



3rd Regional Organizations Meeting on Competition

7 July 2023, 08:30 – 09:30

Room XXVI (26), First floor, E building, Palais des Nations, Geneva

Breakfast will be provided in the room at 8:00

AGENDA

Language: English (translation into French and Spanish)

Moderator: Ms Armine Hakobyan, Deputy Director of Competition and Public Procurement Policy
Department of the Eurasian Economic Commission

Speakers (5-7 minutes for each speaker):

1. Eurasian Economic Commission
Mr. Bakyt Sultanov, Member of the Board-Minister in Charge of Competition and Antitrust Regulation
2. CARICOM Competition Commission (*video recording*)
Nievia Ramsundar, Executive Director
3. COMESA Competition Commission
Dr. Willard Mwemba, Director & Chief Executive Officer
4. EAC Competition Authority (*online*)
Lilian K. Mukoronia, Registrar
5. ECOWAS Regional Competition Authority
Dr. Simeon K. Koffi, Executive Director
6. WAEMU Commission
Mr. Méline Cohou Ttchokponhoue, Head of the Investigations and Litigation Division

Participants will discuss the interaction between regional and national competition authorities

Each regional competition authority is connected in its activities with national competition authorities. Therefore, the matter of coordination of such interaction is particularly relevant.

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

- Mechanisms and the procedure of interaction in the process of competition case consideration. The role of national competition authorities in the decision-making.
- Influence of national competition authorities on the development of regional competition policy.
- Features and difficulties of interaction with national competition authorities.

Minutes of the Third Regional Organizations Meeting on Competition

7 July 2023

08:30 – 09:30 (CET)

Palais des Nations, Geneva

Following the second Regional Organizations meeting on 21 July 2022, the third Regional organizations meeting was held as a side event of the twenty-first session of UNCTAD Intergovernmental Group of Experts on Competition Law and Policy (IGE) on 7 July 2023.

The meeting's objective was to discuss issues of interaction between regional and national competition authorities (NCAs). Each regional competition authority is connected in its activities with NCAs. Therefore, the matter of coordination of such interaction is particularly relevant.

Participants shared their experiences on the following aspects:

- Mechanisms and the procedure of interaction in the process of competition case consideration. The role of NCAs in the decision-making.
- Influence of NCAs on the development of regional competition policy.
- Features and difficulties of interaction with NCAs.

1. The meeting was opened and moderated by the Eurasian Economic Commission (EEC).

The EEC informed about its experience on the issues brought up for discussion during the meeting. In particular, it was noted that the interaction between the EEC and NCAs is governed by the legal framework established by the Eurasian Economic Union Treaty and the EEC's regulations on competition. The interaction between the EEC and NCAs takes place at all stages of a case. The EEC also highlighted the weighty role of NCAs at all of those stages, especially in the decision-making. With regard to policy making the EEC informed that the Treaty on the Eurasian Economic Union provides that where there is a mutual interest in discussing the most topical issues of law enforcement practice, information exchange and problems of harmonization of legislation, the EEC together with NCAs holds meetings at the level of heads of Member States' authorities and the Minister for Competition of the EEC. Further, the EEC noted that there are difficulties of interaction with NCAs, which are particularly apparent as regards unannounced inspections (dawn raids) and dealing with confidential information. The EEC explained that these and other difficulties are connected with the difference in competition procedural rules, which are not harmonized in the Eurasian Economic Union. The NCAs are actively involved in the work of the Commission and have a great deal of influence over it. As for Regional Organizations meetings, EEC suggested to continue them on a regular basis and also to institutionalize them.

2. The CARICOM Competition Commission (CCC) submitted a recorded video presentation on the topic of its interaction with NCAs. Triggers for the CCC to investigate in accordance with the Chapter VIII of the Revised Treaty of Chaguaramas (2001) were presented. The CCC also

informed about the conditions for its jurisdiction to intervene on a cumulative consideration of the business conduct. The CCC noted that in all investigative triggers it can only intervene through NCA or other competition competent authority. The reasons for this were also listed. The CCC therefore includes NCAs in its preliminary assessments and investigations, particularly with proprio motu actions as these are reliant on NCA primary investigations, with collaboration on assessment and jurisdictional criteria. The CCC also mentioned that it does not include NCAs in its final adjudications as the CCC is an independent regional body. After that, it was pointed out that regional policy for competition and consumer matters are dependent upon Member State consultation and agreement as policies agreed at the regional level are required to be prescribed in national laws. Next, the CCC listed challenges in interactions with NCAs. The CCC noted that it is working on solutions to these challenges by reviewing Rules of Procedure, assessing and ensuring clear process for consultation with NCAs and competition specific competent authorities, establishing of cooperation agreements between the CCC, NCAs and competition sector-specific competent authorities and also by establishing of "recognition clauses" in national legislation for sector-specific competent authorities.

3. The COMESA Competition Commission presented its experience on interaction between regional authorities and NCAs. Specifically, it was mentioned that the COMESA Competition Regulations recognized that Member States should work together with the NCAs, so the Commission is obliged to involve all NCAs whenever it has a case, especially during the investigation process, but the NCAs are not included in the decision-making. The COMESA Competition Commission also noted that it is deliberately engaged in MOUs with NCAs, which spell out the cooperation framework that includes how cases are to be handled to avoid inconsistent decision making and to allow for collaboration on cases with cross border effect. As for the influence of NCAs on the development of regional competition policy the COMESA Competition Commission stressed that in this matter the acceptance of the NCAs is mandatory. In addition the COMESA Competition Commission works closely with the NCAs in regulation of the regional competition law through such activity as harmonization of national and regional competition laws. The COMESA Competition Commission also informed about the difficulties of interaction with NCAs, such as refusal by some Member States to accept the supremacy of the COMESA Competition Regulations on certain matters, lack of awareness on regional competition law matters, lack of financial and human resources at both regional and national levels, etc. Finally, the importance of cooperation with other regional competition authorities, such as EEC, CARICOM EAC, WAEMU, ECOWAS, CEMAC, and EC was emphasized.
4. The EAC Competition Authority (EACCA) started its presentation with general introduction about the EAC. Then the EACCA described the legal framework for its establishment and competition law and policy. Information was then provided on mechanisms and the procedure of interaction between the EACCA and NCAs in the process of competition case consideration. It was also mentioned that NCAs are engaged in the process of developing policy documents, legal instruments and other toolkits that facilitate enforcement. The EACCA stated that NCAs are obliged to cooperate and support the activities of the EACCA and the

implementation of legislation. Then the issue of difficulties of interaction was raised by the EACCA. Some of them were listed: other competing priorities, overlapping membership, statutory limitations, rugged terrain, and resource constraints. In conclusion, the EACCA highlighted the importance of cooperation of regional competition bodies and NCAs to achieve the mandate that it intended for them. Also the significance of sharing experiences between different regional competition blocks was recognized.

5. The WAEMU Commission shared its presentation on cooperation with NCAs, where the typology of national competition structures was first described in detail. It was then noted that the basis for cooperation between the WAEMU Commission and the NCAs is the implementation of Community competition law centralized around the WAEMU Commission, with the key involvement of the NCAs in this process. Further, the delimitations of the areas of activity were presented, as well as the conditions for cooperation between the WAEMU Commission and the NCAs. The WAEMU Commission also focused on importance of cooperation between WAEMU and organizations such as ECOWAS, COMESA, AfCFTA and UNCTAD. The WAEMU Commission concluded that the coexistence of national and regional competition legislation is fairly good, but there is little cooperation from Member States and slow decision-making process. In this regard, reforms are currently underway to ensure greater participation of Member States.
6. The ECOWAS Commission submitted a recorded video presentation on the topic of its interaction with NCAs and shared general information about ECOWAS Regional Competition Authority (ERCA) and ECOWAS regional competition framework. The main legal instruments in place that pave the way for the operationalization of the regional competition framework were listed and include: Additional Act A/SA.3/12/21 amending Additional Act A/SA.2/12/08 establishing the ECOWAS Regional Competition Authority, Regulation C/REG. 21/12/21 on the powers and composition of the ERCA Council, Regulation C/REG. 24/12/21 on ERCA procedures, including procedures governing the investigation, decision-making, sanctioning, compensation, and collaboration with competent national authorities, Regulation C/REG. 23/12/21 on procedural rules for mergers and acquisitions, Regulation C/REG.22/12/21 on leniency and immunity rules and procedures.
7. At the end of the meeting, a representative of the Federal Antimonopoly Service of the Russian Federation (FAS) made following statements. The FAS stated that discussion of interaction between regional and national competition authorities could be uncompleted without the voice of NCAs. It was also mentioned that Russia is a Member State of many international and transnational organisations which have very specific institutional design (for example, the Union State of Russia and Belarus, Eurasian Economic Union, the Interstate Council for Antimonopoly Policy of CIS countries, BRICS). As for BRICS, the FAS noted that there is active interaction between the Member States of the organization, in particular in the field of competition. The competition authorities of BRICS countries organize joint conferences on a regular basis, create separate working groups, develop joint documents on the most topical competition topics, etc. In conclusion, the FAS emphasized that BRICS

countries are open to exchange experiences with other countries of the world, for example, in format of BRICS+.

8. As a result of the meeting, the participants agreed to:

- continue holding meetings of Regional Organizations on a regular /annual basis and also to institutionalise them (as a side event of the IGE),
- agreed to send proposals to form the topic of the next meeting of Regional Organizations, and also considered the possibility of discussing at the next meeting an appealing against the actions and decisions of a competitive body,
- invite to participate in meetings not only Regional Organizations, but also national competition authorities,
- ask UNCTAD to include a separate session of Regional Organizations on the agenda of the twenty-second session of UNCTAD Intergovernmental Group of Experts on Competition Law and Policy in 2024.

3rd Regional Organizations meeting

List of participants

Moderator

Armine Hakobyan	Deputy Director of the Department for Competition and Public Procurement Policy	Eurasian Economic Commission
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Speakers

Bakyt Sultanov	Member of the Board-Minister in Charge of Competition and Antitrust Regulation	Eurasian Economic Commission
Nievia Ramsundar	Executive Director	CARICOM Competition Commission
Willard Mwemba	Director & Chief Executive Officer	COMESA Competition Commission
Lilian K. Mukoronia	Registrar	East African Competition Authority
Sacko Seydou	Program Officer Competition & Trade	ECOWAS Commission
Méline Cohou Tchokponhoue	Head of the Investigations and Litigation Division	WAEMU Commission

Participants

Andrey Tsyganov	Deputy Head	Federal Antimonopoly Service of the Russian Federation
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3rd Regional organizations meeting on competition

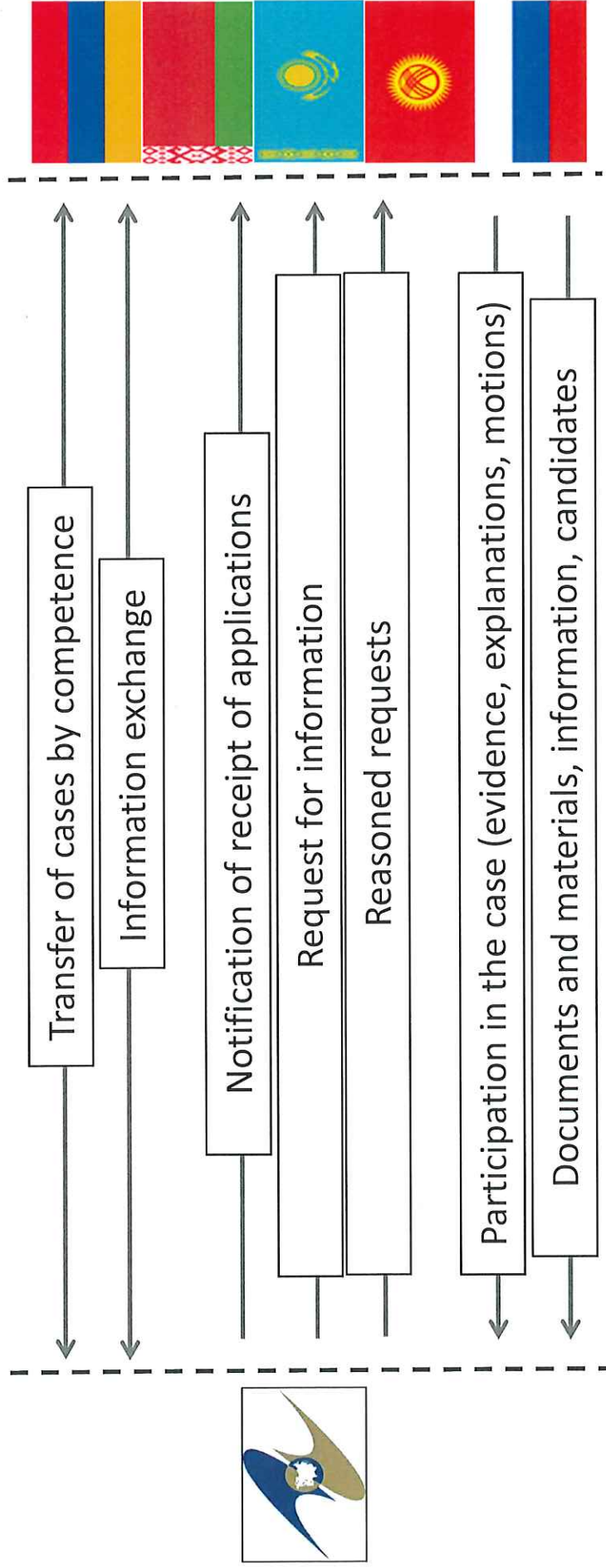
Bakhyt Sultanov

Member of the Board – Minister in charge of
Competition and Antitrust Regulation
Eurasian Economic Commission

*Side event to the 21st Session of
Intergovernmental Group of Experts on
Competition Law and Policy
7 July 2023, Geneva*

Interaction between the EEC and national authorities is carried out at all stages of the case consideration

(in accordance with the Treaty on the EAEU and the EEC regulations on competition)



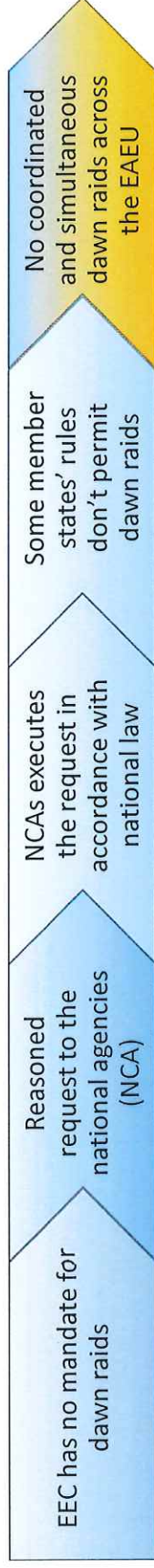
The Eurasian Economic Union (*structure and decision-making*)

EAEU bodies	Structure
Supreme Eurasian Economic Council	Heads of the Member-States
Eurasian Intergovernmental Council	Heads of the Member-States Governments
Eurasian Economic Commission - Council of the Commission - Board of the Commission	- Vice-Prime Ministers of the Member-States - 2 Members (Ministers) from each Member-State
Court of the Eurasian Economic Union	2 judges from each Member-State

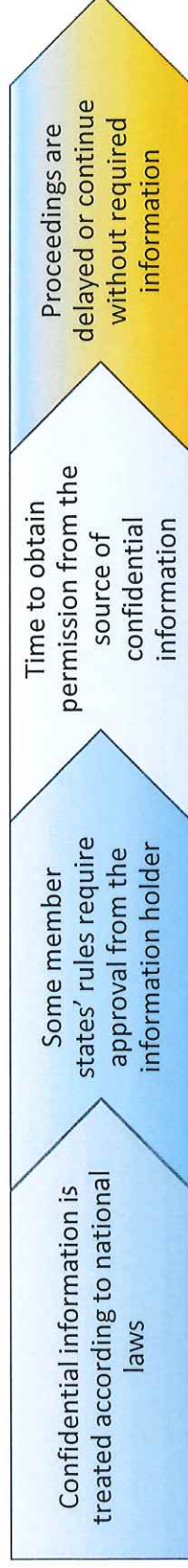
NCA's receive copies of the draft decisions submitted to the Board, and can submit their comments and proposals to the Board prior to the adoption of the final decision.

Difficulties of interaction with national competition authorities

Dawn raids



Confidential information

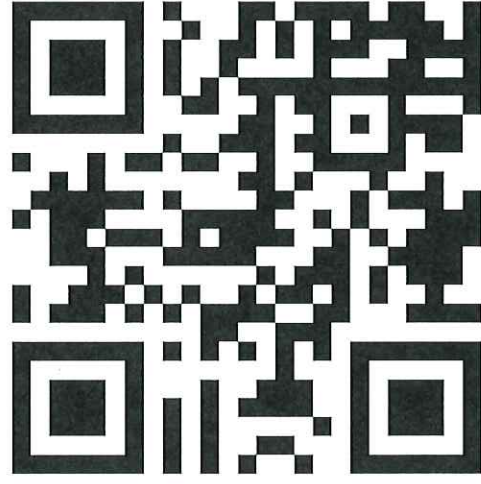


**Next 4th meeting
of Regional Organizations on Competition**

July 2024



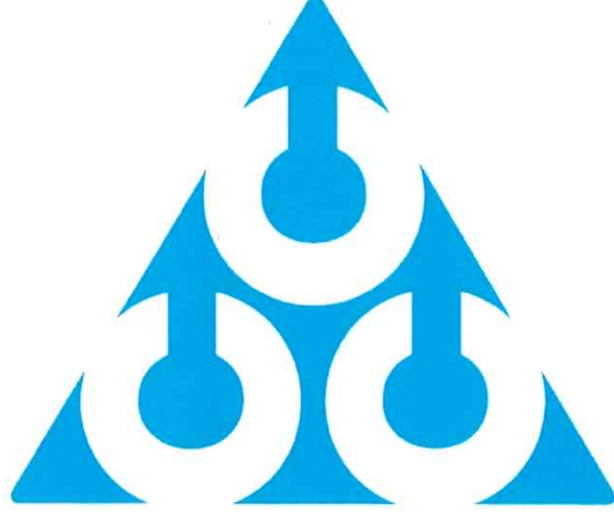
<https://eec.eaeunion.org/>



3rd Regional Organisations
Meeting
Side event of UNCTAD
Intergovernmental Group of
Experts on Competition Law and
Policy
Twenty First session 2023:

***“CCC and its interaction with
national commissions”***

Nievia Ramsundar
Executive Director
CARICOM Competition Commission
7th July 2023





CARICOM
competition
commission

Investigative Jurisdiction

- The Revised Treaty of Chaguaramas 2001, Chapter VIII, provides for the following **triggers** for CCC to investigate:
 - (i) Art. 175 (1) Member State (MS) request regarding business conduct (BC) by an enterprise located in another MS
 - (ii) Art. 175 (2) Council of Trade and Economic Development (COTED) request regarding BC by an enterprise in the CARICOM Single Market and Economy (CSME)
 - (iii) Art. 176 CCC *Propio Motu*.
- CCC **assesses** its jurisdiction to intervene on a cumulative consideration of the BC:
 - (i) Occurring in the CSME
 - (ii) Prohibited under national competition legislation in the MS's
 - (iii) "Cross border transaction/conduct" or likely to have a "cross border effect"
 - (iv) Having the likelihood to "prejudice trade" and "prevent, restrict or distort competition within the CSME" (for Art. 176 both (iii) and (iv) must be present).






Investigative NCA interaction

- In all three investigative triggers, CCC can only intervene through a NCA or other competition competent authority for the following reasons:
 - (i) There is no community law and no direct effect/application of agreed community competition policy (CCP) unless transformed into national law
 - (ii) Art. 170(3) requires NCAs to cooperate with CCC for compliance with the rules of CCP
 - (iii) Art. 174 (2) clearly requires CCC to conduct its investigations in accordance with national law particularly for subpoenas, discovery and other legal procedures.
 - Trinidad Cement Limited v The Competition Commission CCJ Application No. 1 of 2012, the CCJ held:
 - (i) That the CCC Rules of Procedure were silent on a definition of “interested parties”, although Art. 175 mandates CCC consultation with and notification to this group
 - (ii) The issue of jurisdiction can also be considered with inputs from “Member States, COTED or possibly the National Competition Authorities”.
 - CCC therefore includes NCAs in its **preliminary assessments and investigations**, particularly with *proprio motu* actions as these are reliant on NCA primary investigations, with collaboration on assessment and jurisdictional criteria.
 - CCC does not include NCAs in its **final adjudications** as the Commission is an independent regional body.
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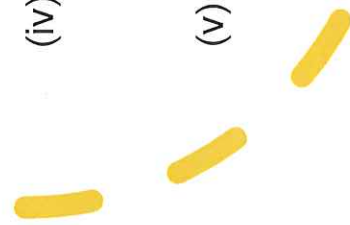


Policy Consultation

- Regional policy for competition and consumer matters are dependent upon Member State consultation and agreement as policies agreed at the regional level are required to be prescribed in national laws.
 - NCAs are primary members of stakeholder groups for policy development and review, followed by competent ministerial officials, but it is noted that the level of consultation with NCAs will depend upon the resultant degree of national interaction or action required from the policy.
 - Recently concluded Regional Merger Policy included NCAs in key stakeholder steering group prior to wider Member State consultations. When implemented, NCAs will have to screen mergers for national and regional thresholds and notify CCC if a transaction meets the latter.
 - Due to the prevalence of sector – specific regulation with a competition component, these agencies also form a critical consultation stakeholder in policy development.
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Challenges in interactions with NCAs

- Art. 176 RTC requires CCC in its proprio motu jurisdiction to first request the NCAs to undertake preliminary examinations of the BC and only if unsatisfactory, can CCC engage in its own investigation. Findings from both the NCA and CCC investigations must then be subject to MS consultation on investigative jurisdiction. Where there is no agreement, CCC is to cease until COTED decides the matter.
 - Tensions are inbuilt into the system as crafted in the RTC:
 - (i) COTED is arbiter of dispute when it can also refer matters to CCC for investigation and MS can be “interested parties”; as opposed to CCC first determining its jurisdiction (kompetenz-kompetenz) and then the CCJ as further adjudicator of jurisdiction.
 - (ii) NCAs are subject to “general directions of public policy interests” and regional commission may not be so hindered.
 - (iii) Where NCAs view business conduct as wholly national matters so regional harm cannot be investigated.
 - (iv) Delay due to priority of national matters over and above cross border/regional matters. Recent example of request for investigation under Art. 176 involved 2 MS – request made March 2022 with deadline #1 June 2022, extended to end August 2022. MS #1 delivered 1st September 2022, MS #2 delivered **April 2023**.
 - (v) By taking individual enforcement action on matters which may have a cross-border anti-competitive effect, national competition authorities:
 - Undermine the implementation of the regional competition policy and limits the Commission’s ability to make determinations as they may conflict with those of national authorities;
 - Leave enforcement gaps in other jurisdictions impacted by the anti-competitive business conduct.
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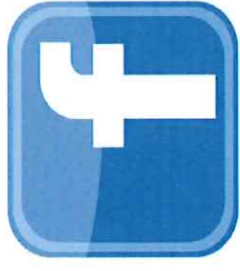
Solutions

- CCC currently reviewing Rules of Procedure and will assess and ensure clear process for consultation with NCAs and competition specific competent authorities as needed, with clear timelines.
 - Establishment of cooperation agreements between CCC and NCAs.
 - Establishment of cooperation agreements between CCC and competition sector-specific competent authorities, to address investigation and enforcement gaps in national agency competences.
 - Establishment of “recognition clauses” in national legislation for sector-specific competent authorities e.g. Guyana Telecommunications Act: for telecommunications matters, the PUC **shall be and shall perform the responsibilities, functions and powers of the national competition authority of Guyana with respect to Chap. VIII, RTC.**
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3RD REGIONAL ORGANISATIONS MEETING

**Interaction Between Regional and National Competition Authorities:
The experience of the COMESA Competition Commission**

Dr Willard Mwemba
DIRECTOR & CHIEF EXECUTIVE OFFICER
COMESA Competition Commission

Outline

1. Competition regulatory framework in the COMESA Region
2. Importance of cooperation between competition regulators
3. Mechanisms and the procedure of interaction in the process of competition case consideration
4. Influence of national competition authorities on the development of regional competition policy
5. Features and difficulties of interaction with national competition authorities

Competition regulatory framework in the COMESA Region

- The COMESA Region is composed of 21 Member States, population of **USD 615.8 Billion** and generates a GDP of about **USD 966.6 Billion**
- In the COMESA Region, at the apex is **the Treaty on the Establishment of the Common Market for Eastern and Southern Africa** which is the foundation upon which competition and consumer protection is regulated.
- The Governments of the 21 Member States (drawn from the North, East and South of Africa) through the Treaty agreed to promote competition within the Common Market (Article 55).
- The Treaty sets the basis for the development and enactment of the **COMESA Competition Regulations** (Article 55 (3)) to regulate competition within the Member States.
- Provides that the Regulations made in pursuance of the Treaty are binding on all Member States in their entirety (Article 10).
- The Treaty establishes the COMESA Court of Justice and COMESA Institutions.

Competition regulatory framework in the COMESA Region

- The COMESA Competition Regulations vest the COMESA Competition Commission with the mandate to; enforce the Regulations with respect to anti-competitive practices, to assess mergers & acquisitions which have a cross border effect in the COMESA Region and regulate consumer protection.
- **18 of the 21 COMESA Member States**, including Uganda whose law awaits assent by the President, have competition laws and institutions. Uganda being the latest Member State to enact a law in the year 2023 to regulate competition.
- The enactment of laws and institutions by these 18 Member States is evident that the Governments of the COMESA Member States are living up to their commitment as enshrined in the COMESA Treaty.
- The COMESA Competition Commission in an effort to enhance regulation of competition and consumer protection in the COMESA Region has enacted various Rules and Guidelines to provide guidance to its stakeholders on the procedures relating to the application of the Regulations.

Importance of cooperation between competition regulators

The OECD observes that cooperation:

- Ensures efficient and effective enforcement of competition laws, and avoid unnecessary inconsistencies and duplication of efforts;
- Helps develop and maintain trust and transparency between jurisdictions;
- Supports and facilitate efficient and effective international business compliance with competition laws; and
- Improves and develops the techniques, tools and frameworks needed for effective international competition enforcement.

According to Scholars such as Professor Frederic Jenny (Chair of the OECD Competition Committee), benefits of cooperation include:

- the enhanced ability for competition authorities to fight against transnational cartels or transnational anti-competitive mergers;
- the reinforcement of national competition authorities of small countries when confronted with powerful multinationals, which can threaten to leave the country.

Importance of cooperation between competition regulators

- Professor Eleanor Fox: *cooperation is particularly needed ... for developing countries, which face extraordinarily scarce resources and whose poor populations are often the targeted victims.*
- Mwemba and Askin: *as regional competition regimes often enforce regional competition laws with support from national competition authorities and interact with other competition authorities, they also benefit from international enforcement cooperation.*
- The COMESA Member States are at different stages of implementing their competition laws and institutions, therefore through a cooperation mechanism being put in place, the Commission can step in to address gaps where they exist to enhance regulation in the region.

Mechanisms and the procedure of interaction in the process of competition case consideration.

- Preamble to the COMESA Competition Regulations recognizes that Member States should cooperate at the regional level in implementing national competition legislation to eliminate the harmful effects of anti-competitive practices.
- If the national and regional competition law are not speaking in harmony, there will be inconsistency in application and may result in forum shopping by parties to cases.
- Closer enforcement cooperation with the Member States in the form of notification, exchange of information, coordination of actions, and consultation with the Member States is thus encouraged and anticipated as part of the Commission's mandate and institutional design.
- The Commission has to date signed 14 Memorandum of Understandings with national competition and competent authorities. These MOUs spell out the cooperation framework which includes how cases are to be handled by both the national and competition regulator to avoid inconsistent decision making, allow for coordination and collaboration on cases with cross border effect.

Mechanisms and the procedure of interaction in the process of competition case consideration.

The Commission has also helped Member States' national competition authorities build capacity to enhance competition law enforcement and develop the relationships and trust that further support international enforcement cooperation through activities such as:

- Annual training of case handlers at national competition authorities to enhance the assessment of competition cases.
- Facilitating attachment of staff from new and less experienced competition authorities to experienced competition authorities.
- Providing advisory opinions to national competition authorities on matters that fall short of the regional dimension but affect only one country.
- Conducting market studies with the Member States to identify markets and sectors susceptible to anti-competitive behaviour.

Influence of national competition authorities on the development of regional competition policy

The Commission works closely with the COMESA Member States in regulation of the regional competition law through activities such as:

- Harmonisation of the national and regional competition laws, which has at times seen the Commission amend its own approach on procedural and substantive matters having learnt from the experience and approach of the national competition authorities.
- Instrumental in the informing of legislative proposals on competition which are under consideration at the national level.
- Training of key stakeholders at the ministry level, the executive, the legislature, the judiciary, among others.

The buy-in of Member States to the regional competition policy is essential for effective enforcement of both the national and regional laws to prevent duplication of work and at the same prevent gaps in enforcement that could harm competition and consumers.

Features and difficulties of interaction with national competition authorities

- Initial teething problems such as refusal by some Member States to accept the supremacy of the COMESA Competition Regulations on certain matters. In some cases, this resulted in double notification of regional mergers at both national and regional level.
- However, these have since been resolved through cooperation agreements negotiated and signed with the national competition authorities of the COMESA Member States.
- Other challenges include lack of awareness on regional competition law matters and lack of financial and human resources at both regional and national levels.
- Interactions between national and regional authorities become easier where there is similarity in assessment approach in the two laws, and similar level of experience by the authorities.
- Assisting Member States to build capacity through technical assistance and through joint investigations.

Features and difficulties of interaction with national competition authorities

Cooperation with Other Regional Competition Authorities:

- The Commission recognizes that it may not have sufficient extra-territorial jurisdiction on conduct outside the COMESA region.
- Therefore, it has focused on entering in both formal and informal cooperation with other RCAs.
 - Formal cooperation with Eurasian Economic Commission and CARICOM.
 - To enter into cooperation arrangements with EAC, WAEMU, ECOWAS, and CEMAC.
 - Informal but robust cooperation with the EC and the US FTC.



Thank You
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EAST AFRICAN COMMUNITY

One People, One Destiny



EAST AFRICAN COMMUNITY COMPETITION AUTHORITY

**3RD REGIONAL ORGANIZATIONS MEETING ON
COMPETITION**

**INTERACTION BETWEEN REGIONAL AND NATIONAL COMPETITION
AUTHORITIES**

7th July, 2023



Lilian Mukoronia, Registrar, EACCA



Presentation outline

- Introduction
- Mechanisms and the procedures of interaction in the process of competition case consideration
- Influence of national competition authorities on the development of regional competition policy
- Features and difficulties of interaction with national competition Authorities

Introduction

- The East African Community (EAC) is a regional intergovernmental organization of 7 Partner States: The Republic of Burundi, the Democratic Republic of the Congo, the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan, the Republic of Uganda, and the United Republic of Tanzania, with its headquarters in Arusha, Tanzania.
- Population estimate 283.7 million citizens, of which over 30% is urban population
- Land area of 4.8 million square kilometres
- Combined Gross Domestic Product of US\$ 305.3 billion



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- Article 9 (2) of the Treaty for the Establishment of the East African Community (Treaty) provides for establishment of EAC institutions
- Article 75(1)(i) of the Treaty - Commitment to adoption of competition principles
- Article 21 of the of the EAC Customs Union Protocol (2005) and Article 33-36 of the EAC Common Market Protocol (2010) provides for competition and consumer protection - The Partner States shall prohibit any practice that adversely affects free trade including any agreement, undertaking or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Community; and shall promote the interests of the consumers in the Community



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- The Council adopted the East African Competition policy at its meeting held on 13th January, 2004
- EAC Competition Act came into force in 2006
- Section 37 of the EAC competition Act, 2006 (the Act) establishes the EAC Competition Authority (EACCA) as an institution of EAC



Mandate and Functions of EACCA

Mandate – Promote and protect fair competition and to provide for consumer welfare in the Community.

The main **functions**–

- Regulation of market structure
- Regulation of market conduct
- Protecting consumer welfare;
- Advocacy and capacity building
- Matters with cross-border effect



Mechanisms and the procedure of interaction in the process of competition case consideration

8

- Having Cooperation frameworks to provide for interaction with national competition Agencies
- Cooperation ensures coherence regarding enforcement of cases – uniformity in application of competition principles and decision making
 - Information sharing – views, ideas, information on methodologies and markets
 - Conducting joint market inquiries that will inform on the investigations
 - Conducting investigations – field work/ site visits together



Mechanisms and the procedure of interaction in the process of competition case consideration

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- Conducting enforcement actions on behalf of EACCA (request for information, information gathering, meetings, dawn raids)
- Consultations between the EACCA and NCA officials
- Sharing of experiences regarding the best practices
- Case analysis for possible remedies - NCAs required to implement the decisions of the EACCA



Influence of national competition authorities on the development of regional competition policy

- NCAs engaged by EACCA throughout the process of developing policy documents, legal instruments and other toolkits that facilitate enforcement – buy-in
- Section 43 of the Act, NCAs obligated to cooperate and support the activities of the Authority and implementation of the Act.
- EACCA Commissioners (Board) from all Partner States – policy guidance and determination of cases
- Support EACCA in building capacity in Partner States without competition laws or institutions - expertise and enforcement experience can be ‘shared’ by EAC experienced national competition Agencies



Features and difficulties in of interaction with National Competition Authorities

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- Competing / different priorities – delays in implementing planned activities
- Overlapping membership
- Statutory limitations – need to align laws with regional laws
- Rugged terrain – some Partner States no Competition Laws/ Institutions/
focal persons
- Resource constraints





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COOPERATION COMMISSION UEMOA ET STRUCTURES NATIONALES DE CONCURRENCE

21^{ème} Session du Groupe

**Intergouvernemental des experts du droit et
de la politique de la concurrence 3^{ème}
réunion des organisations régionales)**



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INTRODUCTION : PLAN

I. TYPOLOGIE DES STRUCTURES NATIONALES DE CONCURRENCE

II. COOPÉRATION ENTRE LA COMMISSION ET LES STRUCTURES NATIONALES DE CONCURRENCE

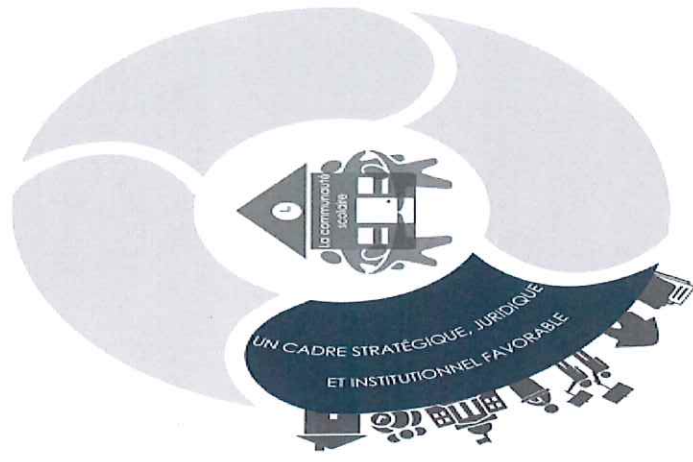
II. COOPÉRATION ENTRE LA COMMISSION ET LES ORGANISATION INTERNATIONALES SŒUR (CEDEAO, COMESA, ZLECAF, CNUCED)

PLAN

CONCLUSION

I- TYPOLOGIE DES STRUCTURES NATIONALES DES ETATS MEMBRES

Les structures nationales des Etats membres de l'UEMOA



Caractéristique	Structure	Niveau d'intervention
Structures de l'Administration centrale	Direction de la Concurrence / Direction du Commerce Intérieur	Définition et mise en œuvre de la politique nationale de concurrence (pratiques restrictives de concurrence) Relais de la Commission pour la mise en œuvre de la PCC. Participent au Comité Consultatif de la Concurrence (CCC) mandat de 3 ans
Autorités administratives indépendantes	Commission Nationale de Concurrence (03/08)	Mission de veille permanente sur le fonctionnement général des marchés. Elles mènent les enquêtes, recueillent des informations et produisent des rapports qui sont transmis à la Commission. Participent au Comité Consultatif de la Concurrence (CCC) mandat de 3 ans
Autorités de régulation sectorielle	Autorité de régulation des marchés publics, communication électronique, énergie, audiovisuel, etc.	Surveillance des marchés dans les secteurs régulés. Définition et mise en œuvre de la politique de régulation sectorielle; membres ad'hoc du CCC (avis techniques sur des problèmes majeurs de Concurrence).

Caractéristique	Structure	Niveau d'intervention
Autorités judiciaires	Tribunaux nationaux	<p>Actions en réparation des préjudices causés par les pratiques anticoncurrentielles (des dommages et intérêts à la victime de l'accord illicite. Avis de la Commission sollicité dans ce cadre</p> <p>Par le Recours préjudiciel les juges nationaux peuvent recueillir l'interprétation du juge communautaire avant de prendre une décision.</p>

II - LA COOPÉRATION ENTRE LA COMMISSION ET LES STRUCTURES NATIONALES DE CONCURRENCE (SNC)

Fondements de la coopération entre la Commission et les SNC

Domaines d'intervention de la Commission et des SNC

Modalités de la coopération

Point de la coopération

II-1 Fondement de la coopération entre la Commission et les SNC

**Mise en œuvre du droit
communautaire de la
concurrence centralisée
autour de la Commission**

**SNCs comme acteurs
incontournables dans le
processus**

II-2 Domaines d'intervention de la Commission et des Structures Nationales de Concurrence

• Commission de l'UEMOA

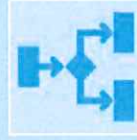
Compétence exclusive pour sanctionner les pratiques anticoncurrentielles relevées sur le marché commun



Enquêtes et instructions dans tous les domaines d'interdiction visé par le Traité UEMOA



Decision



• Etats membres (SNC)

Mission de surveillance permanente des marchés nationaux en vue de déceler les dysfonctionnements qui y ont cours



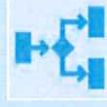
Préparer des rapports d'enquête et des notes d'information sur le fonctionnement des marchés nationaux



Apporter un appui à la Commission lorsqu'elle initie des investigations ! Procéder au recensement des aides d'Etat et en faire le point



Participer au processus d'adoption des décisions à travers le Comité Consultatif de la Concurrence



II-3 Modalités de la coopération entre la Commission et les SNC

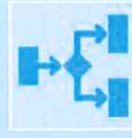
Échanges d'informations (transparence)



Obligation de la Commission d'informer les SNC des procédures sur leur territoire



Transmission aux SNC des copies des plaintes, des notifications, des demandes de renseignements



Obligations des SNC d'informer la Commission des enquêtes initiées et de transmettre les différents rapports

• Assistance et soutien



Les SNC préparent les opérations d'enquête de la Commission



Les SNC prêtent assistance aux agents mandatés par la Commission



La Commission peut demander aux SNC de mener des enquêtes ou des vérifications pour son compte



Demande d'avis à la Commission par les SNC

II-4 POINT DE LA COOPERATION

Réalisation d'enquête conjointes avec les SNC

Ateliers de finalisation des rapports d'enquête avec les enquêteurs des SNC

Implication des SNC à toutes les étapes des procédures conduite par la Commission

réunions de redynamisation de la coopération avec les SNC

II -4 Point de la coopération

▪ *Collaboration des SNC avec la Commission*

- ⑩ Notification à la CUEMOA des enquêtes initiées dans les Etats
- ⑩ Notes sur les aides publiques
- ⑩ Transmission de rapports d'enquêtes réalisées
- ⑩ Transmission des rapports trimestriels sur la concurrence

II -4 Point de la coopération

▪ *Renforcement des capacités*

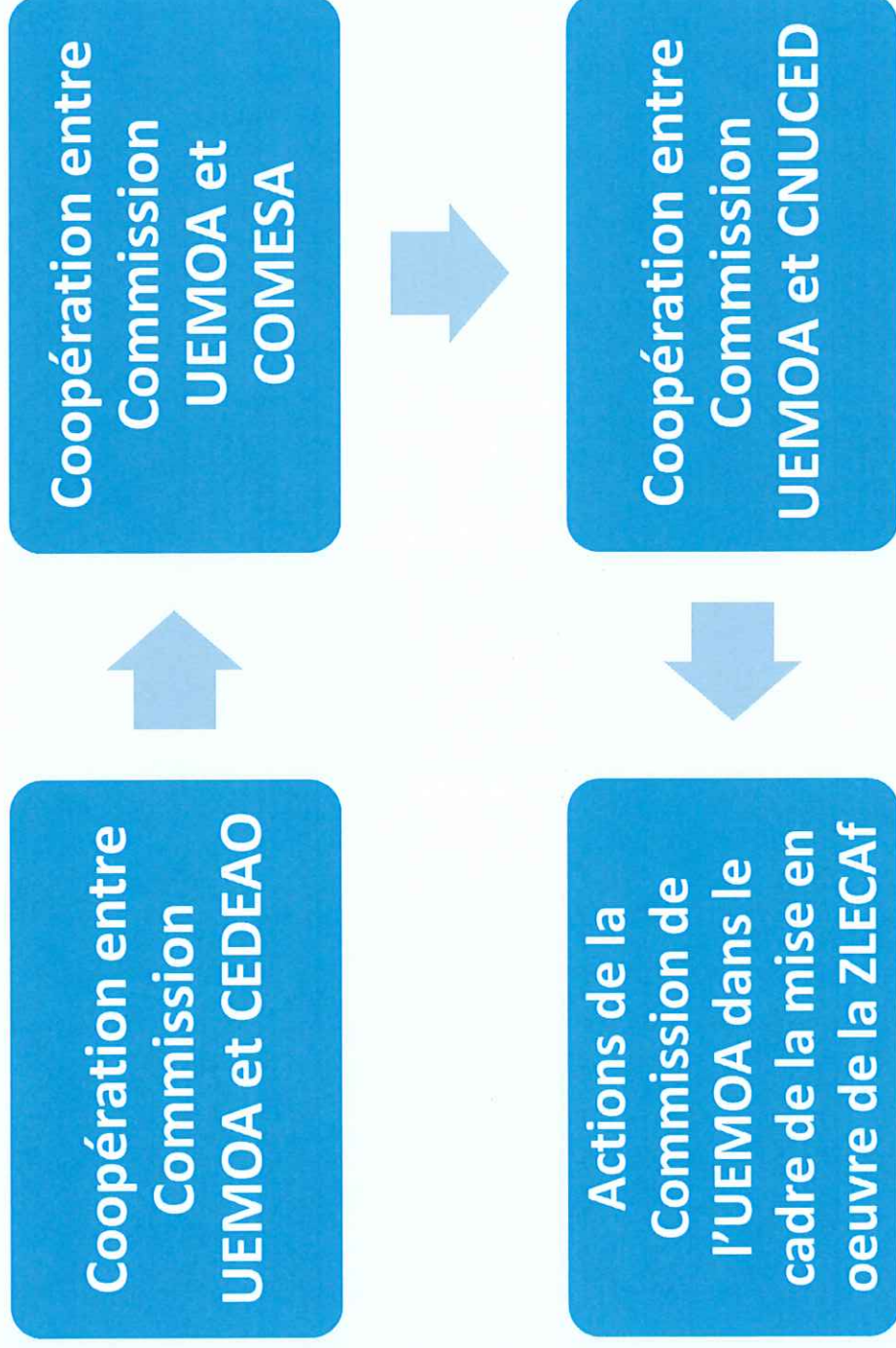
- Ⓣ Mise en place depuis 2013 du programme de formation (certificat d'études avancées en droit international de la concurrence)
- Ⓣ Voyages d'études et d'échanges auprès d'autorités de concurrence française, au Tribunal de l'UE, à la Commission Européenne
- Ⓣ Appui pour la transposition des directives dans les Etats membres
- Ⓣ Séminaire nationaux et régionaux de sensibilisation
- Ⓣ Subvention – appui financier pour le rapport sur l'état de la concurrence pays
- Ⓣ Dotation en matériels informatiques
- Ⓣ Partage du produit des amendes recouvrées (subvention)
- Ⓣ Missions d'appui technique aux structures nationales de concurrence

II -4 Point de la coopération

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II – FOCUS SUR LA COOPÉRATION ENTRE L'UEMOA ET LES ORGANISATIONS TELLES LA CEDEAO, COMESA, ZLECAF ET CNUCED



CONCLUSION

1. Assez bonne coexistence entre les lois nationales et le droit communautaire (les domaines d'intervention de chaque législation étant définis par les textes)

2. faible coopération des États membres et à la lenteur du processus décisionnel (non effectivité de la transposition des Directives sur la concurrence dans certains États)

CONCLUSION

3. Des Réformes sont en cours pour assurer une plus grande implication des États membres (Révision du Traité et textes dérivés en cours)

4. Encourager les États à mettre en place des autorités nationales de concurrence indépendante et autonome avec les ressources nécessaires



**Merci pour votre aimable
Attention**

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