

New COMESA Merger Filing Thresholds and Fees

The COMESA Council of Ministers has approved legislative amendments that introduce formal filing thresholds and lower filing fees, as well as clarifying certain jurisdictional rules and streamlining filing requirements.

Thrashing out some thresholds

In January 2013, the Competition Commission of COMESA (CCC) launched a merger control regime for the COMESA region with filing thresholds that had been set at zero in the implementing legislation, as well as unusually high filing fees. That legislation has now been amended to introduce formal thresholds, and to lower the filing fees, with effect from 26 March 2015.

A filing is now required only if:

- the parties to the transaction have combined turnover or assets in the COMESA region of US\$50 million or more;
- each of at least two parties has turnover or assets in the COMESA region of US\$10 million or more;
- the parties do not each achieve more than two-thirds of their COMESA-wide turnover in one and the same Member State; and
- at least one of the merging parties operates in two or more COMESA Member States.



As regards this last criterion, interpretative guidance previously issued by the CCC states that it considers that a party operates in a Member State if it has turnover or assets of more than US\$5 million in that country.

Filing fees are now 0.1% of the value of the parties' combined turnover or assets in the COMESA region (whichever is the higher), subject to a cap of US\$200,000. Previously, they were 0.5% of turnover/assets, subject to a US\$500,000 cap.

Other legislative amendments clarify rules for the calculation of parties' group turnover and assets (which are now broadly in line with international standards) and introduce a revised filing form with reduced formalities.

The COMESA Member States

Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe

Comment

The new thresholds are broadly sensible and commensurate with a regional economy of the size of the COMESA Common Market and should further enhance the credibility of the COMESA competition regime. They are likely to result in increased enforcement action by the CCC against un-notified mergers, which may lead to more filings, notwithstanding that fewer mergers will be caught by the thresholds.

Moreover, the lower filing fees – while still high by international standards – should mean that fewer firms (if any) are now deterred from submitting filings by the cost of doing so.

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