

KEY TAKEAWAYS FROM AFCFTA ROUNDTABLE ON COMPETITION POLICY
EXPLORING MERGERS & ACQUISITIONS UNDER AFCFTA COMPETITION POLICY

1. There is a wide disparity in terms of levels of development and market size in the various African countries. Only 3 countries account for about 46% of Africa's GDP, while 12 countries account for about 80%.

The question arises on how these 12 countries will carry the remaining countries along to achieve continent-wide development. The rules establishing the Competition policy will be important in narrowing this disparity. **(Francis Anatogu, CEO, Transaharan Limited)**

2. The disparity between the different African countries will certainly have an impact on their ability to benefit from the AfCFTA. The ECA modeling and analytical work shows that with the full implementation of the AfCFTA, the benefits African countries will enjoy from the AfCFTA will vary according to their respective levels of economic advancement.

The distinction between large and small economies will matter, but beyond this, the varying institutional capacities and national bureaucracies of African countries will determine how each country benefits from the AfCFTA.

These are the same dynamics that come to play under the competition policy. Governments have demonstrated a strong political will toward the implementation of the AfCFTA, but this could be undermined by anti-competitive practices. In discussions around competition policies, the benefit that the consumer stands to gain from enhanced competition in the market should be a fundamental consideration. **(Prof. Melaku Desta Coordinator, Africa Trade Policy Centre, UNECA)**

3. A lot of capacity building has been undertaken by the Secretariat for negotiators to understand the intricacies of establishing a regional competition authority. The African situation is peculiar because we have a three-tier framework, the national, regional, and continental levels. Beyond training negotiators to understand what is required under the competition protocol, the secretariat has also been supporting countries to understand how the Competition authority will operate under the AfCFTA.

(Michael Akurang, Ministry of Trade and Industry, Ghana)

4. The state regulators need to engage the private stakeholders to identify their needs, and structure those needs in order of priority, prioritise the key areas, and build a roadmap toward addressing them. There has to be a forum for the private and public sector stakeholders to be able to work together to grow capacity, facilitate trade and ultimately hold each other accountable. **(Francis Anatogu)**
5. Article 8 of the Competition Protocol specifies the businesses and activities that may, upon application, be exempt from the competition protocol - cooperation on research and development, joint-ventures intended to achieve economic development, measures to promote sustainable development, growth, transformation, or stability of any industry, activities of professional associations designed to develop or enforce professional standards of competence reasonably necessary for the protection of the public.

The industries that easily stand to benefit from the Competition Protocol include:

- A. Financial Sector eg. Banks (example is Access Bank Merging with Intercontinental Bank in Nigeria and looking to merge with banks in other countries on the continent; Kenya Transnational Bank and Zambia's Cavmont Bank merger)
 - B. Fintech/Technology sector; eg. The acquisition of Paystack by USA's Stripe)
 - C. Food and Beverages
 - D. Legal sector. India has recently opened up its borders to legal professionals **(Segun Awolowo, Executive Secretary - AfCFTA National Action Committee, Nigeria)**
6. A lot of cross-border collaboration has been seen on the part of lawyers and law firms in Africa. Examples are Africa Legal Network, Lex Africa, and the Commonwealth Legal Network with Africa Law Practice, and Africa Legal Associates being the only African law firms. It matters not so much that there are different types of legal systems in Africa; we must, however, ensure that as far as the AfCFTA Protocols are concerned, there is predictability, clarity, and uniformity and that once the law is set there is a universal application for everyone.

Procedurally, there may be some differences in the various legal systems in Africa, but there are however underlying similarities in relation to the legal framework governing trade and business in these countries, no matter the jurisdictional disparities and cultural differences.

(Gabby Otchere-Darko, Senior Partner - Africa Legal Associates)

7. It is also important for stakeholders to provide support to MSMEs and SMEs to participate and grow through the AfCFTA framework, particularly in the area of mergers and acquisitions, especially since informal trading forms a significant part of Africa's GDP. **(Segun Awolowo, Executive Secretary - AfCFTA National Action Committee, Nigeria)**

Key Takeaways from the Statement by Secretary General of the AfCFTA Secretariat delivered by Mr. Malick Diallo (Head of Trade Remedies Division & Acting Head Competition Division, AfCFTA Secretariat)

8. The Competition Protocol forms part of Phase II negotiations. As M&A activities in Africa recover from the Covid-19 pandemic, M&A transactions have been valued at \$9.7 billion (as of 2022 and this excludes the South African market).
9. How will the competition policy be a useful tool in regulating the single African market?
- a. The Competition Protocol seeks to improve market efficiency and to ensure that gains from the AfCFTA trade liberalization are not undermined by anti-competitive practices.

- b. It is critical to ensure that the regulatory framework on competition provides room for African businesses to grow and diversify. The level of high concentration in many sectors in the African market, for instance, telecommunication, and agriculture needs to be considered to ensure that M&As do not lead to market foreclosure or high prices for consumers.
 - c. The technology sector and the digital market also require particular attention as young innovative African startups navigate the African economic market.
 - d. There is a need for cooperation on M&A issues at the national, regional, and continental levels to ensure alignment, predictability, and efficiency.
 - e. There is also a need to stress on the importance of stakeholder engagement and consultations in the negotiation process toward developing the guidelines and regulations for M&As and competition. The consultations with the private sector and their lawyers in this regard will ensure that the process is as inclusive as possible.
10. The Competition Protocol has been adopted by the 36th Assembly and we await the decision of the Assembly. The next steps to be taken after the Protocol has been finalized will include creating awareness on the competition protocol, improving competition culture, and capacity building at the national and regional levels.