



ECOWAS
CEDEAO



EAEU
Eurasian
Economic
Union



4th Meeting of Regional Organizations on Competition

*(Hosted by the Eurasian Economic Commission as a side event
of the 22nd session of the UNCTAD IGE)*

04 July 2024, 08:30 – 09:45

(Breakfast served in the room at 08:30)

Room E-3006, Palais des Nations, Geneva

AGENDA

Language: English *(EEC provides simultaneous English-French translation)*

Topic: Judicial and Administrative Appeals of the Decisions and Acts of Regional Competition Authorities

**Moderator: Mr. Alexey Ivanov, Director, HSE-Skolkovo Institute for Law and Development and the
BRICS Competition Law and Policy Centre**

Speakers:

1. Eurasian Economic Commission
Mr. Maksim Yermalovich, Member of the Board-Minister on Competition and Antitrust Regulation
2. Eurasian Economic Union
Mr. Alexey Dronov, President of the EAEU Court
3. Arab Competition Network
Ms. Haya Ibrahim AlAnabr (on behalf of Chair of the Arab Competition Network, H.E. Dr Abdulaziz Alzoom), Head of the Partnerships and International Relations Unit, General Authority of Competition of Saudi Arabia
4. Egyptian Competition Authority
Dr. Mahmoud Momtaz, Chairman
5. COMESA Competition Commission
Ms. Alexia Waweru, Principal Legal Officer *(online)*
6. WAEMU Commission
Mr. Mélaïne Cohou Tchokponhoue, Director of Competition
7. ECOWAS Regional Competition Authority (ERCA)
Mr. Yahya Samateh (on behalf of Dr Simeon K. Koffi, Executive Director of ERCA), Head of Competition and Economic Research Division
8. ASEAN
Mr. Raksagecha Chaechai, Commissioner, Trade Competition Commission of Thailand
9. East African Community (EAC) Competition Authority
Mr. Denis Kabbale *(online)*

Points for discussion:

The previous meetings of the regional organizations have built up a rich agenda of the most outstanding issues relevant for the work of regional competition authorities (such as national and regional legislation, authority powers and competence, the investigation procedure, consideration and prioritization of cases, advocacy, and interaction between regional and national authorities). To take this discussion to a more advanced stage, this meeting invites participants to focus on judicial and other available procedures applied to appealing of the decisions and acts of regional competition authorities.

As regional competition regimes are becoming more prominent and developed, it is necessary that appeal regimes are aligned between the national and the regional levels without causing overlaps in jurisdiction and setting other obstacles in the functioning of regional competition authorities. For complex cases with a regional scale, this is an even more outstanding issue as administrative and judicial decision-making in this context needs to be fast and keep pace with the market. By way of example, appeals of the European Commission's decisions in the Google cases took long enough for Google's dominance to extend even further compared to the pre-appeal levels. To avoid this, regional competition authorities should constantly work on the speed and efficiency of their procedures bearing in mind strategies businesses use to slow up the appeal procedure.

Speakers are invited to share their experiences on the following aspects:

- Types of appeal procedures applicable to the decisions and actions of regional competition authorities;
- The role of national competition authorities in the appeal procedure;
- Strategies used by businesses to obstruct the appeal procedures;
- Successful and less successful cases;
- Features and problems of the appeal procedure, etc;
- Pathways to develop and improve regional laws and mechanisms on procedure.

Minutes of the 4th Meeting of Regional Organizations on Competition

*(Hosted by the Eurasian Economic Commission as a side event
of the 22nd session of the UNCTAD IGE)*

04 July 2024

(08:30 – 09:45, Room E-3006, Palais des Nations, Geneva)

Following the 3rd Regional Organizations meeting on July 7, 2023, the 4th Regional organizations meeting was held as a side event of the 22nd session of UNCTAD Intergovernmental Group of Experts on Competition Law and Policy (IGE) on July 4, 2024.

The 4th Meeting's objective was to discuss issues of Judicial and Administrative Appeals of the Decisions and Acts of Regional Competition Authorities. As regional competition regimes are becoming more prominent and developed, it is necessary that appeal regimes are aligned between the national and the regional levels without causing overlaps in jurisdiction and setting other obstacles in the functioning of regional competition authorities.

The participants shared experiences and challenges on the following aspects:

- Types of appeal procedures applicable to the decisions and actions of regional competition authorities;
- The role of national competition authorities in the appeal procedure;
- Strategies used by businesses to obstruct the appeal procedures;
- Successful and less successful cases;
- Features and problems of the appeal procedure, etc.;
- Pathways to develop and improve regional laws and mechanisms on procedure.

The meeting was opened by the Member of the Board-Minister on Competition and Antitrust Regulation (Minister on Competition) of Eurasian Economic Commission (EEC) Mr. Maksim Yermalovich, moderated by the Director of HSE-Skolkovo Institute for Law and Development and the BRICS Competition Law and Policy Centre Mr. Alexey Ivanov and facilitated by Armine Hakobyan, Deputy Director of the Department for Competition and Public Procurement Policy of the EEC.

1. **Mr. Maksim Yermalovich, the Minister on Competition of EEC**, welcomed the participants to the 4th meeting of Regional Organizations on Competition. Noted new regional organization, the Arab Competition Network, whose joining indicates the growing importance of the dialogue; mentioned that the Andean Community and Caribbean Community (CARICOM) were unable to attend in person but sent letters in

support of the dialogue of Regional Organizations on Competition. Stated that at the previous three meetings issues on national and regional legislation, authority powers and competence, investigations, procedures, advocacy, and interactions between regional and national authorities were discussed.

Highlighted the Common Market for Eastern and Southern Africa (COMESA) and Eurasian Economic Commission representatives' recent meeting and the importance of the topic of judicial and administrative appeals.

To make the dialogue more practical, the President of the Court of the Eurasian Economic Union was also invited to the 4th Meeting.

2. Mr. Alexey Dronov, President of the Court of the Eurasian Economic Union (EAEU Court), provided an overview of the EAEU Court's role in ensuring uniform application of the law, including competition regulations. Noted, that the court has examined 16 cases related to competition law, the second most important area after the customs cases.

Highlighted key EAEU Court decisions on Competition.

Raised challenges that may need to be addressed by the Court in the future:

- Lack of access to justice for individuals (e.g. company officials) who are fined by the Eurasian Commission but cannot judicially appeal the decision, since the law only allows appeals by member states, businesses, and individual entrepreneurs.

- Uncertainty on the ability of economic entities to challenge either only final decisions, or intermediate acts, investigative or procedural actions taken by the Eurasian Commission as well.

- The burden of proof of the validity of the Commission decision. Does it lie within the Commission, is it absolute or may it be reversed when the Commission has managed to provide sufficient evidence to support the conclusion that a violation of competition rule has taken place and that the economic entity in question is liable for this violation.

- Standard of judicial review in matters of complex economic assessments when the Commission often has to analyze the economic effect of anticompetitive practices.

These problematic issues highlight some of the key challenges faced in designing an optimal system for judicial and administrative appeals of competition authority decisions.

3. Ms. Haya Ibrahim AlAnabr, Head of the Partnerships and International Relations Unit, General Authority of Competition of Saudi Arabia, introduced the Arab Competition Network (ACN) on behalf of Chair of the Arab Competition Network, H.E. Dr. Abdulaziz Alzoom. Ms. Haya Ibrahim AlAnabr provided an information on CAN, which unites 18 countries, an overview of the ACN's objectives, working groups, and ongoing projects, including studies, awards, and a digital library. Noted that ACN does not have an appeal cases, but has a good cooperation among the regional states.

Highlighted current status of competition in MENA region, noting efforts to develop a competition agreement in the region; mentioned joint regional efforts in competition cases, provided examples of cooperation between Saudi Arabia, Egypt and Kuwait on merger and acquisition cases; the adjudication committee of Saudi Arabia that reviews the regulator's recommendations and the possibility of appeals to administrative courts.

4. **Dr. Mahmoud Momtaz, Chairman of Egyptian Competition Authority**, as a founder of Arab Competition Network and as a Commissioner at COMESA Competition Commission (which is kind of a court of first instance), emphasized two problems: the importance of educating the judiciary on competition principles and the change of the judiciary. Even with specialized courts, there can be challenges in accepting the regulator's expertise. Noted: efforts by the Arab Competition Network to train judges; the idea to create a kind of knowledge hub and so-called knowledge management of competition within the judiciary body and the idea of having a digital library of old cases for judges. In addition, noted the diversity of judicial appeal models (administrative, criminal, etc.) in the Arab world and the need for a common understanding of competition law.

5. **Ms. Alexia Waweru, Principal Legal Officer of COMESA Competition Commission**, explained the two-level appeal system at COMESA, which regulates 21 countries in Africa: first to an internal appeals body, then to the COMESA Court of Justice. Noted that only two cases have been appealed so far out of over 430 merger and 45 restrictive practices decisions handled by the Commission, and described successful appeal case. Shared plans to restructure the adjudication mechanism to enhance transparency and fairness, as the current system is not practical and highlighted the importance of training judges, as COMESA plans to hold a training session for member state judges later this year.

6. **Mr. Mélaine Cohou Tchokponhoue, Director of Competition, WAEMU Commission**, outlined the exclusive jurisdiction of the WAEMU Court of Justice over competition matters (including increase or decrease of the fines), with no role for national courts; noted jurisdiction of national judges on compensation of damages once the Court of Justice has made a decision and imposed sanctions. Highlighted challenges like systematic appeals to delay enforcement, as businesses often seek suspension of enforcement measures; importance of training the judges; strategies to reduce court recourse, such as making the competition authority the official representative before the court and noted that in 10 cases examined, the court's decisions have aligned with the commission's position.

7. **Mr. Yahya Samateh, Head of Competition and Economic Research Division of ECOWAS Regional Competition Authority (ERCA)**, on behalf of Dr Simeon K. Koffi, Executive Director of ERCA, introduced the young ECOWAS Competition Authority,

established in 2019 with the staff only 5 people. Explained the authority's mandate to investigate and make decisions, with appeals going solely to the ECOWAS Court of Justice. Noted that while some member states still lack national competition authorities, the ECOWAS authority is working to harmonize regional competition laws, and discussed the challenge of criminal competition offenses, where jurisdiction lies within the member states, and the need to find mechanisms to address this.

8. Mr. Raksagecha Chaechai, Commissioner, Trade Competition Commission of Thailand, Chairperson of the ASEAN Experts Group on Competition, shared insights on ASEAN's principles of consensus, mutual respect, and non-interference guiding regional cooperation. Highlighted ASEAN initiatives like the Merger Information Sharing Portal and the ASEAN Competition Framework Agreement on Competition with the aim to establish a fair business environment in ASEAN, where consumer can benefit from a wide choice of goods and service at their competitive price. Noted challenges around judicial understanding of competition issues and the use of MoUs to improve cooperation between competition authorities and the judiciary.

9. Mr. Denis Kabbale, Competition Expert of the Competition Authority of EAC, provided an overview of the EAC competition law framework and appeal mechanisms. Noted the recent repeal of administrative appeals, leaving the EAC Court of Justice as the sole avenue for appeals and identified the need to address jurisdiction over criminal competition offenses as a challenge, as these fall under member state jurisdiction.

In conclusion Mr. Yermalovich, the Minister on Competition of EEC:

- Summarized the key issues, including the proposal to create a library of cases for knowledge sharing, and importance of trainings for judges;
- Noted that there are challenges that regional organizations need to address together;
- Highlighted appeals processes and judicial cooperation as important areas;
- Invited participants to suggest topics for the next 5th Meeting of Regional Organizations;
- Expressed interest in continuing regional dialogue and cooperation on competition policy, noting the need to expand meeting capacity for future sessions.

As a result of the 4th Meeting of Regional organizations on Competition, the participants agreed to:

- continue holding meetings of Regional Organizations on a regular/annual basis;
- send proposals to form the topic of the next meeting of Regional Organizations.