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Take note and prepare to comment – Proposed Amendments to the COMESA Competition Regulations

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and Chiara Ferri, Candidate Attorney

On 24 January 2024, the COMESA Competition Commission ("**CCC**") published its Draft COMESA Competition and Consumer Protection Regulations ("**Draft Regulations**"). COMESA competition law is aiming to keep pace with current market developments with various regulations being amended and replaced. Written comments on the Draft Regulations by stakeholders are due by 14 February 2024. It is therefore crucial to consider some of the most noteworthy proposed amendments and what effect these changes may have for organisations in the current competition arena.

Determination of Dominance

The Draft Regulations seek to amend the CCC's current determination of dominance. For example, the Draft Regulations specifically provide that if an undertaking holds a market share of at least 30% in the relevant market, it will be presumed to be dominant. In addition, it is stipulated that in determining whether an undertaking is dominant, consideration must be given to a host of factors, the most notable of which are –

- relevant market defined in terms of the product and the geographic context;
- barriers to entry, expansion and exit;
- history of competition and rivalry between competitors in the sector of activity;
- level of actual or potential competition in terms of number and size of competitors; and
- production capacity and product demand.

Draft Regulations Binding Member States

The Draft Regulations stipulate that Member States are precluded from relying on their own national laws where competition related conduct is covered under the CCC Regulations. The Draft Regulations seek to reinforce the notion that COMESA must be a one-stop-shop and therefore curtails the duplication of enforcement between national competition authorities and COMESA.

Transaction Value Threshold

Another proposed introduction in the Draft Regulations is that mergers in the digital market industry, which exceed a specified transaction value, must be notified to the CCC. The Draft Regulations neglect to define what a digital market industry is and it therefore remains unclear as to whether there are different thresholds for various markets.

Public Interest Grounds

The introduction of specific public interest grounds also form part of the Draft Regulations. If these are implemented, merging parties ought to be cognizant that the CCC will pay equal attention to public interest as it will to competition considerations.

Abuse of Dominance

On a final note, the Draft Regulations maintain the Current Regulations' approach which treats abuse of dominance as an outright prohibition. This rigid stance runs the risk of ignoring nuanced market dynamics. This could hinder legitimate conduct which may enhance efficiency and benefit consumers. In the comings days, practitioner workshops will be held to discuss and comment on the CCC's Draft Regulations. For access to the Draft Regulations, please click **here**.

Nkonzo Hlatshwayo

Director

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Phuti Mashalane

Director

View Profile