CPI COMPETITION POLICY INTERNATIONAL

CPI Antitrust Chronicle
July 2015 (2)

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An important legal development for global investors into Africa is the increasing enforcement of antitrust law by regional bodies like the Common Market for Eastern and Southern Africa ("Comesa") as well as the East African Community ("EAC") and the West African Economic and Monetary Union ("WAEMU"), alongside several powerful national competition authorities.

A number of powerful local antitrust authorities have established themselves over the last 10 years in Africa, including the South African Competition Commission (which has been in operation since 1999), the Fair Competition Commission of Tanzania (established in 2003) and the Zambian Competition and Consumer Protection Commission (previously the Zambia Competition Commission, established in 1997). These authorities have levied millions of dollars in fines on companies for anticompetitive practices like price-fixing, market allocation, bid-rigging and abuses of dominance, sometimes using dawn raids to obtain evidence and employing sophisticated software to search large volumes of electronic data.

These authorities have also energetically pursued companies who have implemented merger transactions without notifying them or have implemented mergers prior to clearance being obtained. Merger control is also actively enforced by competition regulators in countries like Namibia, Botswana, Swaziland, Mauritius, Kenya, Malawi, and Morocco.

However, in the last two years, we have witnessed the establishment of regional competition regulators who are tasked with enforcing merger control and investigating and prosecuting anticompetitive conduct alongside national authorities.

Comesa was established in 1994 to promote economic integration among 19 African member states in Central, Eastern, and Southern Africa, namely Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe. The Comesa Competition Commission commenced regulation of mergers in January 2013 but, unfortunately, no minimum monetary thresholds for notification of merger transactions in Comesa were set and the regulations specified very high filing fees. The regulations were also unclear in various respects, not least of all on whether transactions with an impact in Comesa states that have their own national competition authorities, like Kenya and Zambia, were still required to be notified separately in those countries.

These factors negatively impacted compliance with the new regime—by the end of 2014, only 66 filings had been submitted (although this was an increase on the total in 2013, which was

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only 44). In March 2015, however, an amendment to Comesa's regulations clarified that a merger notification in Comesa is only required where:

1. both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Comesa member states;
2. if the combined annual turnover or combined value of assets, whichever is higher, in Comesa of all parties to a merger equals or exceeds U.S. $50,000,000; and
3. the annual turnover or value of assets, whichever is higher, in Comesa of each of at least two of the parties to a merger must equal or exceed U.S. $10,000,000, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in Comesa within one and the same Comesa member state.

The maximum filing fee was also substantially reduced—the filing fee is now the higher of 0.1 percent of the combined annual turnover or combined asset value in Comesa, capped at a maximum of U.S. $200,000.

In practice, it seems that most of the competition authorities in the Comesa member states now recognize that if a filing has been made with Comesa, no separate filings to any national authorities are required. The only exception is Kenya, where the competition authority, the Competition Authority of Kenya ("CAK") continues to insist on a local filing pending amendment of its national competition legislation.

In effect, this means that parties to cross-border transactions with an impact in the Comesa states can treat Comesa like a "one-stop-shop" and, further, it is sometimes cheaper to lodge a single Comesa filing than to file in several different jurisdictions (particularly those which charge relatively high filing fees). And, unlike with some local competition laws, the Comesa regulations do not require that parties await clearance before they can implement their merger, which means that the notification requirement need not hold up implementation of transactions.

Although Comesa's focus to date has been on merger reviews, it is likely that it will begin enforcing its regulations dealing with cartels and abusive practices by dominant firms in the near future, as it builds its capacity and expertise. This is already a focus for the African Competition Forum, a network of competition authorities in African countries that was formally launched in March 2011. It involves 41 out of 54 African countries, and aims to enhance the adoption of competition laws across the Continent and to build the capacity of new authorities. It has already published a number of papers on concentrated sectors of the African economy that have posed challenges for national competition authorities, like cement and poultry. This facilitates the sharing of expertise by more established competition authorities, like those in South Africa and Namibia, who have intensively investigated complaints about cartels and abuses of dominance in those sectors of the African economy.

The EAC is another regional African economic organization that has enacted antitrust regulations, although it is not yet fully operating. The EAC Secretariat is in the final stages of setting up the organizational structure of the EAC Competition Authority, which will regulate competition in the Republic of Burundi, Kenya, Rwanda, United Republic of Tanzania, and the Republic of Uganda. The authority is expected to come into force in or about August 2015. Notification of mergers will be mandatory, although the thresholds for filings and the applicable filing fees have not yet been published. It is unclear how this regime will interface with Comesa

and apply in states like Tanzania and Kenya (a Comesa member state) that have their own local authorities.

WAEMU (also known by its French acronym, UEMOA) was established by the Treaty of Dakar in 1994 and is composed of Bénin, Burkina Faso, Côte d'Ivoire, Guinée Bissau, Mali, Niger, Sénégal, and Togo. It adopted competition legislation in May 2002, which became operative from January 1, 2003. Notification of mergers is not compulsory, but its rules provide that if a proposed merger will result in an abuse of a dominant position, the WAEMU Commission can order the merging parties: (i) not to implement the transaction (if it has not been executed/closed) or to re-adopt the status they had before the transaction, (ii) to modify the transaction, or (iii) to take any necessary measure to ensure or re-establish sufficient competition. However, it is possible for parties to ask for the Commission's opinion before, or even after, a transaction is implemented.

These new regional antitrust regulators will play a valuable role in preventing anticompetitive conduct and concentrations which may result in a prevention or lessening of competition on the Continent—particularly in countries like the DRC, Djibouti, Eritrea, Libya, and Uganda that don't yet have a national competition authority. There is the potential for regional bodies to act as a cheaper and faster one-stop-shop for merger clearances and to build up significant economic and technical expertise, particularly in dealing with cartels and monopolies that impact cross-border trade.

Countries with insufficient resources may find it more effective to rely on antitrust enforcement by these regional authorities, than to establish their own national authorities. However, particularly in relation to merger control, there currently is no attempt to clarify the relationship between the national and the regional authorities, or between the various regional authorities. Kenya, for example, belongs to both the EAC and Comesa, and Tanzania has its own local competition authority and belongs to the EAC.

Far more co-ordination is required among these various African regulators in order to eliminate duplication of costs and effort—for the authorities themselves, and the companies they regulate. Much work is needed to harmonize the approach of these authorities to substantive issues (for example, what constitutes a merger) and procedural ones (for example, whether parties are entitled to implement a merger before clearance has been granted and what the maximum time periods for reviews are). Ideally, these new authorities should be co-ordinating their efforts to enhance competition in African markets through organizations like the African Competition Forum and the International Competition Network.

Foreign investment will be affected if parties wishing to acquire a business in Africa are forced into multiple filings in several jurisdictions, and face increased transaction costs and possible delays as a result. Uncertainty about the principles applied in reviewing mergers—for example, is the only relevant factor whether competition will be lessened, or does the authority also consider public interest factors like job losses or local investment—is also likely to impact on acquisitions on the Continent. Protracted and costly merger reviews may make Africa seem like a less attractive destination for investment.