



COMPETITION FRAMEWORK IN COMESA

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8. Cooperation with national, regional and continental authorities

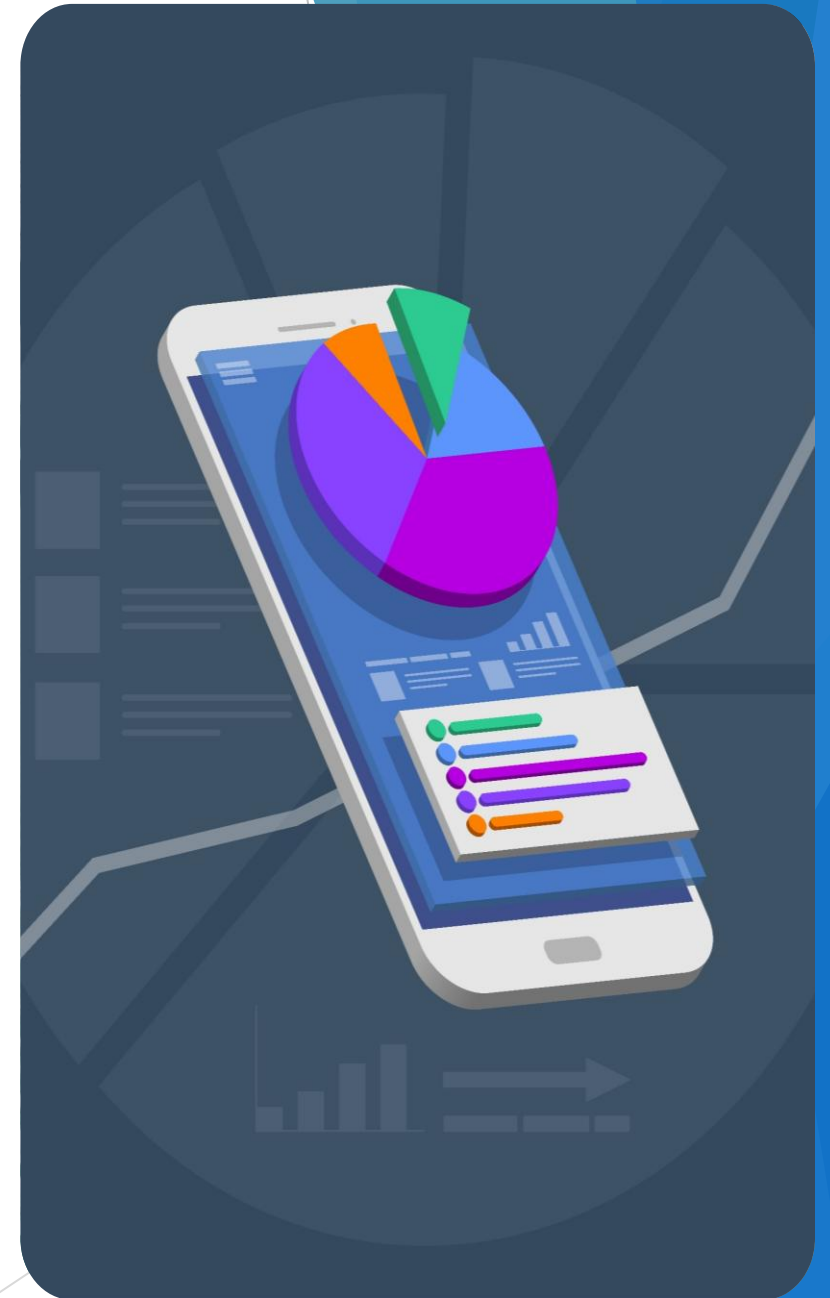
Introduction

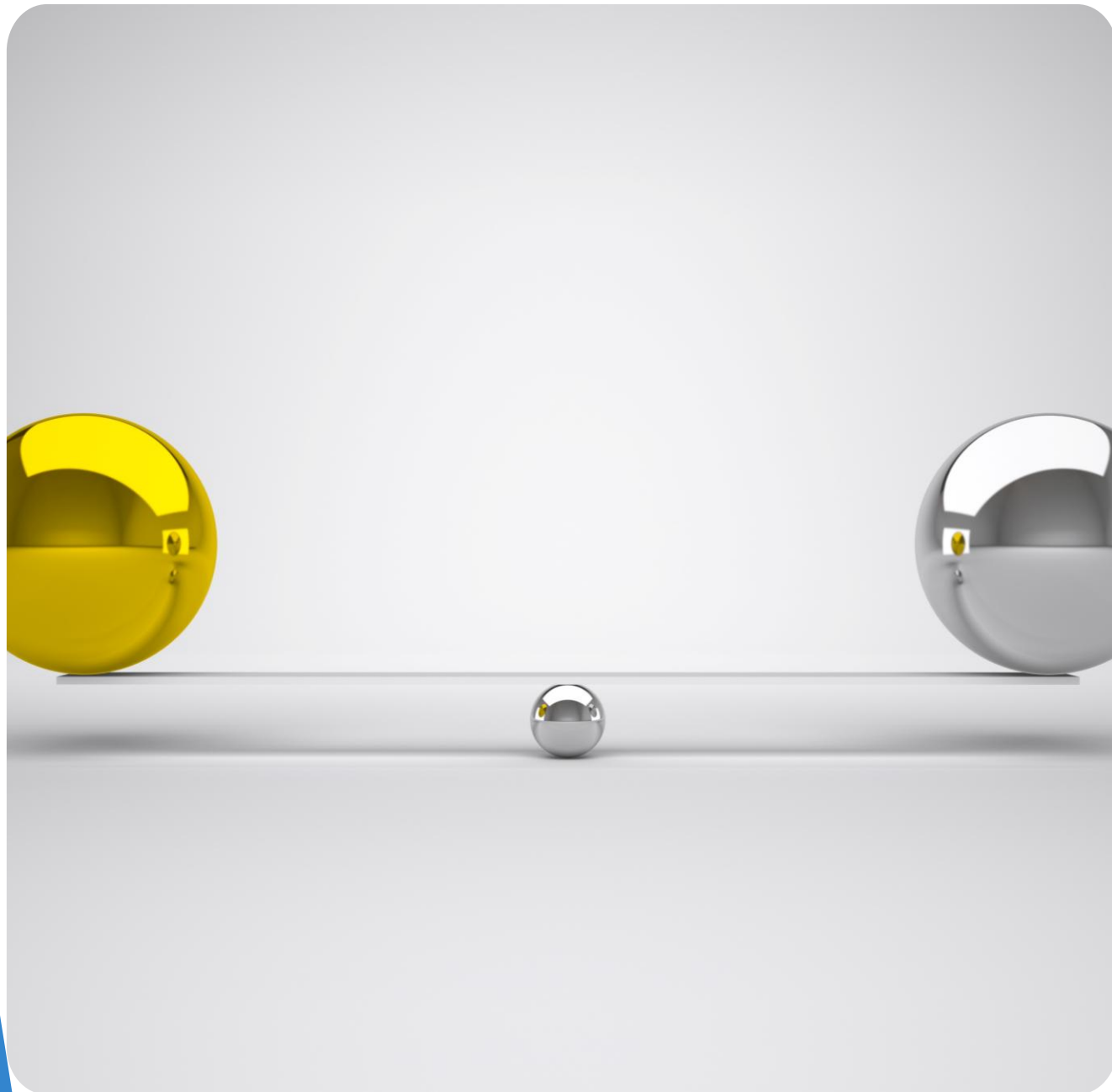
- Competition Regulations are promulgated pursuant to Article 55 of the COMESA Treaty.
- The COMESA Competition Regulations adopted in 2004, the COMESA Competition Commission operationalized in 2013
- In 2025, the 2004 Regulations repealed and replaced by the COMESA Competition and Consumer Protection Regulations on 4 December 2025.
- Regulation 8 establishes the COMESA Competition and Consumer Commission.
- The Regulations are binding in their entirety on undertakings and Member States
- The purpose of the Regulations is to:
 - ▶ promote competition by preventing and prohibiting anti-competitive business practices, anti-competitive mergers and other restrictions that deter the efficient operation of markets
 - ▶ enhance consumer welfare by preventing and prohibiting unfair trade practices



Scope of Application

- The Regulations apply to all economic activities conducted by an undertaking within, or having or likely to have an effect in two or more Member States within the Common Market or a substantial part of it,
- The Regulations have exclusive application with regards to conduct that affects the Common Market or a substantial part of it:
 - ▶ anti-competitive business practices
 - ▶ Mergers
 - ▶ Unfair trade practices
- Member States cannot apply national legislation to such unless in exceptional circumstances.
- Where there is a conflict between the Regulations and the provisions of the national competition or consumer protection laws with respect to matters with a regional dimension, the provisions of the Regulations shall prevail.





Anti-competitive Business Practices

Anti-competitive Business Agreements

- ▶ Ant-competitive Business Agreements
- ▶ Agreement, decision or concerted practice, which has or likely to have the object or effect of SLC
- ▶ Efficiency considerations considered as justifications
- ▶ Public Interest
- ▶ environmental protection or sustainability considerations.
- ▶ Any other factors that bear upon public interest

Prohibited *per Se* Offences for undertakings that are direct competitors or potential direct competitors

- ▶ 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 products to a potential purchaser, or to purchase products from a potential supplier,
- ▶ collective denials of access to an arrangement or association which is crucial to competition.

Prohibited Per Se Offences for undertakings that are in a vertical relationship

- ▶ absolute territorial protection,
- ▶ restrictions of passive sales,
- ▶ minimum resale price maintenance,

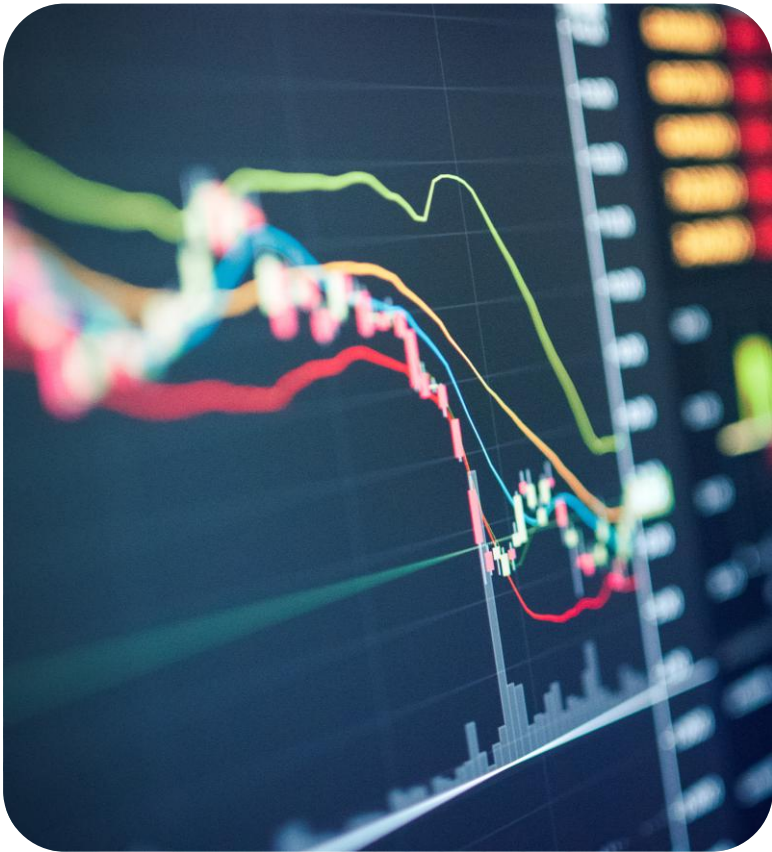
Dominant Position and Abuse of Dominance

- relevant market definition
- level of actual or potential competition,
- barriers to entry, expansion and exit,
- history of competition and rivalry between competitors in the sector,
- in case of digital markets, data quantity, accessibility and control, and network effects.

Abuse of Dominance Position

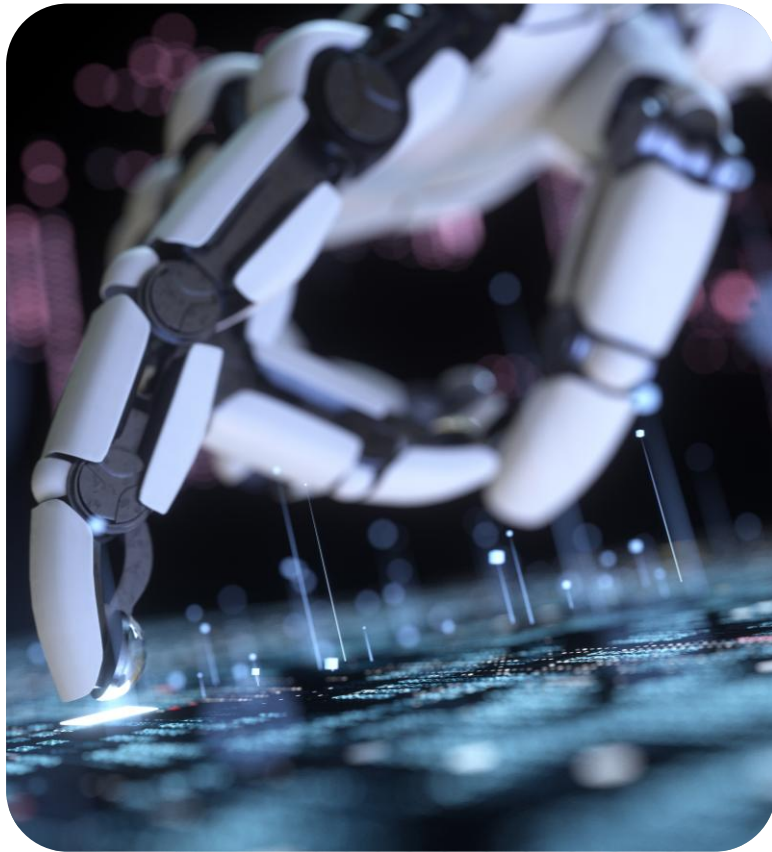
- ▶ Restricts, or may restrict, the entry of any undertaking into a relevant market;
- ▶ prevents or deters, or may prevent or deter, any undertaking from engaging in competition in a relevant market;
- ▶ eliminates, or may eliminate, any undertaking from a relevant market;
- ▶ directly or indirectly imposes unfair purchase or selling prices or other restrictive practices;
- ▶ limits the production of products;
- ▶ as a party to an agreement makes the conclusion of such agreement subject to acceptance by another party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the agreement;
- ▶ engages in any conduct that results in the exploitation of its customers or suppliers, so as to frustrate the benefits expected from the establishment of the Common Market; or
- ▶ applies dissimilar conditions to equivalent transactions with trading parties thereby placing them at a competitive disadvantage.

Abuse of Economic Dependence



- ▶ Determination of abuse of economic dependence does not require a dominant position in any market.
- ▶ Determination of economic dependence may be based on:
 - ❖ the market share of the undertaking in the Common Market,
 - ❖ the relative strength of the undertaking,
 - ❖ the existence or lack thereof of alternative solutions,
 - ❖ the factors that led to the situation of dependence,
 - ❖ any other relevant factors as the circumstances dictate.

Prohibited Practices by Gatekeepers

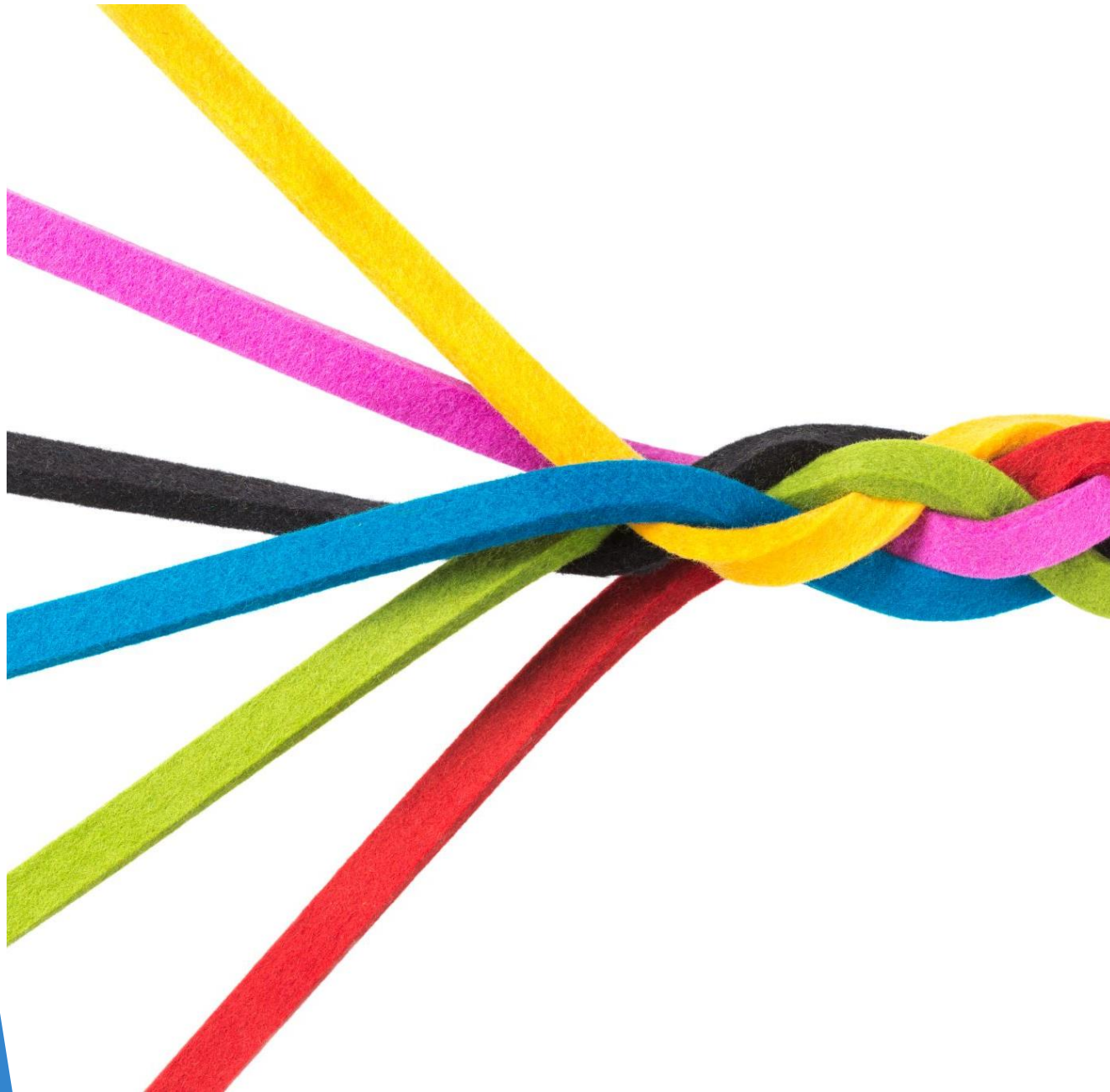


- ▶ imposing price or service parity clauses on business users,
- ▶ imposing anti-steering provisions, or otherwise preventing business users from:
 - ❖ engaging consumers directly outside of a core platform,
 - ❖ using business user data to compete against the business user,
 - ❖ self-preferencing of products offered by the gatekeeper on a core platform,
 - ❖ differentiation in fees or treatment against small and medium enterprises,
 - ❖ placing restrictions on the portability of data or other actions that inhibit switching platforms for business and end-users,
 - ❖ failing to identify paid ranking as advertising in search results and to allow paid results to exceed organic results on the first results page,
 - ❖ combining personal data sourced from different services offered by the gatekeeper
 - ❖ forcing purchase or provision of benefit or tie-in sales,
 - ❖ imposing sales target,
 - ❖ causing disadvantages,
 - ❖ interfering with the business management or operation.

Leniency



- ▶ The CCCC has powers to grant leniency for cartel conduct
- ▶ Through Leniency undertakings that voluntarily disclose the existence of prohibited practices relating to cartel conduct and fully co-operate with the CCCC in the investigation may receive immunity from all or part of an administrative fine.
- ▶ Parties granted leniency by the CCCC shall not be subjected to separate legal proceedings at national level on the same matter.
- ▶ A decision rendered by the CCCC with respect to a leniency application is binding on undertakings and Member States.



Mergers

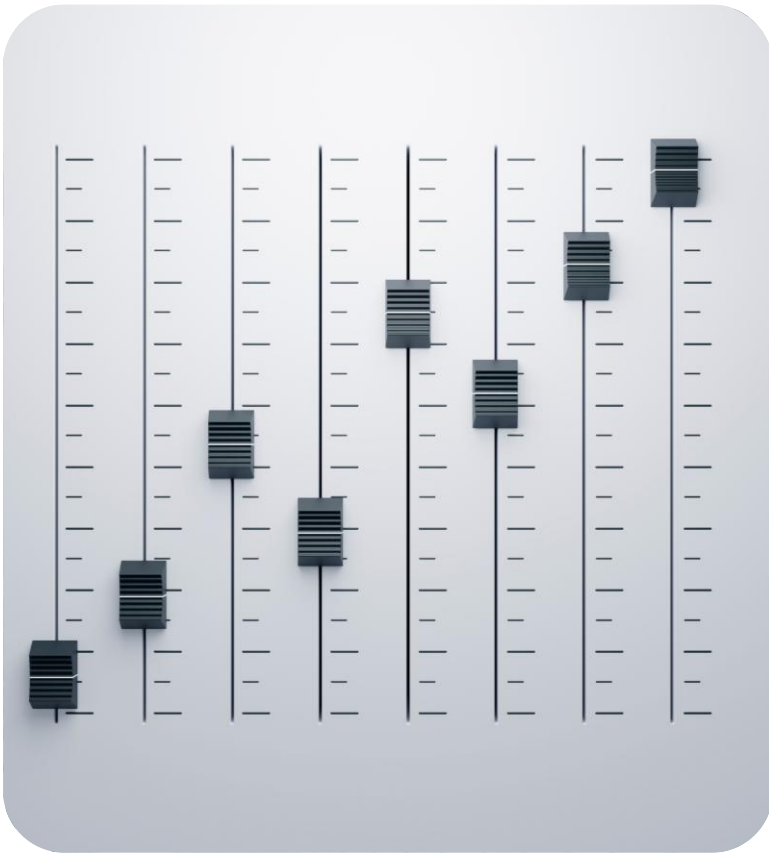
Mergers



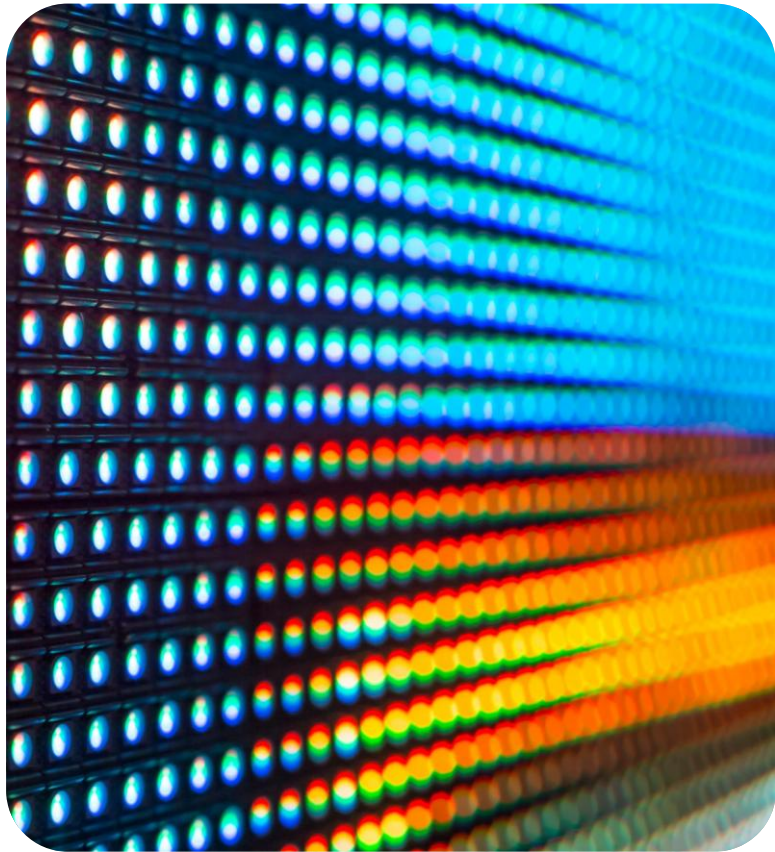
- ▶ The guiding principle is the preservation of the integrity of the one stop shop
- ▶ Merger regulation is suspensory, parties to a notifiable merger required to notify prior to implementation.
- ▶ Parties can implement a merger if:
 - ❖ the merger is approved,
 - ❖ There are derogations granted by the CCCC.
- ▶ Failure to comply will be a violation of the Regulations.

Merger Definition

- ▶ A merger can be achieved through the following means:
 - ❖ the purchase of shares or assets of a competitor, supplier, customer or other undertaking,
 - ❖ the lease of assets of a competitor, supplier, customer or other undertaking,
 - ❖ the amalgamation or combination with a competitor, supplier, customer or other undertaking,
 - ❖ the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity,
 - ❖ any means other than those specified above

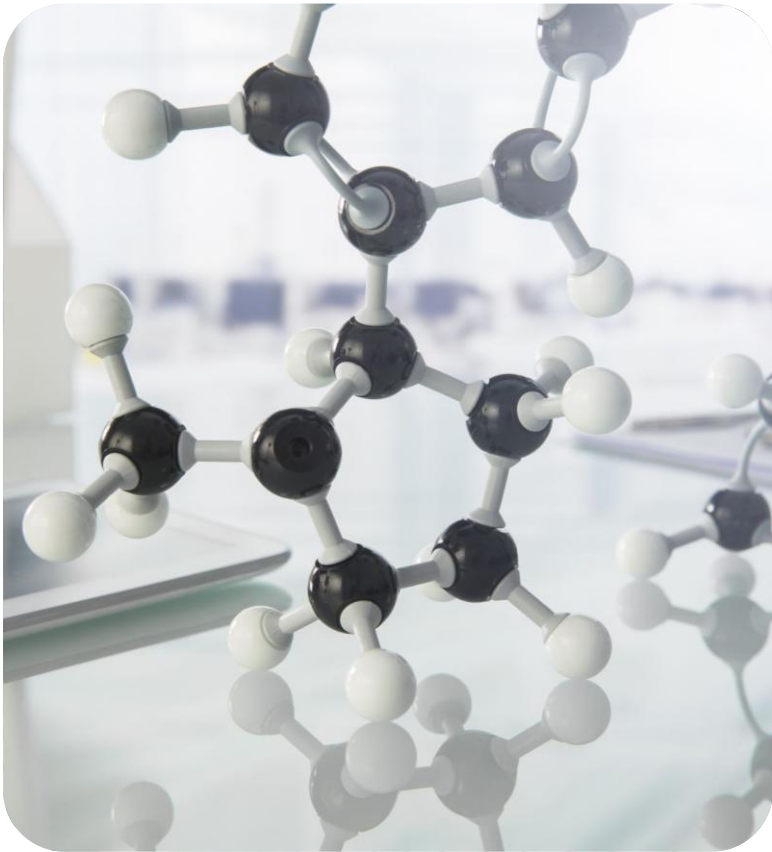


What Constitutes Change of Control



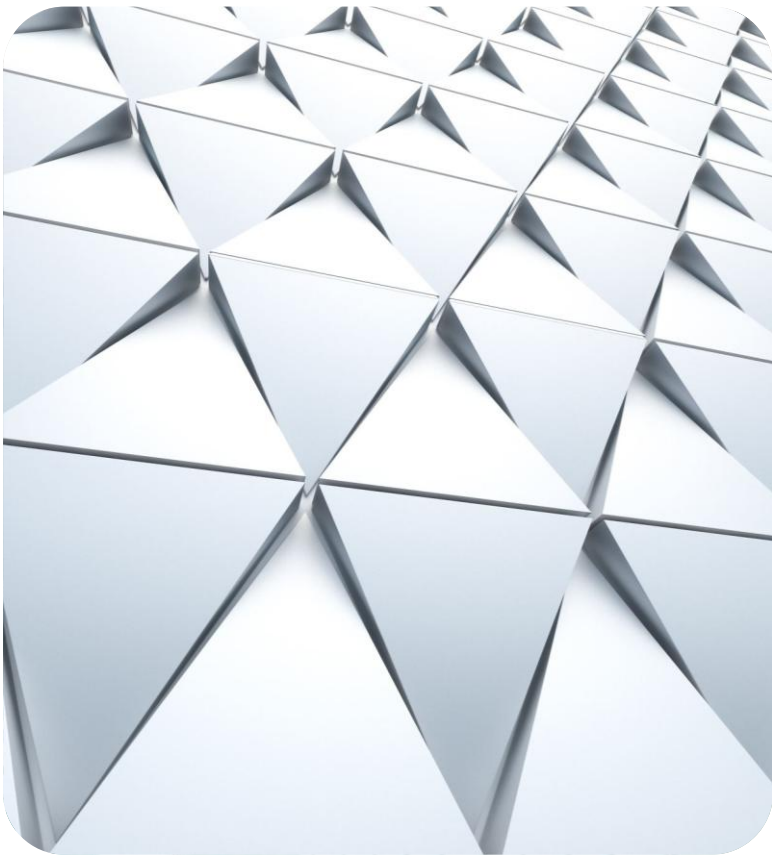
- ▶ determination or ability to influence the voting of the majority of the votes that may be cast at a general meeting of the undertaking,
- ▶ the ability to appoint or veto the appointment of the majority of directors and senior management of the undertaking,
- ▶ the ability to determine or veto the determination of the strategic commercial policy of the undertaking, or strategic use of the asset concerned; or
- ▶ the ability to influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to above

Merger Notification



- ▶ A joint venture is notifiable if:
 - ❖ the joint venture is intended to operate in two or more Member States;
 - ❖ at least one of the parent undertakings to the joint venture operates in two or more Member States; and
 - ❖ the combined annual turnover or value of assets, whichever is higher, in the Common Market of all parties to the joint venture meets or exceeds the prescribed threshold.
- ▶ Mergers in digital markets, including platforms, are notifiable if:
 - ❖ at least one of the parties to the merger has operations in two or more Member States; and
 - ❖ the merger meets the prescribed transaction value.

Merger Notification Thresholds



- ▶ A merger is notifiable if:
 - ❖ the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds COMESA Dollars Sixty Million (COM\$ 60 million); and
 - ❖ the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds COMESA Dollars Ten Million (COM\$ 10 million),
 - ❖ unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.
 - ❖ A merger in the digital market is notifiable if it meets the transaction value of COMESA Dollars Two Hundred and Fifty Million (COM\$ 250 million).

Assessment of Mergers



- ▶ The CCCC's assessment of mergers shall include considerations of:
 - ❖ Substantial lessening of competition,
 - ❖ Public interest grounds,
 - ❖ Technological efficiency,
 - ❖ any pro-competitive gains



Adjudicative structure

2004 Regulations



CCCC Secretariat

- Investigative body
- The Secretariat would forward the investigation report to the Committee Responsible for Initial Determinations after parties had had an opportunity to comment

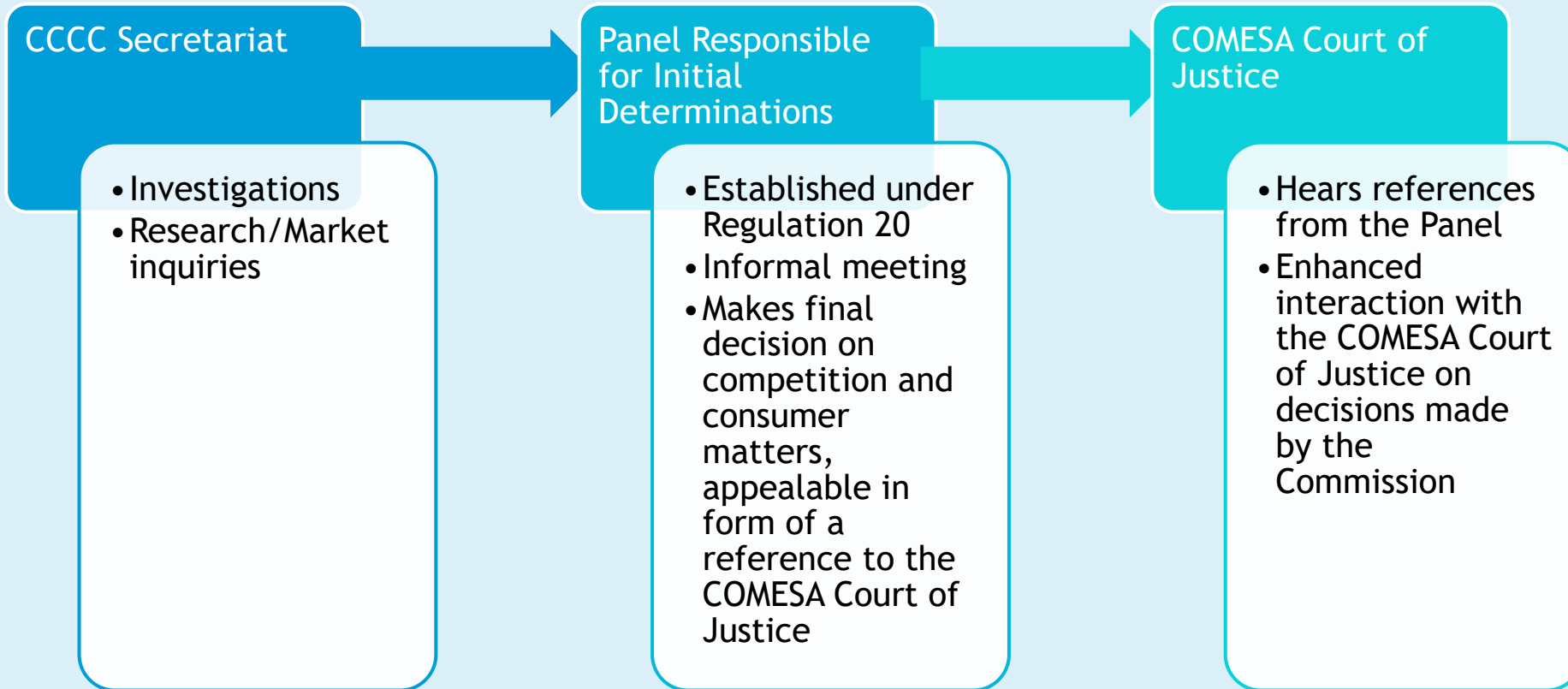
Committee Responsible for Initial Determinations

- Permanent Committee of **3 Board Members**
- **It used to sit like a court (formal hearing)**
- Would make decisions on competition and consumer matters which were appealable to the Appeals Board of the Commission

Appeals Board

- It used to consist of **5-7 Board members** who would hear Appeals from the Committee Responsible for Initial Determinations
- **Further right of reference to COMESA Court of Justice**

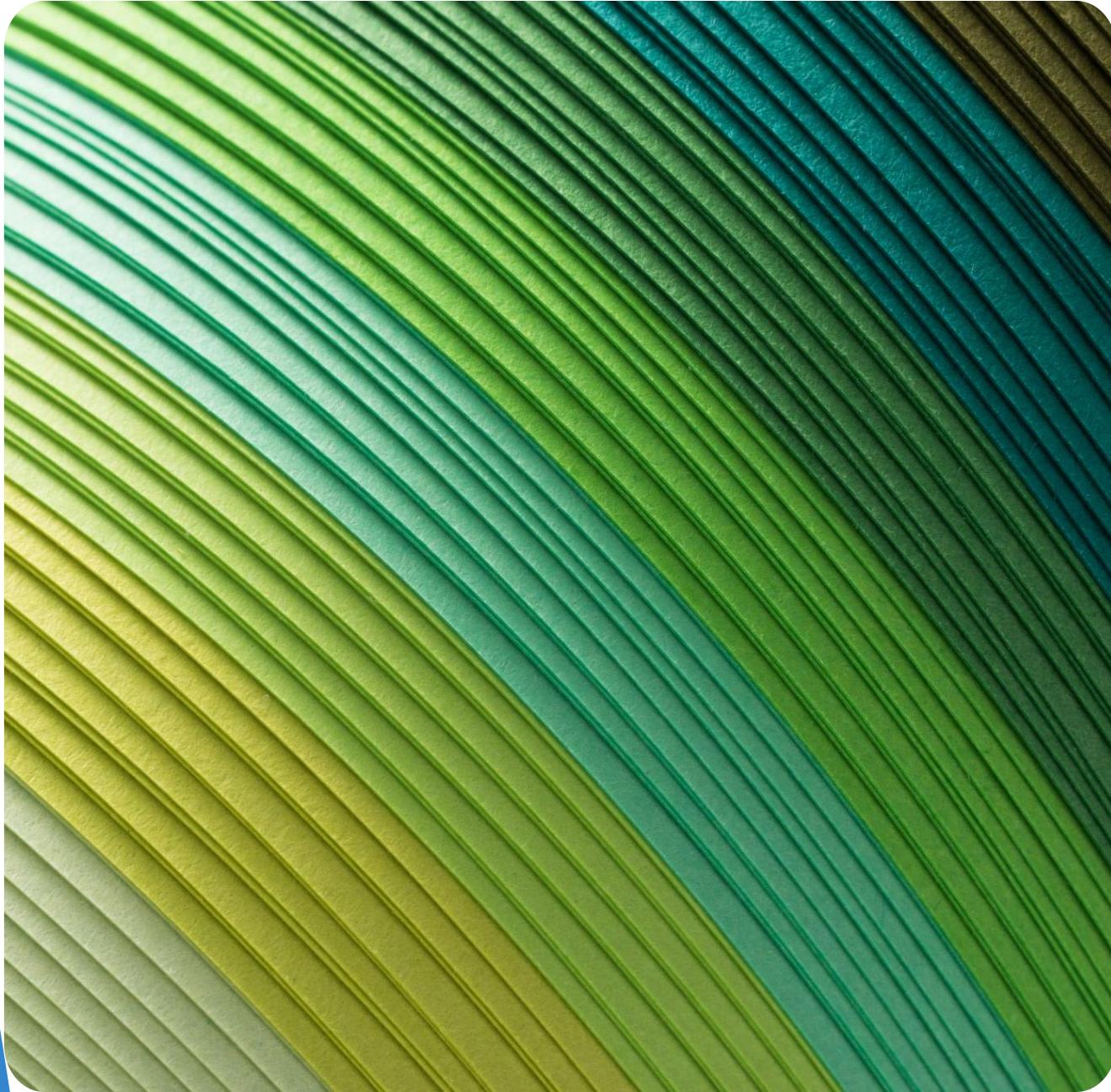
2025 Regulations



Fines and Penalties



- ▶ Fines for violation of competition and consumer protection matters are up to 10 percent of the annual turnover of each of the undertakings or association of undertakings. ***No Maximum fine applicable***
- ▶ Undertakings can also be fined for:
 - ❖ obstructing an investigation or assessment under the Regulations,
 - ❖ failure to comply with an order, determination or decision of the Commission,
 - ❖ supplying incomplete, incorrect or misleading information,
 - ❖ failure to supply information within the time limit specified by the Commission.



Market Inquiries, Research

Market Inquiries and Research



- ▶ The CCCC may conduct a market inquiry in a market.
- ▶ A market inquiry is a formal inquiry in respect of issues affecting consumers or the general state of competition without necessarily referring to the conduct or activity of any particular undertaking.
- ▶ The CCCC can also undertake research in any sector

Settlement and Interim Orders



Settlement

- ▶ Parties can enter into settlements with the CCCC with or without admitting liability. However, such parties should:
 - ❖ Acknowledge their engagement or participation in conduct investigated by the CCCC,
 - ❖ Cease the conduct or offer remedies to address the CCCC's concerns in order to bring the proceedings to an end,
 - ❖ pay a fine as determined by the Commission.

Interim Orders

- ❖ The CCCC may issue interim orders for undertakings to cease and desist from engaging in conduct, pending the completion of any investigation or market inquiry, where there are reasonable grounds to believe that an undertaking has engaged, or is likely to engage, in a practice likely to contravene the Regulations.
- ❖ In determining the urgency of the matter, the CCCC may have regard to:
 - the risk of serious and irreparable damage to competition or consumer welfare; or
 - the purpose of protecting public interest.

Cooperation with National, Regional and Continental Authorities



- ▶ The CCCC cooperates with Member States in investigations.
- ▶ The principle of subsidiarity applies in the determination of the best placed authority to investigate cases.
- ▶ The CCCC to set up a competition network and consumer network to facilitate cooperation.
- ▶ The CCCC may engage regional and continental competent authorities to:
 - ❖ determine the best-placed agency to undertake investigations; or
 - ❖ to undertake joint investigations, studies and market inquiries.

THANK YOU

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