



COMPETITION AND CONSUMER PROTECTION COMMISSION

The Development of Competition Authorities in Africa and Practical Challenges
in Building Competition Regimes

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Ms. Mweete Chiluba, Analyst

Competition and Consumer Protection Commission 4th Floor, Main Post Office,
Cairo Road, Lusaka

m.chiluba@ccpc.org.zm

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Abstract

Prior to, the general economic liberalizations of the 1990s Africa's economies were largely characterized by state monopolies and protectionist policies that limited competition. However, following liberalization, many African countries opened their economies to foreign investment and competition. This led to the proliferation of competition laws in Africa, with many countries enacting legislation aimed at promoting competition and protecting consumers. The Bertelsmann Transformation Index notes that, comprehensive competition laws have been enforced to a greater or lesser extent in at least 46 African jurisdictions¹. Although most of the African countries have moved towards adoption of competition policy and law, practical challenges of building competition regimes in Africa cannot be ignored. Therefore, this paper explores the development of competition authorities in Africa by considering, the presence or absence of laws and policies that support the development of competition authorities in Africa. Additionally, the paper interrogates prioritisation of competition development by certain African countries. The paper also looks at the treatment of competition law in times of crisis or downturn by African countries. Further, the paper looks to interrogate whether, there has been enough political will from the elite and national leaders to support the development of competition authorities in Africa. Finally, the paper looks at the practical challenges in building competition regimes in Africa.

¹ <https://lexafrica.com/2022/03/competition-laws-proliferating-across-the-african-continent/>

Introduction

Context of Competition Authorities in Africa

1. Competition authorities in Africa have emerged as important institutions in promoting fair competition, protecting consumers, and driving economic growth. The establishment of competition authorities in Africa can be attributed to various historical factors and global trends. Historically, many African countries operated under state-controlled economies characterized by monopolies, protectionism, and limited competition². These economic systems, prevalent before economic liberalisation, often hindered private sector growth, stifled innovation, and resulted in inefficiencies³. However, with the wave of economic liberalization and market-oriented reforms that swept across the world in the 1980s and 1990s, African countries began to realize the importance of competition as a driver of economic growth and development⁴.
2. These reforms, influenced by international organizations such as the World Bank and the International Monetary Fund, aimed to dismantle state monopolies, remove trade barriers, and open economies to foreign investment. As African countries embraced economic liberalization, the need for competition policies and laws became apparent⁵. Competition authorities were established to enforce these policies and laws, creating a regulatory framework to promote fair competition, prevent anti-competitive practices, and protect consumer interests. The adoption of competition laws in Africa was influenced by global trends and international best practices⁶. Since then, by mid-2020 41 African countries had enacted a modern competition law⁷. However, among the 41 African countries that have a national-level competition law, nine of them, namely Benin, Burundi, Comoros, Cabo Verde, the Democratic Republic of Congo, Libya, Mauritania, Mozambique, and Niger, have yet to establish an operational competition agency⁸. Interestingly, some of these countries have had competition laws in place for over a decade without establishing functioning competition agencies. This situation cannot be attributed solely to a minor delay in the process of establishing the new competition

² <https://unctad.org/system/files/official-document/poitcdclpm18.en.pdf>

³ <https://unctad.org/system/files/official-document/poitcdclpm18.en.pdf>

⁴ Buthe, Tim and Kigwiru, Velloh Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020, Available at SSRN: <https://ssrn.com/abstract=3901690>

⁵ https://unctad.org/system/files/official-document/ditccclp20041ch3_en.pdf

⁶ REGIONAL COMPETITION AGREEMENTS: BENEFITS AND CHALLENGES

⁷ Buthe, Tim and Kigwiru, Velloh Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020, Available at

⁸ Buthe, Tim and Kigwiru, Velloh Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020, Available at

regime. rather there could be bigger challenges that this paper will seek to address ⁹.

Scope of Paper

3. In this paper we seek to explore the development of competition authorities in Africa by considering the presence or absence of laws and policies that support the development of competition authorities in Africa. The paper will also look at the treatment of competition law in times of crisis or downturn by African countries. Further, the paper looks to interrogate whether, there has been enough political will from the elite and national leaders to support the development of competition authorities in Africa. Finally, the paper will look at the practical challenges in building competition regimes in Africa.

Legal Frameworks for Competition in Africa

4. The economic landscape of African countries before economic liberalisation was marked by state monopolies, protectionist policies, limited private sector participation, and a heavy dependence on primary commodities. These factors hindered competition, innovation, and economic diversification, ultimately constraining economic development and welfare. This led to some recommending that Africa should turn to competition law and policy to make markets work for its people¹⁰. Thus, in the late 1980s, African countries began introducing modern national-level competition laws. Leading the way, Gabon, Kenya, and South Africa were among the early adopters before 1990, and subsequently, other countries followed suit in the 1990s and 2000s. At present, out of the 54 African countries, 41 have implemented comprehensive competition laws, which are enforced to varying degrees. Meanwhile, 13 countries do not have their own national competition laws but are governed by regional competition regimes, and 2 countries lack both a national law and coverage under any supranational rules of a regional competition regime¹¹.

See Annex 1 showing a comprehensive table for the current status of African Countries' Competition Regimes as at 2022.

5. African countries exhibit significant diversity in their legal frameworks for competition. Many countries have enacted comprehensive competition

⁹ Buthe, Tim and Kigwiru, Velloh Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020, Available at SSRN: <https://ssrn.com/abstract=3901690>

¹⁰ Buthe, Tim and Kigwiru, Velloh Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020, Available at SSRN: <https://ssrn.com/abstract=3901690>

¹¹ Buthe, Tim and Kigwiru, Velloh Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020, Available at

laws that explicitly outline the objectives, powers, and functions of competition authorities. These laws typically prohibit anti-competitive practices, such as cartels, abuse of dominance, and mergers that may harm competition as well as safe guarding consumer interests. They may also provide provisions for investigations, enforcement, and penalties for violations¹².

6. The increased cross-border trade has created a need for effective regional co-operation on competition, which over the years has resulted in a number of Regional Competition Agreements (“RCAs”)¹³. Further, as a result of the adoption of competition regulation at national levels, competition regimes are now extending to the Regional Economic Communities (RECs). Africa has seen the establishment of five regional competition regimes (RCRs) that feature a supranational competition law. These include the West African Economic Monetary Union, the East African Community, the Common Market for Eastern and Southern Africa, the Economic Community of West African States, and the Economic and Monetary Community of Central Africa¹⁴. Furthermore, two RCRs, The Southern African Customs Union (SACU) and The Southern African Development Community (SADC) have implemented a "confederate model," where member states commit to adopting national competition laws and engaging in enforcement cooperation without implementing a unified set of competition rules. This demonstrates the diverse approaches taken by African countries to foster competition and cooperation at both national and regional levels¹⁵.

Figure 1: *Proliferation of competition law in Africa*

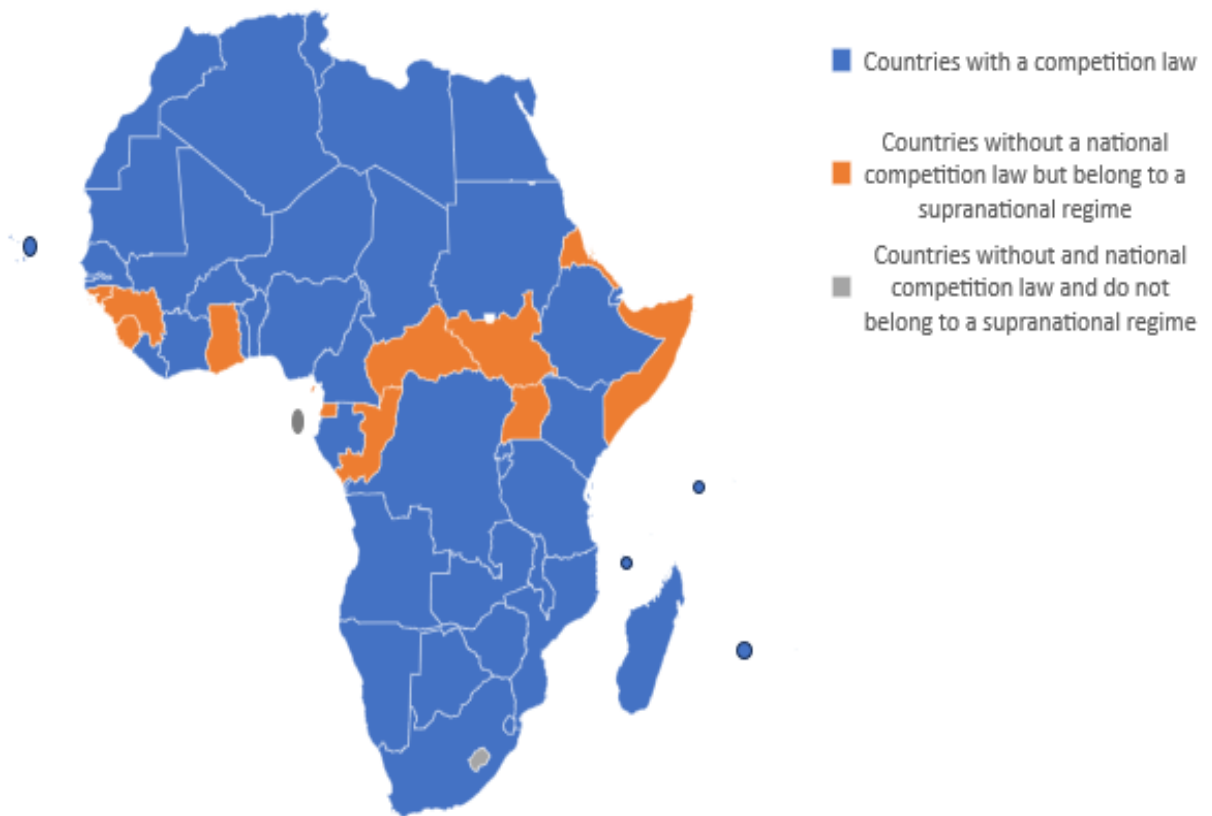
¹² Buthe, Tim and Kigwiru, Velloh Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020

¹³ REGIONAL COMPETITION AGREEMENTS: BENEFITS AND CHALLENGES

¹⁴ <https://lexafrica.com/2022/03/competition-laws-proliferating-across-the-african-continent/>

¹⁵ Buthe, Tim and Kigwiru, Velloh Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020, Available at

SSRN: <https://ssrn.com/abstract=3901690>



Source¹⁶: Author's research based on reviewed literature see footnote 16.

Prioritization of Competition Law Development in Africa

9. There has been a notable proliferation of competition laws in Africa, with many countries enacting legislation specifically designed to promote competition and protect consumers. This trend reflects a growing recognition of the importance of fostering competitive markets for economic development and ensuring fair business practices. While competition law and policy are still recognized as important tools for promoting fair and efficient markets, they may take a secondary role compared to broader development goals. The reasons behind this vary significantly. In some instances, the prioritization of competition development can be influenced by various factors, including political will, economic considerations, and budget considerations.

¹⁶https://www2.deloitte.com/content/dam/Deloitte/za/Documents/risk/ZA_Competition_Law_in_Africa_RA_071116.pdf

https://bowmanslaw.com/wp-content/uploads/2022/05/Competition_10.5.2022.pdf

Buthe, Tim and Kigwiru, Vellah Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020

Political Will

1. In some instances, it seems that governments are unwilling to introduce a competition law, even though there is a recognized need for such legislation. This unwillingness is likely driven by the belief that implementing a competition law would be detrimental to entrenched interests. For instance, in Ghana competition law development is not a top priority for the political directorate as there have been speculations that the political directorate is not yet convinced that it is necessary to police uncompetitive behaviour actively. The hesitance is attributed to concerns that such a law could harm entrenched interests¹⁷.
2. Ghana does not have a general competition law or policy. The closest the country had done in that regard was the Protection Against Unfair Competition Act (Act 589) which addresses unfair business practices such as causing confusion regarding another enterprise, damaging goodwill or reputation, misleading the public, and misappropriating trade secrets. However, this act does not encompass fundamental antitrust matters such as abuse of dominance and the restriction of anti-competitive practices¹⁸.
3. In Ghana, the prevailing regulations primarily revolve around sector-specific laws that aim to regulate competition within specific sectors of the economy, with a significant focus on merger control. It has been established that large firms in Ghana dominate markets and frequently engage in abusive practices due to their dominant positions. In a survey conducted by Zakari and Adomako, over 80% of the participating firms in Ghana expressed a "need" for the country to establish a competition regime. Similarly, more than 70% of consumers anticipated numerous benefits from the introduction of a competition regime¹⁹.
4. In response to these demands, Ghana's government has promised to put forth a competition law. As at 2020 a draft Competition and Fair-Trade Practices Bill ("Competition Bill") was receiving further review by the Ministry of Trade and will be resubmitted to Cabinet. There is no indication as to when this will be done²⁰. The principal objective of the Competition

¹⁷ <https://cuts-accra.org/ghana-needs-competition-law-and-policy-without-delay-justice-samuel-date-bah/>

¹⁸ <https://resourcehub.bakermckenzie.com/en/resources/africa-competition-guide/africa/ghana/topics/general>

¹⁹ Koomson, Esther, Developing without a Competition Legislation: An Analysis of Competition Law in Ghana and Its Impact on Competition and Development (September 16, 2020). MIPLC Master Thesis Series (2019/20, Available at SSRN: <https://ssrn.com/abstract=3903953> or <http://dx.doi.org/10.2139/ssrn.3903953>

²⁰ https://bowmanslaw.com/wp-content/uploads/2022/05/Competition_10.5.2022.pdf

Bill is to maintain and encourage competition in markets, to promote and ensure fair and free competition, and to protect the welfare and interests of consumers. Under the Competition Bill, provision is made for the establishment of a Competition Commission of Ghana. The mandate of the Commission would be to monitor trading practices in the country, to ensure fair trade practices and prevent restrictive trade practices²¹.

5. Policy think-tanks have urged Government to prioritise its competition policy since competition legislation is a necessary condition for the implementation of phase 2 of the African Continental Free Trade Area (AfCFTA)²².
6. Similarly, within the Law Officers Department in Sierra Leone, a highly promising Draft Competition Bill has been in existence for several years, yet it remains untouched, a testament to the challenges faced in establishing a comprehensive competition framework. Past attempts to advance a draft Competition Act in Sierra Leone have encountered limited success, shedding light on the intricate dynamics involved in pushing such legislation forward²³.
7. The repercussions of an inadequately monitored private sector, marred by cartels, price-fixing, and the ensuing market inefficiencies, reverberate throughout the economy and society at large. Sierra Leone's economic landscape has grappled with challenges spanning half a century. However, the present government is under mounting pressure to proactively address urgent economic and social concerns. A key strategy to achieve this entails the swift and sustained implementation of Competition (Antitrust) Laws. These laws need to be paired with a comprehensive suite of measures aimed at bolstering the competitive resilience of the local private sector²⁴.

Budget Considerations

8. The development of competition law is usually constrained. This is evident in cases where some African countries have had competition laws in place for over a decade but have not established functional competition agencies. The reasons for this delay can be attributed to limitations in budget and human resources. Cape Verde, for example, introduced its competition law through the enactment of Decree Law No. 53/2003 on 24 November 2003.

²¹ <https://resourcehub.bakermckenzie.com/en/resources/africa-competition-guide/africa/ghana/topics/general>

²² https://bowmanslaw.com/wp-content/uploads/2022/05/Competition_10.5.2022.pdf

²³ Sierra Leone government must prioritise local business competitiveness September 20, 2019 Abdul Rashid Thomas Economy & Business 2

²⁴ Sierra Leone government must prioritise local business competitiveness September 20, 2019 Abdul Rashid Thomas Economy & Business 2

However, there have been indications that there were delays in implementing the law due to limitations in budgetary allocation and human resources. These constraints have persisted over a considerable period, as Cape Verde's Directorate-General for Industry and Trade and its Competition Council, which were established in the law, have yet to become operational²⁵. In Cape Verde, it has been noted that competence on competition matters will be vested in the Ministry of Finance in the short to medium term, as there is currently no effective competition regulatory body²⁶.

Economic Considerations

9. As per economic theory, competition facilitates consumers in acquiring goods and services at affordable prices, allowing enterprises to be compensated for their production inputs without undermining their profit objectives²⁷. In an ideal competitive market, prices align with marginal costs, and excessive profits are absent. In such circumstances, competition emerges as a potent tool in combating poverty by granting economic participants access to resources at the most favorable rates. Moreover, within a competitive market, each enterprise endeavors to minimize its expenses. This competitive environment promotes technological advancement, innovation, and effectiveness while guarding against resource wastage²⁸. However, certain observers argue that practical experience demonstrates mixed outcomes when it comes to the expected benefits of competition for overall well-being. This is because achieving pure and perfect competition, as a general concept, is not realistically feasible in the real world. As a result, the actual impact of competition on various aspects of well-being may vary and may not always align with ideal expectations.

10. Policies, such as trade, anti-corruption measures, and tax policies are sometimes seen as crucial in fighting against poverty as opposed to competition law and policy. In Africa people such as subsistence farmers residing in isolated rural regions, mostly operate outside the market economy. Consequently, competition policies might have limited influence on their lives as their livelihoods are not significantly impacted by market

²⁵ Buthe, Tim and Kigwiru, Vellah Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020, Available at SSRN: <https://ssrn.com/abstract=3901690>

²⁶ <https://verdant-cap.com/wp-content/uploads/2022/05/q1-2022.pdf>

²⁷ Competition and Poverty Reduction <https://www.oecd.org/daf/competition/competition-and-poverty-reduction2013.pdf>

²⁸ Competition and Poverty Reduction <https://www.oecd.org/daf/competition/competition-and-poverty-reduction2013.pdf>

dynamics²⁹. Therefore, some African countries will typically prioritize addressing pressing socio-economic challenges and achieving sustainable development over strictly focusing on market competition. The emphasis is placed on implementing policies and measures that directly target poverty reduction, reducing inequality, and fostering economic growth³⁰.

Supranational Rules

11. The existence of regional supranational rules for competition in some African regions can impact the development of national competition laws. Countries that are members of regional organizations with implemented common competition rules may perceive them as substitutes for national legislation. This may lead to delayed or reduced priority in establishing their own competition laws and agencies. It is worth noting that, out of the 13 African countries lacking a national competition law, 11 of them are members of a regional organization that has implemented common competition rules for its member states³¹. For instance, half or more of the Member States in the Economic and Monetary Community of Central Africa (CEMAC) and the Economic Community of West African States (ECOWAS) do not have a national competition law, while even more do not have a national competition agency (NCA)³². However, a notable concern arises from the fact that, ECOWAS and EAC have not yet enforced the regional provisions to date. Similarly, for CEMAC there is no public record of any infringement decision taken by the CEMAC Competition Commission at the regional level³³. This is a concern because the absence of enforcement of regional competition provisions in countries without domestic competition laws creates an environment of regulatory inconsistency, uneven competition, and potential anti-competitive behavior. This situation undermines the goals of regional economic communities and can have negative repercussions for economic development, investment, and consumer welfare.

Treatment of competition law in times of crisis by African countries

12. The treatment of competition law during crises holds significant implications for the development of competition authorities in Africa. Building effective competition regimes across the continent requires a

²⁹ <https://www.oecd.org/daf/competition/competition-and-poverty-reduction2013.pdf>

³⁰ <https://www.oecd.org/daf/competition/competition-and-poverty-reduction2013.pdf>

³¹ Buthe, Tim and Kigwiru, Vellah Kedogo, The Spread of Competition Law and Policy in Africa: A Research Agenda (December 18, 2020). African Journal of International Economic Law 2020, Available at SSRN: <https://ssrn.com/abstract=3901690>

³² [https://one.oecd.org/document/DAF/COMP/GF\(2018\)5/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)5/en/pdf)

³³ REGIONAL COMPETITION AGREEMENTS: BENEFITS AND CHALLENGES
[https://one.oecd.org/document/DAF/COMP/GF\(2018\)5/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)5/en/pdf)

strong commitment to competition enforcement, institutional independence, and addressing practical challenges. Unfortunately, during times of crisis, governments may prioritize short-term economic stability over competition concerns, resulting in weakened enforcement of competition laws and reduced support for competition authorities. As a consequence, their ability to effectively address anti-competitive practices and promote fair competition may be hindered, as was evident during the COVID-19 pandemic, which had a global impact on competition law enforcement³⁴.

13. During the pandemic, African competition authorities were committed to upholding the continuity of competition law enforcement. This commitment was evident in their dynamic approach to administering and enforcing laws. These authorities proactively initiated investigations into instances of excessive pricing under competition law. In certain regions, they even introduced new regulations and guidelines to offer clarity on their strategies for intervention. In parallel, some jurisdictions opted for leveraging price control legislation and consumer protection laws as tools to combat price gouging effectively. To address areas where their mandates fell short, collaboration with other governmental bodies was fostered, enabling a more comprehensive response³⁵.
14. For instance, in Zambia, the Government's well-intentioned decision to close bars, taverns, nightclubs, and restaurants and restrict liquor service to takeaway only, without granting appropriate licenses as relief, led to the closure of these establishments. Meanwhile, bottle stores, supermarkets, and hotels continued to sell liquor, potentially creating competition issues. Despite the Government's positive motives, their actions raised concerns about fair competition in the market. Additionally, the Zambia Tourism Association (ZTA) encouraging industry players to collaborate could have inadvertently provided fertile ground for cartel-like behavior³⁶. The Competition and Consumer Protection Commission advised that Government interventions should take into account various factors, with a particular emphasis on considering their impact on competition. Furthermore, the Competition and Consumer Protection Commission in Zambia faced limitations under the Competition and Consumer Protection Act No. 24 of 2010 when addressing general price adjustments, particularly in the pharmaceutical and fast-moving consumer goods

³⁴ Rethinking competition law enforcement: Lessons learned from the pandemic, particularly in socially important markets – Challenges and opportunities for an effective response during the pandemic and economic recovery in the post-pandemic period https://unctad.org/system/files/official-document/ciclpd63_en.pdf

³⁵ Trade and Development Board Trade and Development Commission Intergovernmental Group of Experts on Competition Law and Policy Twentieth session Geneva, 20–22 July 2022 Item 7 of the provisional agenda

³⁶ STUDY ON THE EFFECTS OF COVID-19 ON COMPETITION IN ZAMBIA

sectors. As a solution, the Commission recommended amending the act to address unconscionable conduct and profiteering during crises³⁷.

15. Operational disruptions and delays also affected numerous competition authorities during the pandemic. Lockdowns, curfews, and states of emergency forced some authorities to temporarily suspend their statutory functions and extend timelines for court cases. Kenya's Competition Authority, for example, faced challenges in promptly reviewing exemption requests during pandemics and disasters, leading them to opt for soft law enforcement and advising companies to amend certain prohibition clauses in agreements instead of applying exemption provisions, which could take longer to review³⁸.
16. Equally, the Competition and Consumer Authority of Botswana faced challenges due to their competition law which did not specifically cover excessive pricing. As a result, emergency regulations were implemented, including the imposition of profit margin caps on specific essential products. Similarly, in South Africa, regulations were implemented to address excessive pricing in specific consumer and medical products and services. These regulations introduced a temporary benchmark to assess excessive pricing, deviating from previous approaches. The application of these regulations considered the potential structural shifts in competition conditions during the pandemic, including changes in consumer behavior. It is important to account for factors such as shifts in demand and cost changes when making intertemporal comparisons. An example of the application of these regulations involved two cases. One case focused on a small wholesaler of face masks, while the other case involved a large pharmacy group and their pricing practices for masks³⁹.
17. These examples illustrate the adaptive measures taken by competition authorities to address competition concerns during the pandemic. The response varied across jurisdictions, highlighting the importance of flexible and responsive approaches to protect consumers and maintain fair market conditions which is very instrumental to building effective competition regimes across the region.

Practical Challenges in Building Competition Regimes

³⁷ STUDY ON THE EFFECTS OF COVID-19 ON COMPETITION IN ZAMBIA

³⁸ Rethinking competition law enforcement: Lessons learned from the pandemic, particularly in socially important markets – Challenges and opportunities for an effective response during the pandemic and economic recovery in the post pandemic period https://unctad.org/system/files/officialdocument/ciclpd63_en.pdf

³⁹ Rethinking competition law enforcement: Lessons learned from the pandemic, particularly in socially important markets – Challenges and opportunities for an effective response during the pandemic and economic recovery in the post pandemic period https://unctad.org/system/files/officialdocument/ciclpd63_en.pdf

18. Implementing competition reform is often a complex and time-consuming process. Despite the widespread adoption of competition policies and laws in Africa, competition agencies face numerous challenges in promoting and protecting competition through policy implementation and regulation. In Africa, some of the persistent challenges include a lack of competition culture, limited resources, lack of experience, bureaucratic and political resistance, and vested interests. These obstacles make it particularly difficult for newly established agencies to address these issues effectively while fulfilling their mandate of safeguarding markets from anti-competitive practices and policies.

Political Resistance

19. Political resistance poses a significant challenge to establishing a competition regime in Africa. This resistance can stem from various sources, including vested interests, political alliances, and concerns about the impact of competition on certain industries or sectors⁴⁰. Political actors may be reluctant to implement competition policies and laws if they perceive them as a threat to their own power, influence, or favored economic interests. This resistance can manifest through delays in enacting competition legislation, lack of adequate funding and resources for competition agencies, or limited political support for the enforcement of competition rules.

20. For instance, the implementation of competition law in Zambia encountered significant hurdles arising from the intricate interplay of political, economic, and institutional factors, collectively referred to as the political economy. This complex interrelationship posed considerable obstacles as political considerations intermingled with economic goals, directly influencing the enforcement of competition regulations⁴¹.

21. Although the Competition and Fair-Trading Act of Zambia was enacted in 1994, the actual operationalization of the competition authority commenced only in May 1997, reflecting a three-year gap. This delay was attributed to the prevailing political climate at the time. During the period from 1991 to 2001, Zambia experienced a lack of a supportive political environment for robust competition enforcement. This suggested that

⁴⁰ Challenges Faced by Small Agencies and those in Developing Economies Contribution from CUTS
[https://one.oecd.org/document/DAF/COMP/GF/WD\(2017\)23/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2017)23/en/pdf)

⁴¹ Challenges Faced by Small Agencies and those in Developing Economies Contribution from CUTS
[https://one.oecd.org/document/DAF/COMP/GF/WD\(2017\)23/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2017)23/en/pdf)

political motivations and priorities overshadowed the urgency of effective competition implementation⁴².

22. In addition, for competition law to be effectively enforced, it requires freedom from restrictive governance mechanisms that might compromise its impartial execution. However, the lack of such freedom during this period constrained the authority's ability to carry out its mandate. These mechanisms encompassed bureaucratic red tape, regulatory hurdles, or political interference that hindered the authority's independent decision-making.
23. Challenges in formulating clear and effective competition policies further impeded the enforcement process. Inadequate policy formulation led to ambiguity in interpreting and applying the law, creating loopholes that entities exploited to avoid compliance. Provisions that granted exemptions to State-owned enterprises from certain competition regulations and provisions that inadvertently distorted competition posed additional challenges. These exemptions favoured certain entities and distorted the level playing field, undermining the fairness and effectiveness of competition law. Instances of political influence over adjudicators—those responsible for making judgments on competition cases—also emerged as a critical challenge. Political interference could potentially sway the outcomes of competition cases, undermining the impartiality and credibility of the enforcement process.
24. Through effective advocacy Zambia successfully repealed the Competition and Fair-Trading Act which had lacunae in legal frameworks; design related obstructions diluting independence of the authority and presence of political influence over adjudicators⁴³. Thus, the Competition and Consumer Protection Commission was introduced as per the Competition and Consumer Protection Act, Act No. 24 of 2010. In turn, the Tribunal was established, with its members appointed by the Minister of Commerce, Trade, and Industry, and its administrative functions housed within the secretariat of the Ministry of Commerce, Trade, and Industry⁴⁴.
25. The experiences in Zambia underscore the critical importance of addressing political economy challenges and governance deficiencies to ensure the successful implementation of competition law. A supportive political environment, coupled with robust legal frameworks and

⁴² Challenges Faced by Small Agencies and those in Developing Economies Contribution from CUTS

[https://one.oecd.org/document/DAF/COMP/GF/WD\(2017\)23/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2017)23/en/pdf)

⁴³ Challenges Faced by Small Agencies and those in Developing Economies Contribution from CUTS

[https://one.oecd.org/document/DAF/COMP/GF/WD\(2017\)23/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2017)23/en/pdf)

⁴⁴ <http://www.daily-mail.co.zm/promoting-fair-competition-consumer-protection/>

institutional independence, are essential for fostering fair competition and realizing the benefits of competitive markets.

26. A case of particular interest in Africa currently is that of Ethiopia, where a noteworthy development has occurred involving the powers of the Trade Competition and Consumer Protection Authority. These powers have been transferred to the Ministry of Trade and Regional Integration. This transfer of authority from an independent competition-focused body to a government ministry raises significant concerns about the autonomy and effectiveness of competition enforcement within the country.⁴⁵
27. The implications of such a move are multi-faceted and warrant careful consideration. The shift could potentially undermine the independence that is crucial for maintaining the integrity of competition enforcement processes. By placing these powers under a government ministry, there exists a risk of political interference and potential conflicts of interest arising. This situation could compromise the impartiality required for ensuring fair competition in the marketplace⁴⁶.
28. Of equal concern is the potential loss of specialized expertise that is typically essential for successful competition regulation. The nuances of competition law and its enforcement may be overshadowed by broader policy objectives of the ministry. This misalignment could lead to conflicts between policy goals and the impartiality required for equitable competition enforcement.
29. Additionally, an elevated risk of regulatory capture, whereby regulatory processes are influenced by vested interests, could emerge as a consequence. This situation has the potential to erode public trust in the enforcement process and undermine the credibility of the authority. Additionally, resource constraints and competing priorities within a larger government ministry might compromise the efficiency of competition enforcement efforts⁴⁷.
30. The repercussions of this shift in authority extend beyond the national regulatory landscape. It could impact Ethiopia's standing in the global marketplace for trade and investment. A perceived lack of autonomy and impartiality in competition enforcement could deter foreign investors and trading partners. This, in turn, might hinder the country's ability to attract investments and engage in international trade on competitive terms.

⁴⁵ <https://resourcehub.bakermckenzie.com/en/resources/africa-competition-guide/africa/ethiopia/topics/general>

⁴⁶ https://unctad.org/system/files/official-document/CCPB_IGE2014_UNCTADNOTE_EMCF_en.pdf

⁴⁷ https://unctad.org/system/files/official-document/CCPB_IGE2014_UNCTADNOTE_EMCF_en.pdf

31. The case of Ethiopia serves as a striking example of the complex considerations associated with transferring competition enforcement powers from an independent authority to a government ministry. The potential consequences range from diminished autonomy and impartiality to compromised expertise, increased regulatory capture risk, and a potential negative impact on the country's global trade and investment reputation. Balancing broader policy objectives with the need for effective competition regulation is a delicate task that requires careful planning and consideration of the long-term implications for the economy and the marketplace.
32. It is important to note that the implications can vary based on the specific legal framework, the extent of the transfer of powers, and the actual implementation of the changes. In some cases, a well-designed framework and proper safeguards within the ministry could mitigate some of these concerns. However, maintaining the autonomy and independence of competition authorities is generally considered essential for effective competition enforcement and ensuring fair and competitive markets.

Lack of Competition Culture

33. The absence of a competition culture in Africa presents a notable hurdle when it comes to establishing effective competition regimes as at often times is linked to frequently limited availability of resources⁴⁸. In many African countries, there is a historical lack of awareness and understanding of the benefits of competition and its role in driving economic growth, innovation, and consumer welfare. This has hampered the adoption and implementation of competition laws and regulations, due to the resistance or indifference from stakeholders who do not appreciate the importance of competition in fostering a vibrant marketplace. Without a supportive culture, it becomes difficult to gain public and political support for the establishment and enforcement of competition regimes.
34. In the case of Burundi, the relevant competition law came into effect in March 2010. However, no ministerial orders have yet been issued to support the application of the Act, albeit it is understood that a draft decree relating to the establishment of the competition regulator was submitted to the President of Burundi in April 2017 and is awaiting Presidential assent. To expedite the process, the East African Community Competition Authority (EACA) Registrar was in Burundi in 2022 for a

⁴⁸https://www.konkurrensverket.se/globalassets/dokument/om-oss/oecd/2018_regional-competition-agreements-benefits-and-challenges_daf-comp-gf-wd-2018-14.pdf

three-day mission to conduct capacity building and technical assistance to facilitate the setting up of the national competition authority. The Registrar also took the opportunity to create awareness on the importance of competition policy and law enforcement to the senior officials in the Ministry of Trade, Transport, Industry and Tourism as well as the Ministry of the EAC Affairs⁴⁹.

35. In addition, The COMESA Competition Commission (CCC) has been actively engaged in providing technical assistance and enhancing capacity in competition law matters to Burundi. This assistance has been extended to members of various sectors, including staff from the Ministry responsible for COMESA affairs, the judiciary, and business reporters. From 2013 to the present, representatives from Burundi have participated in training sessions organized by the CCC⁵⁰. In October 2021, the CCC organized informative and awareness-raising meetings involving stakeholders such as Ministries, national legislative offices, sector regulators, professional bodies, and the private sector. The objective was to foster understanding and consciousness regarding the enforcement of competition and consumer protection laws in Burundi. Subsequently, in June 2022, the CCC conducted a training program tailored for government officials. This training focused on the practical application of competition and consumer protection laws. The purpose of this initiative was to prepare for the establishment and operationalization of the competition and consumer protection authority in Burundi⁵¹.

Budget and Human Resource Constraints

36. Despite the widespread existence of competition law regimes, the size and resources of competition authorities in Africa varies substantially. South Africa hosts the largest and most established competition authority. The authority has over 130 staff, in contrast to 9 other African competition authorities which have fewer than 10 staff. Similarly, the South African Competition Commission had an expenditure of \$27 million in 2015/2016, compared with an average budget of \$1.4 million for other competition authorities on the continent⁵².
37. Budget and human resource constraints pose significant challenges when it comes to building competition regimes in Africa. These constraints refer

⁴⁹ <https://www.eac.int/press-releases/157-trade/2621-burundi-to-set-up-national-competition-agency-to-promote-competition-and-consumer-welfare>

⁵⁰ https://unctad.org/system/files/non-official-document/ccpb_IGECOMP20_contrib_COMESA_en.pdf

⁵¹ https://unctad.org/system/files/non-official-document/ccpb_IGECOMP20_contrib_COMESA_en.pdf

⁵² https://www.cliffordchance.com/content/dam/cliffordchance/PDFDocuments/Article_by_Daniel_Schwarz_Africa-Column-August-2017.pdf

to limitations in financial resources and personnel that can hinder the effective establishment and functioning of competition authorities and the implementation of competition laws. Building competent competition authorities requires recruiting and retaining professionals with a deep understanding of competition principles, market dynamics, and analytical skills. However, there is often a shortage of such specialized talent in many African countries. The lack of experienced competition practitioners can impede effective enforcement of competition laws, hinder the assessment of complex cases, and limit the ability to provide sound economic analysis and expert advice⁵³.

Conclusion

The establishment of competition authorities in Africa represents a pivotal shift from historically controlled economies to market-oriented systems. These authorities play a crucial role in ensuring fair competition, fostering innovation, and contributing to overall economic growth and development. The continent's diverse legal frameworks for competition, as well as the establishment of both unified and confederate regional competition regimes, showcase the varied approaches taken by African nations to promote competition and cooperation on both national and regional levels.

While competition law and policy are important tools for promoting fair and competitive markets, their prioritization varies among African countries due to factors like political will, economic considerations, budget constraints, and the presence of regional supranational rules. The decision to prioritize competition development needs to be balanced with other socio-economic challenges and development goals specific to each country's context. Economic factors and the specific needs of less most African countries might influence the perceived impact of competition policies on overall well-being.

The treatment of competition law during times of crisis has a profound impact on the development of competition authorities in Africa. To build effective competition regimes across the continent, it is essential to maintain a strong commitment to competition enforcement, ensure institutional independence, and address practical challenges. The COVID-19 pandemic served as a stark reminder of how crises can strain competition law enforcement and raise concerns about fair competition in the market.

⁵³https://www.internationalcompetitionnetwork.org/wpcontent/uploads/2018/05/AEWG_APMHumanResources.pdf

Establishing effective competition regimes in Africa is a complex endeavor marked by challenges such as political resistance, lack of competition culture, and constraints related to budget and human resources. These challenges can impede the timely implementation and enforcement of competition laws, making it crucial for countries to address them to ensure fair and competitive market environments.

Recommendations

These recommendations aim to address the challenges identified in the paper and contribute to the development of effective competition regimes in Africa that can promote fair competition, protect consumers, and drive economic growth.

Recommendation	Challenges Faced	Expected outcome
Strengthen the political will	There is lack of recognition of the importance of competition development and active support for the establishment and functioning of competition authorities.	-Enhanced commitment to enforcing competition laws -Reduced influence of vested interests on regulations -Increased credibility of regulatory bodies
Allocate sufficient resources	Inadequate budgetary allocations and high turnover in African competition agencies.	Enhanced effectiveness in enforcing competition laws and human resource retention.
Promote competition culture	There is lack of awareness and promotion of competition culture among businesses, consumers, and policymakers to foster a competitive market environment and discourage anti-competitive behaviors.	-Increased innovation and product quality -Diversified product choices for consumers -Encouragement of entrepreneurial activities
Adopt Domestic Competition Laws	Thirteen countries do not have domestic competition laws. These countries should consider enacting comprehensive competition legislation to protect their markets, consumers, and businesses from anticompetitive practices.	-Prevention of monopolistic behavior - Lower barriers to entry for new businesses - Economic growth and market development -Increased cooperation between RCR and NCA for effective enforcement of competition laws
Capacity Building and Expertise	There is need to building and maintaining competent competition authorities and this	-Skilled workforce for implementing competition laws

	requires sustained efforts in capacity building and specialized expertise	-Improved credibility and efficiency of regulatory bodies -Better decision-making based on expert analysis
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Annex 1: Adoption of Competition Laws in Africa and Status Quo as at 2022⁵⁴

Country	Period of Establishment	Dept/Agency	Relevant competition legislation	Active Enforcement	Regional Competition Regime
Gabon	Pre-1990	Directorate-General for Competition and Consumer Affairs.	The relevant national competition legislation is Law No. 014/1998 of 23 July 1998 on the Competition of Gabon (“Gabon Competition Act”), Regulation No. 06/19_UEAC-639-CM of 7 April 2019 on competition.	The law is actively enforced, both mergers, prohibited practices and consumer protection	CEMAC
South Africa		The Competition Commission	The relevant competition legislation is the Competition Act, 89 of 1998, as amended (the Act) and the regulations promulgated in terms of the Act.	The law is actively enforced, both in respect of mergers and prohibited practices (including abuse of dominance).	SADC/SACU
Kenya		The Competition Authority of Kenya	The Competition Act, No. 12 of 2010 (the Act) which came into force on 1 August 2011 and the Competition (General) Rules, 2019.	The law is actively enforced on merger control, and in recent years it has become more active in the enforcement of restrictive trade practices including abuse of buyer power, as well as consumer protection.	COMESA/EAC

⁵⁴ https://bowmanslaw.com/wp-content/uploads/2022/05/Competition_10.5.2022.pdf
<https://www.bakermckenzie.com/-/media/files/insight/guides/2019/overview-of-competition-and-antitrust-regulations-in-africa.pdf>
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Algeria	1900-1999	The Competition Council	Ordinance No. 03-03 of 19 July 2003 on Competition, as amended in 2008 and 2010.	Actively enforces the merger control regime and actively investigates anti-competitive market practices.	Not a member of any RCR
Tunisia		The Tunisian Competition Council	The relevant legislation Law No. 36 of 15 September 2015 on the Reorganization of Competition and Prices,	Actively enforces both mergers and prohibited practices	COMESA
Cameroon		The National Competition Commission	The relevant competition legislation in Cameroon is Law No. 98/013 of 14 July 1998 (Act); Decree No. 2005/1363/PM of 6 May 2005 (Decree).	The NCC actively enforces the merger control regime and actively investigates anti-competitive market practices.	CEMAC
Burkina Faso		National Competition Council	The law governing competition dates back to April 27, 2017. It is referred to as Law No. 016-2017/AN and deals with the organization of competition in Burkina Faso.	The NCC actively enforces the merger control regime and actively investigates anti-competitive market practices	ECOWAS/WAEMU
Cote D'Ivoire		The Competition Commission Department of Competition	At a national level, the Competition Order (Order No. 2013-662 of 20 September 2013) regulates competition law in Côte d'Ivoire.	Merger control and Anti-competitive practices are enforced at regional level	ECOWAS/WAEMU
Malawi		The Competition and Fair-Trading Commission	The relevant legislation is the Competition and Fair-Trading Act [Chapter 48:09 of the Laws of Malawi] (Competition Act), which is complemented by the Competition and Fair-Trading Regulations (G.N. 20/2006) (Regulations).	The Commission actively enforces the Act in both competition and consumer protection.	COMESA/SA DC
Mali		The Directorate General for Trade, Consumer Affairs and Competition.	Malian competition law is governed by the Law No. 2016-066/ of 24 February 2016 on the organisation of competition	Actively enforces the law with respect to both mergers and prohibited practices	ECOWAS/WAEMU

Niger		Does not yet have an operational competition agency.	The relevant competition legislation consists is the Niger Competition Act (Law No. 2019-56 dated 22 November 2019).	Enforcement has not yet commenced	ECOWAS/WA EMU
Togo		The Competition Authority	The relevant competition legislation is Law N°99-011 of 28 December 1999 on the organisation of competition in Togo.	Actively enforces the law with respect to prohibited practices. They do not look at merger control	ECOWAS/WA EMU
Senegal		The National Competition Commission	At a national level, the competition regulations are Law No. 94-63 dated 22 August 1994 on Prices, Competition and Economic Disputes and its implementing Decree No. 95-77 dated 20 January 1995.	Actively enforces the law with respect to prohibited practices. They do not look at merger control	ECOWAS/WA EMU
Tanzania		The Fair Competition Commission	The relevant competition legislation includes the Fair Competition Act, 2003 (the FCA), the Fair Competition Procedure Rules, 2018 and the Fair Competition Tribunal Rules, 2012.	Actively enforces the law in relation to merger control, anti-competitive behaviour and consumer complaints.	EAC/SADC
Zambia		The Competition and Consumer Protection Commission	The relevant legislation is the Competition and Consumer Protection Act No. 24 of 2010 (the Act).	Actively enforces the Act in relation to mergers, restrictive business practices and abuse of dominance as well as safe-guards consumer interests.	COMESA/SA DC
Zimbabwe		The Competition and Tariff Commission	The Competition Act (Chapter 14:28) (the Act)	Actively enforcing the competition laws and policy, as well as to provide advisory services on the trade tariff to the Government of Zimbabwe	COMESA/SA DC
Botswana	2000-2009	The Competition	The Competition Act, 2018 [Cap 46:09] (Act)	Actively enforces both mergers	SADC/SACU

		and Consumer Authority	together with the Competition Regulations, S.I No 154 of 2019 (Regulations) being the regulations promulgated in terms of the Act.	and prohibited practices.	
Cape Verde		Does not yet have an operational competition agency.	Competition is governed by the Competition Act, approved by Decree-Law No. 53/2003 of 24 November 2003 (" Competition Act ").	Enforcement has not yet commenced	ECOWAS
Djibouti			No national competition law regime		COMESA
Egypt		The Egyptian Competition Authority	The Law No. 3 of 2005 Promulgating the Law on the Protection of Competition and the Prohibition of Monopolistic Practices, as amended (the Law) and the Executive Regulations of 2005, issued by Prime Ministerial Decree No. 1316 of 2005, as amended in 2010 by Prime Ministerial Decree No. 2957 of 2010 (the Regulations).	Actively investigates anti-competitive practices and conducts inspections. However, as of yet, the ECA does not have the power to review notified mergers and only does so for internal purposes.	COMESA
Eswatini		The eSwatini Competition Commission	The Competition Act, 8 of 2007 (Act) and the Competition Commission Regulations of 2010, promulgated in terms of the Act (Regulations)	Actively enforces both mergers and prohibited practices.	COMESA/SA CU/SADC
Ethiopia		The Trade Competition and Consumers Protection Authority	The Trade Competition and Consumers Protection Proclamation (No. 813/2013)	The Proclamation and Merger Directive are actively enforced, both in respect of mergers and prohibited practices.	COMESA
Madagascar		Competition Council	Currently competition is governed by Law No. 2005-020 on Competition, dated 27 July 2005 in Madagascar.	Actively enforced, both in respect of mergers and prohibited practices.	COMESA/SA DC
Mauritania		does not yet have an			Not a member of any RCR

		operational competition agency.			
Morocco		The Competition Council.	The relevant legislation is the Law No. 104-12 of 30 June 2014 (Dahir No. 1-14-116) on free pricing and competition.	Actively enforces the law with respect to both mergers and prohibited practices	Not a member of any RCR
Mauritius		The Competition Commission	The Competition Act 25 of 2007 (Act) regulates competition in Mauritius and came into effect between October 2008 and December 2009.	Actively reviews mergers and investigates restrictive business practices.	COMESA/SADC
Seychelles		The Fair-Trading Commission	The relevant legislation in Seychelles is the Fair Competition Act 2009 (FCA), the Fair-Trading Commission Act 2009 (FTCA) and the Consumer Protection Act 2010 (CPA) (together, the Laws).	Actively enforces the Act in relation to mergers, restrictive business practices and abuse of dominance as well as safeguards consumer interests.	COMESA/SADC
Namibia		The Namibian Competition Commission	The relevant legislation in Namibia the Competition Act 2 of 2003 (Competition Act) and the rules (Rules) passed under the Competition Act.	Actively enforced in respect of merger control and restrictive practices	SADC/SACU
The Gambia		The Gambia Competition and Consumer Protection Commission	The relevant legislation in Gambia are: Competition Act, 2007 ("Act"); The Consumer Protection Act 2014; The Essential Commodities Act 2015	Actively enforced in respect to merger control, restrictive practices, consumer protection and essential commodities.	ECOWAS
Sudan		The Competition and Prevention of Monopoly Council	The Regulation of Competition and Prevention of Monopoly Act 2009	The law is actively enforced in respect of both mergers and prohibited practices	COMESA
Angola	2010-2019	The Angolan Competition Authority	The Competition Act (approved by Law No. 5/18, of 10 May 2018),	The law is actively enforced by the ACA in respect of	SADC

				mergers and restrictive practices	
Benin			No National competition law		ECOWAS/WAEMU
Burundi		A draft decree relating to the establishment of the competition regulator was submitted to the President of Burundi in April 2017 and is awaiting Presidential assent.	The relevant competition legislation in Burundi is Law No. 1/06 of 25 March 2010 (Act),	Although the Act is in effect, it is not possible to enforce given that the Commission has yet to be established.	COMESA/EAC
Nigeria		The Federal Competition and Consumer Protection Commission	The relevant competition legislation is the Federal Competition and Consumer Protection Act, 2018 (the Act	Actively enforced, particularly in relation to the Commission's merger control, competition, and consumer protection mandates.	ECOWAS
Chad		The National Competition Council	The relevant legislation is law No. 043/PR/2014	Actively enforces both mergers and prohibited practices	CEMAC
Comoros		Not yet established	The relevant competition legislation is Law No.13-014 /AU	Actively enforces the law with respect to prohibited practices but does not provide for merger control regime.	COMESA
Democratic Republic of Congo		The Competition Commission of the Democratic Republic of Congo (the 'DRC Commission)	The relevant legislation is the Organic Law No. 18/020 on Pricing Freedom and Competition (the 'DRC Competition Act').	Enforcement has not commenced	COMESA/SADC

Liberia		The National Competition Council	The Act to Enact the Competition Law to Provide for an Efficient Free Market System". The act was passed into law in 2016.	Actively enforces the law with respect to merger control and prohibited practices.	ECOWAS
Mozambique		The Competition Authority	Competition Law is regulated in Mozambique primarily by Law 10/2013 of 11 April 2013 (the Competition Law and Glossary to the Competition Law), and the Competition Law Regulation, approved by Decree 97/2014 of 31 December 2014 (the Regulation).	Actively enforces mergers and anti-competitive conduct.	SADC
Rwanda		The Competition and Consumer Protection Regulatory Body (the 'CCPRB')	The relevant legislation is the Competition Act No. 36/2012 of 21/09/2012 (the 'Rwandan Competition Act')	Enforcement has not yet commenced.	COMESA/EAC
Central African Republic			No Domestic Competition Law in place		CEMAC
Congo Brazzaville			No Domestic competition law		CEMAC
Equatorial Guinea			No Domestic Competition Law in place		CEMAC
Eritrea			No Domestic Competition Regime in place		COMESA
Uganda			Competition Bill awaiting Presidential Assent		COMESA/EAC
Ghana			No Domestic Competition Law in place		ECOWAS
Guinea			No Domestic Competition Law in place		ECOWAS
Guinea Bissau			No Domestic Competition Law in place		ECOWAS/WAEMU
Sierra Leone			No Domestic Competition Law in place		ECOWAS

Libya		Does not yet have an operational competition agency.			COMESA
Somalia			No Domestic Competition Regime in place		COMESA
Sao Tome and Principe			No Domestic Competition Regime in place		Does not belong to RCR
Lesotho			No Domestic Competition Regime in place		SADC/SACU

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