Competition Law in Africa: Maximising Competitor Advantage
Consumer Value Chain Spotlight
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Executive Summary

Africa’s consumer-facing industries are expected to grow by more than $400 billion by 2020. This expected growth would account for more than half of the total revenue increase that all businesses are expected to generate in Africa by the end of the decade. It presents many opportunities for global entities and related value chain role-players in production, secondary processing, distribution and retail to choose Africa as an expansion destination.

This, coupled with the continent’s increased stability, tremendous economic growth, improved infrastructure and lucrative foreign investment returns by global entities, has resulted in a lot of merger activity, as foreign governments and international companies have begun to grow their African footprint.

Any potential investor in Africa will need to be aware of the following:

- Differences in legislation and regulation, particularly competition or Anti-Trust legislation and regulation
- Ability to determine the required level of compliance during the process of acquiring investments in Africa
- Ongoing business initiatives to prevent anti-competitive behaviour post acquisition
- Monitoring ongoing business interests on a day-to-day basis, as these factors can significantly increase the risk and complexity of investing in Africa.

During the period between 1990 and 2013, a dedicated competition law regime has been implemented by 26 countries in Africa. Over the past six years, new competition law regimes have spread across Africa, and existing, but largely dormant regimes, have been reinvigorated.

Notably, many countries have introduced competition regimes that reflect the country’s history and economy to accommodate different approaches to competition and other policies. This recent trend in merger regulation in Africa suggests that broader welfare imperatives are playing a far more significant role than ever before, particularly in those jurisdictions where public interest considerations are sewn into the legislative framework.

There are both similarities and contrasts in the competition law regimes across Africa. In Sub-Saharan Africa, there are other similarities between the provisions of the legislation in Botswana, Kenya, Namibia, South Africa and Swaziland as far as prohibited practices are concerned – particularly with regard to the abuse of a dominant position. If we look at cartel conduct, the legislation in Kenya, Malawi, Tanzania and Zambia respectively contains similar provisions. Similarly, the merger control provisions under the Malawian, South African and Zambian competition legislation include the consideration of the impact of a merger on employment and the promotion of exports.

However, there are noteworthy contrasts in competition legislation across jurisdictions in various countries. These are well illustrated in relation to merger control, for example:

- The factors triggering the obligation to notify of a merger
- The substantive tests for clearance of a merger
- The review periods applicable to mergers
- The information required to be submitted as part of a merger filing

In addition, despite having had individual competition law regulations for some time, African nations have been moving towards various forms of economic unity so as to redress the divisions imposed by colonialism, in an attempt to more effectively harness the continent’s potential.
A number of protocols and declarations are already in place in Africa. They strive to promote the regional convergence of competition enforcement and case-specific cooperation. The most advanced of them is the now widely known as Common Market for Eastern and Southern Africa (COMESA), which is the largest regional economy of 19 African member countries, namely Burundi, the Comoros, the Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, the Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

This regional competition law regulation was introduced in January 2013 and is currently fully in force.

It is clear that COMESA is a legal framework that is enforced with the sole aim of enabling the Common Market to attain the full benefits of the regional economic integration agenda. It does this by affording a legal platform for promoting fair competition among businesses involved in trade in the Common Market by protecting consumers from the adverse effects of monopolisation and related business malpractices.

The COMESA Competition Commission (CCC) exercises jurisdiction over all economic activities within, or having an effect within, its current 19 member states. It regulates, among other things, mergers by private or public persons, that have an appreciable effect on trade between the member states and that will restrict competition in the Common Market.

With regard to mergers and acquisitions, COMESA has primary jurisdiction where there is ‘regional dimension’ (where both parties or one of the parties operates in two or more COMESA states), provided that certain financial thresholds (turnover or asset values of the merging parties) in the COMESA region are exceeded. The threshold figure effective as of 26 March 2015 is now set at US$50 million.

Importantly, investors should understand how their proposed business transaction would be classified. Similar to South African competition law, COMESA deals with vertical business conduct; but its regulation encompasses extensive provisions around vertical business transactions.

Such vertical relations can be classified into two main categories – the first being vertical integration or vertical mergers (including vertical acquisitions) and the second being vertical agreements (or ‘restraints’) between otherwise independent firms. Vertical relations have an impact on the value chain (including the welfare of the consumer), and entities should treat them with caution.
In addition, the Restrictive Practices Guidelines provide extensive guidance on horizontally and vertically restrictive agreements and business practices. The COMESA regulations stipulate that vertical agreements are agreements between upstream and downstream firms, which can be anti-competitive if they foreclose competition in either the upstream or downstream markets, or in both. This area needs to be considered carefully, as economies of scale may often affect a company’s ability to reduce competition.

According to Article 20 of the COMESA regulations, the CCC may, in circumstances of legislative transgressions, decide, based on its determination, that the party in breach should:

- Cease its conduct immediately;
- Pay a fine in an amount to be determined by the CCC; and
- Take whatever action the CCC deems necessary to remove and/or diminish the effect of the illegal conduct.

Furthermore, contravention of the provisions under anti-competitive practices can have serious transactional consequences. For instance, any agreement or decision that contravenes the COMESA competition law is void and unenforceable. Firms engaged in activities that breach these provisions can face fines of up to 10% of annual turnover in the Common Market, and they expose themselves to actions for damages from consumers and competitors who can demonstrate that they have been harmed by the anti-competitive behaviour. In this regard, entities need to be aware of the provisions of the COMESA competition law, so that they can meet their obligations and protect their position in the marketplace.

More importantly though, is the significant risk posed to a company’s reputation, during lengthy investigations or subsequent litigation from consumers and competitors.

One of the tools needed to mitigate the exposure to potential non-compliance includes implementing an end to end competition compliance programme encompassing:

- Understanding current operations and the regulatory landscape and compliance obligations;
- Designing and implementing an operating model which facilitates ongoing specific focus on proactive and continuous contract management to ensure contract risk compliance; and
- Ongoing training and awareness to in-country teams on anti-competitive behaviour and appropriate response plans.
Introduction

One of the key objectives of competition policy is to promote consumer welfare by encouraging healthy competition among businesses.

To function optimally, any company that operates or invests in Africa must understand and be able to navigate all the relevant laws well. Of particular relevance to expansion plans in Africa, will be competition or “anti trust” regulation, especially in light of the fact that there has been increased legislator activity in this space in the past few years across the continent.

One of the key objectives of competition regulation is to promote consumer welfare by encouraging healthy competition among businesses. This is achieved by establishing a legal framework that aims to prevent restrictive business practices and other restrictions that deter the efficient operation of the market, thereby enhancing the welfare of consumers in that relevant market.

In the context of mergers and acquisitions, obtaining competition approval from regulators across Africa has become a significant part of many transactions. Likewise, compliance with legislation that prohibits cartel conduct and the abuse of dominance is playing a greater role, as enforcement is stepped up and regulators scrutinise companies’ business activities more closely in more African jurisdictions than was previously the case. Although competition legislation has been in place for a number of years in African countries such as Kenya, Malawi, South Africa, Tanzania and Zimbabwe, this legislation is a more recent introduction in countries such as Botswana, Namibia, Mozambique and Swaziland.

During 2013 and 2014, 5% and 7% of mergers decided upon by the CCC in South Africa, were for the wholesale and retail industry respectively.

The most recent example of this being the SAB and AB InBev merger.

Many African countries recognise the value of competition as a means for spurring economic growth, innovation and, as such, improving the economic wellbeing of citizens. With this in mind, it could be that countries undergoing economic reform recognise that competition policy can facilitate economic liberalisation. Policymakers agree that, in free markets that operate with anti-competitive restraints, competition forces producers and suppliers to lower prices, improve quality and innovate to the benefit of the consumer. Competition law will thus expectantly play a critical role in Africa, with a growing number of countries across Africa implementing competition law regimes.

In an increasingly competitive environment, it is important to discuss:

- The intra-regional trade identified under the competition law imperatives across Africa, during a multi-jurisdictional merger
- The necessity for ongoing legal compliance for businesses in Africa or those contemplating expanding into Africa

While the need for merger regulation is widely accepted, if not embraced, the extent of such intervention has long been debated, with participants falling into one of two schools of thought:

1. the free-market aligned Chicago school, which regards efficient competition as the only goal of merger regulation
2. the Harvard school, which recognises broader social welfare imperatives.

With both feet firmly in the Harvard camp, the various African jurisdictions, with existing and or currently establishing competition law regimes, are arguably a global forerunner in formalising, through legislation, a plurality of welfare goals that extend well beyond merely the regulation of competition.
Competition law in Africa

It is only within the last decade that most African countries have put competition legislation in place.

During the period between 1990 and 2013, a dedicated competition law regime has been implemented by 26 countries in Africa\(^1\). Over the past six years, new competition law regimes have spread across Africa, and existing but largely dormant regimes have been reinvigorated. The map below gives an overview of the competition law landscape in Africa. The primary drivers behind these developments are the traditional justifications of competition regulation as a means of encouraging economic growth and ensuring that consumers have access to the widest range of the best products at competitive prices. At the same time, most of the African jurisdictions have adopted South Africa’s overt inclusion of a public interest filter into their legislation. Notably, many countries have thus introduced competition regimes that reflect the country’s history and economy to accommodate different approaches to competition and other policies\(^2\). This recent trend in merger regulation in Africa suggests that broader welfare imperatives are playing a far more significant role than ever before, particularly in those jurisdictions where public interest considerations are sewn into the legislative framework.

*The competition law landscape in Africa*
Similarities in jurisdictions

Competition legislation in South Africa, Namibia and Kenya includes socio-economic or socio-political objectives. Particularly, the South African competition legislation specifically recognises that discriminatory laws and practices of the past resulted in excessive concentrations of ownership and control and inadequate restraints against anti-competitive trade practices. Emanating from this is a clear objective that underlies certain African countries’ competition policies and legislation. The objective is the promotion of a greater spread of ownership stakes of historically disadvantaged persons. Consequently, at the preliminary stage of identifying transaction risks, parties that are considering a particular transaction would do well to carefully assess the transaction’s impact through the filter of public interest with a view to predicting prospects of success and anticipating merger conditions.

In Sub-Saharan Africa, there are other distinct similarities between the provisions of the legislation in Botswana, Kenya, Namibia, South Africa and Swaziland as far as prohibited practices are concerned – particularly with regard to the abuse of a dominant position.

If we look at cartel conduct, the legislation in Kenya, Malawi, Tanzania and Zambia respectively contains similar provisions. Similarly, the merger control provisions under the Malawian, South African and Zambian competition legislation include the consideration of the impact of a merger on employment and the promotion of exports. The above-mentioned similarities between the competition regimes that have been developed thus far are indicative of the shared goals of competition law in various African countries and may provide the scope for even greater convergence over time. This is an important point to consider when contemplating a multi-jurisdictional merger.

Contrasts in jurisdictions

There are noteworthy contrasts in competition legislation across jurisdictions in various countries. These are well illustrated in relation to merger control, for example:
- The factors triggering the obligation to notify of a merger
- The substantive tests for clearance of a merger
- The review periods applicable to mergers
- The information required to be submitted as part of a merger filing

Similarly, the prohibitions against anti-competitive practices present notable differences, particularly in relation to conduct involving an abuse of dominance.

Despite having had individual competition law regulations for some time, African nations have been moving towards various forms of economic unity so as to redress the divisions imposed by colonialism, in an attempt to more effectively harness the continent’s potential in the face of globalisation. This has seen public-sector trade barriers tumble through the formation of customs unions, free trade areas, economic communities and similar mechanisms.

Regionalisation increases the geographic reach of business transactions and, along with it, the likelihood that conduct by a firm in one country can, negatively or positively, affect business in other countries. At the same time, globalisation requires firms to be competitive on a global scale, with expansion beyond national boundaries being an imperative. As relevant markets in Africa extend beyond national boundaries, it is clear that African countries intend to cooperate with one another to address cross-border mergers and anti-competitive practices for purposes of levelling the playing fields and to ensure that consumers and suppliers alike are able to benefit from Africa’s economic promise.

The rise of regional regimes

A number of protocols and declarations are already in place in Africa. They strive to promote the regional convergence of competition enforcement and case-specific cooperation. The most advanced of them is the now widely known Common Market for Eastern and Southern Africa (COMESA), which is the largest regional economic organisation in Africa. It consists of 19 African member countries, namely Burundi, the Comoros, the Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, the Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. This regional competition law regulation was introduced in January 2013 and is currently fully in force.

It is clear that COMESA is a legal framework that is enforced with the sole aim of enabling the Common Market to attain the full benefits of the regional economic integration agenda. It does this by affording a legal platform for promoting fair competition among businesses involved in trade in the Common Market by protecting consumers from the adverse effects of monopolisation and related business malpractices.
COMESA’s reach
The COMESA Competition Commission (CCC) exercises jurisdiction over all economic activities within, or having an effect within, its current 19 member states. It regulates, among other things, mergers by private or public persons, that have an appreciable effect on trade between the member states and that will restrict competition in the Common Market. It is clear that COMESA’s ambition is to introduce a federal competition law regime similar to the one that is operating in the European Union. The CCC has primary jurisdiction over all matters that have a community dimension, that is where the matter affects competition in more than one member state. In addition, the COMESA competition regulations also encompass the regulation of anti-competitive conduct and consumer protection.

With regard to mergers and acquisitions, COMESA has primary jurisdiction where there is ‘regional dimension’ (where both parties or one of the parties operates in two or more COMESA states), provided that certain financial thresholds (turnover or asset values of the merging parties) in the COMESA region are exceeded. The threshold figure effective as of 26 March 2015 is now set at US$50 million.

One particular area of contention has been the issue of the CCC’s jurisdiction. In theory, national competition regulators in the COMESA member states must defer to the jurisdiction of the CCC as regards mergers that fall within the CCC’s jurisdiction. However, given the hasty introduction of the COMESA competition law regime, various member states failed to make provision for it in their national legislation, resulting in uncertainty as to whether jurisdiction over a particular merger lies with the national or regional regulator. Such uncertainty is self-evidently problematic in the time-sensitive world of mergers and acquisitions. This is also compounded by the differences between the law, regulations, business culture and economies in various member states.

Typically competition law governs two aspects, mergers on the one hand and conduct on the other. COMESA is no different.

Vertical business transactions (or mergers)
Importantly, investors should understand how their proposed business transaction would be classified. Similar to South African competition law, COMESA deals with vertical business conduct; but its regulation encompasses extensive provisions around vertical business transactions.

Throughout the value chain, there are several levels at which anti-competitive business practices can harm consumer welfare and derail the gains of intra-regional trade. Investors contemplating a merger, as well as those already operating in Africa, must take care not to enter into any commercial arrangements that may be seen as vertical relations.

It is important to pay particular attention to vertical relations in the value chain. These generally refer to all types of relations among firms that act relative to one another as buyers and sellers of goods or services. The relations may be between wholesalers and retailers, or they may involve the sale of inputs or intermediate products or services that, in turn, are transformed into final goods.

Such vertical relations can be classified into two main categories – the first being vertical integration or vertical mergers (including vertical acquisitions) and the second being vertical agreements (or ‘restraints’) between otherwise independent firms. Vertical relations have an impact on the value chain (including the welfare of the consumer), and entities should treat them with caution.
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Be wary of the typical vertical relations and agreements highlighted below when contemplating a multi-jurisdictional merger.

The COMESA regulations specifically identify vertical mergers as mergers between firms that are operating at different levels of a supply chain in a given industry, such that the different levels in the production chain at which the merging parties are active, complement one another. An example is a merger between a manufacturer and a distributor in an industry at different stages of production, from raw materials to finished products to distribution. The regulator must be notified of these mergers, and parties to the merger must seek approval prior to implementation. Within the African context, this type of vertical business integration may be appealing due to the need to reduce risk within the value chain and increase reliability.

One such vertical merger occurred in April 2015, when Africa Spirits Ltd (ASL) merged with Wines of the World (WOW). WOW, a Kenyan importer of premium wines and spirits, merged with sister company ASL, a manufacturer of middle-market spirits. ASL is known for its flagship brand Blue Moon vodka, but also manufactures and distributes several popular spirits targeted at low-income consumers. WOW holds the Kenyan distributor licences for brands such as Jack Daniels and Southern Comfort.

Agreements and practices (or conduct)

In addition, the Restrictive Practices Guidelines provide extensive guidance on horizontally and vertically restrictive agreements and business practices.

The COMESA regulations stipulate that vertical agreements are agreements between upstream and downstream firms, which can be anti-competitive if they foreclose competition in either the upstream or downstream markets, or in both. This area needs to be considered carefully, as economies of scale may often affect a company’s ability to reduce competition.

If vertical agreements (of which there are many types) are not authorised, they may infringe the Competition Regulations. Vertical agreements include agreements that may:

- Restrict, or are likely to restrict, the entry of new undertakings into the market
- Prevent or deter any undertaking from engaging in competition in a market
- Eliminate or remove any undertaking from a market
- Directly or indirectly impose unfair purchase or selling prices or other restrictive practices
- Limit the production of goods and services for a market to the prejudice of consumers
- Arise from persuading others in the market to sign agreements against their interests
- Exploit customers or suppliers so as to frustrate the benefits expected from the establishment of the Common Market.

It is also worth noting that restrictive business practices are defined in the COMESA regulations as “all agreements between undertakings, decisions by associations of undertakings and concerted practices which are, or are intended to be, implemented within the Common Market, which may affect trade between Member States and which have as their object the prevention, restriction or distortion of competition within the Common Market”.

Such practices and agreements are generally prohibited and declared void, although exemptions may be granted if it is shown that the contravening conduct ‘contributes to production or distribution of goods or to promoting technical or technological or economic progress while allowing consumers a fair share of the benefit’ (our emphasis).

The Restrictive Practices Guidelines provide guidance on specific categories of agreements and practices, which include information exchange, R&D cooperation, production, purchasing and commercialisation agreements, resale price maintenance, single branding, exclusive and selective distribution and exclusive supply and franchise agreements.
What is notable is the large number of vertical agreements, which are agreements between a firm and its suppliers or customers, typically grouped into three distinct categories:

- **Single branding agreements**: Typically aimed at inducing a buyer to concentrate his/her orders for a particular product with one supplier.
- **Limited distribution agreements**: Have as their main element a requirement that a manufacturer (or supplier) sells products to only one buyer or a limited number of buyers, such as exclusive distribution agreements.
- **Market partitioning agreements**: Restrict where a buyer may buy or resell a particular product.

The CCC will apply a cumulative test requiring a demonstration that the agreement or concerted practice appreciably affects trade between member states, that its effect on competition is appreciable and that it is, or is intended to be, implemented within the Common Market.

The regulations provide safe harbours for vertical agreements, where the parties’ combined market share does not exceed 30%. Above these thresholds, there is no presumption that an agreement is a restrictive business practice; however, entities may apply for exemption of specific contracts or proposed contracts under Article 20 of the Regulations.

Entities can justify entry into exclusive vertical agreements on the basis that the agreements contribute towards improving the production or distribution of goods, or that they alternatively promote technical or economic progress within COMESA, while simultaneously allowing consumers a fair share of the resulting benefit. In so doing, firms will need to ensure that these agreements do not impose restrictions that are dispensable to the attainment of the foregoing objectives and that they do not go towards eliminating competition in respect of a substantial portion of the relevant market. This is similar to the approach adopted in the EU, where the most important objective of competition law is said to be the protection of competition in the market as a means of enhancing consumer welfare and ensuring the efficient allocation of resources.

In November 2005, Langeberg Foods International, part of the Tiger Brands Group, successfully merged with Ashton Canning Company, to form Langeberg & Ashton Foods (Pty) Ltd. This merger established one of the world’s largest deciduous canned fruit manufacturing and marketing entities, which continues to benefit customers and stakeholders alike.

Provided a firm can demonstrate that the exclusive vertical agreement was entered into for the purpose of achieving technological or efficiency gains (to the ultimate benefit of consumers), the agreement is unlikely to be prohibited, in the absence of dominance. Such an intention could, for example, be recorded in the agreement itself. Alternatively, the following documentation may be kept on file: documentation that identifies the pro-competitive benefits of the arrangements such as the elimination of free-riders, reduced transactions costs, protection against price fluctuations, sales and after sales service investment and staff training. In instances in which either party to the exclusive vertical agreement is dominant in its particular industry, a careful assessment of the risk of foreclosure of some of its operations by the competition regulators will need to be conducted before implementation of the agreement.

Akin to South Africa’s legislation, verbal and informal “gentlemen’s agreements” are equally capable of being found to be anti-competitive as formal, written agreements.
Some examples of the types of business arrangements, which are generally prohibited under the COMESA competition law, include:

- Agreements fixing prices
- Collusive tendering and bid-rigging
- Market or customer allocation agreements
- Allocation by quota as to sales and production
- Collective action to enforce arrangements
- 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 that is crucial to competition

This type of conduct between competitors is the most serious form of anti-competitive behaviour, as it constitutes uncompromising cartels and carries the highest penalties.

However, it is subtle and often unintended contraventions of the regulatory framework that entities should be most concerned about.
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Contraventions and penalties

Firms engaged in activities that breach these provisions can face fines of up to 10% of annual turnover in the Common Market.

According to Article 20 of the COMESA regulations, the CCC may, in circumstances of legislative transgressions, decide, based on its determination, that the party in breach should:

- Cease its conduct immediately
- Pay a fine in an amount to be determined by the CCC
- Take whatever action the CCC deems necessary to remove and/or diminish the effect of the illegal conduct

Furthermore, contravention of the provisions under anti-competitive practices can have serious consequences. For instance, any agreement or decision that contravenes the COMESA competition law is void and unenforceable. Firms engaged in activities that breach these provisions can face fines of up to 10% of annual turnover in the Common Market, and they expose themselves to actions for damages from consumers and competitors who can demonstrate that they have been harmed by the anti-competitive behaviour. In this regard, entities need to be aware of the provisions of the COMESA competition law, so that they can meet their obligations and protect their position in the marketplace.

The Court of Justice, in terms of the COMESA Treaty (Treaty), is responsible for ensuring adherence to the law in the interpretation and application of the Treaty and has jurisdiction to adjudicate on all matters which may be referred to it pursuant to the Treaty.

Matters of non-compliance, as well as requests for regulatory guidance, may be referred to the Court of Justice by:

- the Member States themselves;
- the Secretary-General; or
- any person who is resident in a Member State should they require guidance on the legality of ‘any act, regulation, directive, or decision of the Council or of a Member State on the grounds that such act, directive, decision or regulation is unlawful or an infringement of the provisions’ of the Treaty.

It is noteworthy that except where the exclusive jurisdiction is conferred on the Court of Justice by or under the Treaty, disputes to which the Common Market is a party will not be excluded from the jurisdiction of national courts. However, decisions of the Court of Justice on the interpretation of the provisions of the Treaty will prevail over decisions of national courts.

Non-compliance with the COMESA competition law therefore becomes a serious governance issue, which may discourage potential investors and may even lead to the exit from the company of current shareholders and/or exit from the market in which it operates.

More importantly though, is the significant risk posed to a company’s reputation, during lengthy investigations or subsequent litigation from customers, competitors and consumers.

With respect to potential conflicts between the provisions of the Treaty and international law or national law, in the event of a conflict between an international law/regulation and the COMESA Treaty, international law will prevail as the Treaty limits the jurisdiction of the COMESA Court to the interpretation and application of the Treaty only and not international law issues.

In the event of a conflict between the provisions of the Treaty and national law, the Treaty does not contain a supremacy clause however Article 5 of the Treaty states that the Member States shall make every effort to plan and direct their development policies with a view to creating conditions favourable for the achievement of the aims of the Common Market and the implementation of the provisions of this Treaty and shall abstain from any measures likely to jeopardise the achievement of the aims of the Common Market or the implementation of the provisions of this Treaty.

Further, the Treaty requires that every Member State enacts legislation to give effect to the Treaty, therefore it is evident that COMESA did not anticipate that there would be conflicts of this nature.
One of the tools needed to mitigate the exposure to potential non-compliance includes implementing an end to end competition compliance programme encompassing:

- understanding current operations and the regulatory landscape and compliance obligations;
- designing and implementing an operating model which facilitates ongoing specific focus on proactive and continuous contract management to ensure contract risk compliance; and
- ongoing training and awareness to in-country teams on anti-competitive behaviour and appropriate response plans.

A typical end to end compliance programme should thus encompass three distinct phases as set out to the right:

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<td>Regulatory universe development and unpacking of detailed compliance obligations</td>
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<td>• Training content</td>
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<td>• Compliance monitoring plan which facilitate compliance</td>
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<td>Implement –</td>
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<td>• New operating model through changed roles and responsibilities, policies and processes</td>
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<td>• Compliance maintenance plan through roles and responsibilities and training</td>
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Annual Health Check
**Deloitte Visualiser**

Deloitte has developed a regulatory tool which, utilising data analytics functionality, enables a visualisation of regulatory universes, compliance risk management plans and our regulator matrix information, where information is overlaid to visualise the intersection of regulatory information with macro-economic information and client specific information, such as client revenues, staff numbers, competitor revenues and the like.

The information is visualised per country, and is customised for the client’s geographic footprint, and is specific to the regulatory universes and compliance risk management plans which develop as part of the solution. The regulatory tool contains detailed macro-economic information which can guide decisions to enter or exit countries based on various publically available metrics. This allows a very strategic view of country, opportunity and risk and is linked to the regulatory content also housed within the tool. But what is possibly most exciting about the regulatory tool, is that all data which we load into the regulatory tool, is kept up to date (so as regulatory changes are made, these are updated into the tool and a notification is sent to you of what the change was and the suggested change to your business process due to the change). Notifications are specific to the information which is developed for you so that only relevant notifications are received by you. This means that any regulatory data developed will remain current, the value of this is significant.

The tool can incorporate any existing databases/information already in place and this information does not have to be recaptured into the tool, a feed of the information is merely developed so that it overlays that information with the regulatory information in the tool. It is hosted by Deloitte, on our platform and is maintained through this.
## Contacts

### Southern Africa

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### East Africa

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### West Africa

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References

3. Ibid
4. See Article 264(4)(b) of the COMESA regulations, which stipulates that when the CCC is determining whether a merger is or will be contrary to the public interest, it shall take into account all matters that it considers relevant in the circumstances and shall have regard to the desirability of "promoting the interests of consumers, purchasers and other users in the region, in regard to the prices, quality and variety of such commodities and services".
6. “Common Market” is defined as the Common Market for COMESA, established by Article 1 of the Treaty (i.e. transactions or conduct affecting two or more COMESA member states)
8. Centre for Competition Policy Instituto Universitario de Estudios Europeos, Madrid Reviewing Vertical Restraints in Europe: Reform, Key Issues and National Enforcement, November 11-12, 2010 p.2
10. Articles 16 and 19 of the COMESA Competition Regulations
11. Ibid
17. Ibid
18. Ibid
20. Ibid
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23. Ibid
24. Ibid
25. Ibid
27. Ibid
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31. Ibid
32. Ibid
33. Ibid
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35. Ibid
36. Ibid
37. Ibid
38. Ibid
39. Ibid
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