Assessing the effectiveness of a regional competition regime in the Southern African region

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Abstract

The dilution of trade barriers and the opening of cross-borders market have accentuated the need for market integration around the world. With higher risks of international anti-competitive conducts, there have also been an increasing need for competition authorities to cooperate and harmonise their competition regimes. The southern African region is no exception. They have been putting much emphasis on unleashing the potential for regional integration and regional competition policies to help the countries to fully enjoy the benefits derived from the regional market. This paper analyses the similarities and differences across 9 southern African jurisdictions (including the 'Common Market for Eastern and Southern Africa (COMESA)) the different competition laws where particular focus has been made in understanding the key provisions (elements) in regard to collusive agreements, abuse of dominance and anti-competitive mergers. The degree of convergence towards the COMESA Regulations of the jurisdiction has also been assessed. The analysis revealed that although jurisdictions are slowly converging towards a regional competition regime, their provisions still do vary a lot across them whether in terms of definitions, interpretation or sanctions of the three types of anti-competitive conducts. Namibia, South Africa and Swaziland have been found to be closest to the full convergence of the regional competition regimes. On the other hand, Kenya, Mauritius and Malawi are among the jurisdictions which are furthest in the regional harmonisation of their law.

Keywords: competition law, cartels, abuse of dominance, mergers, harmonisation, regional competition regime

Classification codes: F15, G34, K21, L41, L43, O18

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1. Introduction

The process of globalisation, dilution of trade barriers, opening of cross-border markets and technological innovation around the world have no doubt led to an increase in the number of cross-border transactions. With the growing need for regional integration, the expansion of cross-border transactions have also increased the risks of cross-border anti-competitive practices. These have consequently boosted the need for formalising cooperation across competition authorities through international agreement around the world. The southern African region is no exception.

While domestic markets are regulated by national competition authorities (CAs) through the enforcement of their competition law, the influx of cross border transactions has made countries realised that national competition laws may not be sufficient when it comes to regulating international markets. The requirement for a regional competition regime was felt. A regional competition regime would help to oversee the anti-competitive behaviour of firms in the free trade area. This can only be effectively achieved through the harmonisation of the competition law across the jurisdictions. It is however a fact that each jurisdiction has their own specificities and is likely to have different approaches to the same circumstances. But, how far are the southern African jurisdictions from adopting a regional competition regime? How effective have they been in implementation process of a regional competition regime? What are the challenges that these jurisdictions are facing in view of successfully harmonising their competition law.

This paper therefore seeks to assess the degree of convergence of the competition laws towards a regional competition law, the 'Common Market for Eastern and Southern Africa (COMESA)) Regulations, by studying the similarities and differences of the competition laws across the southern African jurisdictions. A comparative analysis has been performed based on the institutional and legal framework across 9 jurisdictions including the COMESA. Particular focus is made on the analysis of the different elements of the three main types of anti-competitive conducts namely collusive agreements, abuse of dominance and anti-competitive mergers. The identified elements are then assessed using a scaled score methodology. It is found that while countries are working towards the harmonisation of their competition law, there are variations not only in terms of definitions of conducts but also in terms of threshold and sanctions adopted by the CAs. Namibia, South Africa and Swaziland have been found to be those jurisdictions which are most convergent to the COMESA Regulations in terms of the identified anti-competitive conducts provisions. On the other hand, Mauritius, Kenya and Malawi are the least convergent to the regional competition regimes. The differences in the implementation of the regional competition regimes can be explained by a number of factors such as the level of expertise of the CA, their regulatory regimes, political and economic realities among others.

This paper is organised as follows: Section 2 provides an overview of regional integration across the southern African countries. Section 3 explains the need for harmonising competition laws by recalling the advantages and disadvantages of implementing such regional regimes. Section 4 compares the competition regimes across the jurisdictions in the southern African region. Section 5 then assesses the degree of convergences of the different competition laws towards the regional competition regime (COMESA Regulations). Section 6

explains the challenges faces by these southern African jurisdictions in harmonising their competition law which is followed by concluding remarks in section 6.

2. Regional integration in Southern Africa countries

Regional integration today plays a very important role in the development strategies of economies across the world including the Southern African region. Regional integration is the process by which two or more countries agree to cooperate and work closely together to achieve peace stability and wealth. As explained by Hartzenberg (2011), the African paradigm is that of linear market integration which follows stepwise integration of goods, labour and capital markets, and eventually monetary and fiscal integration. The starting point is usually a free trade area, followed by a customs union, a common market, and then the integration of monetary and fiscal matters to establish an economic union, the African Economic Community. The achievement of a political union, features as the ultimate objective in many African regional arrangements. This process is followed by the various regional economic communities in Africa such as the Economic Community of West African States (ECOWAS) for West Africa, the COMESA and the Economic Community of Central African States (ECCAS) for Central Africa. The instruments for cooperation identified in the Southern African region are as follows:

i. COMESA Competition Rules

COMESA is a regional organization which came into force in 1994. In 2000, it launched the Free Trade Area in 2000 with 9 participating countries. Today, it consists of 19 members[1] where 13 countries have eliminated all customs duties on the COMESA imports. These countries include: Djibouti, Burundi, Comoros, Egypt, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Zambia, and Zimbabwe.

The COMESA Competition Regulations was adopted in 2004. Its core mandates consist of enforcing the provisions of the regulations, promoting competition and monitoring and investigating anti-competitive practices of undertakings within the Common Market. It has the main functions of monitoring and investigating anti-competitive practices within the Common market, reviewing regional competition policy. It also seeks to help member states with the harmonisation of national laws, the cooperation of member states competition authorities and the facilitation of exchange of relevant information and expertise[2].

ii. 2009 SADC Declaration on regional cooperation in competition and consumer policies

The Southern African Development Community (SADC), formerly known as the Southern African Development Coordination Conference (SADCC) has been established since 1980. While SADCC had the main aim of coordinating development projects in order to lessen economic dependence on the then apartheid South Africa, SADC in 1992 explicitly

[1] The countries include Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Sate of Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

[2] See COMESA Competition Regulations 2004

adopted an explicit market integration agenda. It officially launched its free trade area in 2008 by 12 of the 15 Member States. The SADC Trade Protocol was implemented in 2000 with the gradual elimination of customs duties on 85% of tariff lines by 2008.

In September 2009, SADC signed a Declaration on Regional Cooperation in Competition and Consumer Policies in view of prohibiting unfair business practices and promoting competition and cooperation in the region. This showed that there was the need for cooperation between the member states in the area of competition enforcement. Through the Declaration, Member States officially recognised that Regional Integration creates markets that cross national boundaries subject to varying trade policies. They therefore agreed to softly converge their laws and policies in order to preserve equity in trade and fair competition throughout the region, with the ultimate aim of regional policy harmonisation. The declaration was intended at a high level to pave the way for cooperation between authorities including provisions on the sharing of information and establishment of competition laws in countries that did not have relevant legislation.

In view of reinforcing cooperation across the member countries, in 2016, competition authorities of the SADC Member states signed a Memorandum of Understanding (MOU) on Inter-Agency Cooperation in Competition Policy. The main objective of the MOU is to foster closer cooperation in the enforcement of Member States' competition laws in order to address effectively national and cross/border competition problems or anti-competitive business practices such as cartels, abusive practices of dominant firms and monopolies. The MoU includes inter alia includes the sharing of information on cases, the coordination investigation of cases, the harmonizing the rules and procedures for handling cases, and the undertaking of joint capacity building and research activities.

The region now boasts of ten Member States with operational competition authorities. The remaining five Member States are at different stages in the development of their respective competition legislation.

iii. The Southern African Customs Union (SACU)

The Southern African Customs Union (SACU) has been established in 1910. Initially consisting of South Africa, Lesotho, Swaziland and Botswana, Namibia joined in 1990 when it became independent in 1990.

As stipulated in Article 40 of the SACU Agreement of 2002 provides that the Member States 'agree that there shall be competition policies in each Member State' and, further, will 'cooperate with each other with respect to the enforcement of competition laws and regulations.' However, to date cooperation between SACU members has taken place on an informal basis and has been limited to technical assistance and capacity building.

3. Harmonisation of competition law

The establishment of free trade areas opened access to innumerable markets. Countries are more and more experiencing an increase in the number of cross-border transactions. These countries are consequently faced with higher risks of cross-border anti-competitive practices.

This has led to the need of formalising the cooperation across competition authorities through international agreements.

It is a fact that the removal of trade barriers has accentuated the number of cross-border transactions including cross-border mergers and acquisitions across the different countries. For example, COMESA has handled approximately 150 mergers between 2013 and 2017. The number of regional mergers has progressively increased from 21 in 2013 to 34 in 2017[3]. Free trade is meant to increase the prosperity of an economy by allowing consumers to buy more, better-quality products at lower costs. It drives economic growth, enhanced efficiency, increased innovation, and the greater fairness that accompanies a rules-based system. These benefits increase as overall trade—exports and imports—increases. However, to ensure that countries fully benefit from free trade, it is essential that there is fair competition among businesses. As stated by Korah (1997), there would be very little point in removing the various internal barriers and national boundaries imposed by governments if these governmental restraints were replaced by concentrations and other restrictive business practices as well as concerted practices among private firms. It is therefore essential that any anticompetitive conducts are controlled by an effective common competition law (Fundira, 2010). Otherwise, this is likely to lead to distorted prices and inefficient allocation of resources.

But, how to cope with cross border cartels or abuse of dominance position or the assessment of regional mergers? Given the territorial restrictions of national competition laws, such laws might not be enough. In such circumstances, as highlighted by Malinauskaite (2008), practices of this nature would lead to the transfer of wealth from consumers in one country to producers in another. Unfortunately, consumers in one or more countries will have to directly or indirectly bear the cost of these unlawful activities, which may result in higher prices and reduced choice.

This is why there is a need to come up with regional competition agreements which will oversee anti-competitive behaviour of firms in the free trade area. Sharing the two basic features in terms of members located within the same region and cooperation on competition law issues (Gal & Wassmer, 2012), regional competition agreements is arguably desirable for its efficiency effects. It can reduce the burden of some costs of legal uncertainty imposed on divergent local standards. Cross border anti-competitive practices can create private obstacles to market access nullifying the advances made by governments in trade liberalisation and regulatory reform. These issues could be potentially solved through international competition law mechanism.

A regional competition regime may also help in reducing the enforcement resource constraint by enabling jurisdictions to pool together scarce resources to reach economies of scale in enforcement activities (investigations, enforcement), as well as in competition advocacy and training. As stated by Malinauskaite (2008), international competition rules can also help in the promotion of gradual convergence of competition laws through the avoidance of conflicts of law and jurisdiction between countries. It is however important that a country is able to enact and enforce laws within its boundaries and must not intervene in the domestic affairs of other nations.

[3] Statistics available on COMESA website at: http://www.comesacompetition.org/wp-content/uploads/2016/06/Merger-Statistics-2013-2017.pdf

Moreover, cumulative sanctions might have greater deterrence effects than if it was enforced by a national competition authority. In fact, the creation of a regional authority may be an efficient way to overcome deep rooted limitations of existing authorities, including corruption, inefficiency and bureaucratic obstacles.

A regional competition regime may also reduce the public choice limitations. It can alter some of the effects of well-organised pressure groups (political pressures) on decision-makers in adopting a competition law, since a push towards regionalization creates internal and external pressures for adopting a competition law. This is especially true if competition law is part of a wider agreement on trade. Also, once created, the aggregation of different incentives in a regional authority, which is one step removed from each member state, reduces the ability of a domestic group to exert pressures on the legislator or regulator to change the regulatory environment.

These benefits however do not come without costs. The setting up of a joint authority involves direct costs of building a new institution and resourcing its operation including enforcement and the monitoring of compliance activities. If the national CA is inefficient, such costs may create an additional burden on already limited resources. Inadequate institutional and regulatory capacity may also make the adoption and enforcement of the law very costly.

The harmonisation of competition laws may also limit the sovereignty of member states when deciding all competition law cases surfacing at their shores. Nevertheless, each jurisdiction exercises its discretion and decision-making power in deciding whether and under which conditions to enter the agreement. As shown by Guzman (1998), joint enforcement might not always lead to decisions that benefit all member states. For example, a merger or a joint venture may benefit consumer in some states since their markets are less concentrated, and harms consumers in others. Any joint standard set for review of such conduct will harm some states and benefit others. If it is based on total welfare- counting benefits and harms by their absolute size, then the outcome will generally be driven by the effects of the conduct on the larger jurisdictions. If it is based on a calculation of effects in each jurisdiction in relative terms, then the outcome might be driven by the effects on a small number of consumers in micro-states. Accordingly, setting such a standard is highly contentious. Thus, if the optimal policies for different members clash, regionalization will require that some measure of domestic welfare be sacrificed, at least in some cases. Such sacrifice might be especially costly for those potential members which can create a stronger credible threat to prevent the anti-competitive conduct than others and to those whose interests are most harmed by the common standard. The lack of substantive convergence in some areas of competition law, most notably monopolization, may further increase the problems involved in reaching a common standard.

Regional competition law may also reduce the comparative advantage of some countries relative to their neighbours, given their different unilateral enforcement capabilities. Once again, the loss of such an advantage must be balanced against benefits from a coordinated and stronger regional competition policy.

4. Competition regimes across Southern African countries

Competition regimes do vary across continents, regions and countries but the baseline of any competition law remains the detection and deterrence of any anti-competitive conducts. This section assesses the similarities and differences of competition regimes across 8 southern African countries and the COMESA region. It provides an overview of their competition authority, the institutional and legal framework across those countries where particular attention is given to the collusive agreements, abuse of dominance and anti-competitive merger types of anti-competitive conducts.

4.1 Sample jurisdictions

Sample jurisdictions have been selected based on the availability of information. Data for the different jurisdictions has been collected from the world competition database of the George Washington Competition Law Center (GWCLC), the CA's competition law and website, and the Bowmans- Africa Guide. Table 1 provides details of the selected sample jurisdictions and their competition authorities together with their relevant adopted competition law.

Table 1: Background information on sample jurisdictions

Countries	The law	Name of CA	Most recent law	Establishment of CA
COMESA	COMESA Competition Regulations	COMESA Competition Commission	2004	2013
Botswana	Competition Act	Competition AuthorityCA's	2009	2011
Kenya	Competition Act	Competition Authority of Kenya	2011	2011
Malawi	Competition and Fair Trading Act	Competition and Fair-Trading Commission	1998	2005
Mauritius	Competition Act	Competition Commission	2007	2009
Namibia	Competition Act	Namibian Competition Commission	2003	2009
South Africa	Competition Act	Competition Commission,	2001	1998
Swaziland	Competition Act	Swaziland Competition Commission	2007	2007
Zambia	The Competition and Consumer Protection Act	Competition and Consumer Protection Commission	2010	1997

Source: CAs website

4.2 Legal and institutional framework

In terms of the legal and institutional framework, it is found all the CA's across the 9 jurisdictions are stand-alone agencies in an independent physical location. They are the only agency responsible for the enforcement of competition law where their heads are appointed by the Minister.

Table 2 next provides an overview of the legal and institutional framework within which the competition authorities operate.

Table 2: Legal and institutional information

Indicators	Yes	No
Decisions of the CA may be vetoed by a ministry or by the executive branch.	Botswana, Namibia, Swaziland	Kenya, Malawi, Mauritius, South Africa, Zambia
The executive have powers to decide on specific cases based on public interest	Namibia, Swaziland	Botswana, Kenya, Malawi, Mauritius, South Africa, Zambia
Obliged to publish its reasoned decisions to ensure transparency	Botswana, Kenya, Malawi, Mauritius, Namibia, South Africa, Zambia	Swaziland
A provision of the national budget is allocated by law to the CA to ensure its proper functioning	Botswana, Kenya, Malawi, Namibia, South Africa, Swaziland, Zambia	Mauritius, Zambia
Is financed by its own means (notification fees, fines, etc.)	Botswana, Malawi, Namibia, South Africa	Kenya, Mauritius, Swaziland, Zambia
Accept leniency applications	Botswana, Malawi, Mauritius, Namibia, South Africa, Zambia	Kenya, Swaziland
Have powers to seek criminal punishment	Botswana, Kenya, Malawi, Namibia, South Africa, Zambia	Mauritius, South Africa, Swaziland
Issue opinions on draft legislation	Botswana, Kenya, Malawi, Mauritius, South Africa, Swaziland, Zambia	Namibia
Make the decision to investigate and to prosecute cases	Botswana, Kenya, Malawi, Mauritius, Namibia, Swaziland, Zambia	South Africa
Impose punishments	Botswana, Kenya, Malawi, Mauritius, Namibia, Swaziland, Zambia	South Africa
CA's decisions appealed to a court	Botswana, Kenya, Malawi, Mauritius, Namibia, Swaziland, Zambia	South Africa
Different authorities that make the decision to investigate and to prosecute cases?	Botswana, Kenya, Malawi, Mauritius, Namibia, Swaziland, Zambia	South Africa
Disputes presented for decision to a separate entity/tribunal	Botswana, Egypt, Kenya, Malawi, Mauritius, Namibia, Swaziland, Zambia	South Africa

Source: GWCLC

It is observed that there are some degrees of convergence across the different jurisdictions. Despite the decisions across the jurisdictions are subject to judicial review, the indicator that demarks South Africa from all the other jurisdictions is its decision making functions. This is due to its difference in its institutional design. Unlike, the other jurisdictions, South Africa has moved from an integrated administrative model to a prosecutorial model in 1999 with the CA bringing cases to the Competition Tribunal and the decisions of the Competition tribunal being reviewed by the appeal court[4].

4.3 Anti-competitive conducts

Another aspect of the competition law which is looked into are the different types of anti-competitive conducts that are covered. Particular attention have been given to the three main types of anti-competitive conducts namely cartels, abuse of dominance and mergers.

4.3.1 Collusive agreements

A cartel exists when businesses agree to act together instead of competing against one another. This agreement is designed to drive up the profits of cartel members while maintaining the illusion of competition. Thus, for a cartel to exist there should firstly be an agreement between businesses.

i. Agreement

According to the Article 101 of the EU law, for there to be an agreement within the meaning of the article, it is sufficient for the undertakings in question to have expressed their joint intention to conduct themselves in the market in a particular way*.*

An analysis of the definition of 'agreement' across the sample countries shows that Botswana, Mauritius and Zambia includes 'any form of agreement whether or not legally enforceable' in its definition of agreement. Their Act, except for Zambia, do make mention that agreement also includes oral agreement, decisions of associations as well as any concerted practice. The one of Zambia incorporates only oral agreements and decisions of trade associations. As for Namibia, South Africa and Swaziland, their definition of agreement clearly include 'contract, arrangement or understanding, whether or not legally enforceable'. Interestingly, COMESA regulations and the Malawi Competition Act have not been found to explicitly define the term 'agreement'. Nevertheless, COMESA prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices.

ii. Cartel conducts

The Act of all the 9 jurisdictions including the Regulations of COMESA cater for both horizontal and vertical agreements. However, not all of them covers the same conducts of the collusive conducts. Price fixing, market allocation, bid rigging and restraints on production or sales were found to be common collusive conducts across the sample jurisdiction. In addition to these, Kenya and Namibia have provisions which include the application of dissimilar conditions to equivalent transactions with other trading parties. Kenya is also the only country where its provisions for collusive conducts include the use of an intellectual property right that goes

[4] See Jenny (2016).

beyond the limits of legal protection. Moreover, Swaziland provides for any collective action to enforce arrangements.

iii. Elements to prove the case

Agreements and other collusive agreements are not prohibited unless they have as their object or the effect of preventing, restricting or distorting competition. If we refer to the Article 101 of the EU law, violation by object occurs when the action of the undertakings is by its very nature harmful to the functioning of competition in the common market. The object is determined by looking at the content of the action and the objectives it aims to pursue. It includes agreements such as price fixing arrangements, market allocation or agreements that limits trade. If the undertaking's exploits do not have the object of harming competition, the European Court of Justice will then determine if they have negative effects on competition in the market. An effects analysis entails a deep factual investigation of the market, the economic consequences of the action, and the effect of partitioning the market[5].

It is found that the South African countries in the same data do cater for the object or effects elements when prohibiting cartels. However, the intensity of proving the prevention, restricting and distorting of competition. For example, while COMESA, Kenya, Malawi, Swaziland and Zambia only need to prove that the conducts have led to the prevention, restriction and distortion of competition, Mauritius requires to prove that the conduct has significantly prevented, restricted or distorted competition. While Namibia and South Africa require to prove the substantial prevention or lessening of competition, Kenya needs to show that the conduct has led to the prevention, distorting and substantial lessening of competition.

Table 3: Elements of cartel conducts

Jurisdictions	Object	Effect	Prevent, restrict or distort competition
COMESA	X	X	X
Botswana	X	X	
Kenya	X	X	prevent, distort and substantial lessening
Malawi	X	X	X
Mauritius	X	X	X
Namibia	X	X	prevention or substantial lessening of competition
South Africa	X	X	substantially prevent or lessening of competition
Swaziland	X	X	X
Zambia	X	X	X

Source: Competition law of respective jurisdictions

iv. Sanctions

Once an undertaking has been found to have breach the competition law, the latter is liable to be punished. The undertaking may either be liable to pay a fine and/or imprisonment and/or be subject to directions. It is found that all the type of punishment and amount of fines do vary across the different jurisdictions. For example, in Botswana, Kenya, Malawi, Namibia, Swaziland and Zambia, cartels conducts are liable to both financial penalties and imprisonment. The period of imprisonment tend to vary between two and five years. COMESA

[5] See New York Law School (2018).

and Mauritius can only impose fines. The penalties imposed are provided in Appendix, table A.

Moreover, in all the sample jurisdictions excluding South Africa, Swaziland and Zambia, the legislation do not impose the criminal sanction on cartel conducts. COMESA, Botswana and Malawi are the jurisdictions which were not found to have a leniency policy in regard to cartel conducts.

4.3.2 Abuse of dominance

An abuse of dominance can be defined as an anti-competitive act by persons substantially in control of a market that has had, is having, or is likely to have the effect of preventing or lessening competition. The EU court of Justice has defined dominance in terms of an undertaking's economic strengths' and its ability to act independently on the market.

i. Definition

An analysis of definition of 'abuse of dominance' across the different jurisdictions shows variations in the interpretation of this provision. For example, the COMESA Regulations stipulates that an undertaking is considered dominant in a market if by itself or together with an interconnected company, it occupies such a position of economic strength that would enable it to operate in the market without effective constraints from its competitors or potential competitors. The Botswana Competition Act assesses the economic strength in a market so as to allow the enterprise to adjust prices or output without effective constraint from competitors or potential competitors. In Malawi, the Act addresses the misuse of market power in terms of the elimination of a competitors, the prevention of entry of the deterrence or prevention on a person engaging in a competitive conduct. As for Mauritius, a conduct would constitute to be an abuse if an enterprise is in a monopoly situation and has the object or effect of preventing, restricting or distorting competition; or in any other way constitutes exploitation of the monopoly situation. In Swaziland, to be in a dominant position, an enterprise as a supplier or an acquirer of goods and services, either alone or together with any interconnected body corporate, should be in a position to act independently of competitors and consumers over the production, acquisition, supply, or price of goods or services in that market.

ii. Threshold

COMESA, Malawi and Swaziland were not found to have any threshold for a conduct to fall into the abuse of dominance position. Otherwise, the thresholds have been observed to be varying between 25% and 70% across the rest of the jurisdictions. Table 4 shows the thresholds for abuse of dominance across the sample jurisdictions.

Table 4: Abuse of dominance thresholds

Jurisdictions	Supplied/acquired by one enterprise	Supplied/ acquired by three or fewer enterprises
Botswana	25%	50%
Kenya	40% - 50% or < 40% with market power	40% - 50% or < 40% with market power
Mauritius	30%	70%
Namibia	•> 45% ; •35% - 45%, unless it can show that it does not, or they do not, have market power; or • it has, or they have, <35% nas/have market power • Annual turnover in, into or from Namibia or assets in Namibia < NAD 10 million	•> 45% ; •35% - 45%, unless it can show that it does not, or they do not, have market power; or • it has, or they have, <35% nas/have market power • Annual turnover in, into or from Namibia or assets in Namibia < NAD 10 million
South Africa	> 45% of that market; < 35% but has market power or between 35%- 45%, unless it can show that it does not have market power.	> 45% of that market; < 35% but has market power or between 35%- 45%, unless it can show that it does not have market power.
Zambia	30%	60%

Source: Bowmans

iii. Conducts

In terms of the types of conducts falling within the provisions of the Act of the respective jurisdictions, it is found that none of them explicitly covers the same types of conducts. Common elements/conducts of the abuse of dominance includes unfair pricing, limitation or sales of goods and services, and limitation of market access. Kenya is again the only country which caters for an intellectual property right in terms of its abuse. The provisions within the Mauritian Competition Act does not specify the conducts but rather looks at enterprises that are abusing or exploiting any market power this position confers upon them and/ or are engaged in conduct which restricts, prevents or distorts competition or otherwise exploits the monopoly situation. Details of the conducts for each jurisdiction can be found in Appendix, Table B.

iv. Sanctions

For the case of abuse of dominance, undertakings may also be either be liable to pay a fine and/or imprisonment and/or be subject to directions in caught in breach of the law. It is found that all the type of punishment and amount of fines do vary across the different jurisdictions. For example, in Kenya, Malawi and Swaziland, undertakings convicted for abuse of dominance conducts are liable to both financial penalties and imprisonment. The period of imprisonment tend to be up to five years. Mauritius and Botswana are the two countries which do not financially punish undertakings. Kenya, Namibia, South Africa and Zambia have been observed to impose a fine of up to 1% on the firm's previous annual turnover. The rest of the

jurisdictions tend to have an absolute threshold for the imposition of fines (See Appendix, Table B).

4.3.3 Mergers

A merger can be defined as an agreement that unites two existing companies into a new company. Almost all systems of competition law provide for control of mergers, to prevent companies from joining together to eliminate competition between them or to lessen competition between them. The European Union Merger Regulation applies to concentrations. Broadly, there is a concentration where two or more previously independent undertakings merge their business, where there is a change in control of an undertaking or where a full-function joint venture is created[6].

In terms of the definition of the merger conduct across the Southern African jurisdictions, they have been found to be significantly different. The direct or indirect acquisition or controlling elements have been found to be the most common terms used in its definition in the competition law provisions of COMESA, Botswana, Kenya, Namibia, South Africa and Zambia. While in Mauritius merger definitions also incorporates ownership and control elements, it does not specifically distinguish between direct or indirect control or ownership. Unlike the rest of the jurisdictions, Malawi caters only for controlling interest.

i. Control elements

The provisions of the Competition Act ("the Act") that apply to mergers have been segregated into following control elements: the common control, legal control and 'defacto' elements. Table 5 shows the presence of prevailing identified elements across the different jurisdictions:

Table 5: Control elements

	COMESA	Botswana	Kenya	Malawi	Mauritius	Namibia	South Africa	Swaziland	Zambia
Common control	X	X	X	X	X	X	X	X	X
Legal control	X	X	X	X	X	X	X	X	X
De facto control	X	X		X	X	X	X		

Source: Competition law of respective jurisdictions

ii. Merger notification and thresholds

Among the sample jurisdictions, Mauritius has been found to be the only one where merger notification is not mandatory. In the rest of the jurisdictions, merger notification is compulsory.

In terms of the merger thresholds, Kenya, Malawi and Zambia were found to be the countries where there is no merger threshold. All mergers are notifiable. In those jurisdictions with a merger threshold, the criteria were also found to be different. For example in the COMESA

[6] Reg. 139/2004 [2004] OJ L24/1 (the EU merger Regulation)

region, a merger is reviewable if (i) the combined annual turnover or value of assets (whichever is higher) of the merging parties in the Common Market equals or exceeds USD 50 million; and (ii) each of at least two of the merging parties has annual turnover or assets in the Common Market of USD 10 million or more. In Botswana, the merger threshold consist of (i) the turnover in Botswana of the enterprise or enterprises being taken over exceeds BWP 10 million, (ii) the assets in Botswana of the enterprise or enterprises being taken over have a value exceeding BWP 10 million; or (iii) the enterprises concerned would, following implementation of the merger, supply or acquire 20% of a particular description of goods or services in Botswana. Zambia reviews mergers if the combined turnover or assets (whichever is higher) of the merging parties in Zambia is at least 50 million fee units (ZMW 15 000 000) in the merging parties' most recent financial year in which these figures are available. Detailed information for the rest of the jurisdictions can be found in Appendix, Table C.

It is found that there is currently no standard way which jurisdictions have used to apply the threshold. For example, while in the majority of the jurisdictions, an absolute figure has been used in the determination of threshold the merger, in Mauritius, a merger is reviewable if the merged entity will supply or acquire 30% or more of all those goods and services. On the other hand, turnover and assets were found to be main elements determining the threshold.

iii. Filing fees

Table 6 shows the filing fees of the sample jurisdictions. It is clearly found that no jurisdiction has a standard way of charging merger filing fee.

Table 6: Filing fees

Jurisdictions	Filing fees
COMESA	0.1% of the merging parties' combined annual turnover or combined assets (whichever is higher) in the Common Market, subject to a cap of USD 200, 000.
Botswana	0.01% of the merging enterprises' combined turnover or assets in Botswana, whichever is higher
Kenya	COMBINED TURNOVER OF THE MERGING PARTIES — FILING FEE PAYABLE KES 500 million to KES 1 billion — KES 500 000 KES 1 billion to KES 50 billion — KES 1 million Above KES 50 billion — KES 2 million
Malawi	0.05% of the combined turnover or total assets, whichever is the higher, of the enterprises proposing to effect the merger or takeover.
Namibia	The fees for filing a merger notice are as follows: • NAD 10 000 if the combined figure < NAD 50 million; • NAD 25 000 if NAD 50 million ≤ the combined figure < NAD 65 million; • NAD 50 000 if NAD 65 million ≤ the combined figure < NAD 75 million; • NAD 75 000 if NAD 55 million ≤ the combined figure < NAD 100 million; • NAD 125 000 if NAD 100 million ≤ the combined figure < NAD 1 billion; • NAD 250 000 if NAD 1 billion ≤ the combined figure < NAD 3.5 billion; or • NAD 500 000 if the figure≥ NAD 3.5 billion. For these purposes the combined figure means the greater of the: • combined annual turnover in, into and from Namibia of the acquirer and the target; • combined assets in Namibia of the acquirer and the target; • annual turnover in, into and from Namibia of the acquirer plus the assets

	in Namibia of the target; or • assets in Namibia of the acquirer plus the annual turnover in, into and from Namibia of the target.
South Africa	Large merger - ZAR 500 000. Intermediate merger -ZAR 150 000. Small mergers- Nil
Swaziland	Small merger- Turnover < SZL 8 million - Nil Other merger > SZL 8 million - 0.1% of the combined annual turnover or assets of the entities, whichever is greater. The amount charged for notification of a merger is capped at SZL 600 000 for any single merger notified.
Zambia	0.1% of the turnover/ assets (whichever is higher) with a maximum cap of 16 666 667 fee units (ZMW 5 000 000).

Source: Bowmans

Based on the above information, very few similarities have been found to be present across the definitions, thresholds as well as sanctions among others across the different types of anti-competitive conducts. It can thus be said that the provisions of competition law seems to vary a lot across the different jurisdictions. But to what extent, are the laws converging towards a regional competition regime?

5. Degree of convergence of competition laws

It is a fact that the assessment of any competition law remains a difficult task given the multitude of provisions covered as well as the interpretation of these provisions. Using the different elements identified across the different types of anti-competitive conducts, this section attempts to assess the degree of convergence of the competition laws of the different jurisdictions towards the regional competition regime.

5.1 Methodology

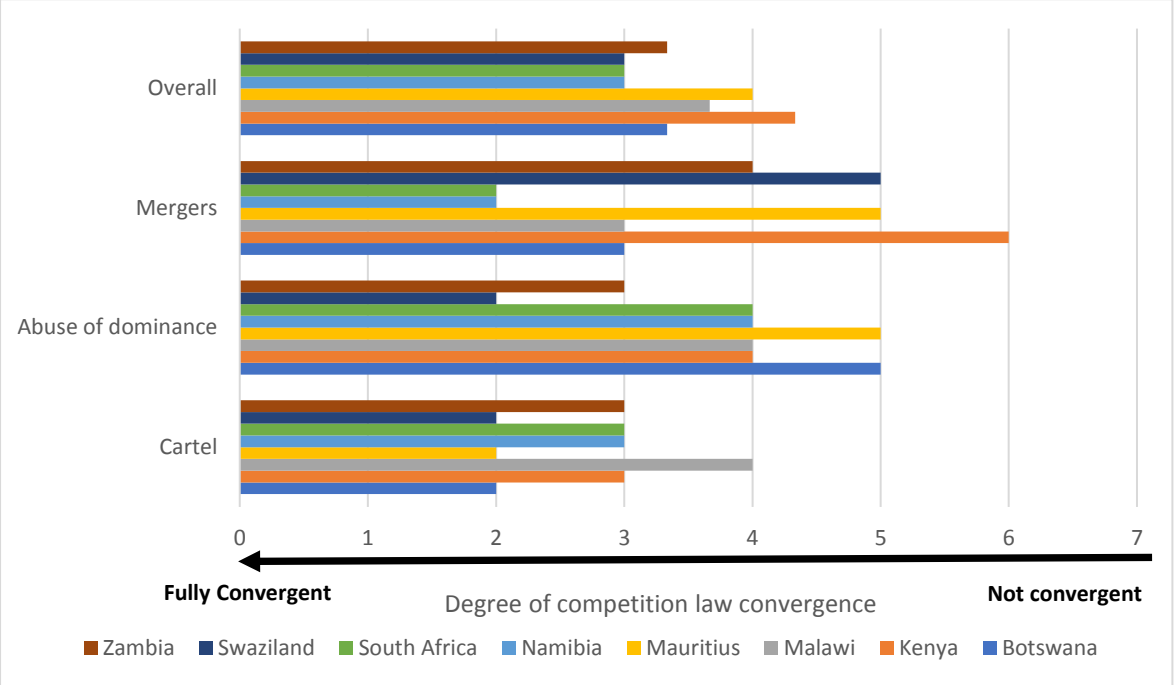
It would be realistic to measure the degree of competition law convergence based on the provisions covering the different types of anti-competitive conducts namely cartels, abuse of dominance and anti-competitive mergers. But, it would be difficult to come up with a very accurate measure of the degree of law convergence. While it may be argued that such measurement may be very subjective, it however provide a useful insight of the degree of convergence of competition law across the sample jurisdictions.

The elements identified for each conducts in section 4 of this paper have then been compared with the COMESA Regulations (See Table D in Appendix). The comparisons for each jurisdictions are next categorised into (1) fully convergent with the COMESA Regulations, (2) partially convergent and (3) not at all convergent with the Regulations. Each category is then assigned a scale score. If the provisions of its competition law is fully convergent, it is assigned a 1, if it is partially convergent, it scores a 2 and if it is not all convergent it then scores a 3. The scores are then totalled for each type of conducts and they are averaged to obtain an overall score for each jurisdictions.

5.2 Analysis

The degree of competition law convergence with the COMESA Regulations across the jurisdictions are shown in Figure 1. Although Botswana, Namibia and South Africa are not members of the COMESA, they have been included in the analysis given that they do trade with other countries in the same region. The harmonisation of competition laws of the neighbourhood jurisdictions would definitely impact on their national competition law.

Figure 1: Degree of competition law convergence with the COMESA Regulations



5.3 Findings

Analysis of provisions of the cartels conducts shows that Malawi is the furthest in terms of competition law convergence with a score of 4 while Botswana, Mauritius and Swaziland are most convergent to the regional competition regime with a score of 2. Interestingly, the common factor which makes all the jurisdictions less convergent is the sanctions imposed. On the other hand, all the jurisdictions can investigates cartels by proving 'the object' or 'by effect'.

As for the abuse of dominance provisions, it is found that Swaziland is the most convergent with a score of 2. It is then followed by Zambia. Mauritius and Botswana are furthest to the harmonisation score a 5 given their abuse of dominance thresholds. The latter do not also have any punitive sanction.

The pattern of degree for convergence changes when it comes to mergers provisions, South Africa and Namibia have been observed to be closest to harmonisation of their law. The merger notification and the filings fees respectively are the elements from which they completely diverge. Kenya, scoring a 5, is the furthest mainly due to its differences in terms of its control elements, merger threshold and imposed filing fees.

In general, based on the scaled score, it is found that Namibia, South Africa and Swaziland are very close to the harmonisation of the anti-competitive conducts provisions. Kenya seems

to be the least convergent mainly due to the differences in its merger provisions. One interesting observation is that although Namibia and South Africa are not members of the COMESA, their respective competition laws are closest to the regional competition regime.

6. Challenges of harmonising the law

The harmonisation of competition law is regarded to be a very important tool for avoiding conflict between legal system in the tackling cross-border cartels, abuse of dominance and anti-competitive regional mergers. As stated by Fox (1991), harmonisation is difficult to accomplish unless nations converge on a commonly accepted standard of rules. In most regional economic agreements, economic integration occurs after member states have adopted competition laws and policies that are similar.

The harmonisation of substantive competition law has been part of the general economic changes considered necessary for the formation of regional economic integration. In this paper, it is found that although competition laws seem to be converging, there are still a lot of difference across the jurisdictions whether in terms of definitions of conducts, its sanctions imposed or its implementation that needs to be tackled. But how could such differences be explained?

Harmonisation is a lengthy process that requires appropriate resourcing and expertise. As stated by Aydin & Buthe (2016), resource constraints can occur at three levels; the finanical resources of the CA, the legal and economic expertise within the CA and an economic expertise within the judiciary. A lack of financial resources can translate into a shortage of staff and inability of hiring experts thus hampering enforcement activities and its performance. Moreover, shortage of expertise can also affect the ability of the agency to appropriately prioritise its activities and to enforce its laws and policies ((Aydin & Buthe, 2016), (Gerber, 2010)). The lack of the judiciary's familiarity to the antitrust economies can cause cross-border problems such as the backlog of cases that renders judicial review of CA's decisions meaningless. As shown by Armoogum and Lyons (2016), budget does positively influence the performance/reputation of a CA.

Harmonisation also brings nations of different economic development into contact with one another. According to Sayeti (2015), harmonisation of competition policy should consider the degree of development of the existing competition law of the member states. Numerous studies carried out by the World Bank, UNCTAD and OECD showed that cross-country differences in living standards and growth rates are significantly related to differences between countries in institutional capacity, protection of property rights and fair and efficient markets[7]. An analysis of the gross national product per capital (GNIPC) from the worldbank database showed that the standard of living across the southern Africa jurisdictions in 2016 varied between $465 in Malawi and $9781 in Mauritius. South Africa, Botswana, Namibia and Swaziland were found to have a GNIPC of $7279, $7345, 5891 and $ 3895 respectively. A country with a higher level of economic development can be expected to have a more effective enforcement of its regional competition regime. As observed, Malawi has a low degree of convergence and also has a lot standard of living compared with the other jurisdictions.

Another challenge that jurisdictions may be facing in the effectively implementing a regional competition regime is the level of government regulations. In many southern African countries, governments tend to retain significant ownership stakes in a number of industries. This may potentially act as a major barrier to entry in these countries and consequently impede the effective implementation of competition regimes. Moreover, certain government regulations such as the reservation policy and the protection of infant industries may matter in influencing this process (Sengupta & Dube, 2008). There is also the need for the jurisdictions to reassess all relevant government legislation and regulations to ascertain the extent to which they distort

[7] See (OECD, 2006)

or enhance competition by minimising the risk of anticompetitive conduct through appropriate discipline on business conduct.

Another factor which may potentially affect the ability of competition authority to implement its regional competition law is the level of political and legal environment prevailing in the jurisdictions (Aydin & Buthe, 2016). The judiciary usually plays an important role as the final arbiter in the enforcement of competition law, even in systems where the initial steps in enforcement take place as an administrative process within the competition agency. Conditions limiting access to the judiciary such as corruption, political stability may therefore inhibit the likelihood that competition law will be effective in achieving socially desirable outcomes.

Having an unsupportive or even hostile political–legal environment is very likely to undermine enforcement-focused and efficiency-maximizing competition policies. But severe political inequality can also limit the foster of rivalry in an underdeveloped private sector, or advance economic freedom through competition (Aydin & Buthe, 2016). The empirical results of Armoogum & Lyons (2008) confirms this, when they showed that governance may significantly influence the performance of CAs.

A look at the governance across the southern African jurisdictions also shows a great variation in terms of the control of corruption, political stability, government effectiveness, voice and accountability, regulatory quality and rule of law indicators ranging from -3.81 for Swaziland to 5.02 for Mauritius (See Table E in Appendix). These are essential elements which is likely to favour the harmonisation process of competition law. They refer to the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them. Table 7 shows the governance indicators for 2016 across the sample data.

Moreover, the competition culture and the level of development of competition law development are two other elements that the southern African regions need to overcome. While some of the CAs are fully operational, some CAs such as Congo, Lesotho and Mozambique are still in the process of adopting competition laws and policies. The vast majority of competition authorities within SADC are relatively young agencies. The competition laws of Zambia, Zimbabwe, South Africa and Malawi were the first to be enacted in the region, in the mid/late 1990"s with their competition agencies becoming operational in 1997, 1998, 1999 and 2005 respectively. Mauritius and Namibia established their CA in 2009 and was followed by the Swaziland which began operation in 2010.

Based on the above discussions, it is thus found that there is therefore still a long way to go before the harmonisation of competition law is completely implemented. It is important for government to balance economic and social regulations, and carefully analyse the impact of all laws and regulations on the competitive economy. It is a fact, that a regional competition regime is unlikely to be able to be implemented effectively on its own. While CAs including regional competition authorities can internally work towards their goals, there are external factors which can have great influence on the effective implementation of the regional competition regime.

7. Conclusion

While harmonisation of competition law has become an important requirement for ensuring that businesses are able to operate in competitive environment, it is found that jurisdictions across the southern African region are striving to fully converge their competition laws towards the regional competition law (COMESA Regulations). Similarities mostly in terms of definitions of anti-competitive conducts have been observed. On the other hand, more work should be

done in terms of the harmonisation of thresholds and sanctions. Interestingly, Swaziland, as a COMESA member state has been found to be most convergent to the COMESA Regulations. While Namibia and South Africa are not COMESA members, high degree of convergences have been noted. Kenya, followed by Mauritius and Malawi have been found to be the least convergent towards the COMESA Regulations.

While there seems to be an appreciable degree of convergence in terms of the legal and institution framework which has been put in place, there is however still a lot of work that needs to be done in aligning their anti-competitive conducts provisions including their sanctions. It is a fact that such type of legal implementation is a lengthy process. It would require great efforts and resources from the CAs in terms of their law review. But, before thinking of an effective harmonisation of the competition law, it important that jurisdictions have in place the required regulatory, political and economic environment to be able to fully benefit from such implementations.

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Appendix

Table A: Cartels conduct and sanctions

	Cartel	Conduct	Sanctions
COMESA	Restrictive Business Practices 1. The following shall be prohibited as incompatible with the Common Market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which: (a) may affect trade between Member States; and (b) have as their object or effect the prevention, restriction or distortion of competition within the Common Market.	• agreements fixing prices, which agreements hinder or prevent the sale or supply or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services; • collusive tendering and bid-rigging; • market or customer allocation agreements; • allocation by quota as to sales and production; • collective action to enforce agreements; • concerted refusals to supply goods or services to a potential purchaser, or to purchase goods or services from a potential supplier; or • collective denials of access to an arrangement or association which is crucial to competition.	In terms of Rule 79, the maximum monetary penalty for each contravention of Article 19 is 750 000 units which is equivalent to USD 750 000.
Botswana	The Act regulates prohibited practices and specifically prohibits certain horizontal restrictive practices (unlawful competition between competitors). The Act stipulates that an enterprise shall not enter into a horizontal agreement with another enterprise to the extent that such agreement involves certain practices, such as: • price-fixing (either direct or indirect); • dividing markets (by allocating customers, suppliers, territories or specific types of goods or services); • bid-rigging (except where the person requesting the bids or tenders is informed of the terms of the agreement before the time that the bids or tenders are made); • restraints on production or sale, including restraint by quota; • a concerted practice; or • "a collective denial of access, of an enterprise, to which is an arrangement or association crucial to competition."	• price-fixing (either direct or indirect); • dividing markets (by allocating customers, suppliers, territories or specific types of goods or services); • bid-rigging (except where the person requesting the bids or tenders is informed of the terms of the agreement before the time that the bids or tenders are made); • restraints on production or sale, including restraint by quota; • a concerted practice; or • "a collective denial of access, of an enterprise, to which is an arrangement or association crucial to competition."	

Kenya	Under the Act, the Authority is empowered to regulate cartel conduct, including any agreements or concerted practices which have the object or effect of preventing, distorting or lessening competition in any goods or services in Kenya. The following definitions in the Act in this respect are worth noting: • 'agreement' when used in relation to a restricted practice includes a contract, arrangement or understanding, whether legally enforceable or not; and • 'concerted practice' means co-operative or co-ordinated conduct between firms, achieved through direct or indirect contact, that replaces independent action, but which does not amount to an agreement. The Act specifically prohibits certain horizontal restrictive practices (unlawful conduct between competitors) as well as certain vertical restrictive practices (unlawful conduct between an undertaking and its supplier or customer, or both).	(3) Without prejudice to the generality of the provisions of subsection (1), that subsection applies in particular to any agreement, decision or concerted practice which— (a) directly or indirectly fixes purchase or selling prices or any other trading conditions; (b) divides markets by allocating customers, suppliers, areas or specific types of goods or services; (c) involves collusive tendering; (d) involves a practice of minimum resale price maintenance; (e) limits or controls production, market outlets or access, technical development or investment (f) applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (g) makes the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject of the contracts; (h) amounts to the use of an intellectual property right in a manner that goes beyond the limits of legal protection; (i) otherwise prevents, distorts or restricts competition. (4) Subsection (3) (d) shall not prevent a supplier or producer of goods or services from recommending a resale price to a reseller of the goods or a provider of the service, provided ! (a) it is expressly stipulated by the supplier or producer to the reseller or provider that the recommended price is not binding; and (b) if any product, or any document or thing relating to any product or service, bears a price affixed or applied by the supplier or producer, and the words "recommended price" appear next to the price so affixed or applied. (5) An agreement or a concerted practice of the nature prohibited by subsection (1) shall be	Any person who contravenes the provisions prohibiting cartel conduct is liable on conviction to imprisonment for a period not exceeding five years or a fine not exceeding KES 10 million, or both. Any person who contravenes the provisions prohibiting cartel conduct is liable on conviction to imprisonment for a period not exceeding five years or a fine not exceeding KES 10 million, or both.

		deemed to exist between two or more undertakings if! (a) any one of the undertakings owns a significant interest in the other or has at least one director or one substantial shareholder in common; and (b) any combination of the undertakings engages in any of the practices mentioned in subsection (3). (6) The presumption under subsection (5) may be rebutted if an undertaking or a director or shareholder concerned establishes that a reasonable basis exists to conclude that any practice in which any of the undertakings engaged was a normal commercial response to conditions prevailing in the market.	
Malawi	Regulates prohibited practices and specifically prohibits certain horizontal restrictive practices (i.e. unlawful conduct between competitors). Any category of agreements, decisions or concerted practices likely to result in the prevention, restriction or distortion of competition to an appreciable extent in Malawi or in any substantial part of Malawi, is prohibited. Section 33(3) of the Act enumerates examples of business practices which have or would likely have negative effects on competition and are, therefore, prohibited.	These include: cartels, such as price fixing or market allocation agreements among competing firms; bid rigging; resale price maintenance; predation; abuse or misuse of market power; and exclusive arrangements or agreements.	There is no specific penalty for cartel conduct. A person who is guilty of an offence under the Act for which no specific penalty is provided, is liable for a fine of MWK 500 000 or an amount equivalent to the financial gain generated by the offence, if such amount is greater, and to imprisonment for five years.

Mauritius	The Act specifically prohibits collusion, also known as cartel conduct. Section 41 of the Act states that an agreement, or provision of an agreement, shall be collusive if: • it exists between enterprises that supply goods or services of the same description, or acquire goods or services of the same description; • it has the object or effect, in any way, of fixing the selling or purchase prices of the goods or services; • sharing markets or sources of the supply of the goods or services; or • restricting the supply of the goods or services to, or the acquisition of them from, any person; and • it significantly prevents, restricts or distorts competition. Any agreement or provision of an agreement which is collusive shall be prohibited and void.	Collusive agreements can also take the form of bid-rigging and resale price maintenance. An agreement or a provision of bid-rigging shall be considered collusive, if one party agrees (i) not to submit a bid or tender; or (ii) agrees upon the price, terms or conditions of a bid or tender. Resale Price Maintenance (RPM) is also a form of collusive agreement, and is described as "an agreement between a supplier and a dealer with the object or effect of directly or indirectly establishing a fixed or minimum price or price level to be observed by the dealer when reselling a product or service to his customers"	Any enterprise which has intentionally or negligently infringed the Act for cartel conduct faces a financial penalty which shall not exceed 10% of the turnover of the enterprise in Mauritius during the period of the breach of the prohibition, up to a maximum period of five years.
Namibia	The Competition Act prohibits restrictive practices and, in particular, contemplates and includes in its ambit agreements concluded between parties in a horizontal relationship, being undertakings trading in competition. Agreements between undertakings, decisions by associations of undertakings or concerted practices by undertakings which have as their object or effect the prevention or substantial lessening of competition in trade in any goods or services in Namibia, or a part of Namibia, are prohibited.	Prohibits any agreement, decision or concerted practice which: • directly or indirectly fixes purchase or selling prices or any other trading conditions; • divides markets by allocating customers, suppliers, areas or specific types of goods or services; • involves collusive tendering; • involves a practice of minimum resale price maintenance; • limits or controls production, market outlets or access, technical development or investment; • applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or • makes the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject of the contracts.	The Court may impose a pecuniary penalty for any amount which it considers appropriate but not exceeding 10% of the global turnover of the undertaking during its preceding financial year. A contravention or failure to comply with an interim or final order of the Court given in terms of the Competition Act constitutes an offence. Upon conviction, the perpetrator is liable to a fine not exceeding NAD 500 000, or to imprisonment for a period not exceeding 10 years, or to both. In the case of any other contravention of the Competition Act, a convicted person is liable to a fine not exceeding NAD 20 000, or to imprisonment for a period not exceeding one year, or to both.

South Africa		It has the effect of substantially preventing, or lessening, competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological, efficiency or other procompetitive gain resulting from it outweighs that effect; or (b) it involves any of the following restrictive horizontal practices: (i) directly or indirectly fixing a purchase or selling price or any other trading condition; (ii) dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or (iii) collusive tendering.	Administrative penalties of up to 10% of turnover may be imposed on the firm concerned.
Swaziland		The Act, at Section 30 (5), specifically lists the following as prohibited conduct: • price fixing; • collusive tendering; • bid-rigging; • market and customer allocation agreements; • sales or production quota allocation arrangements; and • any collective action to enforce arrangements.	Any conduct that is in contravention of the Act attracts criminal and penal liability of a fine of SZL 250 000 or imprisonment not exceeding five years, or both.
Zambia	Section 8 of the Act prohibits, and views as anti-competitive, any category of agreement, decision or concerted practice which has as its object or effect, the prevention, restriction or distortion of competition to an appreciable extent in Zambia.	Prohibits horizontal agreements between enterprises which: • fix (directly or indirectly), a purchase or selling price, or any other trading condition; • divide markets by allocating customers, suppliers or territories; • involve bid-rigging; • set production quotas; or • provide for collective refusal to deal in, or supply, goods or services.	May impose a fine not exceeding 500 000 penalty units (ZMW 150 000) or imprisonment for a period not exceeding five years, or both, on any director or manager of an enterprise that is found to have engaged in cartel activities. The Act further provides that where a penalty is not specifically provided for the offence, the punishment upon conviction in respect of a person who commits that offence is a fine not exceeding 100 000 penalty units (ZMW 30 000) or imprisonment for a period not exceeding one year, or both.

Table B: Abuse of Dominance, conducts and sanctions

	Definition	Conducts	Penalties
COMESA	An undertaking is considered dominant in a market if by itself or together with an interconnected company, it occupies such a position of economic strength that would enable it to operate in the market without effective constraints from its competitors or potential competitors.	• restricts, or is likely to restrict, the entry of any undertaking into a market; • prevents or deters, or is likely to prevent or deter, any undertaking from engaging in competition in a market; • eliminates or removes, or is likely to eliminate or remove, any undertaking from a market; • directly or indirectly imposes unfair purchase or selling prices or other restrictive practices; • limits the production of goods or services for a market to the prejudice of consumers; • as a party to an agreement makes the conclusion of such agreement subject to acceptance by another party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the agreement; or • engages in any business activity that results in the exploitation of its customers or suppliers, so as to frustrate the benefits expected from the establishment of the Common Market.	Maximum monetary penalty for each contravention is 500 000 units (USD 500 000).
Botswana	A dominant position refers to a situation in which one or more enterprises possess such economic strength in a market so as to allow the enterprise to adjust prices or output without effective constraint from competitors or potential competitors.	May have regard to whether the agreement or conduct in question: • maintains or promotes exports from Botswana or employment in Botswana; • advances the strategic or national interest of Botswana in relation to a particular economic activity; • provides social benefits which outweigh the effects on competition; • occurs within the context of a citizen empowerment initiative of government, or otherwise enhances the competitiveness of small- and medium-sized enterprises; or • in any other way enhances the effectiveness of the Government's programmes for the development of the economy of Botswana, including the programmes of industrial development and privatisation.	No punitive sanctions. May issue a direction.

	Definition	Conducts	Penalties
Kenya	The Act prohibits the abuse of a dominant position and defines a dominant undertaking as an undertaking that produces, supplies, distributes or otherwise controls not less than half of the total goods or services produced supplied or distributed in Kenya or any substantial part thereof.	• directly or indirectly imposing unfair prices or trading conditions; • limiting or restricting production, market outlets or market access, investment, distribution, technical development or technological progress through predatory or other practices; • applying dissimilar conditions to equivalent transactions with other trading parties; • making the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contracts; and • the abuse of intellectual property rights.	Liable on conviction to imprisonment for a period not exceeding five years or a fine not exceeding KES 10 million, or both. Note however, as mentioned above, the Amendment Act also permits the Authority to impose a financial penalty of up to 10% of the immediately preceding year's gross annual turnover in Kenya of the undertaking in question.
Malawi	The Act addresses the misuse of market power, providing that any person who has a dominant position of market power shall not use that power for the purpose of (i) eliminating or damaging a competitor in that market or any other market; (ii) preventing the entry of a person into that market or any other market; or (iii) deterring or preventing a person from engaging in competitive conduct in that market or any other market.	Prohibits predatory behaviour towards competitors including the use of cost pricing to damage, hinder or eliminate competition, if the behaviour limits access to markets or otherwise unduly restrains competition, or has, or is likely to have, adverse effects on trade or the economy in general.	No specific penalty. It is an offence for any person who has a dominant position of market to misuse that power. A person guilty of an offence under the Act for which no specific penalty is provided may be liable for a fine of MWK 500 000 or an amount equivalent to the financial gain generated by the offence, if such amount is greater, and to imprisonment for five years.
Mauritius	A monopoly situation shall exist in relation to the supply of goods or services of any description where: • Thirty percent or more of those goods or services are supplied, or acquired in the market, by one enterprise; or • Seventy percent or more of those goods or services are supplied, or acquired in the market, by three or fewer enterprises. (2) A monopoly situation shall be subject to review by the Commission where the Commission has reasonable grounds to believe that an enterprise in the monopoly situation is engaging in conduct that - (a) has the object or effect of preventing, restricting or distorting competition; or (b) in any other way constitutes exploitation of the monopoly situation.	It is not in itself a breach of the law for an enterprise to be in a monopoly situation. However, enterprises which hold monopoly positions may be in breach of the Act where they are abusing or exploiting any market power this position confers upon them and/ or are engaged in conduct which restricts, prevents or distorts competition or otherwise exploits the monopoly situation.	Only give directions. Fail to comply - is an offence and shall, on conviction, be liable to a fine not exceeding MUR 500 000 and to imprisonment for a term not exceeding two years.

	Definition	Conducts	Penalties
Namibia	Abuse of dominance is prohibited. For purposes of determining whether an undertaking has, or two or more undertakings have, a dominant position, the Commission has, by way of Rule 36, prescribed the following criteria, namely where an undertaking has, or two or more undertakings have: • at least 45% of that market; • at least 35%, but less than 45%, of that market, unless it can show that it does not, or they do not, have market power; or • it has, or they have, less than 35% of that market, but has or have market power. For the purposes of this rule 'market power' is defined to mean the power of an undertaking or undertakings to control prices, to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers. The Minister, with the concurrence of the Commission, has determined by notice in the gazette, that the abuse of dominant position provisions of the Act do not apply to an undertaking whose annual turnover in, into or from Namibia is equal to or valued below NAD 10 million, or whose assets in Namibia are equal to or valued below NAD 10 million.	Any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market in Namibia, or a part of Namibia, is prohibited. Abuse of a dominant position includes: • directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; • limiting or restricting production, market outlets or market access, investment, technical development or technological progress; • applying dissimilar conditions to equivalent transactions with other trading parties; or • making the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contracts	Pecuniary penalty for any amount which the court considers appropriate, but not exceeding 10% of the global turnover of the undertaking during its preceding financial year.

	Definition	Conducts	Penalties
South Africa	A firm is considered to be dominant in a market if (i) it has at least 45% of that market; (ii) it has less than 35% of that market, but has market power (as defined in the Act) or (iii) it has at least 35% but less than 45% of a particular market, unless it can show that it does not have market power. 'Market power' is defined in the Act as the power of a firm to control prices, or to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers. The Act includes per se prohibitions which prevent a dominant firm from (i) charging an excessive price (as defined in the Act) to the detriment of consumers; or (ii) refusing to give a competitor access to an essential facility (as defined in the Act) when it is economically feasible to do so.	Further, the Act prohibits a firm from engaging in the following exclusionary acts, unless the firm can show technological, efficiency or other pro-competitive gains that outweigh the anticompetitive effect: • requiring or inducing a supplier or customer to not deal with a competitor; • refusing to supply scarce goods to a competitor when supplying those goods is economically feasible; • selling goods or services on condition that the buyer purchases separate goods or services unrelated to the object of a contract, or forcing a buyer to accept a condition unrelated to the object of the contract; • selling goods or services below their marginal or average variable cost; • buying-up a scarce supply of intermediate goods or resources required by a competitor; and • discriminating between purchasers in relation to equivalent transactions of goods or services of like grade and quality	Penalty may not exceed 10% of the firm's annual turnover in South Africa and its exports from South Africa during the firm's preceding financial year.

	Definition	Conducts	Penalties
Swaziland	A dominant position as a position in a market in which an enterprise as a supplier or an acquirer of goods and services, either alone or together with any interconnected body corporate, is in a position to act independently of competitors and consumers over the production, acquisition, supply, or price of goods or services in that market.	Prohibits a firm from engaging in specific acts if they limit access to markets or otherwise unduly restrain competition, or have or are likely to have, adverse effects on trade or the economy in general, such as: • predatory behaviour towards competitors; • discriminatory pricing and discrimination in the supply and purchase of goods; • making the supply of goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods or the provision of competing goods or other services; • making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier; • imposing restrictions as to where or to whom or in what form or quantities goods supplied or other goods may be sold or exported; • resale price maintenance; • trade agreements fixing prices between persons; • refusals to supply goods or services to potential purchasers; and • denials of access to arrangements or associations which are crucial to competition.	Penal sanction of up to SZL 250 000 or imprisonment for a period not exceeding five years, or both.
Zambia	The Act provides that an enterprise must refrain from any act or conduct if, through abuse or acquisition of a dominant position of market power, the act or conduct of that enterprise limits access to markets or otherwise unduly restrains competition, or has or is likely to have an adverse effect on trade or the economy in general.	Abuse of dominance includes: • directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; • limiting or restricting production, market outlets or market access, investment, technical development or technological progress in a manner that affects competition; • applying dissimilar conditions to equivalent transactions with other trading parties; • making the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contracts; • denying any person access to an essential facility; • charging an excessive price to the detriment of consumers; or • selling goods below their marginal or variable cost.	Fine imposed may not exceed 10% of the enterprise's annual turnover.

Table C: Merger definition and threshold

Jurisdictions	Definition	Merger threshold
COMESA	The direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person, whether that controlling interest is achieved as a result of: • the purchase or lease of the shares or assets; • the amalgamation or combination with a competitor, supplier, customer or other person; or • any means other than those specified in the first two bullet points.	• the combined annual turnover or value of assets (whichever is higher) of the merging parties in the Common Market equals or exceeds USD 50 million; and • each of at least two of the merging parties has annual turnover or assets in the Common Market of USD 10 million or more. In circumstances where each of the merging parties generates two thirds or more of their annual turnover in one and the same member state, a COMESA filing will not be required.
Botswana	Occurs when one or more enterprises directly or indirectly acquire or stablish direct or indirect control over the whole or part of the business of another. There is no closed list of how 'control' may be achieved and may include: • the purchase or lease of shares, an interest, or assets of the other enterprise in question; or • the amalgamation, or other combination, with that enterprise. Broadly speaking, a person controls another firm if that person, inter alia: • beneficially owns more than one-half of the issued share capital of the firm; • is entitled to vote a majority of the votes that may be cast at a general meeting of the firm, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person; • is able to appoint or veto the appointment of a majority of the directors of the firm; • is a holding company, and the firm is a subsidiary of that company as contemplated in the Companies Act; • has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust, in the case of an enterprise being a trust; • owns the majority of the members' interests or controls directly or has the right to control the majority of members' votes in the close corporation, in the case of the enterprise being a close corporation; or • has the ability to materially influence the policy of the firm in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in the bullet points above.	• the turnover in Botswana of the enterprise or enterprises being taken over exceeds BWP 10 million; • the assets in Botswana of the enterprise or enterprises being taken over have a value exceeding BWP 10 million; or • the enterprises concerned would, following implementation of the merger, supply or acquire 20% of a particular description of goods or services in Botswana.

Jurisdictions	Definition	Merger threshold
Kenya	an acquisition of shares, business or other assets, whether inside or outside Kenya, resulting in the change of control of a business, part of a business or an asset of a business in Kenya in any manner and includes a takeover. a merger occurs when one or more undertakings, directly or indirectly, acquires or establishes direct or indirect control over the whole or part of the business of another undertaking. It may be achieved in any manner including: • the purchase or lease of shares, acquisition of an interest or purchase of assets of the other undertaking in question; • the acquisition of a controlling interest in a section of the business of an undertaking capable of itself being operated independently whether or not the business in question is carried on by a company; • the acquisition of an undertaking under receivership by another undertaking either situated inside or outside Kenya; • acquiring by whatever means the controlling interests in a foreign undertaking that has a controlling interest in a subsidiary in Kenya; • in the case of a conglomerate undertaking, acquiring the controlling interest of another undertaking or a section of the undertaking being acquired capable of being operated independently; • vertical integration; • exchange of shares between or among undertakings which results in substantial change in ownership structure through whatever strategy or means adopted by the concerned undertakings; or • amalgamation, takeover or any other combination with the other undertaking.	No threshold- All mergers must be notified.
Malawi	The acquisition of a controlling interest in: • any trade involved in the production or distribution of any goods or services; • an asset which is, or may be utilised in connection with, the production or distribution of any commodity, where the person who acquires the controlling interest already has a controlling interest in any undertaking involved in the production or distribution of the same goods or services; or • the acquisition of a controlling interest in any trade whose business consists wholly or substantially in (i) supplying goods or services to the person who acquires the controlling interest; or (ii) distributing goods or services produced by the person who acquires the controlling interest. There is no closed list of how control may be achieved. Broadly, a controlling interest, in relation to (i) any undertaking, means any interest which enables the holder to exercise, directly or indirectly, any control whatsoever over the activities or assets of the undertaking; and (ii) any asset, means any interest which enables the holder to exercise, directly or indirectly, any control whatsoever over the asset.	No minimum threshold. All mergers are notifiable.

Jurisdictions	Definition	Merger threshold
Mauritius	Bringing together, under common ownership and control, of two or more enterprises, of which at least one carries on activities in Mauritius, or through a company incorporated in Mauritius. The determination of whether a merger exists for the purposes of the Act is based on both qualitative and quantitative criteria focusing on both the concept of control and market share. Enterprises shall be regarded as being under common control where they are: • enterprises of interconnected corporate entities; • enterprises carried on by two or more corporate entities of which one person has, or groups of persons have, control; or • two distinct enterprises, one carried on by a corporate entity and the other carried on by a person having control of that corporate entity. Any person may be regarded as bringing an enterprise under his or her control where: • that person becomes able to control or materially influence the policy of the enterprise, without having a controlling interest in that enterprise; • that person is already able to control or materially influence the policy of the enterprise and acquires a controlling interest in that enterprise; or • that person is already able to materially influence the policy of the enterprise and becomes able to control that policy. The Act prohibits merger situations which result in a restrictive business practice as defined therein.	• all the parties to the merger supply or acquire goods or services of any description, and following the merger, the merged entity will supply or acquire 30% or more of all those goods or services in the market; • prior to the merger, one of the parties to the merger alone supplies or acquires 30% or more of goods or services of any description on the market; and • the Commission has reasonable grounds to believe that the creation of the merger situation has resulted in, or is likely to result in, a substantial lessening of competition within any market for goods or services.

Jurisdictions	Definition	Merger threshold
Namibia	occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking. In terms of the Act, a merger may be achieved in any manner including through the purchase of shares, an interest, or assets of the other undertaking in question; or amalgamation or other combination with the other undertaking. The Act does not make express provision for the exclusion of certain transactions from the merger definition (e.g. where a restructuring occurs within the same economic entity). However, the Commission has indicated that it does not regard internal restructurings as requiring notification. In terms of these provisions, a person controls an undertaking if that person: • beneficially owns more than one-half of the issued share capital of the undertaking; • is entitled to vote a majority of the votes that may be cast at a general meeting of the undertaking, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that undertaking; • is able to appoint, or to veto the appointment, of the majority of the directors of the undertaking; • is a holding company, and the undertaking is a subsidiary of that company as contemplated in the Namibian Companies Act; • in the case of the undertaking being a trust, has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust; • in the case of the undertaking being a close corporation, owns the majority of the members' interest or controls directly or has the right to control the majority of members' votes in the close corporation; or • has the ability to materially influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control as mentioned in the preceding bullet points.	Step 1: the first step is to look at the combined value of the parties. T The Act does not apply where the combined value of the assets and/or turnover of the acquirer and target equals or does not exceed the values set out below in sub-paragraphs (a) to (d): (a) the combined annual turnover in, into or from Namibia of the acquirer and target is equal to or valued below NAD 30 million; (b) the combined asset value in Namibia of the acquirer and target is equal to or valued below NAD 30 million; (c) the annual turnover in, into or from Namibia of the acquirer plus the assets in Namibia of the target is equal to or valued below NAD 30 million; (d) the annual turnover in, into or from Namibia of the target plus the assets in Namibia of the acquirer is equal to or valued below NAD 30 million. Step 2: the second step is to look at the value of the target only. If the combined value of (a) to (d) above all fall below NAD 30 million, then the merger is not notifiable. However, if one of the combinations exceed NAD 30 million, the next step is to look at the asset and turnover values of the target only. If the value of the assets and turnover of the target fall below NAD 15 million, the merger will not be notifiable (even if a combined value in (a) to (d) above exceeds NAD 30 million.

Jurisdictions	Definition	Merger threshold
South Africa	occurs when one or more firms directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another firm, whether such control is achieved as a result of the purchase or lease of the shares, an interest or assets of the other firm, by amalgamation or any other means. There is no closed list of how control may be achieved. Broadly, a person controls another firm if that person, inter alia: • beneficially owns more than one-half of the issued share capital of the firm; • is entitled to vote a majority of the votes that may be cast at a general meeting of the firm, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person; • is able to appoint or to veto the appointment of a majority of the directors of the firm; • is a holding company, and the firm is a subsidiary of that company or • has the ability to materially influence the policy of the firm in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in the first four bullet points above.	• the combined annual turnover in, into or from South Africa of the acquiring firm/ s and the target firm/ s are valued at ZAR 600 million or more; or the combined assets in South Africa of the acquiring firm/ s and the target firm/ s are valued at ZAR 600 million or more; or • the annual turnover in, into or from South Africa of the acquiring firm/ s plus the assets in South Africa of the target firm/ s are valued at ZAR 600 million or more; or • the annual turnover in, into or from South Africa of the target firm/ s plus the asset/ s in South Africa of the acquiring firms are valued at ZAR 600 million or more. In addition, the annual turnover in, into or from South Africa or the asset value of the target firm/ s must be ZAR 100 million or more. A large merger is one where one of the four calculations given above results in a figure that is equal to, or exceeds, ZAR 6.6 billion and the annual turnover or asset value of the target firm/ s equals, or exceeds, ZAR 190 million. The turnover and assets are calculated with reference to the previous financial year of the parties.
Swaziland	The acquisition of a controlling interest in: • any trade involved in the production or distribution of any goods or services; or • an asset which is, or may be, utilised for or in connection with the production or distribution of any commodity. The Act does not define what a controlling interest is, but the Regulations provide that a person will be deemed to have a controlling interest if that person: • beneficially owns more than one-half of the voting rights and/ or more than half of the economic interest of the target firm; • is entitled to vote a majority of the votes that may be cast at a general meeting of the firm; • is able to appoint or veto the appointment of a majority of the directors of the firm; or • has the ability to exercise decisive influence over the policies of the firm and its strategic direction.	No financial threshold.

Jurisdictions	Definition	Merger threshold
Zambia	Acquisition of a legal interest by an enterprise in another enterprise. Therefore, a merger occurs where an enterprise directly or indirectly acquires or establishes direct or indirect control over the whole or part of the business of another enterprise, or when two or more enterprises mutually agree to adopt arrangements for common ownership or control over the whole or part of their respective businesses. A merger as contemplated under the Act occurs in the following instances: • where an enterprise purchases shares or leases assets in, or acquires an interest in, any shares or assets belonging to another enterprise; • where an enterprise amalgamates or combines with another enterprise; or • where a joint venture occurs between two or more independent enterprises. A person or entity will be considered to have control over an enterprise if that person: • beneficially owns more than half of the issued share capital of the enterprise; • is entitled to vote a majority of the votes that may be cast at a general meeting of the enterprise, or has the ability to control the voting of a majority of those votes either directly or through a controlled entity of that enterprise; • is able to appoint or veto the appointment of a majority of the directors of the enterprise; • is a holding company and the enterprise is a subsidiary of that company; • has the ability to materially influence the policy of the enterprise in a manner comparable to aperson who, in ordinary commercial practice, can exercise the element of control referred to in the first four bullet points; or • has the ability to veto strategic decisions of the enterprise, such as the appointment of directors and other strategic decisions which may affect the operations of the enterprise.	Combined turnover or assets (whichever is higher) of the merging parties in Zambia is at least 50 million fee units (ZMW 15 000 000) in the merging parties' most recent financial year in which these figures are available

Table D: Categorisation of degree of harmonisation per conducts across jurisdictions

Collusive agreements	**Botswana**	**Kenya**	**Malawi**	**Mauritius**	**Namibia**	**South Africa**	**Swaziland**	**Zambia**
Agreement	1	1	2	1	1	1	1	2
Elements								
Object	1	1	1	1	1	1	1	1
Effect	1	1	1	1	1	1	1	1
Prevent, restrict or distort	1	2	1	1	2	2	1	1
Conducts	1	1	2	2	2	2	1	1
Sanctions	3	3	3	2	2	2	3	3
	8	9	10	8	9	9	8	9
Abuse of dominance	**Botswana**	**Kenya**	**Malawi**	**Mauritius**	**Namibia**	**South Africa**	**Swaziland**	**Zambia**
Definition	1	1	2	2	1	1	1	2
Threshold	3	3	1	3	3	3	1	3
Conducts	2	2	2	1	2	2	1	1
Sanctions	3	2	3	3	2	2	3	1
	9	8	8	9	8	8	6	7
Mergers	**Botswana**	**Kenya**	**Malawi**	**Mauritius**	**Namibia**	**South Africa**	**Swaziland**	**Zambia**
Definition	1	1	1	2	1	1	2	1
Control elements								
Common	1	1	1	1	1	1	1	1
Legal	1	1	1	1	1	1	1	1
De facto	1	3	1	1	1	1	3	3
Notification threshold	2	3	3	3	3	1	3	3
Filing fees	3	3	2	3	1	3	1	1
	9	12	9	11	8	8	11	10
Overall	26	29	27	28	25	25	25	26

Source: Authors' 1: Fully implemented 2: Partially implemented 3: Not implemented

Table E: Worldbank Governance Indicators for 2016

Governance Indicators	**Botswana**	**Malawi**	**Mauritius**	**Namibia**	**South Africa**	**Swazi-land**	**Zambia**
Control of Corruption	0.93	-0.75	0.32	0.37	0.05	-0.44	-0.40
Government Effectiveness	0.51	-0.73	0.96	0.17	0.27	-0.56	-0.66
Political Stability and Absence of Violence/Terrorism	1.09	-0.06	1.05	0.74	-0.13	-0.49	0.18
Regulatory Quality	0.53	-0.84	1.03	-0.14	0.21	-0.58	-0.48
Rule of Law	0.52	-0.37	0.80	0.39	0.07	-0.32	-0.30
Voice and Accountability	0.42	0.04	0.86	0.61	0.64	-1.42	-0.30
Governance Index	**4.01**	**-2.73**	**5.02**	**2.16**	**1.12**	**-3.81**	**-1.96**

Source: Worldbank database