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LEGAL ALERT



**COMESA Merger Control Framework Revised: Key
Changes Under the New Competition and
Consumer Protection Regulations**



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Introduction

On 4th December 2025, the COMESA Council of Ministers approved and adopted the COMESA Competition and Consumer Protection Regulations, 2025 (the “**Regulations**”) and the COMESA Competition and Consumer Protection Rules, 2025 (the “**Rules**”). The Regulations and the Rules took effect on 5th December 2025, repealing and replacing the previous COMESA Competition Regulations and the Rules from 2004. The Regulations and the Rules introduce significant reforms to the competition regime, including updated procedures and substantive provisions governing competition enforcement and merger control within COMESA.

Revised Jurisdiction and Filing Requirements

The Regulations and the Rules have introduced much-needed clarity to the merger notification process. Regulation 42 provides that all notifications to the COMESA Competition Commission (the “**Commission**”) shall be made in the form and manner determined by the Commission. Rule 21 builds on the foregoing Regulation by providing that merger notifications must be submitted jointly by the parties, or, in the case of acquiring a controlling interest, by the acquiring party alone.

The Regulations and the Rules also expand the information required in filings. Parties must now provide their annual turnover in the common market, details of their activities, including the number of active users or subscribers and the type of data collected and processed, a summary of the merger and its rationale, and a list of the member states

affected. These enhancements reflect the Commission’s stronger focus on evaluating the competitive and regional impact of mergers, including transactions in digital and data-driven markets.

Merger Notification Fees

Rule 22 introduces a revised and differentiated approach to merger notification fees, marking a clear departure from the previous framework.

Under the amended regime, the notification of a merger must now be accompanied by a fee calculated at 0.1% of the combined annual turnover or the combined value of assets in the common market, whichever is higher, subject to a maximum cap of COMESA Dollar Three Hundred Thousand (COM\$300,000). This represents a material increase from the former flat fee structure.

In addition, and for the first time, the Regulations expressly provide for digital market transactions, requiring that the notification of a digital market merger be accompanied by a fee calculated at 0.05% of the transaction value, also subject to a cap of COM\$300,000. This development reflects a further evolution of the Commission’s regulatory approach by expressly bringing high-value, structured digital transactions within its merger control framework.

Notification Threshold

Regulation 41, as read together with Rule 23, sets out the new notification threshold for a merger. According to the Regulations and the Rules, a merger is notifiable only where the combined annual



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turnover or combined value of assets of all parties in the common market, whichever is higher, equals or exceeds COMESA Dollar Sixty Million (COM\$60 million) and where the annual turnover or value of assets of at least two of the merging parties in the Common Market, whichever is higher, equals or exceeds COMESA Dollar Ten Million (COM\$10 million). For the digital market mergers, however, the merger is notifiable where the transaction value equals or exceeds COMESA Dollar Two Hundred and Fifty Million (COM\$ 250 million).

From the above, it is arguable that the spirit behind this new provision is to not only target transactions that are economically significant at a regional level but also to strengthen oversight on digital and innovation-driven markets.

Decision on Application Made to the Commission

While the Regulations and the Rules have retained the prescribed timeframe within which the Commission must make a determination on merger applications, namely 120 days, they introduce important clarity as to when the period commences. Specifically, the review period begins to run only from the date on which the Commission receives a complete application. Where an application is incomplete, the review period is effectively suspended. In this regard, Regulation 44, as read together with Rule 21, clarifies that the statutory clock begins to run only once a complete notification has been submitted.

This clarification is significant. From an administrative and procedural standpoint, it ensures

that merger applications are assessed on the basis of complete and accurate information, thereby reducing the risk of decisions being made on incomplete records. However, it is also important to consider the potential practical drawbacks of this approach. For example, where an application is submitted and the Commission takes an extended period to notify the applicant that the filing is incomplete, the review process may be prolonged beyond what is reasonably necessary. In such circumstances, the absence of clear timelines for the Commission to confirm completeness could introduce uncertainty for parties and undermine transactional certainty, particularly in time-sensitive transactions.

Advisory Opinions

The Regulations expressly empower the Commission to issue advisory opinions including in relation to mergers. In particular, Regulation 9(4)(e) empowers the Commission to provide advisory opinions, including opinions on whether a proposed transaction meets the applicable notification thresholds and is therefore notifiable.

Conclusion

The Regulations and the Rules, amongst other things, represent a significant evolution in the COMESA merger control framework. It achieves this by clarifying jurisdiction, expanding filing requirements, introducing differentiated fee structures for both traditional and digital market transactions, and establishing clear thresholds and review timelines. Because of the foregoing developments, the Regulations have provided a greater predictability for businesses and enhanced oversight for the

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Commission. Notably, the inclusion of digital market transactions reflects a modernised approach that captures mergers and acquisitions in the digital and data driven economy.

These reforms strengthen procedural certainty, promote transparency, and equip the Commission with the tools necessary to assess and regulate mergers effectively across the Common Market. Businesses undertaking mergers and acquisitions under COMESA jurisdiction must therefore ensure strict compliance with the Regulations to avoid potential penalties, including failure to notify, submission of inaccurate information, or premature implementation of transactions.

DISCLAIMER

This alert is for informational purposes only and should not be considered or interpreted as legal advice. If you have any questions or require clarification, please feel free to contact the authors Jacob Ochieng, Partner (jacob@oraro.co.ke), Sheila Nyakundi-Marilu, Partner (sheila@oraro.co.ke) and Wellington Nyabundi, Associate (wellington@oraro.co.ke) – or your usual contact at our firm for legal guidance.



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