



**COMESA** Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

**South Africa**

In July 2022, the Competition Tribunal granted Northam Platinum Holdings Limited leave to intervene in the large merger proceedings involving Impala Platinum Holdings Limited and Royal Bafokeng Platinum Limited. Notwithstanding its appreciation that Northam, as a rival bidder, had every incentive to delay and scupper the deal (which contained a time-sensitive public offer), the Tribunal held that Northam’s experience and unique position in the market could assist in improving its understanding of the market dynamics at a local level.

In balancing the merging parties’ expectations of an efficient and expeditious merger clearance process, with the assistance that the intervenor could provide, the Tribunal prescribed the specific issues on which Northam would be permitted to engage, and limited the scope of documents in the confidential record to which Northam would be allowed access.

**Tanzania**

In July 2022, the Fair Competition Commission of Tanzania published its Whistle-blower Policy, the objective of which is to enable and encourage stakeholders to report corruption, malpractice and other forms of unethical behaviour by employees of the Commission. The policy makes provision for, *inter alia*, reporting procedures, confidentiality measures and compensatory rewards for whistle blowers, with the aim of enhancing and protecting the integrity and reputation of the Commission.

**Botswana**

On 4 August 2022, the Botswana Competition and Consumer Authority approved, subject to conditions, a transaction involving the indirect acquisition by Heineken B.V. of the flavoured alcoholic beverages (FAB), wine and spirits businesses of Distell Group Holdings Limited. In addition to the horizontal overlap, the transaction encompassed the acquisition of a dominant market share held by the target business pre-merger. Thus, Heineken undertook to dispose of its own FAB brand (Strongbow), which the Authority acknowledged as a divestiture undertaking and imposed additional measures as conditions. These include a complete disassociation between Heineken and the Strongbow brand in Botswana, and monitoring mechanisms to enable the Authority to assess the notifiability requirements of any subsequent transaction with the new brand owner.

Furthermore, to address the public interest concern arising from the absence of Botswana-owned local distributors, the Authority imposed conditions aimed at empowering a citizen-owned distribution company. The conditions obligate the parties to identify and equip (through a supplier / distributor development programme) a locally-owned distributorship business for eventual inclusion in the supply chain.

**Morocco**

The Competition Council of Morocco imposed a fine of MAD 3 million (approx. ZAR 4.8 million at the time of writing) on the Accounting Association for agreeing to fix the minimum hourly audit rate in violation of Article 6 of the Law No. 104-12, which prohibits conduct that impedes, limits or distorts competition in a market. It was found that the conduct deprived small and medium companies of audits conducted at competitive prices and was not in accordance with the functions of the Association.

**Mozambique**

Less than two years since becoming operational, the Competition Regulatory Authority of Mozambique issued its first penalty for a contravention of the competition law (Law no. 10/2013 of 11 April 2013). The Authority imposed a fine of MZN 41 million (approx. ZAR 11 million at the time of writing) against merging parties for failing to notify a transaction subject to mandatory filing prior to implementation. In Mozambique, gun-jumping constitutes an offence punishable by a fine up to 5% of each or all of the infringing parties’ turnover in the preceding year.

**Namibia**

In 2018, the Namibian Competition Commission issued preliminary findings following its investigation into alleged collusion between various short-term insurance companies. After inviting oral representations on its findings, the Commission instituted proceedings in the High Court. It was alleged that the defendant insurance companies engaged in a concerted practice to set maximum mark-ups and labour rates charged by panel beaters for the repair of insured vehicles.

In June 2022, the Commission and Phoenix Assurance Namibia Limited (one of the defendants), concluded a settlement agreement based on an admission by Phoenix that the conduct constituted an unintended contravention of the legislation, for which penalties were imposed and commitments required to be made regarding future compliance with competition law in Namibia.

**TRENDING**

**Cooperation is Key**

Now, more than ever before, transacting parties should remain cognisant of the competition law regimes applicable across Africa. In addition to the ever-increasing regulation of competition law in general, there has been notable growth in the monitoring and enforcement capabilities of African regulators. A critical tool in this regard is information sharing (i.e., cooperation) amongst regulators, which can take various forms, including informal commitments and formalised memoranda of understanding (MoU).

In May this year, the Fair Competition Commissions of **Tanzania** and **Zanzibar** respectively, undertook to cooperate in a strong working partnership going forward.

In July, the **Egyptian** Competition Authority agreed with the **Tunisian** Competition Council to enhance cooperation in the competition law domain. In August, the Egyptian Authority further concluded a MoU with the Competition Commission of **South Africa**, in terms of which the agencies have committed to cooperate in various areas of competition law.

A further example of the collaboration trend is the recent MoU entered into between the **COMESA** Competition Commission and the **eSwatini** Competition Commission in August, the objective of which is to foster cooperation and harmonisation across the agencies.