extra fast track fee of NGN 5,000,000.00 (approximately USD 14,000.00) will have their application review expedited and concluded within 15 business days of fulfilment of all notification requirements.

It is expected that the specific timeline will generally depend on the complexity of the transaction.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

We are not aware of any such penalties.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

We are not aware of any such cases.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

The FCCPA generally prohibits any agreement among entities or a decision of an association of entities that has an actual or likely effect of preventing, restricting or distorting competition in any market, unless such agreement or decision is duly authorized by the FCCPC in accordance with the provisions of the FCCPA. The prohibited acts include dividing markets by allocating customers, suppliers, territories or specific types of goods and services and limiting or controlling production or the distribution of any goods or services, markets, technical development or investment.

The FCCPA also prohibits an entity or association from requesting another entity or association to refuse to sell or purchase any goods or services, intending to cause harm to certain entities. In addition, the FCCPA prohibits agreements by suppliers: to withhold supplies of goods or services from dealers who resell or have resold any goods or services in breach of any condition as to the resale price; or to refuse to supply goods or services to such dealers, except on terms and conditions that are less favorable than those applicable to similar dealers.

Agreements between parties (and their successors) regarding any term of a license or patent granted by the proprietor of a patent or a licensor under a license or any assignment of a patent is, however, valid, so far as it regulates the price the licensee or assignee may sell goods produced or processed by him.

The FCCPA also permits certain arrangements which include:

i. combinations or activities of employers for reasonable protection of employees;

ii. arrangements for collective bargaining on behalf of employers and employees to fix minimum terms and conditions of employment;

iii. activities of professional associations designed to develop / enforce standard of professional qualifications;

iv. a contract or an arrangement among partners, none of whom is a body corporate, in so far as it contains provisions on the terms of the partnership or the conduct of the partnership business or details on the nature of competition between the partnership and a party to the contract / arrangement while that party is, or after that party ceases to be a partner;

v. a contract of service or for the provision of services in so far as it contains provisions by which a person, not being a body corporate, agrees to accept restrictions as to the work in which such person may be engaged, during or after the termination of the contract, for a maximum period of two years;

vi. a contract for the sale of a business or of the shares of a body corporate carrying on business, in so far as it contains a provision that is solely for the protection of the purchasers in respect of the goodwill of the body corporate; and

vii. any act done to give effect to a provision of a contract or arrangement referred to in the foregoing.

We are not aware of any prosecutions in this regard since January 2019.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes. The FCCPC has investigated MedContour services, as well as dominant PayTV service providers, in connection with the violation of provisions of the FCCPA on competition and consumer rights. The FCCPC also investigated Apple & Pears Ltd in connection with sale of expired and unwholesome food products. The FCCPC discovered what appeared to be unapproved and unsafe production of food products at the Apple & Pears Ltd offices in Abuja, and has since shut down the office pending the outcome of the investigation. On 25 January 2019, the FCCPC entered a final order against MultiChoice Nigeria Limited (operators of DStv PayTV) in connection with an action filed against MultiChoice before the Federal High Court of Abuja in 2018, for breach of a proposed mutually agreed Consent Order regarding consumer protection and service responsiveness/quality issues.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes. Anti-competitive conduct is criminalized under Part XIV of the FCCPA. We are not aware of any criminal charges/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Yes. Nigeria is a member of the ECOWAS. The ECOWAS has a competition regulatory framework regime – the ECOWAS Regional Competition Rules and the ECOWAS Regional Competition Authority ("**ERCA**"), launched on 31 May 2019 and is charged with implementing the ECOWAS Regional Competition Rules. However, Nigeria is yet to domesticate the ECOWAS Regional Competition Rules.

That said, activities in Nigeria should be conducted with ECOWAS in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

We are not aware of any investigations by the FCCPC in relation to prohibited practices since January 2019.

21. Do you have any views on the level of enforcement of the regional body?

Given that Nigeria is yet to domesticate the ECOWAS competition regulations, enforcement under the ERCA in Nigeria is very likely to be minimal.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Mergers in Nigeria are only required to be notified domestically.

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SOUTH AFRICA

SOUTH AFRICA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

In February 2020, a number of provisions that were introduced by the Competition Amendment Act No. 18 of 2018, aimed at amending the Competition Act No. 89 of 1998 ("**Competition Act**"), came into effect. The relevant provisions deal with price discrimination and abuse of buyer power by dominant firms. Additionally, the relevant provisions have an impact on the right of informants to claim confidentiality and on the accessibility of confidential information.

The price discrimination provisions prohibit discrimination by dominant sellers against small and medium-sized businesses and firms owned or controlled by historically disadvantaged persons, when setting prices. The appropriate test is whether the relevant discriminatory conduct impedes the ability of such firms to participate effectively in the relevant market.

The buyer power provisions prohibit dominant buyers, in sectors designated by the Minister of Trade Industry and Competition ("**Minister**"), from requiring or imposing unfair trading conditions or prices on sellers within the designated sectors.

To facilitate the interpretation and application of the above provisions, the Minister has published Price Discrimination Regulations and Buyer Power Regulations.

The Price Discrimination Regulations provide guidance for determining the application of the price discrimination provisions to firms owned or controlled by historically disadvantaged persons; and set out the relevant factors and benchmarks for determining whether a dominant firm's conduct constitutes discrimination that impedes the participation of small and medium businesses and firms controlled or owned by historically disadvantaged persons.

An important point to note is that the Price Discrimination Regulations apply only to firms controlled or owned by historically disadvantaged persons that purchase less than 20% of the relevant good or service supplied by the dominant seller over the same period as the discrimination.

In assessing whether the price discrimination provisions of the Competition Act have been contravened, the Regulations provide that the competition authorities should seek to determine whether:

i. the seller is a dominant firm as defined in the Competition Act;

ii. there is differential treatment between the purchaser in the designated class of purchasers and other purchasers outside that class in terms of:

   a) the price charged for the goods or services;

   b) any discount, allowance, rebate or credit given or allowed in relation to the supply of goods or services;

   c) the provision of services in respect of the goods or services; or

   d) payment for services provided in respect of the goods or services in relation to equivalent transactions for goods or services of like grade and quality.

   (a firm will belong to designated class of purchasers where it is an SMME or HDP, as defined in the Competition Act and the Regulations thereto)

iii. there is differential treatment, which:

   a) does not make reasonable allowance for differences in the cost or likely cost of supplying the good or service based on different places or methods of supply;

b) does not constitute an act of good faith to meet a competitor's price; or

c) is not a legitimate response to changes in market conditions.

iv. the differential treatment in price relative to other purchasers is likely to impede the effective participation of a firm or firms in the designated class of purchasers.

To establish whether the differential treatment in price is likely to impede the effective participation of a firm, competition authorities should consider the size of the price difference, the significance of the input in the purchaser's cost structure, the duration and timing of the price differential, the demand for the purchaser's goods or services, the likelihood that the differential treatment would result in decreased investment by the purchaser.

In relation to buyer power, the Buyer Power Regulations provide that for a buyer to be found to have contravened the buyer power provisions of the Competition Act, it must be established that:

i. the buyer operates within a sector designated by the Minister, which include the grocery wholesale and retail sector, the agro-processing sector and the ecommerce and online services sector;

ii. the buyer is a dominant firm as defined in the Competition Act;

iii. the supplier is an SMME or HDP;

iv. a price or trading condition has been required from or imposed on the supplier by the buyer; and

v. the price or trading condition is unfair.

The Buyer Power Regulations provide separate factors for prices and trading conditions respectively, which should be considered when seeking to establish whether the price or trading condition is unfair. Beneficiaries of the Buyer Power Regulations are firms operating in the grocery wholesale and retail sector; the agro-processing sector; and the ecommerce and online services sector. An important point to note is that the Buyer Power Regulations protect HDPs that supply 20% or less of the purchases of the dominant buyer for the relevant goods or service.

Factors for establishing the unfairness of an imposed price include the following:

i. A comparison of prices paid to other suppliers of like goods or services, in particular those outside the designated class, and whether such prices are higher;

ii. The magnitude of any differences in prices to other suppliers of like goods or services;

iii. Whether reductions in the existing purchasing price are directly or indirectly required from, or imposed on, the supplier;

iv. Whether reductions to an existing purchasing price are retrospective, unilateral or unreasonable;

v. Whether costs are directly or indirectly imposed on or required from the supplier, which reduce the net price received by the supplier; or

vi. Whether the direct or indirect imposition or requirement of costs is retrospective, unilateral or unreasonable.

The following factors will be considered when determining whether a trading condition that has been imposed by the buyer is unfair:

i. the reasonableness of transferring any risk to the complainant;

ii. the nature of the trading condition; or

iii. the relationship between the condition imposed and the object of the agreement in question.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The Competition Commission ("**Commission**") has not initiated any market inquiries since January 2019. However, the Commission has released provisional findings and recommendations in relation to the following market inquiries that were initiated prior to January 2019:

i. Health Market inquiry: Final Findings and Recommendations Report released in September 2019;

ii. Data Services Market Inquiry: Final Findings and Recommendations Report released on 2 December 2019;

iii. Grocery Retail Market Inquiry: Final Findings and Recommendations Report released on 25 November 2019; and

iv. Land Based Public Passenger Transport Inquiry: Provisional Findings on Metered Taxis and E-hailing Services released on 19 February 2020.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

The Commission has expressed concerns about the healthcare, data and retail sectors in its provisional findings in respect of the market inquiries referred to above. In particular, the Commission found that there are features or a combination of features of the above sectors that may prevent, distort or restrict competition within the sectors. Since January 2019, the Commission has undertaken extensive work to address the concerns noted in the data market and the retail market.

In relation to the data services sector, the Commission has engaged with South African telecommunications companies in an effort to reduce the cost of data bundles. This has culminated in the Commission concluding settlements with various telecommunication companies, in terms of which the companies have undertaken to reduce the cost of their respective data offerings, and have made additional commitments to offer lifeline packages, zero-rated access to certain educational websites and websites of public benefit organisations, and to provide increased transparency in relation to the pricing of data bundles.

In the retail grocery sector, the Commission has engaged with various large chain supermarkets in an effort to abolish exclusivity clauses in leases between shopping centres and the relevant supermarkets. These efforts are in line with the recommendations made by the Commission in its Grocery Retail Market Inquiry, in terms of which the Commission had found that exclusivity clauses contained in various leasing contracts impede competition in the South African grocery retail sector, with no compelling justifications for their continued existence.

In addition, the Commission monitors concentration levels in what has become known as "priority sectors" to the Commission. The priority sectors are the:

- information communication technologies;
- energy;
- financial services;
- food and agro-processing;
- infrastructure and construction;
- intermediate industrial products;
- mining;
- pharmaceuticals; and
- transport sector.

In respect of the above sectors, the Commission's study has revealed that the average market share of dominant firms in these sectors in approximately 52.5% (and where the study has narrowed down the market shares to only firms that are considered presumptively dominant, the market share across the above sectors is approximately 62%).

Forestry sector impact study

The Commission has also published its final report on an impact study conducted on the forestry sector, which found that the sector is characterised by a few large vertically integrated firms that tend to dominate both upstream log supply and downstream milling & processing operations. The vertical integration is the result of numerous approved mergers and plantation acquisitions that occurred over the past 15 years, which fall below the mandatory merger notification thresholds.

According to the impact study, large integrated firms also engage in swap and long-term contracting arrangements, including with small claimant communities, which ensures that large firms have a secure supply of log. In terms of the Commission's findings, a stable supply of own plantation logs reduces costs and enables the large firms to invest in equipment that is more efficient, granting them an advantage in the market. The stable supply also enables them to develop markets for their products as they can assure customers of ongoing supply.

The Commission made several recommendations aimed at ensuring that firms, particularly SMMEs and HDPs, are able to sustainably enter, expand and compete in the forestry sector. The recommendations include the following:

a) Mergers and acquisitions by vertically-integrated firms in the forestry sector should be mandatorily notifiable to the Commission until such time that an assessment of the competition dynamics in the sector indicates improved conditions for the sustainable participation of SMEs and HDPs. This will enable the competition authorities to gain further insight into the developments and dynamics in the forestry sector, particularly insofar as they relate to upstream access to logs and security.

b) The competition authorities should ensure that the preservation of SME and HDP access to log supply is prioritised in the assessment of mergers involving upstream plantations. This will prevent continued erosion of opportunities for these firms to participate in forestry markets.

c) Efforts by SME and HDPs to cooperate (for example, through collective purchasing, commercialisation arrangements or joint ventures for the purchase of upstream plantations) must be facilitated by the competition authorities in ways that support long-term log supply agreements and stable demand agreements. These efforts must be well-designed and no more restrictive than necessary.

d) The Commission also made recommendations on industrial policy and state-owned enterprise mandates, which include the use of policy tools such as industry-level agreements and revised state-owned enterprise mandates to ensure greater security of input supply and greater stability in sales prospects for SMEs and HDPs.

e) Other recommendations relate to industrial policy within government, which the Commission believes can unlock new sources of log supply and development finance for SMEs and HDPs. According to the Commission, state development finance institutions should be directed to consider smaller financing packages for the upgrading of milling operations for SMEs and HDPs in the forestry sector, as well as the financing of acquisitions of plantation assets for longer-term supply stability.

Automotive aftermarket

The Commission has now published its final Guidelines for Competition in the South African Automotive Aftermarket. The guidelines offer practical guidance to players in the automotive aftermarket industry, urging them to adopt pro-competitive measures and to promote greater participation of SMEs and HDPs in the market. Suggested measures include:

a) business models that allow for SMEs and HDPs to undertake service, maintenance and repair work whilst a vehicle is still under warranty;

b) encouraging increased ownership of dealerships by HDPs;

c) fair allocation of repair work by insurers to service providers on their panels;

d) promoting the rights of consumers to use either original or non-original spare parts during the lifespan of their vehicles;

e) removing original equipment manufacturer ("**OEM**") restrictions on the sale and distribution of original parts;

f) promoting consumer choice in the purchase of car maintenance and service plans; and

g) enabling access to OEM training and technical information by independent service providers.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

Yes, dawn raids by the Commission are a high risk in South Africa. The Commission has used and continues to use dawn raids as a tool to gather evidence of anti-competitive conduct by businesses in South Africa. All businesses are potentially at risk of a dawn raid by the Commission, at any time and without notice. The Commission, however, has not conducted any dawn raids since January 2019.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

Yes. The Minister has issued the following Regulations in response to the COVID-19 pandemic:

a) Consumer and Customer Protection and National Disaster Management Regulations and Directions

These Regulations, published on 19 March 2020, apply to the supply of a list goods and services that have been deemed essential during the COVID-19 pandemic. The Regulations are aimed at promoting concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster. The government intends to protect consumers and customers from unconscionable, unfair, unreasonable, unjust or improper commercial practices during the national disaster.

In terms of the Regulations, a material price increase of an essential good or service during any period of the national disaster, which:

i. does not correspond to or is not equivalent to the increase in the cost of providing that good or service; or

ii. increases the net margin or mark-up on that good or service above the average margin or mark-up for that good or service in the three month period prior to 1 March 2020,

is a relevant and critical factor for determining whether the price is excessive or unfair and indicates *prima facie* that the price is excessive or unfair. The Regulations will cease to have force once COVID-19 outbreak is no longer declared a disaster in South Africa.

b) Block exemptions

These regulations sought to exempt a category of agreements or practices in the various sectors from the application of the Competition Act, in response to the declaration of COVID-19 pandemic as a national disaster.

The following sectors have block exemptions:

i. Healthcare sector: The block exemptions in this sector are aimed at promoting access to healthcare, preventing exploitation of patients, enabling the sharing of healthcare facilities, management of capacity and reduction of prices.

ii. Banking sector: The block exemptions in this sector seek to enable the banking sector to minimise the negative impact on the ability of customers, including both business and private individuals, to manage their finances during the national disaster, and be in a position to continue normal operations beyond the national disaster. They also aim to enable the banking sector to manage the banking infrastructure, including the payment infrastructure, ATMs and branches.

iii. Retail property sector: These exemptions seek to enable the retail property sector to minimise the negative impact of COVID-19 on the ability of designated retail tenants, including small independent retailers, to manage their finances during the national disaster and be in a position to continue normal operations beyond the national disaster.

iv. Hotel industry: The purpose of this exemption is to enabling the hotel industry to collectively engage with the Department of Health and the Department of Tourism in respect of identifying and providing appropriate facilities for persons placed under quarantine, as determined by the Department of Health.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

Yes. The Commission has successfully prosecuted two firms for excessively pricing on face masks during the COVID-19 pandemic. The Commission has also concluded a substantial number of settlement agreements with firms that have excessively priced on essential items such as hand sanitiser, facemasks and food items. While the Commission has largely relied on the Consumer and Customer Protection and National Disaster Management Regulations and Directions as the basis for concluding the settlement agreements, the Commission's two successful prosecutions were on the basis of an infringement of the Competition Act. This was due to the fact that the relevant conduct had occurred before the Consumer and Customer Protection and National Disaster Management Regulations and Directions had come into force.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

Yes, the Commission introduced Buyer Power Guidelines in February 2020. The Commission has not brought any cases against entities accused of abusing their buyer power, as the buyer power provisions are relatively new. The Commission has however, published Buyer Power Enforcement Guidelines, which provide an indication of the Commission's intended approach when prosecuting matters related to the abuse of buyer power.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

Yes. We are aware of three mergers that have been prohibited since January 2019. The prohibited transactions included:

i. A merger between one of the largest hospital groups in South Africa and the owner of two multi-disciplinary hospitals: This merger was prohibited on the grounds that:
   a) it would likely result in a significant increase in healthcare prices in the region where the target firm operates;
   b) the incentive to improve on non-price factors, such as patient experience and quality healthcare, would likely diminish after the merger; and
   c) acquisition would confer relatively greater bargaining power to the acquiring firm.

ii. A merger between a generalist classified advertising platform and an online dealer of used vehicles. The merger was prohibited on the grounds that:
   a) absent the proposed transaction, an online "used car" buying and selling platform owned by the acquiring group, would have entered the South African market in close competition with the target firm. This would have appreciably enhanced the level of competition faced by the target firm;
   b) Therefore, the proposed transaction would harm competition in South Africa by eliminating the potential entry of an effective competitor; and
   c) the acquisition would entrench the target firm's market position and raise barriers to other players as a result of various benefits obtained through the acquiring group's activities. These were considered the portfolio effects of the proposed transaction.

iii. A merger between two suppliers of industrial packaging products. The reasons for prohibiting the merger were that it would create a near monopoly in the market for the manufacture and supply of large steel drums.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

The submission of a merger notification is suspensory in South Africa. In August 2020, the Commission announced that it had concluded a settlement agreement with Retail Capital, after the firm submitted a merger notification and admitted that it had implemented the merger in 2018, without the required approval.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of any cases involving parties that breached their merger conditions.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

Yes. The types of conditions that the authorities have imposed include:

i. divestiture orders;

ii. obligations to continue to procure from small to medium sized enterprises or entities controlled by historically disadvantaged individuals;

iii. setting-up a development fund that facilitate entry into or participation within a market;

iv. the imposition of a moratorium on retrenchments for a certain period of time post-merger;

v. obligations to provide training and other assistance (e.g., career guidance, counseling etc.) to employees who are retrenched as a result of a merger;

vi. obligations to continue supplying customers on certain agreed terms for a period of time post-merger; and

vii. commitments to invest in manufacturing facilities with a view to increasing export capacity.

In March 2020, the Tribunal approved the merger between PepsiCo and Pioneer Foods, which marked the first major transaction with remedies aimed at promoting a greater spread of ownership by workers. The merger was subject to a host of conditions that benefit workers and previously disadvantaged persons, including a Broad-Based Black Economic Empowerment ownership plan, that entailed the provision of common stock in the acquiring firm, to its workers, to the value of ZAR 1 billion (approximately USD 93,436,000.00).

The equity provided to the workers will be unencumbered, and issued within 12 months from the closing date of the PepsiCo merger, to a Workers Trust that will be established after consultation with the Workers' Representatives. The workers will select the majority of the trustees of the Workers Trust, and the merged firm will be responsible for the cost of establishing and implementing the trust.

Once established, the Workers Trust will be entitled to appoint at least one non-executive director to the board of Pioneer Foods. The Workers Trust will further be entitled to exercise the equivalent of 12.9% voting rights in Pioneer Foods upon issue of the equity. After 5 years, the stock held by the Workers Trust in PepsiCo must be converted into a direct shareholding in Pioneer Foods of up to 13%. In the event that the equity held by the Workers Trust is worth less than 13% of the value of Pioneer Foods' shares, neither PepsiCo nor Pioneer Foods and their associated companies will provide funding or guarantee to facilitate the conversion.

The merging parties however acknowledged that should the workers require funding for the purpose of purchasing Pioneer Foods' shares, this must be reasonably acceptable to PepsiCo. The Workers Trust will have no guaranteed exit mechanism from Pioneer Foods in respect of the shares, however in order to create internal liquidity, the parties will investigate a mechanism that involves the issue of units to the beneficiaries of the workers. The Workers Trust, Pioneer Foods and PepsiCo will further enter into good faith negotiations aimed at the creation of a shareholder's agreement that will provide minority protection for the Workers Trust.

The Commission and the merging parties agreed that in terms of the shareholder's agreement that will be executed, the Workers Trust will not enjoy any veto rights or be entitled to impede the day-to-day operations of Pioneer Foods, including its commercial or growth initiatives.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Type of merger	Statutory Limit	Average Approval Period in Practice (2018 - 2019)
Small & Intermediate Mergers	60 business days	· Non-complex: approximately 30 - 40 business days · Complex: 60 business days
Large Mergers (includes Tribunal hearing process)	Indefinite	· Non-complex: approximately 50 business days · Complex: 4 - 6 months

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

In February 2019, the Commission and the South African Broadcasting Corporation ("**SABC**") entered into a settlement agreement in terms of which SABC admitted to price fixing and the fixing of trading conditions, in contravention of the Competition Act. SABC undertook to pay an administrative penalty of ZAR 31,845,795.33 (approximately USD 1,978,767.87) and further remedies, including:

i. 25% bonus advertising space for Qualifying Small Agencies for a three-year period, capped at ZAR 40,000,000 (approximately USD 2,485,436.89) annually; and

ii. ZAR 17,797,645.97 (approximately USD 1,105,873.15) contribution to the Economic Development Fund.

In July 2019, South Africa's largest manufacturer and distributor of number plate blanks and embossing machines was ordered to pay an administrative penalty of ZAR 16,192,315 (approximately USD 946,852.55). The manufacturer had been using long-term exclusive agreements to contractually oblige its customers to also purchase all of their number plate blanks and embossing materials from it whenever they purchase an embossing machine. The agreements prevented the customers from switching to alternative suppliers of number plate blanks and hindered the ability of rivals to access customers for number plate blanks in the market.

In July 2020, Dis-Chem Pharmacy was ordered to pay an administrative penalty of ZAR 1,200,000 (approximately USD 70,170.51), for abusing its dominance and excessively pricing on facemasks during the COVID-19 pandemic. Although the penalty is not significant, the case is notable due to the authorities' reliance on temporal dominance in the context of the COVID-19 pandemic as a basis for finding Dis-Chem guilty of excessive pricing.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

Yes, please refer to the response to question 16 below, although the cases mentioned did not involve both parties within the vertical relationship infringing the Competition Act.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Exclusivity clauses are analysed based on the "rule of reason" approach on a case-by-case basis to understand whether they result in a net anticompetitive effect in a market. Parties seeking to defend their exclusivity arrangement must prove that any technological, efficiency or other pro-competitive, gain arising from the exclusivity arrangement or clause outweighs the anticompetitive effect found by the authorities. We can confirm at least two cases that have been publicised by the authorities, dealing with exclusivity clauses:

- In June 2019 the Commission published a decision by the Tribunal, involving a ZAR 16 million (approximately USD 1,039,173.60) fine against Uniplate Group (Pty) Ltd ("**Uniplate**"), South Africa's largest manufacturer and distributor of number plate blanks and embossing machines. Uniplate had concluded agreements with its customers who buy embossing machines, whereby it would be the exclusive supplier for all their blank plates and embossing materials, for a period of 10 years. Embossing machines and number plate blanks are used together to produce the final number plate which is affixed to vehicles. The Tribunal found the agreements to constitute a breach of competition law as they the ability of Uniplate's rivals to procure customers for number plates and further tied customers to one supplier, depriving them an opportunity to seek lower prices for blank plates and plate materials.
- In October 2019, the CAC dismissed an appeal by Computicket (Pty) Ltd ("**Computicket**"), where Computicket sought to challenge the Tribunal's finding that it had abused its dominance by concluding exclusive agreements with inventory providers. The exclusive agreements were imposed by Computicket, and limited the ability of inventory providers to sell through different ticket distribution services for the entertainment industry, which covers events such as sports, cinemas, theatres, festivals and live events.

Non-compete clauses can be considered to fall within two broad categories, namely:

- "Naked non-compete restraints" - these are restraints of trade that are cartelistic in nature - i.e., aimed at market division, customer / territory / supplier / goods or service allocation. Such restraints are automatically prohibited and no justifications are permitted in defence of these clauses.
- "Garden variety" clauses: these clauses resemble a stock-standard ("**garden variety**") restraint of trade that applies in the context of post-employment restraints (i.e., provisions in an employment contract obliging the employee to refrain from competing with the employer after termination of the employment relationship); sale of business restraints (i.e., provision in a sale of business agreement obliging the seller not to compete with the business sold); and post-partnership restraints (i.e., provision in a partnership agreement obliging a retiring partner to refrain from competing with the remaining partners after leaving the partnership business). Such clauses are not automatically prohibited but they should be limited in terms of duration and reasonableness. It is sensible to analyse these clauses on a case-by-case basis.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes, the Commission investigated a substantial number of instances of prohibited conduct between January 2019 and 2020. A number of these investigations led to successful prosecution before the Tribunal, while others were concluded by way of settlement agreements with the implicated firms. The cases include:

- Settlement agreements with the South African Broadcasting Corporation, Ster-Kinekor and Premidia, for their involvement in price fixing and the fixing of trading conditions. The firms undertook to pay administrative penalties and provide bonus advertising space for every rand of advertising space bought by qualifying small agencies, for three years, with the bonus advertising space to be provided being capped at a certain value.
- A settlement agreement with Fireco (Pty) Ltd ("**Fireco**"), whereby Fireco would pay an administrative penalty for concluding an agreement to divide markets in the supply, installation and maintenance of fire control and protection systems.
- A settlement agreement with GD Irons Construction (Pty) Ltd ("GD Irons"), for its involvement in collusive tendering, markets division, and price fixing in the construction market.
- The Commission also referred a case to the Tribunal against packaging paper products manufacturers and suppliers, Mpact Ltd ("**Mpact**") and New Era Packaging (Pty) Ltd ("**New Era**"), for cartel conduct. The Commission alleged that the two companies had engaged in price fixing, dividing markets by allocating customers and tendering collusively in the market for the manufacturing and supplying of corrugated packaging paper products. Mpact subsequently concluded a settlement agreement with the Commission, where it undertook to pay an administrative penalty.
- A number of fleet management solutions suppliers were referred to the Tribunal by the Commission, for engaging in market allocation s in the market for the provision of value added Fleet Management Solutions.
- Chilean car shipping company, Compania Sud Americana De Vapores S.A, was accused by the Commission, of collusive tendering, price fixing and market division in the shipment of Ford motor vehicles from South Africa to Europe and Mediterranean.
- The Commission concluded a settlement agreement with Life Wise (Pty) Ltd, trading as Eldan Auto Body ("Eldan Auto"), for fixing prices, dividing market and collusive tendering, in contravention of the Competition Act.
- The Commission concluded settlement agreements with certain automotive companies, for their participation in collusive tendering in response to Request For Quotation ("**RFQ**") issued by original equipment manufacturers.
- A settlement between the Commission and cable manufacturer, Aberdare Cables (Pty) Ltd ("**Aberdare**"), was confirmed by the Tribunal. Aberdare had applied for corporate leniency from the Commission, in terms of its Corporate Leniency Policy ("**CLP**"). The leniency was granted in March 2012; however, it was conditional upon Arbedare complying with the requirements of the CLP. On 14 October 2020, the Tribunal confirmed that Aberdare co-operated with the Commission and complied with the requirements set out in the CLP. Aberdare admitted to price fixing, market allocation and collusive tendering in contravention of the Competition Act (the Act).

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, cartel conduct/anti-competitive conduct is an offence punishable by imprisonment, fine or both under the Competition Act. In terms of the Competition Act, directors and managers (or employees purporting to have management authority) who cause a company to engage in cartel conduct may be fined up to ZAR 500,000 (approximately USD 32,454.26) and/or subjected to imprisonment of up to 10 years. Personal liability may arise in circumstances where the director, manager or employee purporting to have management authority caused their company to engage in collusion or failed to intervene despite having knowledge of the collusive conduct.

We are not aware of any criminal charges that have been brought against any persons since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

No.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

21. Do you have any views on the level of enforcement of the regional body?

No.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Mergers are notifiable domestically in South Africa.

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SUDAN

SUDAN

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

No new amendments have been introduced since January 2019. However, the Competition Council intends to amend the Regulation of Competition and Prevention of Monopoly Act, 2009 ("**RCPM Act**"), in order to align it with regional conventions.

Additionally, the Prime Minister issued Decree No. 513 on 15 November 2020, whereby a new Council has been formed, consisting of eleven members.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

No.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

No.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

No dawn raids have been conducted since January 2019.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

No.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

No.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

We are not aware of any transactions that have been prohibited since January 2019.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

New filing fees are expected to be introduced when the Competition Council amends the RCPM Act.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes, however no gun-jumping cases have been pursued by the Competition Council since January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

There have been no cases, since January 2019, in this regard.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

No.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

According to the RCPM Act, the Competition Council shall issue its decision regarding the merger within three months from the date of receiving the merger notification. Otherwise, the merger shall be deemed approved. This applies to both complex and non-complex mergers.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

There have been no cases against entities accused of engaging in prohibited practices since January 2019, however, many unfair competition cases are filed before the Consumer's Protection Public Prosecutor.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

No.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

The RCPM Act expressly prohibits exclusivity. Section 5.1 (c) reads as follows:

"It is not allowed to conclude an agreement, contract or any arrangement (whether in writing or verbally) between individuals or corporate persons or taking any action, disposition or adopting a decision or an act of monopoly that shall result in:

a) ...

b) ...

c) Dividing the market of certain products or services on geographical or consumer or importer basis or on time basis or on any other basis for the purpose of dominating that market."

There have been no prosecutions, since January 2019, against entities accused of implementing exclusivity clauses or non-compete restraints.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, cartel conduct is Criminalised in Sudan. However, we are not aware of any cases against any persons or entities accused of cartel behaviour.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Sudan is a member of COMESA.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

No.

21. Do you have any views on the level of enforcement of the regional body?

No. The COMESA Competition Commission has not engaged in any enforcement of competition law in Sudan.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

According to the RCPM Act, all mergers are notifiable domestically. There is no provision in the RCPM Act requiring regional notification.

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TANZANIA

TANZANIA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

There are current amendments that have been introduced by the Finance Act, 2020. Section 60 has been amended to exclude, from the provisions of that section, annual turnover which has its source outside Mainland Tanzania when computing a fine to be paid for contravention of offences referred to in that section.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

There has been an investigation into the tobacco and oil and gas industry, which has culminated in the imposition of fines on certain market players.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

Not that we are aware of.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

We are aware of dawn raids that have been conducted on producers of counterfeit products. The authority has also seized telecom equipment, mobiles phones, solar equipment, perfumery, seeds, washing machines and confectioneries.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

We are not aware of any action that has been taken against entities for infringing competition legislation during the COVID-19 pandemic; however, the competition authority has warned some supermarkets and retail shops regarding artificial shortages.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

There are no specific provisions, apart from regulations for merger approval where the buyer applies. We are not aware of any cases pertaining to abuse of buyer power.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

We are not aware of any such prohibition.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

We are not aware of any official proposals to amend the merger filing fees.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

After a merger application has been lodged, the consummation of the merger is prohibited until a final decision is made. We are not aware of any cases brought against entities for gun-jumping as these are not held in public (if held at all).

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions

Unfortunately, information relating to fines is not publicised, however we are aware of a few oil and gas, tobacco and cement companies that have been fined.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

Information relating to merger approvals and their accompanying conditions (if any) is not publically available and therefore unknown to us.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Non-complex mergers take between 45 to 60 days. Complex mergers take 75 to 120 days.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

Although we can confirm that there have been penalties imposed in this regard, we are unable to provide further details as the information is not publically available.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

We are not aware of any cases that have been brought against parties in a vertical relationship since January 2019.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

To the best of our knowledge, such clauses have not yet come under scrutiny by competition authorities, although the competition law has specific provisions regarding the clauses. There is no public registry on this and we are unaware of any prosecutions.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

We are not aware of any new investigations related to prohibited practices that have been launched since January 2019.

18. Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, cartel conduct is criminalised, however we are not aware of any enforcement action by the competition authority in this regard. Usually, the authority imposes penalties. In any case, a lot of the work the antitrust authority undertakes in Tanzania in such cases is not in the public domain.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Tanzania is a member of EAC. Therefore, activities in Tanzania should be conducted with EAC in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Not that we are aware of.

21. Do you have any views on the level of enforcement of the regional body?

The EAC Competition Authority has become operational. Competition law activity has therefore accelerated within EAC and soon the full functioning of the mandatory merger control regime will be seen.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Currently, mergers are only notifiable domestically.

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TUNISIA

TUNISIA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

No new amendments or guidelines have been proposed or enacted since January 2019.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

As far as we are aware, the authority has not initiated any market inquiries in relation to any sector or industry.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

As far as we are aware, there have been no concerns expressed by the competition authority in relation to any industry/sector.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

Dawn raids are a moderate risk in Tunisia. We are not aware of any dawn raids conducted since January 2019.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

Yes. The competition authority advised on decree-laws relating to social and economic measures associated with the COVID-19 pandemic, whose objective was to repress monopolistic practices or acts of eviction and to control the prices of products that are in high demand.

The competition authority also suggested from the outset of the pandemic that it would impose heavier penalties on producers and retailers who are found to be charging excessive prices for basic necessities and products related to health and hygiene.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

Cases have been brought by the government before the courts (not necessarily before the competition authority) against offenders with respect to the aforementioned offences.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

Article 5 of the Tunisian competition law covers the abuse of economic dependence by a buyer vis-à-vis the supplier.

The said Article prohibits "***...the abuse of a dominant position on the domestic market or a substantial part of that market, or the abuse of a state of economic dependency of customers or suppliers who do not have any alternative solutions for the commercialization, supply or the provision of services.***"

The Article further provides that the abuse of state of economic dependency may consist of:

- a refusal to sell or to purchase;
- linked sales or purchases;
- imposing minimum prices for the resale of goods;
- imposing discriminatory conditions; and/or
- the termination of a commercial relationship without objective cause or because the other party refused to accept exorbitant commercial conditions.

We are not aware of any cases pursued by the competition authority against entities accused of abusing buyer power.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

As far as we are aware, no.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

As far as we are aware, no.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

The submission of a merger notification is not suspensory in Tunisia, provided that the parties do not take any measure that would make the merger irreversible or that would alter the market situation on a lasting basis.

We are not aware of any cases brought by the Tunisian Competition Council ("**TCC**") against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

As far as we are aware, there have been no such cases.

12. Since January 2019, has the authority approved any mergers/s subject to novel or otherwise noteworthy conditions?

As far as we are aware, no mergers have been approved subject to novel or noteworthy conditions.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The statutory deadline within which the TCC must make a decision is three months from the delivery of the acknowledgement of receipt, provided all the required documents were submitted to the TCC. If no response has been provided by the TCC within three months, the transaction is deemed to be approved. However, in certain cases the TCC may require additional documents or information, in which case the prescribed period will be paused.

In practice, the merger assessment may take 6 to 12 months for a complex transaction and 6 to 8 months for a non-complex transaction, provided all required documents and information have been provided.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

As far as we are aware, the TCC is expected to sanction nine companies active in the vegetable oil refining industry, with a fine of TND 25,000 (approximately USD 8,438) each, for violating the rules of competition and engaging in prohibited practices. The TCC investigated the companies after discovering an agreement between them aimed at blocking a call for tenders that was launched by the National Agency of Oil. These companies attempted to prevent the opening of the sector to competition. Their goal was to maintain market dominance and preserve related advantages.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

We are not aware of any cases brought by the TCC against parties in a vertical relationship for infringing the competition legislation since January 2019.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Exclusivity clauses are in principle prohibited in Tunisia.

As regards non-compete restraints, Tunisian law permits restraints on exercising a certain commerce or industry, in a specified location or for a specific duration. The Ministry of Trade has previously required parties to a franchise agreement to amend their non-compete clause from operating for a term of two years to being valid for one year.

We are not aware of any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

As far as we are aware, the TCC has not launched or publicised any new investigations.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, cartel conduct/anti-competitive conduct is criminalised.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Tunisia has been a member of the COMESA since July 2018. Going forward, all activities in Tunisia should be conducted with COMESA competition laws in mind.

20. If so, please comment on the frequency of your engagement with the regional body.

Since Tunisia only recently joined the COMESA, it is not possible to identify the frequency of engagements.

21. Do you have any views on the level of enforcement of the regional body?

No.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Even though the COMESA treaty suggests that under certain conditions the filing with the COMESA Competition Commission substitutes the merger filing domestically, we do not have information confirming such an interpretation under the domestic competition law.

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UGANDA

UGANDA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

No amendments or guidelines relating to competition legislation have been proposed or enacted since January 2019. This is because of the absence of substantive domestic competition legislation in Uganda, as well as a dedicated regulatory body or authority to enforce competition law. However, in 2016, the Ministry of Trade, Industry and Cooperatives developed a national competition and consumer protection policy. The policy is cognizant of the country's vision 2040, National Development Plan, National Trade Policy, and other sectoral policies and strategies aimed at minimizing market distortions and promotion of sustainable development. Furthermore, the policy commits the government to implement obligations and commitments of the East African Community, COMESA and WTO on consumer protection and competition.

Despite the absence of a substantive competition authority, a number of sector bodies have been active in relation to competition regulation. By way of illustration, the Uganda Communication (Competition) Regulations SI No. 93 of 2019 has been enacted under the auspices of the Uganda Communication Commission.

Additionally, there are also draft competition regulations, developed by the Civil Aviation Authority, which will apply to the Aviation sector. These regulations are undergoing stakeholder consultations.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

We are not aware of market inquiries or any plans by authorities in Uganda to initiate market enquiries in relation to any specific sector or industry in Uganda.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

As noted above, there is no competition authority in place in Uganda.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

Owing to the absence of a competition authority in Uganda, we are not in a position to assess the risk associated with dawn raids in Uganda.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

There are no uniform measures that have been passed in response to the COVID-19 pandemic, due to the absence of a competition authority in Uganda.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

As noted above, there is no competition authority in Uganda and as such, there is no collective action that has been taken against any entity for infringing competition legislation during the COVID-19 pandemic.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

No cases have been brought against entities accused of abusing buyer power.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

Owing to the absence of a competition authority and an enabling domestic competition regime, there are no notifiable transactions that have been prohibited since January 2019.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

There are no merger thresholds currently applicable in Uganda. However, we may draw insight from the minds of the legislators of the Competition Bill 2004, which is yet to be enacted into law.

The Competition Bill 2004 imposes a mandatory notification requirement to the Uganda Competition Commission for transactions where the parties jointly have assets exceeding 500 currency points or a worldwide turnover in excess of 1,500 currency points. Under the 1995 Constitution of the Republic of Uganda, as amended, a currency point is the equivalent of UGX 20,000.

From the perspective of group transactions, the proposed Ugandan competition legislation imposes a mandatory notification requirement in instances where the group belonging to the entity in which shares, assets or voting rights may have been acquired, has assets in Uganda in excess of two thousand (2,000) currency points; or a turnover exceeding six thousand (6,000) currency points or worldwide assets in excess of USD 1 billion or a turnover in excess of USD 500 million.

Apart from the monetary thresholds envisaged above, the resultant market share to be held by the undertaking upon completion of a proposed transaction may also trigger compulsory notification. This requirement applies in the context of mergers and acquisitions, leading to a combined market share of 35% in any relevant market held by the resultant undertaking.

As indicated above, the Competition Bill has not yet been enacted into law, and the proposed provisions are thus not yet law.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

We are not aware of any entities which have been accused of gun-jumping or any cases which have been brought against entities for prior implementation in any sector in Uganda.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of any cases in which entities have been fined for failing to comply with merger conditions in any sector in Uganda.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

We are not aware of any approvals that are subject or have been subject to novel or otherwise noteworthy conditions.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

There is no specific Ugandan legislation regarding merger control. However, regulatory approval is required with regard to transactions in certain sectors such as the banking, telecommunications, capital markets, oil and gas, and insurance sector. The regulatory approval must be obtained prior to the completion of a merger or acquisition. The timelines for approval are relative and will vary according to the different sector regulators.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

We are not aware of any noteworthy penalties imposed on any entities engaged in prohibited practices since January 2019.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

There have been no cases brought against parties in a vertical relationship for infringing the competition legislation in January 2019.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Exclusivity clauses are interpreted in terms of the Contracts Act 2010. The clause must be communicated effectively at the time the contract is concluded and not after it was concluded. Otherwise, for an exclusion clause to be incorporated into an already existing contract, the party against whom it is to operate must be given reasonable notice of its existence. Any ambiguity in the contract / agreement is to be construed against the party that intends to rely on the clause.

Non-compete restraints on the other hand have commonly emerged in employment related scenarios and are interpreted in a manner that is consistent with English common law.

Both exclusivity clauses and non-compete restraints are not criminalised. It appears to us that the remedies available to aggrieved parties are civil in nature.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

We are not aware of any investigation that has been launched against any entity for engaging in prohibited practices.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

As explained above, different sectoral laws prohibit anti-competitive conduct in the different sectors. By way of illustration, the Uganda Communications Act 2013 prohibits anti-competitive conduct but does not impose criminal sanctions against the same. It appears to us that the remedies available to an aggrieved person are civil in nature, in the form of statutory actions. Ezee Money Uganda Limited has previously brought such an action against MTN Uganda Limited. In light of the foregoing, we are not aware of any criminal charges or convictions that have been brought against any person or entity for engaging in anti-competitive conduct since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Uganda is a member state of the COMESA and therefore subject to the COMESA competition law regime. In addition to COMESA, Uganda is a member of the EAC and is therefore subject to the EAC Competition Act.

The EAC Competition Act is only applicable to economic activities and sectors having a cross-border effect. Whereas the act contains no statutory definition of the word "cross-border", we understand the ordinary meaning of cross-border to be "*an economic activity that spans the geographically defined borders of the East African Community states*" which are the Republic of Uganda, Rwanda, Burundi, South Sudan, Kenya and the United Republic of Tanzania. Therefore, activities in Uganda should be conducted with the COMESA and EAC competition laws in mind.

In addition to the above, Uganda has also ratified and signed the African Continental Free Trade Area Agreement, which has a competition law regime. Trading under the agreement was to commence in July 2020 but has been curtailed by the global COVID- 19 pandemic and therefore postponed to 1st of January 2021.

Therefore, activities in Uganda should be conducted with these regional bodies in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

We are not aware of any new investigations against any entities for engaging in prohibited practices since January 2019.

21. Do you have any views on the level of enforcement of the regional body?

We are not aware of the level of enforcement of competition law in relation to Uganda by the EAC. However, it is noteworthy that the EAC has recently appointed Competition Commissioners, and is in the process of passing enabling regulations; hence EAC competition law enforcement is likely to increase. In relation to the COMESA, the authority held a training workshop for Ugandan officials in 2018, including over 110 ministerial District Commercial officers, sensitising them to competition law issues, detecting antitrust offences, and catalysing the enactment of robust competition legislation in the EAC region. Uganda has been flagged as one of the target jurisdictions for the COMESA authority.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Yes. A notifiable merger would necessitate both domestic (currently sector-based notifications) and regional notifications to the extent applicable.

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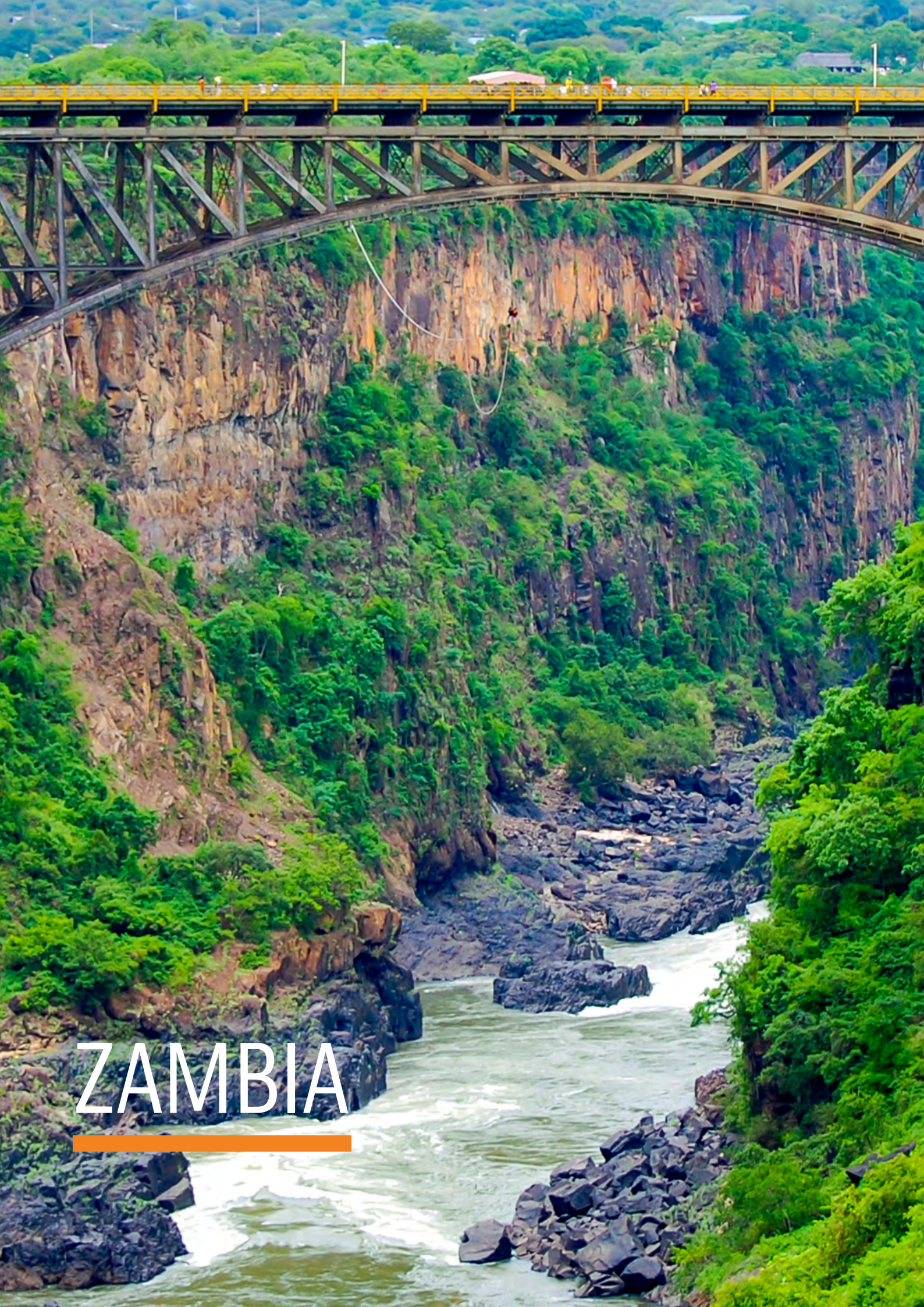

ZAMBIA

ZAMBIA

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

Zambia has not introduced any new amendments to the competition legislation.

In September 2019, the Competition and Consumer Protection Commission ("**CCPC**") published its new guidelines for the issuance of fines.

As of September 2019, the Zambian Parliament is yet to domesticate the COMESA regulations by amending the Zambian Competition Act to incorporate the COMESA Regulations.

We also understand that there is a draft amendment bill to the Competition and Consumer Protection Act, which is yet to be made public.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The CCPC has initiated and carried out market inquiries in various sectors. The CCPC only publishes its findings and circulates these findings to the public after the conclusion of the market inquiries.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

The CCPC has noted with concern that the Poultry Association of Zambia ("**PAZ**") and Millers Association of Zambia ("**MAZ**") continue to agree to and subsequently announce the prices of day-old chicks and mealie-meal. The CCPC became aware of this behavior after PAZ and MAZ issued media statements in which the duo announced a possible hike in the prices of day-old chicks and mealie-meal on 28 and 29 October 2019.

The CCPC was of the view that the conduct by PAZ and MZA is a violation of Sections 8 and 9 of the Competition and Consumer Protection Act No. 24 of 2010 ("**Competition and Consumer Protection Act**"), which prohibits concerted practices, and cartel conduct by market participants and members of the two Associations. The CCPC also noted that the conduct by the two Associations signaled price fixing and created distortion in the market, which was unnecessary and would distort independent decision making on the pricing of day-old chicks and mealie-meal by market participants.

The CCPC Director of Restrictive Business Practices revealed that both PAZ and MAZ had cases before the Competition and Consumer Protection Tribunal ("**CCPT**") relating to similar conduct. The CCPC expressed displeasure over the fact that Associations such as PAZ and MAZ had continued to make pronouncements related to price increases when the CCPC had engaged them on such conduct. The CCPC has since warned PAZ and MAZ not to engage in conduct that is likely to prevent, distort or restrict competition, such as price fixing.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

Yes. There have been several cases since January 2019 that are being investigated and that were initiated by way of dawn raids. However, the details of these cases could not be disclosed to us as they are still being investigated. We understand that one dawn raid related to wheat farmers and stock feed farmers.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

The competition law has remained the same and all the regulations are to be implemented as they are. However, the CCPC has implemented procedures related to electronic filings, online meetings and online hearing platforms. The introduction of these platforms does not change the law, guidelines and regulations already in place but ensure that, despite the COVID-19 pandemic, the CCPC continues to operate efficiently using the said platforms.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

Not that we are aware of.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

Yes. Section 16(1) and (2)(a) of the Competition and Consumer Protection Act prohibits an enterprise from engaging in any act or conduct, through abuse or acquisition of a dominant position of market power. The relevant conduct will be prohibited where it limits access to markets or otherwise unduly restrains competition, or has or is likely to have adverse effect on trade or the economy in general. Abuse of a dominant position includes imposing, directly or indirectly, unfair purchase prices or other unfair trading conditions.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

No notified transactions have been prohibited since January 2019.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

No, there have been no official proposals thus far. However, a draft amending the Competition and Consumer Protection Act, that encompasses various amendments, has been submitted to the legislative body for enactment.

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes. The merger control regime in Zambia is suspensory, which means that to parties a transaction cannot implement it until they have received clearance from the CCPC.

The details of cases brought against entities for gun-jumping could not be disclosed to us by the CCPC as they are still undergoing investigation.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of any cases that have been brought against entities since January 2019, for failing to comply with merger conditions.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

Yes. The CCPC has approved certain mergers, since January 2019, with certain conditions. Examples of these conditions include:

i. compelling the merging/merged firm to continue to honouring existing agreements with local customers, for a period of at least one year from the date of receipt of the approval to merge;

ii. requiring a moratorium on all merger related retrenchments, for a period of at least one year from the date of receipt of the approval to merge;

iii. granting conditional approval, which does not preclude the parties from obtaining any other relevant regulatory approvals; and

iv. requiring that the merging firms submit a report to the CCPC after a period of twelve months, in order to determine whether any imposed conditions have been complied with.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

In practice, the CCPC takes about 60 days to approve a non-complex mergers.

The period allowed for the investigation of a proposed merger is up to 90 calendar days from the date of notification, with the possibility of an extension of 30 days if prior notice is given 14 days before the expiry of the 90-day period.

If the CCPC does not issue its determination regarding the proposed merger within 90 days or within an extension of 30 days (if prior notice is given before the expiry of 90 days), then the proposed merger shall be deemed to have been approved. No proposed transaction may be implemented pending approval of the CCPC.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties since January 2019 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

Since January 2019, we have not come across any noteworthy penalties that have been imposed on any entities.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

We do not have any cases on record since 2019.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

Non-compete clauses are contractual obligations restricting a party from competing with the business of another. They take a wide range of forms and various terminology is used to describe them. They may also be referred to as exclusivity clauses, exclusivity provisions, non-poaching clauses, non-solicitation clauses, restraint of trade clauses or restrictive covenants.

In Zambia, these clauses are considered on a case-by-case basis (common law position) which entails that a party can only invoke them by relying on the accompanying conditions as prescribed in the agreement. We are not aware of any prosecutions since 2019, against entities for implementing exclusivity clauses or no-compete restraints. Exclusivity is not a per se prohibition in Zambia.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Not that we are aware of.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, cartel conduct is criminalised in Zambia. The Zambian Competition Act provides that anyone found to be engaging in anti-competitive/cartel conduct commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units (approximately ZMW 90 million or USD 4,475,371.95) or to be imprisoned for a period not exceeding five years or both.

We are not aware of any criminal sanction imposed since January 2019.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Zambia is a member of the COMESA and falls under the jurisdiction of the COMESA Competition Commission. Therefore, activities in Zambia should be conducted with COMESA in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

We are not aware of any new investigations against any entity for engaging in prohibited practices.

21. Do you have any views on the level of enforcement of the regional body?

We have yet to see the level of enforcement by the COMESA Competition Commission in relation to Zambia. We note that the COMESA competition law regime has not been formally domesticated in Zambia.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

At present, Zambia officially recognises the COMESA Competition Commission as one-stop-shop jurisdiction. As such, to the extent that a filing is notified to the COMESA Competition Commission, a Zambian notification is not required as previously mentioned, despite the fact that the Zambian thresholds for mandatory notification are met.

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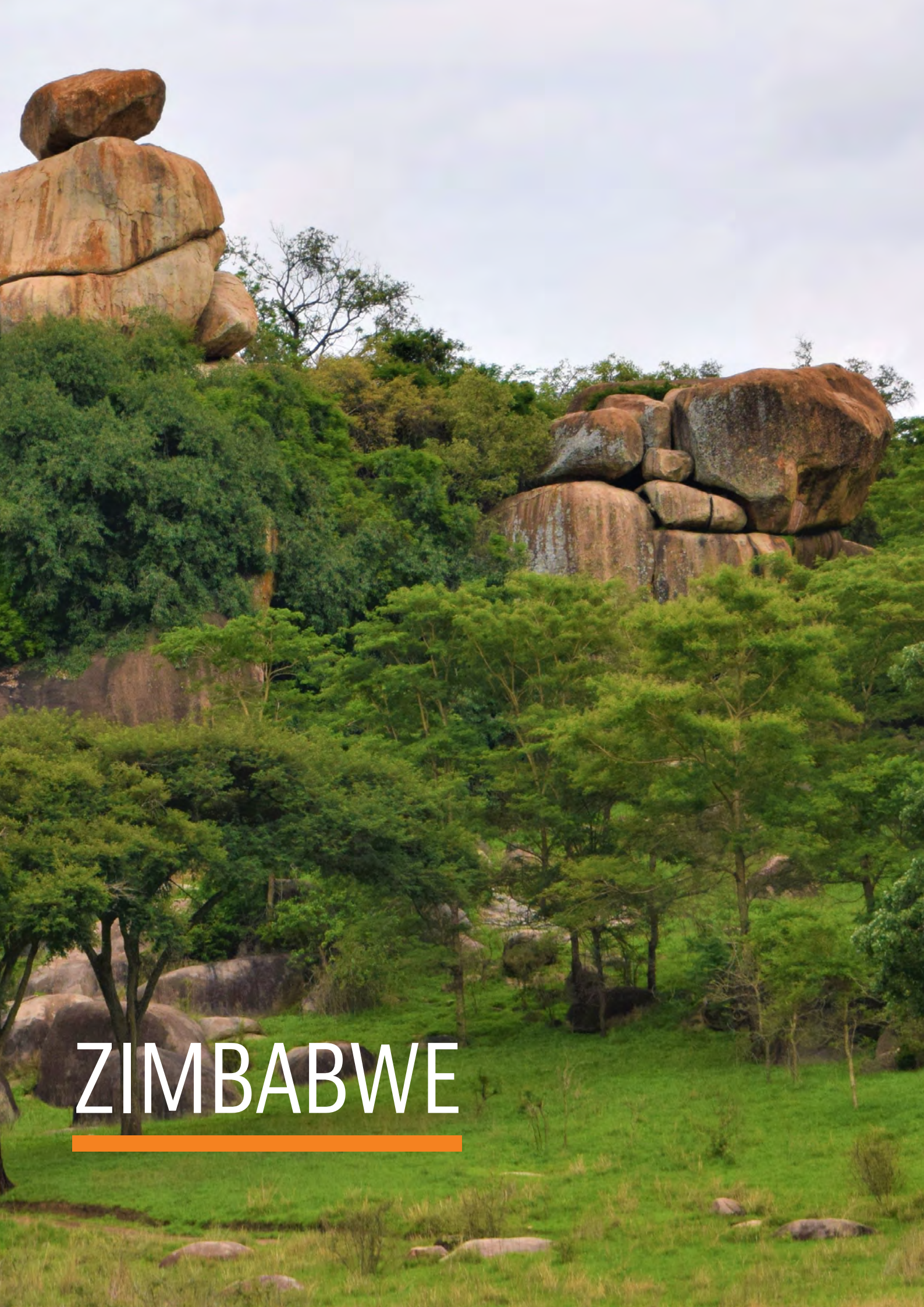

ZIMBABWE

ZIMBABWE

current as of December 2020

GENERAL

1. Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2019.

Zimbabwe in the process of making the following changes to its competition law regime:

- The Competition Act is in the process of being overhauled.
- Competition (Advisory Opinion) Regulations were promulgated, enabling the Competition and Tariff Commission ("**CTC**") to issue opinions to parties on the provisions of the Competition Act; and
- The Draft Review of the Competition Act has been submitted to the Attorney General's office for approval.

2. To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The CTC commenced a market enquiry into the pharmaceutical sector.

3. Has your competition authority publicly expressed concern in relation to any industry/sector?

Yes.

Sugar value chain

In the second half of 2019, the CTC published its findings in relation to issues identified in the Zimbabwean sugar value chain. According to the CTC, the sugar value chain is monopolised by a single firm, from sugarcane production, down to marketing and trading. The CTC noted that there exists significant barriers to entry at all levels of the sugar value chain, as sugar cane growing is anchored in the availability of high temperatures and the availability of water.

Water rights were a notable factor in the CTC's findings, as it uncovered that the monopoly firm had secured water rights from major dams in the lowveld, to the detriment of other players. Therefore, access to water was found to be one of the significant impediments to sugar production. The CTC offered various recommendations to the Zimbabwean government in order to remedy the above issues, which include:

- incentivising existing players (who produce sugar cane but are not into sugar production) to expand their operations and venture into sugar production to create competition in the sector;
- encouraging and incentivising experienced producers to invest in the Kanyemba area where ideal conditions exist for sugar production;
- Declaring the sugar industry as a strategic sector providing concessions that facilitate its expansion and growth. These may include affording the sector special economic zone status and granting exemptions from certain tax obligations for a specific period; and
- lobbying for regional trade policies designed to protect existing export markets and create new premium markets in Africa, such as the Tripartite Free Trade Area, AfCFTA and bilateral and multilateral arrangements within SADC and COMESA.

Textile and Clothing sector

In late 2019, the CTC reported that it had undertaken an analysis of the Textile and Clothing sector, as it had received various complaints against government interventions. The relevant interventions introduced duty increases, which according to stakeholders, resulted in shortages of fabric, smuggling due to punitive tariffs and loss of employment in the sector.

Findings from the CTCs analysis revealed that there has been no improvement in the performance of the CTC industry, as some measures have resulted in shortages of input used to manufacture apparel, hospital related linen and furniture. The CTC also noted that there was a lack of agreement on the impact of the duties imposed on textiles. According to the CTCs survey, the local textiles industry only produces a limited range of cotton and polyester fabrics. The local clothing sector then supplements the limited range of fabrics produced, through imports in order to meet market requirements.

The CTC recommended that the Ministry of Finance and Economic Development review the import duty imposed on all fabrics where there is no local production, to 10%; that the duty imposed on cotton fabrics be maintained where there is local production and potential of the revival of the textile sector and that all duties above the bound rate be aligned with the WTO commitments on tariff bindings.

4. Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about dawn raids conducted by your jurisdiction's competition authority since January 2019.

Dawn raids are not a high risk in Zimbabwe. The CTC has not conducted any dawn raids.

5. Has your competition authority introduced new regulations or measures related to competition enforcement in response to the COVID-19 pandemic?

No.

6. Has your competition authority taken action against any entities for infringing competition legislation during the COVID-19 pandemic?

No.

7. Does your competition legislation contain provisions on the abuse of buyer power? If so, has the authority brought any cases against entities accused of abusing buyer power?

The Competition Act refers to market power rather than buyer power. In analyzing abuse of market power, the CTC looks at monopolies and their conduct on the market. The CTC has not yet investigated a case of abuse of buyer power but hopes to do so in the near future.

MERGER CONTROL DEVELOPMENTS

8. Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2019? If so, on what basis?

No.

9. Are there official proposals to amend merger filing fees and/or monetary thresholds or have such amendments been affected since January 2019?

The merger notification thresholds were recently amended by Statutory Instrument 126 of 2020. In terms of the new thresholds, a merger is notifiable where:

- the combined annual revenue in or from Zimbabwe, of the acquiring group and the target group is equal to or exceeds ZWD 10 million (approximately USD 27,631.943);
- or if the combined gross assert value in Zimbabwe, of the acquiring group and target group is equal to or exceeds ZWD 10 million.

The previous thresholds were set at USD 1,2 million for either the combined annual turnover or the asset value of both the acquiring group and the target group. The merger filing fee remains 0.5% of the higher amount between the combined annual revenue and the combined gross value of assets of the merging parties in Zimbabwe. The filing fee is now capped at a maximum of ZWD 800,000 (approximately USD 2,210), while the minimum filing fee is ZWD 100,000 (approximately USD 276.32).

10. Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2019?

Yes, merger notification is mandatory, and should any party consummate or implement a merger without the CTCs approval, such party will be liable to a fine.

- On 7 March 2019, the Supreme Court of Zimbabwe confirmed the CTC's decision to fine Innscor Africa Limited USD 2,55 million for failing to notify its acquisition of National Foods in 2007. This is the largest fine to be imposed by the CTC since its inception.
- On 21 May 2020, the CTC reversed Innscor Africa Limited's acquisition of a 49% shareholding in Profeeds (Pty) Limited. The CTC uncovered that the transaction had been implemented in May 2015 and therefore imposed a fine of ZWD 40,5 million (approximately USD 1,6 million as at 22 June 2020), for the parties' failure to notify.
- In late 2019, the CTC imposed a fine against Intercape Ferreira Mainliner (Pty) Ltd and Pathfinder Laxury Coaches (Pty) Ltd for failing to comply with merger notification provisions. According to the CTC, the two firms entered into a joint venture involving a 50-50 shareholding agreement in which both parties contributed an equal number of assets. The CTC fined the merging firms for not being cooperative during the examination of the transaction, noting that they took five years to fully comply with the notification requirements.

11. Please describe any cases since January 2019 in which the competition authority fined any entity for failing to comply with merger conditions.

We are not aware of any cases in this regard.

12. Since January 2019, has the authority approved any mergers subject/s subject to novel or otherwise noteworthy conditions?

Yes, the Commission approved some mergers subject to conditions.

13. On average how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

A non-complex transaction takes about 30 to 60 days to be approved or rejected. A complex transaction can take up to 120 days or more. There are no statutory guidelines on this.

PROHIBITED PRACTICES

14. Please provide information in relation to any noteworthy penalties, since January 2019, that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.?

The current Competition Act does not provide penalties for anticompetitive practices, other than for consummating a merger without the CTCs approval.

15. Has the authority brought any cases against parties in a vertical relationship for infringing the competition legislation since January 2019?

The CTC is finalising a case in relation to vertical infringements.

16. Please explain how exclusivity clauses and non-compete restraints are treated in your jurisdiction. Have there been any prosecutions since January 2019 against entities for implementing exclusivity clauses or non-compete restraints?

If the parties are not part of the same group of companies, then exclusivity clauses and non-restraints amount to unfair trade practices.

17. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

The CTC carried out three investigations on prohibited practices and all those cases were referred to the Attorney General's office for prosecution, since the Commission has no prosecuting powers.

18. Is cartel conduct/ anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/ convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2019?

Yes, cartel conduct is criminalised in terms of the Competition Act, along with other forms of anticompetitive conduct such as undue refusal to distribute commodities or service, collusive arrangements between competitors, exclusive dealing, resale price maintenance and predatory pricing.

No criminal charges have been pursued against any firm so far.

REGIONAL BODIES

19. Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.).

Zimbabwe is a member of COMESA. Therefore, activities in Zimbabwe should be conducted with COMESA competition laws in mind.

20. Has the authority launched and publicised any new investigations since January 2019 against any entities for engaging in prohibited practices?

Yes. In March 2019, the CTC launched an investigation on the City of Harare's ("**City**") practices when procuring conveyancing services for the transfer of properties in the city. The CTC discovered that the City was not engaging in a restrictive practice as defined in the Competition Act, given that the city is entitled, when selling property, to select a conveyancer of its choice. However, the investigation further revealed that the selection criteria used by the City was not pro-competitive as the process was not open to all potential conveyancers. This is now being ratified by way of competitive bidding, in compliance with the **Procurement Regulatory Authority of Zimbabwe** Act.

In order to achieve liberation of the market for the provision of conveyancing services, the CTC undertook to monitor the market and engage with the City of Harare, in conjunction with the Procurement regulatory Authority.

21. Do you have any views on the level of enforcement of the regional body?

It is difficult to proffer a view on the COMESA Competition Commission's level of enforcement vis-à-vis Zimbabwe.

22. If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Mergers are notifiable domestically where they affect Zimbabwe. If the merger affects two or more Member States, notification will be required at COMESA level, without the need for domestic notification.

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