

COMPETITION

ECOWAS REGIONAL COMPETITION AUTHORITY LAUNCHES IN THE GAMBIA

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The Commission of the Economic Community of West African States (“**ECOWAS**”) officially launched its Regional Competition Authority today in Banjul, The Gambia.

The ECOWAS Regional [Competition](#) Authority (“**ERCA**”) is established to implement the Regional Competition Rules adopted by the ECOWAS Authority in 2008. These Rules essentially promote, maintain and encourage competition while enhancing economic efficiency in production, trade and commerce at the regional level.

ECOWAS constitutes a regional economic block of 15 West African members states, namely Benin, Burkina Faso, Cabo Verde, Cote d’Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

The establishment and function of the ECOWAS Authority is set out in Supplementary Act, A/SA.1/06/08 (“**the Supplementary Act**”).

Article 11(2) of the Supplementary Act empowers the ERCA to approve mergers, acquisitions, or other business combinations prohibited under Article 7 of the Supplementary Act, if such transaction is in the public interest.

Article 7 of the Supplementary Act provides that:

Every merger, takeover, joint venture, or other acquisition or business combination including interconnected directorships whether of a horizontal, vertical, or conglomerate nature between or among enterprises are prohibited where the resultant market share in the ECOWAS Common Market, or any significant part thereof, attributable to any good, service, line of commerce, or activity affecting commerce shall result in abuse of dominant market position resulting in a substantial reduction of competition.

Any merger prohibited by paragraph (1) of this Article shall be automatically void and of no effect in any Member State of ECOWAS.

Mergers, acquisitions or concentrations of enterprises prohibited by virtue of paragraph 1 of this Article may be authorized or exempted if the transaction concerned is in the public interest.

In terms of the Supplementary Act:

- “control” in relation to a company means the power of a physical or moral person to secure by means of:
 - the holding of shares or the possession of voting power in relation to that company; or
 - any other power conferred by the company’s constituent documents or other documents regulating the company,
 - the effective exercise of power of decision within the company; so that the company’s business is conducted in accordance with that individual’s wishes.

Being a specialised agency with adjudicatory and investigative powers, the ERCA also has a core mandate of keeping under review commercial activities in the Community market with a view to ascertaining practices which may distort the efficient operations of the market conduct or which may adversely affect the economic interest of consumers.

Taking the changing competition law landscape on the African continent into consideration is important. Understanding the legal requirements is imperative as a lack of knowledge and understanding could bring about significant legal and reputational consequences.



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