



# **An Overview of Competition and Antitrust Regulations in Africa**

August 2019 Baker McKenzie, Johannesburg

**IMPORTANT DISCLAIMER:**

The material in this report is of the nature of general comment only. It is not offered as legal advice on any specific issue or matter and should not be taken as such. Readers should refrain from acting on the basis of any discussion contained in this report without obtaining specific legal advice on the particular facts and circumstances at issue. Whilst the authors have exerted every effort to provide accurate and up-to-date information on laws and policy, these matters are continuously subject to change. Furthermore, the application of these laws depends on the particular facts and circumstances of each situation, and therefore, readers should consult their lawyer before taking any action.

Information contained herein is as at August 2019.

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# PREFACE

## **The rapid growth of competition law in Africa**

Competition law on the continent is the subject of notable growth. An increasing number of jurisdictions have adopted laws and regulations, established authorities, secured membership to regional antitrust regimes and ramped-up enforcement of suspected violations of prevailing competition laws at both domestic and regional levels.

## **New competition legislation**

Since 2018, domestic competition legislation has been enacted in Angola and Nigeria. In Angola, these legislative developments have been bolstered by the establishment of the Angolan Competition Regulatory Authority, which recently became operational. In Nigeria, the Federal Competition and Consumer Protection Act was signed into law in 2019, establishing the Competition Commission and Competition Tribunal to enforce the legislation.

Madagascar adopted a new law, which modifies certain aspects of its competition laws. This is yet to be published in the official gazette, but also demonstrates an impending change (which is consistent with the general wave of development in relation to competition regimes on the continent).

## **Amendments to existing legislation**

Outside of the introduction of entirely new laws in certain jurisdictions, there have also been significant amendments to existing legislative regimes in a number of countries, including Egypt, Ethiopia, The Gambia, Morocco, Mozambique, South Africa, Zambia, and Zimbabwe.

### **Egypt**

In 2018, a new merger notification form and guidelines were introduced by the Egyptian Competition Authority.

Recently, an amendment was passed enabling the Council of Ministers to fix the prices of "essential products" for a specific period of time.

### **Ethiopia**

Certain provisions of the competition law are currently being reviewed but there have been no recent amendments or guidelines relating to competition legislation. The provisions under review include the merger control regime in general, issues of change of control, and the definition of certain terms.

### **The Gambia**

Guidelines regarding the interpretation of the Competition Act were published on 1 April 2019.

### **Morocco**

The president and subordinate members of the Competition Council were appointed in December 2018. This brought the council into full operation, enabling the effective enforcement of Morocco's competition framework.

### **Mozambique**

Regulations on competition in the air transport industry, which govern competition in this sector, were published in 2018.

# PREFACE

- South Africa** The Competition Amendment Bill was signed into law in early 2019 and since then, certain provisions have come into effect with others still pending.
- Zambia** Guidelines on Calculating Merger Fees were issued in 2018. Proposed amendments to the Abuse of Dominance Guidelines and the Fines Guidelines have been circulated for public comment.
- Zimbabwe** The entire Competition Act has been amended, and is currently in draft form awaiting imminent approval.

## The regulators

Africa's competition regulators are gaining momentum and becoming more sophisticated in the analysis of mergers and understanding of prohibited practices.

Over and above specific country regulation, Africa has a number of regional competition regulators, including the West African Economic Monetary Union ("**WAEMU**"), the East African Community ("**EAC**"), the Common Market for Eastern and Southern Africa ("**COMESA**"), the Economic Community of West African States ("**ECOWAS**") and the Economic and Monetary Community of Central Africa ("**CEMAC**").

In April 2019, the COMESA Competition Commission approved three new guidelines, including the Guidelines on Market Definition, the Guidelines on Restrictive Business Practices and the Guidelines on Abuse of Dominance. These guidelines were prepared in consultation with the national competition authorities of the member states and follow international best practice. Their aim is to provide clarity on the interpretation of the COMESA Competition Regulations and Rules, as well as predictability in enforcement by the regulator.

In May 2019, ECOWAS announced a new competition regulator with the launch of the ECOWAS Regional Competition Authority ("**ERCA**"). There is currently no domestic competition law in ECOWAS member countries, including Benin, Ghana, Guinea-Bissau, Liberia or Togo, with The Gambia and Nigeria being the only members of ECOWAS to have competition legislation in place. The ERCA will thus play a role in enforcing competition law in the region.

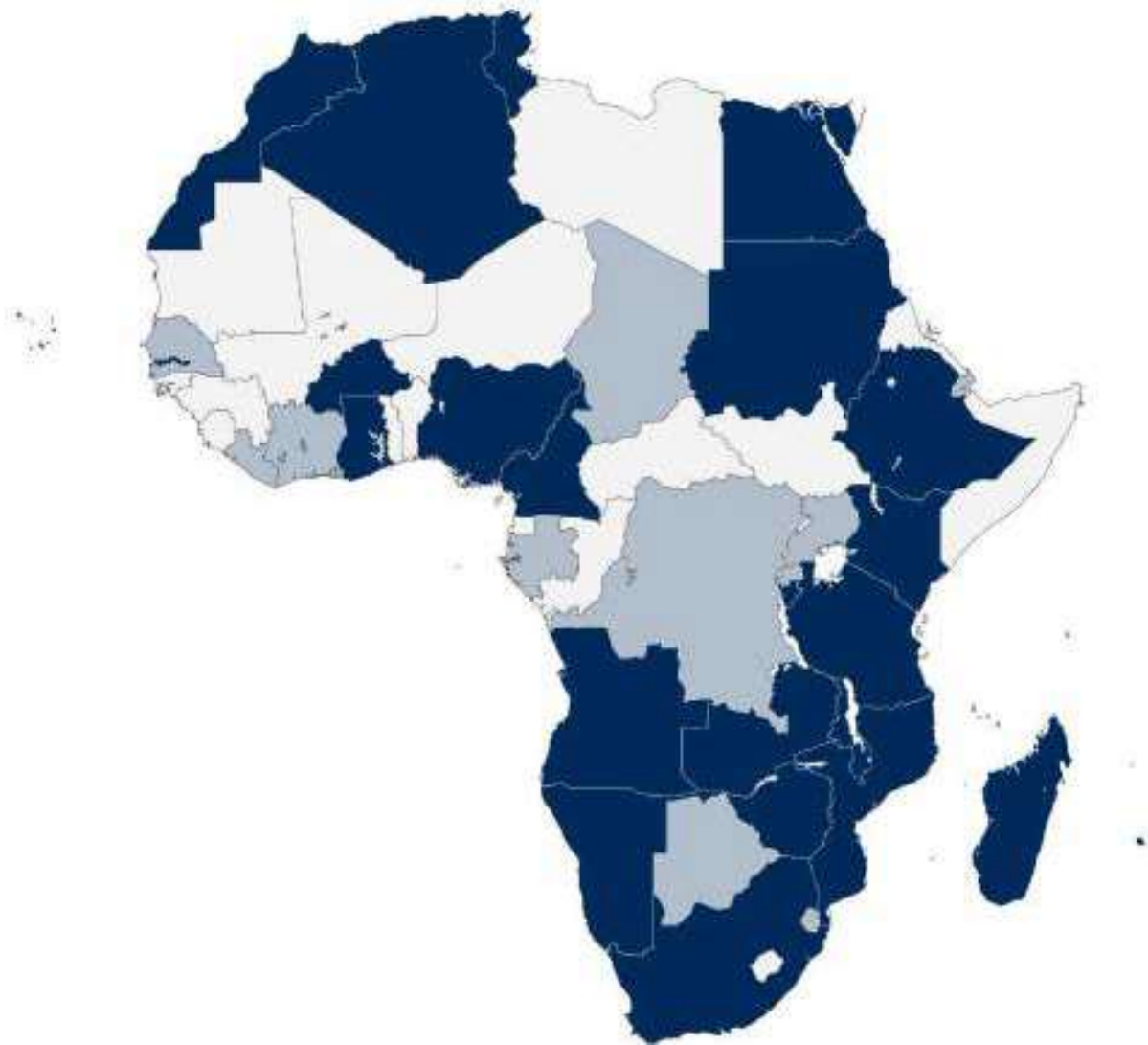
In June 2019, the East African Competition Authority ("**EACA**") finalised the EACA Outreach and Advocacy Strategy ("**Strategy**"), which aims to facilitate and promote awareness of competition policy across the region. The EACA recognises that market participants and consumers have little knowledge of competition laws and regulations, which impacts on enforcement. While finalised, the Strategy has not yet been officially accepted.

While not a regional regulator, it is worth noting that the African Competition Forum, an association of African competition agencies, exists to promote competition policy awareness in Africa and the adoption of competition policies and laws. The forum also facilitates regular contact between authorities, creating a platform for the sharing of best practice and domestic competition trends.

## This publication


This publication engages with these developments at a domestic level, itemising relevant amendments and approaches of competition authorities on topical issues.

# GEOGRAPHICAL OVERVIEW



## KEY

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 Jurisdictions covered by this publication

 Countries with antitrust laws





# BURUNDI

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## GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

No amendments nor guidelines relating to the competition legislation have been proposed or enacted since January 2018 in Burundi.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

No. The competition authority is not yet operational, despite the existence of the Competition Act, which was enacted in 2010.

However, it is important to note that a draft decree relating to the establishment of the competition authority was submitted to the president of Burundi on 20 April 2017, with the signature to and approval of the decree pending.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No, the competition authority is not yet operational.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

No, the competition authority is not yet operational.

## MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

No, the competition authority is not yet operational.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

Yes, the submission of a merger notification is suspensory according to Article 49 of the Competition Act. Parties to a merger are prohibited from implementing the merger for a period of three months pending assessment and approval by the competition authority.

No cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction have been initiated since January 2018 given that the competition authority is not yet operational.





**8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.**

No such cases exist given that the competition authority is not yet operational.

**9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?**

No, the competition authority is not yet operational.

**10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?**

We are not in a position to advise on timing for merger assessments and approvals given that the competition authority is not yet operational.

### PROHIBITED PRACTICES

**11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.**

No such information exists given that the competition authority is not yet operational.

**12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?**

No, the competition authority is not yet operational.

**13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?**

There are criminal and civil sanctions against cartel conduct and anti-competitive conduct in Burundi. The sanctions include administrative penalties, damages, suspension of activities, fines, jail sentences, and withdrawal of licences for a certain period, etc.

Given that the competition authority is not yet operational, such sanctions/penalties are not yet applicable. However, theoretically, a judge may impose such sanctions/penalties during a trial before the civil, criminal or administrative courts in Burundi.

### REGIONAL BODIES

**14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**

Burundi is a member of the EAC, COMESA and CEMAC. Therefore, activities in Burundi should be conducted with these three regional bodies in mind.



**15 If so, please comment on the frequency of your engagement with the regional body.**

We regularly engage with the COMESA Competition Commission on several transactions.

**16 Do you have any views on the level of enforcement of the regional body?**

No. However, we note that even though the competition authority of Burundi is not yet operational, parties must always consider the COMESA, CEMAC and EAC competition laws and regulations when conducting activities in Burundi or activities outside of Burundi that have an effect in Burundi, or in the regional common market.

**17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?**

According to Burundian laws (including regional treaties), a merger may be notifiable to regional competition authorities.

Given that the national competition authority of Burundi is not yet operational, no notifications have been made domestically.



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