

# COMPETITION, TRADE & INVESTMENT

QUARTERLY UPDATE (MARCH / APRIL 2023)

Our CTI practice offers clients a holistic service that covers all the complexities of competition, trade and investment across the continent.

\*Some of the developments included in this publication were sourced using the Betweenity App ([betweenity.co.za](https://betweenity.co.za))

## Agribusiness, Food & Beverage

### Fresh produce market inquiry launched

South Africa: In March 2023, the South African Competition Commission (SACC) launched the Fresh Produce Market Inquiry (FPMI). The FPMI will examine whether any features in the fresh produce value chain impede, restrict, or distort competition in the market. It will focus on:

- particular issues in each layer of the value chain, including the sale of fresh produce by farmers to their customers (retailers, processors, or export markets);
- five fruits: apples, citrus, bananas, pears and table grapes; and
- six vegetables: potatoes, onions, carrots, cabbages, tomatoes and spinach.

All the relevant documents for the FPMI are available on the SACC's website [here](#).

### Competition Commission expresses concerns about unjustified essential food price increases

South Africa: In its latest Essential Food Price Monitoring Report, the SACC said that South African consumers had, over a two-year period, faced unjustified price increases in sunflower oil, white and brown bread, and opportunistic price increases in maize meal. The SACC's latest report, available [here](#), also focuses on the poultry value chain. The SACC has undertaken to closely probe and monitor the prices of these goods. Experts have criticised the report for a lack of analysis.

Source



## African Continental Free Trade Area Updates

- 1 As at March 2023, 46 of 54 countries (85.2%) have deposited their instruments of ratification.
- 2 In February 2023, the African Union approved the AfCFTA's draft investment, intellectual property and competition protocols. This is a step in Phase II AfCFTA negotiations.
- 3 By January 2023, 89.7% of the lines of goods had been agreed by the South African Customs Union (SACU), while an agreement was still required on the tariff order for eleven lines of goods. SACU has also now submitted its offer under the Agreement on Trade in Goods.

4 Commercially meaningful trade commenced under the Guided Trade Initiative (GTI) last year, where eight countries (Ghana, Egypt, Tanzania, Rwanda, Kenya, Mauritius, Cameroon and Tunisia) traded goods under the preferential rules of the AfCFTA. According to the AfCFTA Secretary-General, the exercise was successful, with around 96 products (including air conditioners, tiles and coffee) traded. He said that the objective for this year would be to expand the scope of the GTI to include the services sector.

5 It has also been reported that the AfCFTA Competition Protocol provides for the establishment of a Continental Competition Authority. The authority, among other things, is expected to adjudicate mergers that meet certain thresholds.

Source, source and Betweenity

## Regulatory

- **Cape Verde:** It has been reported that the Cape Verde competition authority, Autoridade da Concorrência (AdC), has come into operation. The AdC will be responsible for investigating prohibited practices and reviewing mergers. Mergers must be notified to the AdC if the prescribed merger thresholds are met. [Source](#)
- **COMESA:** The COMESA Competition Commission (CCC) has recently published three important documents.

**Practice Note 4 of 2023** regarding the Interpretation of the term 'operate' and the threshold calculations (the Revised Thresholds Practice Note). This clarifies that the quantitative criteria for the term 'operate' set out in the CCC merger guidelines no longer apply. The Revised Thresholds Practice Note also clarifies how the regional dimension test, combined and individual thresholds, and two-thirds exemption rule should be applied.

**Practice Note 3 of 2023** regarding engagements with the CCC, relevant authority in Member States and merger parties with regard to notified mergers (the Merger Engagement Practice Note). The Merger Engagement Practice Note encourages merger parties to co-operate with national competition authorities in COMESA member states and delineates the roles of the CCC and national competition authorities in the merger review process.

**Notice 2 of 2023** revised guidance on engagement with the CCC on merger filings (CCC Engagement Notice). This notice withdraws some of the measures that the CCC put in place due to the Covid-19 pandemic. It confirms that, as long as parties have engaged with the CCC on the notification process within the 30-day period stipulated in the regulations, they will not be penalised for failing to submit a notification within 30 days of the parties' decision to merge.

- **South Africa:** In February 2023, the SACC published Guidelines on the Exchange of Competitively-Sensitive Information between Competitors (the Guidelines). This follows requests from various stakeholders, such as industry associations, to clarify what is permissible information exchange. The Guidelines are intended to assist firms, trade associations and other stakeholders by detailing the type of information exchange that the SACC would regard as harmful to competition and when information exchange would enhance efficiencies. The Guidelines can be accessed on the SACC's website [here](#).
- **Zambia:** The Zambian merger notification threshold has been revised upwards from ZMW 15 000 000 to ZMW 30 000 000, in accordance with Statutory Instrument No. 106 of 2022.

## Telecommunications, media and technology

- **South Africa:** In March 2023, the SACC published **draft Terms of Reference (ToRs)** for a market inquiry into the distribution of media content on digital platforms, the Media and Digital Platforms Market Inquiry (MDPMI). The MDPMI is based on the SACC's view that there may exist market features in digital platforms distributing news media content that may impede, distort, or restrict competition and could have adverse implications for South Africa's news media sector. This imbalance could have implications for fair payment for content and the sustainability of independent journalism. Written submissions on the draft ToRs are due on 20 April 2023.
- **South Africa:** A two-month extension has been granted to the Online Intermediation Platform Market Inquiry (OIPMI) to finalise and complete its report by 18 April 2023. The extension will enable the inquiry to continue its extensive consultation on additional recommendations. The DTIC has also published **Draft Regulations relating to appeals arising from market inquiries before the Competition Tribunal in terms of section 43F and Draft Regulations relating to a divestiture recommendation by the Commission in terms of section 43D (2) of the Competition Act 89 of 1998** as amended for public comment.

## Infrastructure

In April 2023, the SACC launched the Steel Market Inquiry (SMI) and published **draft terms of reference** for comment. The SMI will examine whether any features in the South African steel industry impede, restrict, or distort competition in the market.

The Steel Industry Inquiry will be confined to only two levels of the steel value chain; namely:

- the raw materials and inputs; and
- the upstream steel production level.

In addition, the inquiry will focus on the impact of these levels of the value chain on the domestic downstream steel market.

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