

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Cancels & replaces the same document of 6 November 2018**

**Global Forum on Competition****REGIONAL COMPETITION AGREEMENTS - INVENTORY OF PROVISIONS  
IN REGIONAL COMPETITION AGREEMENTS**

**Annex to the Background note by the Secretariat**

**29 November 2018**

This document was prepared by the OECD Secretariat to serve as an annex to the background note for Session III at the 17th Global Forum on Competition, on 29-30 November 2018.

This document includes general information on selected regional competition frameworks under scope, to provide an indicative overview of the different characteristics of such regional competition frameworks. The information was selected by the Secretariat from publicly available sources and does not pretend to be complete, accurate in all respects and up to date. This document is intended to describe the broad legal and institutional features of the different regional competition frameworks, and the OECD recognises that there could be possible errors or omissions. Individual jurisdictions or regional competition authorities are encouraged to signal any necessary corrections to the OECD Secretariat.

The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

More documentation related to this discussion can be found at [oe.cd/rca](http://oe.cd/rca).

Please contact Mr. Wouter Meester [E-mail: [Wouter.Meester@oecd.org](mailto:Wouter.Meester@oecd.org)] and Ms. Lynn Robertson [E-mail: [Lynn.Robertson@oecd.org](mailto:Lynn.Robertson@oecd.org)], if you have any questions regarding this document.

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## *Regional Competition Agreements: Benefits and Challenges*

### *Inventory of Provisions in Regional Competition Agreements*

#### - Annex to the Background note by the Secretariat -

## 1. Regional characteristics

**Table 1. Regional characteristics**

Region		Member states	Population (2017) <sup>1</sup>	Level of integration <sup>5</sup>
CAN	Andean Community	Bolivia, Colombia, Ecuador, Peru	108,907,560	Customs Union
CARICOM <sup>2</sup>	Caribbean Community	Antigua and Barbuda, The Bahamas Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago	23,442,520	Common Market
CEMAC	Central African Economic and Monetary Community	Cameroon, the Central African Republic, Chad, Equatorial Guinea, Gabon, the Republic of the Congo	52,166,380	Customs (and Monetary) Union
COMESA	Common Market for Eastern and Southern Africa	Burundi, the Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Tunisia, Somalia, Uganda, Zambia, Zimbabwe	560,204,290	Customs Union
EAC (CAE)	East African Community	Burundi, Kenya, Rwanda, South Sudan, United Republic of Tanzania, Uganda	185,521,210	Common Market
EAEU	Eurasian Economic Union	Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia	181,172,520	Common Market
ECOWAS (CEDEAO)	Economic Union of West African States	Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo	367,565,890	Customs (and Monetary) Union
EFTA	European Free Trade Association	Iceland, Liechtenstein, Norway, Switzerland <sup>3</sup>	14,127,440	Free Trade Agreement
EU	European Union	Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom	512,461,280	Economic Union
MERCOSUR (MERCOSUL)	Southern Common Market	Argentina, Brazil, Paraguay, Uruguay, Venezuela <sup>4</sup>	263,827,370	Customs Union
WAEMU (UEMOA)	West African Economic and Monetary Union	Benin, Burkina Faso, Ivory Coast, Guinea Bissau, Mali, Niger, Senegal, Togo	120,192,690	Customs (and Monetary) Union

*Note:*

1. Source: World Bank (<https://data.worldbank.org/indicator/SP.POP.TOTL>)

2. N.B. The CARICOM Competition Commission does not have jurisdiction over the entire CARICOM. Instead, it has jurisdiction over markets of the CARICOM Single Market and Economy (CSME), which excludes The Bahamas.

3. Switzerland is an EFTA member but it is not part of EEA.

4. Venezuela, although being a full member, has been suspended since 1 December 2016.

5. D. Both defines four levels of regional economic integration: (a) free trade areas (i.e. FTA – elimination of customs to intraregional trade, (b) customs union (FTA + common external tariffs), (c) common market (customs union + free movement of factors of production) and (d) economic union (common market + common currency and tax harmonisation). See Both, G. D. (2018). ‘Models of Regional Cooperation in Competition Law and Policy from Around the World; Lessons for the ASEAN Region’, In ‘The Regionalisation of Competition Law and Policy within the ASEAN Economic Community’, Ong, B. (Ed.), (pp. 165-209). Cambridge: Cambridge University Press.

Source: *OECD analysis*

## 2. Legal Framework

### *CAN*

- Andean Subregional Integration Agreement ("Cartagena Agreement"), Chapter X - Trade competition (art. 93, 94) (1969)
- Decision 608 on the Rules for the Protection and Promotion of Competition in the Andean Community ("normativa andina") (2005)
- Treaty Creating the Court of Justice of the Cartagena Agreement (1996)

### *CARICOM*

- Revised Treaty of Chaguaramas (RTC), Chapter 8 (articles 168 to 183) (2001)

### *CEMAC*

- Treaty Establishing the Economic and Monetary Community of Central Africa (CEMAC) (article 23-25) (1999)
- Regulation No. 1/99 - UEAC-CM-639 of 25 June 1999 - amended by Regulation No. 12/05 - UEAC-639 U-CM-SE of 25 June 2005 (on Anticompetitive Business Practices)
- Regulation No. 4/99 - UEAC-CM-639 of 18 August 1999 (on State Practices Affecting Trade Between Member States)

### *COMESA*

- Treaty Establishing the Common Market for Eastern and Southern Africa (1994)
- COMESA Competition Regulations (2004)
- COMESA Competition Rules (2004)
- Amendment to the Competition Rules (2012)
- Amendment to the Competition Rules (2014)

### *EAC*

- Treaty for the Establishment of the East African Community (2000, amended in 2006 & 2007)
- EAC Competition Act (2006)
- EAC Competition Regulations (2010)
- East African Community Competition (Amendment) Bill (establishment of EACCA)
- East African Court of Justice

### *EAEU*

- Treaty on the Eurasian Economic Union (2015) (Section XVIII - General Principles and Rules of Competition)
- Treaty on the Eurasian Economic Union (2015) (Annex 19 - Protocol on General Principles and Rules of Competition)

- Model Law on Competition (2013)
- Decision No. 97 of 23.11.2012 on the procedure for consideration of applications on violation of general competition rules in cross-border markets (amended by decision No. 26 of 03.03.2017)
- Decision No. 98 of 23.11.2012 on conducting the investigation of violations of general rules of competition on cross-border markets (amended by decision No. 27 of 03.03.2017)
- Decision No. 99 of 23.11.2012 on the consideration a violation of general rules of competition on transborder markets (amended by decision No. 28 of 03.03.2017)
- Decision No. 29 of 19.12.2012 on approving criteria of market classification as cross-border market
- Decision No. 7 of 30.01.2013 on the methods of evaluation of competitive situation
- Decision No. 117 of 17.12.2012 on the methods of identifying monopolistically high (low) prices
- Decision No. 118 of 17.12. 2012 on the methods of calculation and procedure for imposition of fines for violation of common competition rules at cross-border markets
- Agreement on the procedure for protecting confidential information and liability for its disclosure upon exercise by the Eurasian Economic Commission of powers to control compliance with common competition rules
- Decision No. 71 of 18.09.2014 on the procedure for handling restricted distribution (confidential and official use) documents in the Eurasian Economic Commission
- Procedures for applying to the EEC by the Member States regarding the cases of introduction of governmental price regulation and consideration of them

### ***ECOWAS***

- ECOWAS Revised Treaty (2010)
- Supplementary Act A/SA.1/06/08 (Adopting Community Competition Rules and the Modalities of Their Application Within ECOWAS)
- Act A/SA.2/12/08 of 12.08.2008 (Establishment, Functions and Functioning of the ECOWAS Regional Competition Authority)
- Amendment Act A/SA.4/07/13 (amendment of A/SA.2/12/08)
- Supplementary Act A/SA.2/06/08 (Establishment, Functioning of the Regional Competition Authority for ECOWAS)

### ***EFTA***

- EEA Agreement (EEA competition provisions - Articles 53 to 64)
- Annex XIV (competition), XV (State Aid) to the EEA Agreement
- Protocol 21-24, 26, 27 of the EEA Agreement
- The Surveillance and Court Agreement
- Protocol 2-7 of the Surveillance and Court Agreement

### *EU*

- Treaty on European Union ("TEU")
- Treaty on the Functioning of the European Union ("TFEU") (articles 101-109) (2012)
- Council Regulation (EC) No 139/2004 ("EC Merger Regulation") (2004)
- Council Regulation (EC) Regulation No 1/2003 (2003)

### *MERCOSUR*

- Treaty Establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay ("Treaty of Asuncion") (art. 4)
- Additional Protocol to the Treaty of Asunción on the Institutional Structure of MERCOSUR (1994) ("Protocol of Ouro Preto")
- Protocol of the Defense of Competition (1996) ("Fortaleza Protocol")\*
- Brasília Protocol for the Solution of Controversies (1991)
- Decision CMC 43/2010 by the Common Market Council (2010)

\* Note that the Fortaleza Protocol was signed only by two member states (Brazil and Paraguay)

### *WAEMU*

- Treaty of the West African Monetary and Economic Union (WAEMU) (1994) - Articles 88-90
- Regulation No 2/2002/CM/UEMOA of 23.05.2002 (anti-competitive practices)
- Regulation No 3/2002/CM/UEMOA of 23.05.2002 (procedures applicable to restrictive agreements and abuse of dominant position)
- Regulation No 4/2002/CM/UEMOA of 23.05.2002 (State Aid)
- Regulation No 02/2002/CM/WAEMU of 23.05.2002 (cooperation between the Commission and the national authorities of the member states)

### 3. Institutional design

#### 3.1. Regional Competition Institution(s) and relevant advisory bodies/committees

##### *CAN*

- Andean Community Court of Justice
- Andean Community General Secretariat (SG CAN)
- National Competition Authorities
- National Courts of Justice
- Andean Committee for Defence of Competition (advisory group formed by representatives of all the competition authorities of the member states)

##### *CARICOM*

- Caribbean Court of Justice
- CARICOM Competition Commission (CCC)
- Council for Trade and Economic Development (COTED)
- National Competition Authorities
- National Courts of Justice

##### *CEMAC*

- CEMAC Community Court of Justice
- CEMAC Competition Commission
- CEMAC Regional Council of Competition
- National Competition Authorities
- National Courts of Justice

##### *COMESA*

- Board of Commissioners
- COMESA Competition Commission (CCC)

##### *EAC*

- East African Court of Justice
- EAC Competition Authority (EACCA)\*

\* The EACCA has started operations in 2018.

##### *EAEU*

- Supreme Eurasian Economic Council
- Eurasian Intergovernmental Council

- Eurasian Economic Commission (EEC) (Council of the Commission and Board of the Commission) (Department of Antitrust Regulation, Department of Competition and Public Procurement Policy)
- Court of the Eurasian Economic Union

### ***ECOWAS***

- ECOWAS Community Court of Justice
- ECOWAS Regional Competition Authority (ERCA)
- Consultative Competition Committee (consisting of two competition experts per member state)

### ***EFTA***

- EFTA Court of Justice
- EFTA Surveillance Authority (ESA) (Acting only in Iceland, Liechtenstein and Norway)

### ***EU***

- European Court of Justice
- General Court of Justice
- Directorate-General for Competition (DG COMP)
- National Competition Authorities
- Advisory Committee on Restrictive Practices and Dominant Positions

### ***MERCOSUR***

- Committee for the Defence of Competition
- Trade Commission of the MERCOSUR

### ***WAEMU***

- WAEMU Court of Justice
- WAEMU Competition Commission (Directorate of competition within the Department of the Regional Market, Trade, Competition and Cooperation)

Advisory function:

- Committee on Competition

### 3.2. Provisions on the status of the Regional Competition Institution(s)

#### *CAN*

##### *Article 29 - Cartagena Agreement*

The General Secretariat is the executive body of the Andean Community and, as such, acts solely in accordance with the interests of the Subregion.

##### *Article 32 - Cartagena Agreement*

The General Secretariat shall be headed by a Secretary General who shall be chosen by consensus of the Andean Council of Foreign Ministers for a five-year term of office and may be re-elected a single time.

##### *Article 94 - Cartagena Agreement*

The Member Countries may not take corrective measures without prior authorization from the [Andean Community] General Secretariat.

##### *Article 38 - Decision 608*

The Andean Committee for the Defense of Free Competition is hereby created, which shall be composed of a representative of the competent national authority in matters of free competition of each of the Member Countries.

##### *Article 40 - Decision 608*

The following are rights and obligations of the members of the Committee:

f) Issue its opinion in the forms and periods provided in this Decision;

#### *CARICOM*

##### *Article 15 - Revised Treaty of Chaguaramas*

2. Subject to the provisions of Article 12, COTED [the Council For Trade And Economic Development] shall be responsible for the promotion of trade and economic development of the Community.

##### *Article 182 - Revised Treaty of Chaguaramas*

Subject to this Treaty, COTED shall develop and establish appropriate policies and rules of competition within the Community including special rules for particular sectors.

*Article 171 - Revised Treaty of Chaguaramas*

For the purposes of implementation of the Community Competition Policy, there is hereby established a Competition Commission (hereinafter called "the Commission") having the composition, functions and powers hereinafter set forth.

*Article 172 - Revised Treaty of Chaguaramas*

1. The [CARICOM Competition] Commission shall comprise seven members appointed by the Regional Judicial and Legal Services Commission to serve on the Commission.

*Article 176 - Revised Treaty of Chaguaramas*

If there is a difference of opinion between the Commission and the Member State regarding the nature and effects of the business conduct or the jurisdiction of the investigating authority, the Commission shall:

- (a) cease any further examination of the matter; and
- (b) refer the matter to COTED for its decision.

*Article 182 - Revised Treaty of Chaguaramas*

Subject to this Treaty, COTED shall develop and establish appropriate policies and rules of competition within the Community including special rules for particular sectors.

*Article 183 - Revised Treaty of Chaguaramas*

1. Where COTED determines, pursuant to Article 182, that special rules shall apply to specific sectors of the Community, it may suspend or exclude the application of Article 177 to such sectors pending adoption of the relevant rules.

2. COTED may, on its own initiative or pursuant to an application by a Member State in that behalf exclude or suspend the application of Article 177 to any sector or any enterprise or group of enterprises in the public interest.

**CEMAC**

*Article 25 - CEMAC Treaty*

The Executive Secretary [of CEMAC] is responsible for the application of the competition rules defined on the basis of Articles 23 and 24 of this Convention. As part of this mission, he may request the opinion of the Judicial Chamber.

*Article 3 - No. 1/99 - UEAC-CM-639*

In order to benefit from a derogation from the prohibition, agreements or agreements must have been notified to the Regional Competition Council by the companies concerned.

*Article 17 - No. 1/99 - UEAC-CM-639*

For the purposes of this Regulation, a Regional Competition Council is established to advise the Executive Secretary of CEMAC on all competition issues or disputes before it.

The Executive Secretariat of CEMAC is responsible for investigating offenses relating to common competition rules and state aid.

*Article 19 - No. 1/99 - UEAC-CM-639*

At the request of states, public authorities and consumer organizations, the Regional Council gives an advisory opinion on any question relating to competition, state aid and consumer protection. The Regional Council deliberates and gives an advisory opinion on infringements of the common competition rules and state aids.

The Executive Secretary decides on infringements of the common competition rules and state aid.

*Article 44 - No. 1/99 - UEAC-CM-639*

A permanent Committee on Competition, Trade and Consumer Protection will be established.

**COMESA***Article 10 - COMESA Treaty*

1. The Council may, in accordance with the provisions of this Treaty, make regulations, issue directives, take decisions, make recommendations or deliver opinions.
2. A regulation shall be binding on all the Member States in its entirety.

*Rule 5 - COMESA Competition Rules*

1. For the purposes of the implementation of the [COMESA Competition] Regulations, the Regulations established two authorities, the COMESA Competition Commission (“the Commission”) and the Board of Commissioners (“Board”).
2. Decisions rendered by the enforcement institutions above shall, pursuant to Article 5 of the Regulations, be binding on undertakings, governments of Member States and State courts.

*Rule 6 - COMESA Competition Rules*

The Commission shall enjoy an independent legal personality [...].

*Rule 13 - COMESA Competition Rules*

The Commission shall be headed by a Director appointed by the Council.

The Commission shall be divided into various departments to oversee work in areas including restrictive business practices, mergers and abuse of dominant positions.[...]

*Article 10 - COMESA Competition Regulations*

The Director shall not be removed from office except by the Council for stated misbehaviour or for inability to perform the functions of his office due to infirmity of mind or body or as rendered appropriate by applicable law.

***EAC***

*Article 37 - EAC Competition Act*

1. There is hereby established the East African Community Competition Authority.
2. The Authority shall operate on an ad hoc basis for an initial and transitional period of not more than five years.

*Article 38 - EAC Competition Act*

1. The Authority shall consist of three Commissioners, one Commissioner from each [original founding] Partner State [Kenya, Uganda, Tanzania].
2. The Commissioners shall be appointed by the Council [of Ministers of EAC] on the recommendations of the Partner States.

*Article 44 - EAC Competition Act*

1. The determination of any violation of this law is within the exclusive original jurisdiction of the Authority.

*Article 46 - EAC Competition Act*

Any question with respect to any action of the Authority under this Act or anything done with respect to the Authority under this Act shall be determined by the Court.

***EAEU***

*Article 18 - EAEU Treaty*

1. The Commission shall be a permanent governing Body of the Union. The Commission shall consist of a Council and a Board.
3. The status, tasks, composition, functions, powers and procedures of the Commission shall be determined in accordance with Annex 1 to this Treaty.

*Section I - Annex I to the EAEU Treaty*

3. The Commission shall operate within the powers provided for by the Treaty and international treaties within the Union in the following areas:

9) competition policy; [...]

***ECOWAS****Article 1 - Supplementary Act A/SA.2/06/08*

There is hereby established a regional body to be known as the ECOWAS Competition Authority, (The Authority) which shall be charged with the implementation of the ECOWAS Community Competition Rules.

*Article 4 - Supplementary Act A/SA.2/06/08*

Without prejudice to the provisions relating to the powers of the Community Court of Justice, the Authority, in the execution of its functions under this Supplementary Act, shall have powers to issue injunctions [...].

*Article 13 - Supplementary Act A/SA.1/06/08*

4. A Consultative Competition Committee composed of members who are experts in the area of competition is hereby set up. Each Member State shall be represented by two of such members who can be replaced by other members in case of incapacity. The operation of the Committee shall be governed by rules of procedure adopted by the Commission after consultation with the Committee.

***EFTA****Article 4 - Surveillance and Court Agreement*

An independent surveillance authority among the EFTA States, the EFTA Surveillance Authority, is hereby established.

*Article 5 - Surveillance and Court Agreement*

1. The EFTA Surveillance Authority shall, in accordance with the provisions of this Agreement and the provisions of the EEA Agreement and in order to ensure the proper functioning of the EEA Agreement

[...]

2. To this end, the EFTA Surveillance Authority shall:

(a) take decisions and other measures in cases provided for in this Agreement and in the EEA Agreement;

- (b) formulate recommendations, deliver opinions and issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the present Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary;
- (c) carry out cooperation, exchange of information and consultations with the Commission of the European Communities as provided for in this Agreement and the EEA Agreement;
- (d) carry out the functions which, through the application of Protocol 1 to the EEA Agreement, follow from the acts referred to in the Annexes to that Agreement, as specified in Protocol 1 to the present Agreement.

*Article 27 - Surveillance and Court Agreement*

A court of justice of the EFTA States, hereinafter referred to as the EFTA Court, is hereby established. It shall function in accordance with the provisions of this Agreement and of the EEA Agreement.

*EU*

*Article 3 - TFEU*

1. The Union shall have exclusive competence in the following areas:
  - (b) the establishing of the competition rules necessary for the functioning of the internal market.

*Article 17 - TEU*

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. [...]

3. [...] In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

8. 8. The Commission, as a body, shall be responsible to the European Parliament. [...]

*Article 19 - TEU*

1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed. [...]

## **MERCOSUR**

### *Article 8- Fortaleza Protocol*

Application of the present Protocol is applied by the Trade Commission of the MERCOSUR, in accordance with the terms of article 19 of the Protocol of Ouro Preto, and by the Committee for the Defense of Competition.

The Committee for the Defense of Competition, an organ of intergovernmental nature, shall be constituted by the national organs for the application of the present Protocol in each State Party.

### *Article 9 - Fortaleza Protocol*

The Committee for the Defense of Competition shall submit the rules of procedure of the present Protocol to the Trade Commission for approval.

### *Article 13 - Fortaleza Protocol*

In case of emergency or threat of irreparable damage to competition, the Committee for the Defense of Competition of the MERCOSUR shall determine, ad referendum of the Trade Commission of the MERCOSUR, the application of preventive measures, including the immediate cessation of the practice subject to inquiry, and the reestablishment of the prior situation or other measures which it deems necessary.

### *Article 20 - Fortaleza Protocol*

The Trade Commission of the MERCOSUR, taking into account the ruling or the conclusions of the Committee for the Defense of Competition, shall make a ruling through adoption of a Directive, setting forth the sanctions to be applied to the infringing party or other appropriate measures.

## **WAEMU**

### *Article 90 - WAEMU Treaty*

The Commission is responsible, under the supervision of the Court of Justice, for the application of the competition rules prescribed by Articles 88 and 89. In the context of this task, it has the power to take decisions.

### *Article 28 - Regulation No. 3/2002/CM/UEMOA*

[...]

2. The Commission shall carry out the procedures referred to in paragraph 1 above, in close and constant liaison with the competent authorities of the Member States, which shall be entitled to comment on these procedures.

3. An Advisory Committee on Competition is set up, composed of competent officials in competition matters. Each Member State shall designate two officials who represent it and who may be replaced in case of incapacity by other officials. The functioning of the Committee is governed by Rules of Procedure adopted by the Commission following the opinion of the Committee.

4. The Advisory Committee on Competition shall be consulted prior to any decision following a procedure referred to in paragraph 1 and any decision concerning the renewal, amendment or revocation of a decision taken pursuant to Article 6 of Regulation No 02/2002 / CM / UEMOA on anti-competitive practices within WAEMU. It is also consulted on the level of pecuniary sanctions provided for in Articles 22 and 23 of these Regulations.

### 3.3. Provisions on possibility to appeal

#### *CAN*

##### *Article 47 - Cartagena Agreement*

The settlement of any disputes that may arise as a result of the application of Andean Community Law shall abide by the provisions of the Treaty establishing the Court of Justice.

##### *Article 1 - Treaty Creating the Court of Justice of the Cartagena Agreement*

The legal system of the Cartagena Agreement comprises:

- a) The Cartagena Agreement, its Protocols and additional instruments;
- b) The Treaty set forth herein;
- c) The Commission's Decisions; and
- d) The Board's Resolutions.

#### *CARICOM*

##### *Article 175 - Revised Treaty of Chaguaramas*

12. A party which is aggrieved by a determination of the Commission in any matter may apply to the Caribbean Court of Justice for a review of that determination.

##### *Article 176 - Revised Treaty of Chaguaramas*

6. Nothing in this Article shall prejudice the right of the Member State to initiate proceedings before the Court at any time.

##### *Article 211 - Revised Treaty of Chaguaramas*

1. Subject to this Treaty, the Court shall have compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Treaty, including:

- (a) disputes between the Member States parties to the Agreement;
- (b) disputes between the Member States to the parties to the Agreement and the Community;
- (c) referrals from national courts of the Member States parties to the Agreement;
- (d) applications by persons in accordance with Article 222, concerning the interpretation and application of this Treaty.

#### *CEMAC*

##### *Article 24 - No. 1/99 - UEAC-CM-639*

The Community Court of Justice hears appeals against the decisions of the Regional Competition Council.

*Article 25 - No. 1/99 - UEAC-CM-639*

Decisions of the Executive Secretary made pursuant to these Rules may be appealed to the Community Court of Justice by companies or third parties with a legitimate interest.

*Article 25 - No. 1/99 - UEAC-CM-639*

The Court has jurisdiction with full jurisdiction over appeals against decisions by which the Regional Council fixes a fine or a penalty.

**COMESA**

*Article 12 - COMESA Competition Regulations*

1. There is hereby established the Board of Commissioners which shall be the supreme policy body of the Commission.

*Article 15 - COMESA Competition Regulations*

1. The Board [of Commissioners] may:

- (a) issue determination on any conduct prohibited in terms of Part 3 of these Regulations;
- (b) adjudicate on any other matter that may, in terms of these Regulations, be considered by it and make an order provided for in these Regulations;
- (c) The Board may hear appeals from, or review any decision of, the Commission that may, in terms of these Regulations, be referred to it.

*Article 20 - COMESA Competition Regulations)*

3. As regards anticompetitive agreements, the undertaking concerned, or any other person with a substantial financial interest affected by a decision of the Commission in terms of this Article, may appeal that decision to the Board in the manner set forth in the Rules and Regulations.

*Article 26 - COMESA Competition Regulations*

12. Any person aggrieved by the decision of the CCC may appeal to the Board.

**EAC**

*Article 13 - EAC Competition Act*

3. Where the Authority objects to a merger or an acquisition the Council [of Ministers], may, upon appeal by the undertaking or undertakings concerned, approve the merger or acquisition.

*Article 15 - EAC Competition Act*

3. If the Partner State is dissatisfied with the decision of the Authority [regarding a state subsidy], it may refer the matter to the [East African] Court [of Justice].

*Article 24 - EAC Competition Act*

2. A Partner State or person dissatisfied with the decision of the Authority under subsection (1) [regarding a complaint] may appeal to the Court.

*Article 44 - EAC Competition Act*

6. In case of disagreement between the Authority and Partner States' authorities or courts, the matter shall be referred to the Court.

*Article 46 - EAC Competition Act*

Any question with respect to any action of the Authority under this Act or anything done with respect to the Authority under this Act shall be determined by the Court.

***EAEU****Annex 19 – EAEU Treaty*

14. Acts and actions (omission) of the Commission in the sphere of competition shall be contested in the Court of the Union in the procedure provided for by the Statute of the Court of the Union (Annex 2 to the Treaty) subject to the provisions of this Protocol.

*Annex 2 - EAEU Treaty*

1. The Court of the Eurasian Economic Union shall be the judicial body of the Eurasian Economic Union and shall be formed and operate on a permanent basis in accordance with the Treaty on the Eurasian Economic Union and this Statute.

2. The objective of the Court's activities shall be to ensure, in accordance with the provisions of this Statute, uniform application by the Member States and Bodies of the Union of the Treaty, international treaties within the Union, international treaties of the Union with a third party and decisions of the Bodies of the Union.

39. The Court shall resolve disputes arising in connection with the implementation of the Treaty, international treaties within the Union and/or decisions of the Bodies of the Union [...].

***ECOWAS****Article 7 - Supplementary Act A/SA.2/06/08*

3. Decisions taken by the Authority in accordance with paragraphs 1 and 2 of this article may be subject to appeal. The Community Court of Justice shall sit as an appellate court and its decision shall be final.

***EFTA****Article 32 - Surveillance and Court Agreement*

The EFTA Court shall have jurisdiction in actions concerning the settlement of disputes between two or more EFTA States regarding the interpretation or application of the EEA Agreement, the Agreement on a Standing Committee of the EFTA States or the present Agreement.

*Article 34 - Surveillance and Court Agreement*

The EFTA Court shall have jurisdiction to give advisory opinions on the interpretation of the EEA Agreement. [...]

*Article 35 - Surveillance and Court Agreement*

The EFTA Court shall have unlimited jurisdiction in regard to penalties imposed by the EFTA Surveillance Authority.

*Article 36 - Surveillance and Court Agreement*

The EFTA Court shall have jurisdiction in actions brought by an EFTA State against a decision of the EFTA Surveillance Authority on grounds of lack of competence, infringement of an essential procedural requirement, or infringement of this Agreement, of the EEA Agreement or of any rule of law relating to their application, or misuse of powers.

Any natural or legal person may, under the same conditions, institute proceedings before the EFTA Court against a decision of the EFTA Surveillance Authority addressed to that person or against a decision addressed to another person, if it is of direct and individual concern to the former.

[...]

***EU***

*Article 19 - TEU*

3. The Court of Justice of the European Union shall, in accordance with the Treaties:

- (a) rule on actions brought by a Member State, an institution or a natural or legal person;
- (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;
- (c) rule in other cases provided for in the Treaties.

*Article 267 - TFEU*

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

*Article 31 - Regulation 1/2003*

The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

## **MERCOSUR**

### *Article 1 - Brasília Protocol for the Solution of Controversies*

The controversies which arise between the State Parties regarding the interpretation, application or non-compliance of the dispositions contained in the Treaty of Asuncion, of the agreements celebrated within its framework, as well as any decisions of the Common Market Council and the resolutions of the Common Market Group, will be submitted to the procedure for resolution established in the present Protocol.

### *Article 19 - Brasília Protocol for the Solution of Controversies*

1. The Arbitral Tribunal will decide the controversy based on the dispositions of the Treaty of Asuncion, of the agreements celebrated within its framework, on the decisions of the Common Market Council, the resolutions of the Common Market Group, as well as on the principles and dispositions of international law which are applicable to the matter.

## **WAEMU**

### *Article 90 - WAEMU Treaty*

The Commission is responsible, under the supervision of the Court of Justice, for the application of the competition rules prescribed by Articles 88 and 89. In the context of this task, it has the power to take decisions.

### *Article 15 of Regulation N. 01/96/CM*

The Court may be called to issue a judgment concerning the decisions and fines imposed by the Commission on the undertakings that did not comply with the principle of free competition or that abused their dominant position on the market of the Union. It can change or annul such decisions, reduce or increase the amount of the fines or penalty payments ("astreintes"), reach findings ("opérer des constatations") or impose certain obligations upon the undertakings.

### 3.4. Member states with a national competition law and/or a competition authority

**Table 2. Member states with a national competition law and/or a competition authority**

Region		Member states with a national competition law	Member states with a national competition authority
CAN	Andean Community	Bolivia, Colombia, Ecuador, and Peru	Colombia, Ecuador, Peru
CARICOM	Caribbean Community	Barbados, Guyana, Jamaica, Trinidad and Tobago	Barbados, Guyana, Jamaica, Trinidad and Tobago
CEMAC	Central African Economic and Monetary Community	Cameroon, Gabon, Central African Republic	Cameroon
COMESA	Common Market for Eastern and Southern Africa	Burundi, the Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Tunisia, Zambia, Zimbabwe	Egypt, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Seychelles, Swaziland, Tunisia, Zambia, Zimbabwe
EAC (CAE)	East African Community	Burundi, Kenya, Rwanda, Tanzania	Kenya, Tanzania
EAEU	Eurasian Economic Union	Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia	Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia
ECOWAS (CEDEAO)	Economic Union of West African States	Burkina Faso, Gambia, Ivory Coast, Mali, Nigeria, Senegal, Togo	Burkina Faso, Gambia, Ivory Coast, Mali, Senegal
EFTA	European Free Trade Association	Iceland, Liechtenstein, Norway	Iceland, Liechtenstein, Norway
EU	European Union	Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom	Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom
MERCOSUR (MERCOSUL)	Southern Common Market	Argentina, Brazil, Paraguay, Uruguay	Argentina, Brazil, Paraguay, Uruguay
WAEMU (UEMOA)	West African Economic and Monetary Union	Burkina Faso, Ivory Coast, Mali, Senegal, Togo	Burkina Faso, Ivory Coast, Mali, Senegal

Source: OECD analysis

## 4. Jurisdiction

### 4.1. Provisions on the territorial scope of application of regional competition framework

#### *CAN*

*Territorial scope (art. 5 - Decision 608)*

The purposes of this Decision are those conducts carried out in:

- a) The territory of one or more Member Countries and whose actual effects occur in one or more Member Countries, except when the origin and effect occur in a single country;
- b) The territory of a country that is not a member of the Andean Community and whose actual effects occur in two or more Member Countries.

The other situations not foreseen in this article will be governed by the national legislations of the respective Member Countries.

#### *CARICOM*

*Territorial scope (art. 173)*

1. (a) The Commission shall apply the rules of competition in respect of anti-competitive cross-border business conduct.

#### *CEMAC*

*Territorial scope*

- anti-competitive agreements: any agreements between enterprises, all decisions of business associations, and any concerted practices that are likely affect trade between Member States (art. 3, Regulation No. 1/99 - UEAC-CM-639)
- abuse of dominance: abuse of dominant position in the Community or a part of it to the extent that trade between Member States is likely to be affected (art. 16, Regulation No. 1/99 - UEAC-CM-639)
- merger control: all concentrations with a community dimension (art. 6, Regulation No. 1/99 - UEAC-CM-639)
- state aid/competitive neutrality: Incompatible with the Common Market are direct aids granted by means of State resources in any form whatsoever, in so far as they affect trade between Member States , which distort or threaten to distort competition by favoring certain companies or productions (Art. 2(1) Regulation No. 4/99-UEAC-CM-639)

#### *COMESA*

*Territorial scope (Article 3 - COMESA Competition Regulations)*

All economic activities conducted within or having an effect within the Common Market (with the exceptions of the activities listed under Article 4) which have an appreciable effect on trade between Member States and restrict competition in the Common Market.

***EAC***

*Territorial scope (Article 4 - EAC Competition Act)*

1. All economic activities and sectors having cross-border effects.

***EAEU***

*Territorial scope (art. 74 - EAEU Treaty, and Section III, Annex 19 - EAEU Treaty)*

[relations] which produce or may produce an adverse effect on competition in transboundary markets on the territories of two or more Member States. The criteria of transboundary markets required for determining the jurisdiction of the Commission shall be determined by decision of the Supreme Council.

[...] 4. The Member States shall conduct agreed competition (antitrust) policy in relation to actions of economic entities (market participants) of third countries, if such actions may negatively affect the competition in commodity markets of the Member States.

***ECOWAS***

*Territorial scope (art. 4, Supplementary Act A/SA.1/06/08)*

This Supplementary Act applies to agreements, practices, mergers and distortions caused by Member States which are likely to have an effect on trade within ECOWAS. The Rules shall concern notably acts, which directly affect regional trade and investment flows and/or conduct that may not be eliminated other than within the framework of regional cooperation.

***EFTA***

*Territorial Scope:*

Article 53 - EEA Agreement

1. The following shall be prohibited as incompatible with the functioning of this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement [...]

*Article 54 - EEA Agreement*

Any abuse by one or more undertakings of a dominant position within the territory covered by this agreement or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Contracting Parties.

*Article 57 - EEA Agreement:*

1. Concentrations the control of which is provided for in paragraph 2 and which create or strengthen a dominant position as a result of which effective competition would be significantly impeded within the territory covered by this Agreement or a substantial part of it, shall be declared incompatible with this Agreement.

2. The control of concentrations falling under paragraph 1 shall be carried out by:
- (a) the EC Commission in cases falling under Regulation (EEC) No 4064/89 in accordance with that Regulation and in accordance with Protocols 21 and 24 and Annex XIV to this Agreement. The EC Commission shall, subject to the review of the EC Court of Justice, have sole competence to take decisions on these cases;
  - (b) the EFTA Surveillance Authority in cases not falling under subparagraph (a) where the relevant thresholds set out in Annex XIV are fulfilled in the territory of the EFTA States in accordance with Protocols 21 and 24 and Annex XIV. This is without prejudice to the competence of EC Member States.

#### *Article 61 - EEA Agreement*

Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.

#### *EU*

##### *Territorial Scope:*

#### *Article 101 - TFEU*

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, [...]

#### *Article 102 - TFEU*

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

#### *Article 107 - TFEU*

1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

#### *Art. 1 - EU Regulation No 139/2004*

1. Without prejudice to Article 4(5) and Article 22, this Regulation shall apply to all concentrations with a Community dimension as defined in this Article.

## ***MERCOSUR***

### *Territorial scope*

#### *Article 2 - Fortaleza Protocol*

The rules of this Protocol apply to actions taken by natural and legal persons under public and private law, and other entities whose purpose is to influence or to bring influence to bear upon competition in the framework of the MERCOSUR and consequently to influence trade between the States Parties

#### *Article 3 - Fortaleza Protocol*

The regulation of the acts carried out within their respective territory by natural persons or legal entities or by any other entity domiciled therein, and whose influence on competition is limited to the same, falls within the exclusive competence of each State.

## ***WAEMU***

### *Territorial scope*

#### *Art. 88 - WAEMU Treaty*

One (1) year after the entry into force of this Treaty, are automatically prohibited:

- a. agreements, associations or concerted practices having as their object or effect the restriction of competition within the Union.
- b. abuses of dominant position on the common market or a significant part of the common market.

## 4.2. Provisions on whether national authorities can enforce regional competition provisions

**Table 3. Can national authorities enforce regional competition provisions?**

Region	NCA's enforce regional provisions	Provisions
CAN	No	<p>Bolivia can apply the regional provisions in cases that fall outside the scope of the aforementioned decision, (national cases). This ability results from a transitory period that was enacted by Decision 608 in 2005, during which both Ecuador and Bolivia could directly apply the regional competition provisions in a domestic setting, until the enactment of their own national competition law. This option of the regional framework, also known as the 'downloading' option, is still valid as Bolivia is currently the only country in the Andean Community without a national competition law.</p> <p><i>Article 49 - Decision 608</i></p> <p>Bolivia may apply the provisions of this Decision, as applicable, for cases that fall outside the scope described in Article 5.</p>
CARICOM	No	
CEMAC	Yes	<p><i>Article 21 - Addendum to the CEMAC Treaty relating to the institutional and legal system of the Community</i></p> <p>[...]</p> <p>Regulations and framework regulations are general in scope. The regulations are binding in their entirety and directly applicable in all Member States. The framework regulations are directly applicable only for some of their elements.</p> <p>The directives bind each recipient Member State as to the result to be achieved, while leaving to the national authorities their competence as regards the form and the means.</p> <p>Decisions are mandatory in all their elements for the recipients they designate. Recommendations and opinions are not binding.</p>
COMESA	Yes	<p><i>Article 5 - COMESA Treaty</i></p> <p>2. Each Member State shall take steps to secure the enactment of and the continuation of such legislation to give effect to this Treaty and in particular:</p> <p>(b) to confer upon the regulations of the Council the force of law and the necessary legal effect within its territory.</p> <p><i>Article 5 - COMESA Competition Regulations</i></p> <p>Pursuant to Article 5(2)(b) of the Treaty, Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of these Regulations or resulting from action taken by the Commission under these Regulations. They shall facilitate the achievement of the objects of the Common Market. Member States shall abstain from taking any measure which could jeopardize the attainment of the objectives of these Regulations.</p> <p><i>Rule 39 - COMESA Competition Rules</i></p> <p>3. As long as the Commission has not initiated any procedure under Rules 32, 33 or 36, the authorities of the Member States shall remain competent to apply Article 16 (1) and Article 18 of the Regulations in accordance with Article 7 of the Regulations; they shall remain competent in this respect notwithstanding that the time limits specified in Rule 35 relating to notification have not expired.</p>
EAC (CAE)	No	<p>The EAC Competition Act gives the EAC Competition Authority exclusive original jurisdiction in the determination of violations of the EAC Competition Act. This means that NCAs in member states will not have the jurisdiction to enforce regional competition provisions.</p>
EAEU	Yes	<p><i>Section III - Annex 19 to the Treaty</i></p> <p>8. The authorised authorities of the Member States shall be in charge of suppression of violations by economic entities (market participants), as well as by natural persons and non-profit organisations of the Member States that are not economic entities (market participants), of the general rules of competition determined in Article 76 of the Treaty on the territories of the Member States.</p> <p>9. The Commission shall be in charge of suppression of violations by economic entities (market participants), as well as by natural persons and non-profit organisations of the Member States that are not economic entities (market participants), of the general rules of competition determined in Article 76 of the Treaty on the territories of the Member States, if such violations have or may have an adverse effect on competition in transboundary markets, except for violations adversely affecting competition in transboundary financial markets, the suppression of which shall be carried out in accordance with the legislation of the Member States.</p>

ECOWAS (CEDEAO)	No	
EFTA	Yes	<p><i>Chapter 2, Article 3 - Protocol 4 of the Surveillance and Court Agreement</i></p> <p>1. Where the competition authorities of the EFTA States or national courts apply national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 53(1) of the EEA Agreement which may affect trade between the Contracting Parties to the EEA Agreement within the meaning of that provision, they shall also apply Article 53 of the EEA Agreement to such agreements, decisions or concerted practices. Where the competition authorities of the EFTA States or national courts apply national competition law to any abuse prohibited by Article 54 of the EEA Agreement, they shall also apply Article 54 of the EEA Agreement.</p> <p>2. The application of national competition law may not lead to the prohibition of agreements, decisions by associations of undertakings or concerted practices which may affect trade between the Contracting Parties to the EEA Agreement but which do not restrict competition within the meaning of Article 53(1) of the EEA Agreement, or which fulfil the conditions of Article 53(3) of the EEA Agreement or which are covered by an act for the application of Article 53(3) of the EEA Agreement. EFTA States shall not under this act be precluded from adopting and applying on their territory stricter national laws which prohibit or sanction unilateral conduct engaged in by undertakings.</p>
EU	Yes	<p><i>Article 3 - Regulation 1/2003</i></p> <p>1. Where the competition authorities of the Member States or national courts apply national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 81(1) of the Treaty which may affect trade between Member States within the meaning of that provision, they shall also apply Article 81 of the Treaty to such agreements, decisions or concerted practices. Where the competition authorities of the Member States or national courts apply national competition law to any abuse prohibited by Article 82 of the Treaty, they shall also apply Article 82 of the Treaty.</p> <p>2. The application of national competition law may not lead to the prohibition of agreements, decisions by associations of undertakings or concerted practices which may affect trade between Member States but which do not restrict competition within the meaning of Article 81(1) of the Treaty, or which fulfil the conditions of Article 81(3) of the Treaty or which are covered by a Regulation for the application of Article 81(3) of the Treaty. Member States shall not under this Regulation be precluded from adopting and applying on their territory stricter national laws which prohibit or sanction unilateral conduct engaged in by undertakings.</p>
MERCOSUR (MERCOSUL)	No	<p><i>Article 40 - Ouro Preto Protocol</i></p> <p>In order to ensure the simultaneous entry into force in the States Parties of the decisions adopted by the Mercosul organs provided for in Article 2 of this Protocol, the following procedure must be followed:</p> <p>I. Once the decision has been adopted, the States Parties shall take the necessary measures to incorporate it in their domestic legal system and inform the Mercosul Administrative Secretariat.</p> <p>II. When all the States Parties have reported incorporation in their respective domestic legal systems, the Mercosul Administrative Secretariat shall inform each State Party accordingly.</p> <p>III. The decisions shall enter into force simultaneously in the States Parties 30 days after the date of the communication made by the Mercosul Administrative Secretariat, under the terms of the preceding subparagraph. To this end, the States Parties shall, within the time-limit mentioned, publish the entry into force of the decisions in question in their respective official journals.</p>
WAEMU (UEMOA)	No	<p><i>Opinion of the Court No. 003/2000</i></p> <p>Articles 88, 89 and 90 of the WAEMU Treaty enshrine an exclusive competence of the Union. Member States are only entitled to take decisions pertaining to criminal law aimed at sanctioning anticompetitive practices, breaches of the laws on market transparency and competition regulation.</p>

Source: OECD analysis

### 4.3. Provisions on powers to investigate

#### *CAN*

##### *Article 10 - Decision 608*

The General Secretariat may initiate an investigation *ex officio* or at the request of the competent national authorities on matters of free competition or of the national integration organisms of the Member Countries, or of natural or legal persons, of public or private law, consumer organizations or other entities when there are indications that they have engaged in conduct that could unduly restrict competition in the market.

##### *Article 15 - Decision 608*

The General Secretariat, within a period of five (5) working days from the date of publication of the reasoned resolution that initiates the investigation, will request the competent national authorities in matters of free competition from the Member Countries where the companies identified in the application originate or perform their economic activity and, if applicable, where the effects of the reported behaviors occur or the applicants reside, the carrying out of investigations concerning the determination of the existence of the syndicated conduct as restrictive. The request must be accompanied by a copy of the file.

Within fifteen (15) business days following the request referred to in the preceding paragraph, the General Secretariat jointly with the competent national authorities to which they request their cooperation, shall draw up the Investigation Plan which shall indicate, among others, the type of actions to be taken, the suggested schedule, the economic agents to whom such actions will be directed, the elements and characteristics of the conduct, and available information of the goods or services and geographical area that may be affected.

The Investigation Plan will be notified to interested parties.

##### *Article 17 - Decision 608*

The investigation by the competent national authority must be carried out within ninety (90) business days following the date of notification of the Investigation Plan referred to in article 15. Interested parties may submit their arguments within of said term, which will be concluded the probationary period, without prejudice to the provisions of Article 19.

At the latest within the period indicated, the competent national authority shall send to the General Secretariat all documents, reports, studies, evidence and other results of such investigation.

The General Secretariat will have access to all the information gathered by the national authorities at any time during the investigation.

*Article 18 - Decision 608*

During the course of the investigation referred to in the previous article, the General Secretariat may conduct its own investigations and gather the evidence it deems necessary, without interfering with the provisions of the Investigation Plan referred to in Article 15.

In addition, the national authorities in charge of the investigation and the General Secretariat will be in permanent coordination during the period of the investigation.

*Article 20 - Decision 608*

Once the term referred to in the previous article has expired, the General Secretariat will have a period of ten (10) business days to prepare the Report on the results of the investigation. [...]

**CARICOM***Article 174 - Revised Treaty of Chaguaramas*

1. The Commission may, in respect of cross-border transactions or transactions with cross-border effects, monitor, investigate, detect, make determinations or take action to inhibit and penalise enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the CSME.

*Article 176 - Revised Treaty of Chaguaramas*

1. Where the Commission has reason to believe that business conduct by an enterprise in the CSME prejudices trade and prevents, restricts, or distorts competition within the CSME and has cross-border effects, the Commission shall request the national competition authority to undertake a preliminary examination of the business conduct of the enterprise.

2. Where a request is made under paragraph 1, the national competition authority shall examine the matter and report its findings to the Commission within such time as may be determined by the Commission.

3. Where the Commission is not satisfied with the outcome of its request, the Commission may initiate its own preliminary examination into the business conduct of the enterprise referred to in paragraph 1.

4. Where the findings of the preliminary examination under paragraphs 2 and 3 require investigation, the Commission and the Member State concerned shall hold consultations to determine and agree on who should have jurisdiction to investigate.

7. Where there is a finding that the Commission has jurisdiction to investigate the matter, the Commission shall follow the procedures set out in paragraphs 5, 6, 7 and 8 of Article 175.

**CEMAC***Article 17 - No. 1/99 - UEAC-CM-639*

The Executive Secretariat of CEMAC is in charge of investigating infringements related to the common rules of competition and state aid.

**COMESA***Article 7 - COMESA Competition Regulations*

2. [...]the Commission shall:

(a) monitor and investigate anti-competitive practices of undertakings within the Common market, and mediate disputes between Member States concerning anti-competitive conduct

*Article 8 - COMESA Competition Regulations*

1. The Commission may, in respect of trade between Member States, monitor, investigate, detect, make determinations or take action to prevent, inhibit and/or penalise undertakings.

[...]

*Rule 43 - COMESA Competition Rules*

1. At the request of the Commission, the competent authorities of the Member States shall undertake the investigations which the Commission considers to be necessary under Rule 44(1), or which it has ordered by decision pursuant to Rule 44 (3). The officials of the competent authorities of the Member States responsible for conducting these investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the Member State in whose territory the investigations is to be made. Such Authorization shall specify the subject matter and purpose of the investigation.

2. If so requested by the Commission or by the competent authority of the Member State in whose territory the investigation is to be made, the officials of the Commission may assist the officials of such authority in carrying out their duties.

*Rule 44 - COMESA Competition Rules*

1. In carrying out the duties assigned to it by Article 7 of the Regulations and by provisions adopted under Article 8 of the Regulations, the Commission may undertake all necessary investigations into undertakings and associations of undertakings. To this end the officials authorized by the Commission are empowered:

- a) to examine the books and other business records;
- b) to take copies of or extracts from the books and business records;
- c) to ask for oral explanations on the spot;
- d) to enter any premises, land and means of transport of undertakings. [...]

4. The Commission shall take decisions referred to in Rule 3 above after consultation with the competent authority of the Member State in whose territory the investigation is to be made.

5. Officials of the competent authority of the Member State in whose territory the investigation is to be made may, at the request of such authority or of the Commission, assist the officials of the Commission in carrying out their duties.

## ***EAC***

### *Article 42 - EAC Competition Act*

The Authority shall have all powers, express and implied necessary for and conducive to the implementation and enforcement of the East African Community Competition Law.

(1) In the performance of its functions under this Act, the Authority shall have powers to:

- (a) Gather information;
- (b) investigate and to compel evidence, including the search and seizure of documents;
- (c) hold hearings;

[...]

(k) collect data, undertake studies and publish reports;

(l) co-operate with regional and international organisations and with foreign competition authorities.

### *Article 21 - EAC Competition Regulations*

1. The Authority shall undertake any investigation which the Authority considers necessary for the purpose of giving effect to the Act.

2. The Authority may, during the conduct of an investigation and where the Authority considers it necessary request the competent authority of a Partner State to conduct the investigation and make a report to the Authority.

### *Article 22 - EAC Competition Regulations*

1. The Authority shall, before carrying out an investigation concerning a Partner State, give notice of the investigation to the competent authority of the Partner State in whose territory the investigation is to be conducted.

## ***EAEU***

### *Section III - Annex 19 to the EAEU Treaty*

10. The Commission shall:

1. Review statements (materials) on the presence of signs of a violation of the general rules of competition determined in article 76 of the Treaty [...].

2. initiate and review cases of violations of the general rules of competition determined in Article 76 of the Treaty [...].

4. request and receive information from state government and local authorities, other authorities or organisations of the Member States exercising their functions, juridical persons and natural persons, including confidential information required for the exercise of powers to control compliance with the general rules of competition in transboundary markets.

*Article 14 - Decision No. 97*

The authorized structural division of the Commission, within a period not exceeding 30 working days from the date of registration of the application (materials) in the Commission, considers the application [of a complaint regarding a cross-border competition violation] and, based on the results of the review, prepares one of the following decisions:

- 1) on investigating violations of the general rules of competition in transboundary markets;
- 2) on transferring the application (materials) to the authorized bodies by subordination;
- 3) on the absence of grounds for investigating violations of the general rules of competition in transboundary markets.
- 4) on terminating the consideration of the application (materials) and its return due to withdrawal.

*Article 5 - Decision No. 98*

5. The investigation is carried out by officials and (or) employees of the Commission's structural division authorized to monitor compliance with the general rules of competition in cross-border markets [...].

**ECOWAS***Article 3 - Supplementary Act A/SA.2/06/08*

b. The ECOWAS Competition Authority shall carry out on its own initiative or at the request of private persons or government officials from the Member States or of the Community Court of Justice, such investigations in relation to the conduct of business in the Common Market as will enable it to determine whether any enterprise is engaging in business practices in contravention of the Supplementary Act adopting the Common Competition Rules.

*Article 5 - Supplementary Act A/SA.2/06/08*

The Authority may, where necessary and for the purpose of gathering evidence of the involvement of a person or corporate body in an anti-competitive conduct or conduct likely to be anti-competitive, request an authority from the competent national institutions to:

- (i) carry out a search in accordance with legal procedures;
- (ii) inspect and remove temporarily in accordance with legal procedures, for the purpose of making copies, any documents or extracts under the control of any person.

**EFTA***Chapter 5, Article 11 - Protocol 4 of the Surveillance and Court Agreement*

6. The initiation by the EFTA Surveillance Authority of proceedings for the adoption of a decision under Section III should relieve the competition authorities of the EFTA States of their competence to apply Articles 53 and 54 of the EEA Agreement. If a competition authority of an EFTA State is already acting on a case, the EFTA Surveillance Authority shall only initiate proceedings after consulting with that national competition authority.

*Chapter 5, Article 17 - Protocol 4 of the Surveillance and Court Agreement*

1. Where the trend of trade between the Contracting Parties to the EEA Agreement, the rigidity of prices or other circumstances suggest that competition may be restricted or distorted within the territory covered by the EEA Agreement, the EFTA Surveillance Authority may conduct its inquiry into a particular sector of the economy or into a particular type of agreements across various sectors. In the course of that inquiry, the EFTA Surveillance Authority may request the undertakings or associations of undertakings concerned to supply the information necessary for giving effect to Articles 53 and 54 of the EEA Agreement and may carry out any inspections necessary for that purpose.

[...]

*Chapter 5, Article 18 - Protocol 4 of the Surveillance and Court Agreement*

1. In order to carry out the duties assigned to it by Articles 55 and 58 of the EEA Agreement, by the provisions set out in Protocol 23 and in Annex XIV to the EEA Agreement or by this Chapter, the EFTA Surveillance Authority may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information.

5. The Commission shall without delay forward a copy of the simple request or of the decision to the competition authority of the Member State in whose territory the seat of the undertaking or association of undertakings is situated and the competition authority of the Member State whose territory is affected.

6. At the request of the Commission the governments and competition authorities of the Member States shall provide the Commission with all necessary information to carry out the duties assigned to it by this Regulation.

*Chapter 5, Article 20 - Protocol 4 of the Surveillance and Court Agreement*

1. In order to carry out the duties assigned to it by this Chapter, the EFTA Surveillance Authority may conduct all necessary inspections of undertakings and associations of undertakings.

*Chapter 5, Article 22 - Protocol 4 of the Surveillance and Court Agreement*

1. The competition authority of an EFTA State may in its own territory carry out any inspection or other fact-finding measure under its national law on behalf and for the account of the competition authority of another EFTA State in order to establish whether there has been an infringement of Article 53 or Article 54 of the EEA Agreement. Any exchange and use of the information collected shall be carried out in accordance with Article 12.

2. At the request of the EFTA Surveillance Authority, the competition authorities of the EFTA States shall undertake the inspections which the EFTA Surveillance Authority considers to be necessary under Article 20(1) or which it has ordered by decision pursuant to Article 20(4). [...]

*EU**Article 11 - Regulation 1/2003*

6. The initiation by the Commission of proceedings for the adoption of a decision under Chapter III shall relieve the competition authorities of the Member States of their competence to apply Articles 81 and 82 of the Treaty. If a competition authority of a Member State is already acting on a case, the Commission shall only initiate proceedings after consulting with that national competition authority.

*Article 17 - Regulation 1/2003*

1. Where the trend of trade between Member States, the rigidity of prices or other circumstances suggest that competition may be restricted or distorted within the common market, the Commission may conduct its inquiry into a particular sector of the economy or into a particular type of agreements across various sectors. In the course of that inquiry, the Commission may request the undertakings or associations of undertakings concerned to supply the information necessary for giving effect to Articles 81 and 82 of the Treaty and may carry out any inspections necessary for that purpose.

[...]

*Article 18 - Regulation 1/2003*

1. In order to carry out the duties assigned to it by this Regulation, the Commission may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information.

5. The Commission shall without delay forward a copy of the simple request or of the decision to the competition authority of the Member State in whose territory the seat of the undertaking or association of undertakings is situated and the competition authority of the Member State whose territory is affected.

6. At the request of the Commission the governments and competition authorities of the Member States shall provide the Commission with all necessary information to carry out the duties assigned to it by this Regulation.

*Article 20 - Regulation 1/2003*

1. In order to carry out the duties assigned to it by this Regulation, the Commission may conduct all necessary inspections of undertakings and associations of undertakings.

*Article 22 - Regulation 1/2003*

1. The competition authority of a Member State may in its own territory carry out any inspection or other fact-finding measure under its national law on behalf and for the account of the competition authority of another Member State in order to establish whether there has been an infringement of Article 81 or Article 82 of the Treaty. Any exchange and use of the information collected shall be carried out in accordance with Article 12.

2. At the request of the Commission, the competition authorities of the Member States shall undertake the inspections which the Commission considers to be necessary under Article 20(1) or which it has ordered by decision pursuant to Article 20(4). [...]

*Article 11 - No 139/2004*

1. In order to carry out the duties assigned to it by this Regulation, the Commission may, by simple request or by decision, require the persons referred to in Article 3(1)(b), as well as undertakings and associations of undertakings, to provide all necessary information.

*Article 13 - No 139/2004*

1. In order to carry out the duties assigned to it by this Regulation, the Commission may conduct all necessary inspections of undertakings and associations of undertakings.

**MERCOSUR**

*Article 10 - Fortaleza Protocol*

The national organs of application shall initiate the procedure provided through the present Protocol ex officio or through reasoned presentation by the legitimately concerned party, which should appear before the Committee for the Defense of Competition and present a preliminary technical evaluation.

*Article 11 - Fortaleza Protocol*

The Committee for the Defense of Competition, following a preliminary technical analysis, shall initiate an investigation or, ad referendum of the Trade Commission of MERCOSUR, shelve the case.

*Article 12 - Fortaleza Protocol*

The Committee for the Defense of Competition shall regularly submit reports on the state of negotiations on the cases under consideration to the Trade Commission of the MERCOSUR.

*Article 15 - Fortaleza Protocol*

The national organ of application of the State in the territory of which the defendant is domiciled shall carry out the investigation of the restrictive practice of competition.

1. The national enforcement bodies undertaking the investigation shall disseminate regular reports on its activities.

2. The exercise of the right of defense shall be guaranteed to the defendant.

*Article 16 - Fortaleza Protocol*

The national organs of application of the other States Parties are responsible for assistance to the national enforcement body responsible for the investigation through contribution of information, documentation and other means considered essential to the correct execution of the investigation procedures.

*Article 18 - Fortaleza Protocol*

Once the process of investigation has concluded, the national body responsible for the investigation shall present a conclusive ruling on the matter to the Committee for the Defense of Competition.

*WAEMU**Article 21 - Regulation No. 3/2002/CM/UEMOA*

To carry out its tasks pursuant to Article 90 of the Treaty, the Commission can conduct all the necessary examination of the undertakings and associations of undertakings.

[Officials of the Commission can]

- a) check all professional documents;
- b) make copies of such documents or seize them for up to 10 days;
- c) request oral explanations;
- d) have access to all premises, properties and means of transports of the undertakings;

#### **4.4. Provisions on powers to exchange information and expertise (between regional and national authorities)**

##### *CAN*

###### *Article 17 - Decision 608*

[...] At the latest within the period indicated, the competent national authority shall send to the General Secretariat all documents, reports, studies, evidence and other results of such investigation.

###### *Article 18 - Decision 608*

[...] In addition, the national authorities in charge of the investigation and the General Secretariat will be in permanent coordination during the period of the investigation.

###### *Article 25 - Decision 608*

The competent national authorities involved will have access to the file in the stage established in article 17.

The members of the Committee will have, in the performance of their duties, access to the file.

###### *Article 37 - Decision 608*

The Member Countries shall establish mechanisms to ensure the improvement of the common instruments and the strengthening of the competent national authorities in matters of free competition, through programs of exchange of information and experiences, of technical training, and of compilation of jurisprudence and administrative doctrine, related to the defense of free competition.

##### *CARICOM*

###### *Article 170 - Revised Treaty of Chaguaramas*

3. Every Member State shall require its national competition authority to:

- (a) co-operate with the Commission in achieving compliance with the rules of competition;
- (b) investigate any allegations of anti-competitive business conduct referred to the authority by the Commission or another Member State;
- (c) co-operate with other national competition authorities in the detection and prevention of anti-competitive business conduct, and the exchange of information relating to such conduct.

###### *Article 174 - Revised Treaty of Chaguaramas*

2.(g) The Commission shall facilitate the exchange of relevant information and expertise.

##### *CEMAC*

###### *Article 19 - No. 1/99 - UEAC-CM-639*

Upon automatic referral or at the request of Member States, companies or organizations of consumers, to establish a breach of the rules of the competition, the Executive Secretariat may proceed any necessary verification with the companies and groups of companies.

[...]

Before this verification, the Executive Secretariat shall have fifteen (15) days to inform the competent authority of this State. He may request the assistance of agents of that State. [...]

### ***COMESA***

#### *Article 7 - COMESA Competition Regulations*

2.(d) The Commission shall co-operate with authorities of the Member States.

2.(g) The Commission shall facilitate the exchange of relevant information and expertise.

### ***EAC***

#### *Article 23 - EAC Competition Act*

1. A Partner State or an undertaking shall provide such information [on a possible breach of the EAC Competition Act] as the Authority may request.

#### *Article 42 - EAC Competition Act*

1. In the performance of its functions under this Act, the Authority shall have powers to:

(l) co-operate with regional and international organisations and with foreign competition authorities.

#### *Article 43 - EAC Competition Act*

The Authority and the Partner States shall mutually co-operate in the implementation of the East African Community Competition Law. The Partner States shall support the activities of the Authority.

### ***EAEU***

#### *Article 75 - EAEU Treaty*

8. Authorised authorities of the Member States shall, in accordance with their state legislation and this Treaty, interact with each other by sending notices and requests for information, holding consultations, sending notifications on investigations (examination of cases) affecting the interests of another Member State, conducting investigations (examination of cases) by request of an authorised authority of any Member State and providing information on their results.

*Section I - Annex 1 to the EAEU Treaty*

8. The Commission shall be entitled to request from the Member States their opinion on any issue examined by the Commission. Respective requests shall be sent to the governments of the Member States. The Commission shall also be entitled to request from executive authorities of the Member States, juridical and natural persons any information required by the Commission for the exercise of its powers. [...] Executive authorities of the Member States shall provide the information requested within the period prescribed in the Rules of Procedure of the Commission, on condition that it does not contain any data classified in accordance with the legislation of the Member States as a State secrecy (State secrets) or restricted information.

*Section III - Annex 19 to the EAEU Treaty*

10. The Commission shall [...]

4) request and receive information from state government and local authorities, other authorities or organisations of the Member States exercising their functions, juridical persons and natural persons, including confidential information required for the exercise of powers to control compliance with the general rules of competition in transboundary markets;

*Section VI - Annex 19 to the EAEU Treaty*

74. When investigating a violation of the general rules of competition and conducting proceedings on cases of violation of the general rules of competition in transboundary markets, the Commission may submit to authorised authorities of the Member States requests for information and documents. [...]

76. The authorised authority of a Member State shall provide the information at its disposal within the period determined in the request.

**ECOWAS***Article 13 - Supplementary Act A/SA.1/06/08*

3. In the implementation of the Community Competition Rules, the Regional Authority shall collaborate with other existing competition agencies. (UEMOA)

*Article 3 - Supplementary Act A/SA.2/06/08*

In accordance with the provisions of Article 2 of this Supplementary Act, the ECOWAS Competition Authority shall perform the following functions:

f. co-operate with national and regional competition agencies in taking measures necessary to ensure implementation of the obligations arising from this Supplementary Act.

k. contribute to the training of the staff of national competition structures and provide them with support notably in the management of investigations, creation of a competition-related data base, advocacy on competition and consumer protection.

***EFTA****Chapter 4, Article 11 - Protocol 4 of the Surveillance and Court Agreement*

1. The EFTA Surveillance Authority and the competition authorities of the EFTA States shall apply the EEA competition rules in close cooperation.
2. The EFTA Surveillance Authority shall transmit to the competition authorities of the EFTA States copies of the most important documents it has collected with a view to applying Articles 7, 8, 9, 10 and Article 29(1). At the request of the competition authority of an EFTA State, the EFTA Surveillance Authority shall provide it with a copy of other existing documents necessary for the assessment of the case.
3. The competition authorities of the EFTA States shall, when acting under Article 53 or Article 54 of the EEA Agreement, inform the EFTA Surveillance Authority in writing before or without delay after commencing the first formal investigative measure. This information may also be made available to the competition authorities of the other EFTA States.

*Chapter 4, Article 12 - Protocol 4 of the Surveillance and Court Agreement*

1. For the purpose of applying Articles 53 and 54 of the EEA Agreement the EFTA Surveillance Authority and the competition authorities of the EFTA States shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information.
2. Information exchanged shall only be used in evidence for the purpose of applying Article 53 or Article 54 of the EEA Agreement and in respect of the subject-matter for which it was collected by the transmitting authority. However, where national competition law is applied in the same case and in parallel to EEA competition law and does not lead to a different outcome, information exchanged under this Article may also be used for the application of national competition law.

*Chapter 4, Article 14 - Protocol 4 of the Surveillance and Court Agreement*

1. The content of Chapter VIII has not been revised since the original adoption of Protocol 4 and it refers therefore to the Chapters of the Protocol as they were published in OJ L 344, 31.1.1994, p. 3
2. For the discussion of individual cases, the Advisory Committee shall be composed of representatives of the competition authorities of the EFTA States. For meetings in which issues other than individual cases are being discussed, an additional EFTA State representative competent in competition matters may be appointed. Representatives may, if unable to attend, be replaced by other representatives.

The EC Commission and the EC Member States shall be entitled to be present in the Advisory Committee and to express their views therein, as provided for in Protocol 23 to the EEA Agreement. However, their representatives shall not have the right to vote.

*Article 1 - Protocol 23 of the EEA Agreement*

1. The EFTA Surveillance Authority and the EC Commission shall exchange information and consult each other on general policy issues at the request of either of the surveillance authorities.

*Article 1A - Protocol 23 of the EEA Agreement*

In the interests of homogeneous interpretation by the EFTA Surveillance Authority and the EC Commission of Articles 53 and 54 of the Agreement and of Articles 81 and 82 of the Treaty, the EFTA Surveillance Authority and the competent authorities of the EFTA States may also be allowed to participate in meetings of the network of public authorities referred to in recital 15 of Council Regulation (EC) No 1/2003 for the purposes of discussion of general policy issues only. The EFTA Surveillance Authority, the EC Commission and the competent authorities of the EFTA states and of the EC Member States shall have the power to make available all information necessary for the purpose of such general policy discussion in that network. Information made available in this context shall not be used for enforcement purposes. This participation shall be without prejudice to rights of participation of the EFTA States and the EFTA Surveillance Authority granted under the EEA Agreement.

*EU**Article 11 - Regulation 1/2003*

1.1. The Commission and the competition authorities of the Member States shall apply the Community competition rules in close cooperation.

2. The Commission shall transmit to the competition authorities of the Member States copies of the most important documents it has collected with a view to applying Articles 7, 8, 9, 10 and Article 29(1). At the request of the competition authority of a Member State, the Commission shall provide it with a copy of other existing documents necessary for the assessment of the case.

3. The competition authorities of the Member States shall, when acting under Article 81 or Article 82 of the Treaty, inform the Commission in writing before or without delay after commencing the first formal investigative measure. This information may also be made available to the competition authorities of the other Member States.

4. No later than 30 days before the adoption of a decision requiring that an infringement be brought to an end, accepting commitments or withdrawing the benefit of a block exemption Regulation, the competition authorities of the Member States shall inform the Commission. To that effect, they shall provide the Commission with a summary of the case, the envisaged decision or, in the absence thereof, any other document indicating the proposed course of action. This information may also be made available to the competition authorities of the other Member States. At the request of the Commission, the acting competition authority shall make available to the Commission other documents it holds which are necessary for the assessment of the case. The information supplied to the Commission may be made available to the competition authorities of the other Member States. National competition authorities may also exchange between themselves information necessary for the assessment of a case that they are dealing with under Article 81 or Article 82 of the Treaty.

5. The competition authorities of the Member States may consult the Commission on any case involving the application of Community law.

*Article 12 - Regulation 1/2003*

1. For the purpose of applying Articles 81 and 82 of the Treaty the Commission and the competition authorities of the Member States shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information.

2. Information exchanged shall only be used in evidence for the purpose of applying Article 81 or Article 82 of the Treaty and in respect of the subject-matter for which it was collected by the transmitting authority. However, where national competition law is applied in the same case and in parallel to Community competition law and does not lead to a different outcome, information exchanged under this Article may also be used for the application of national competition law.

*Article 14 - Regulation 1/2003*

1. The Commission shall consult an Advisory Committee on Restrictive Practices and Dominant Positions prior to the taking of any decision under Articles 7, 8, 9, 10, 23, Article 24(2) and Article 29(1).

2. For the discussion of individual cases, the Advisory Committee shall be composed of representatives of the competition authorities of the Member States. For meetings in which issues other than individual cases are being discussed, an additional Member State representative competent in competition matters may be appointed. Representatives may, if unable to attend, be replaced by other representatives.

**MERCOSUR**

*Article 30 - Fortaleza Protocol*

In order to ensure application of the present Protocol, the States Parties shall, through the respective national enforcement bodies, adopt mechanisms of cooperation and of technical consultation, so as:

a) to systematize and strengthen cooperation between the national organs and authorities responsible for the perfecting of the national systems and of the joint defense instruments of competition, through a program of the exchange, as well as of the joint investigation of the practices harmful to competition, through a program of exchange of information and experience, of the training of technicians and the accumulation of case law relative to the defense of competition, as well as of the joint investigation of practices harmful to competition in the MERCOSUR.

b) to identify and mobilize, by means of agreements of technical cooperation in the area of the defense of competition with other States or regional groups, the necessary resources for the implementation of programs of cooperation referred to in the preceding paragraph.

*WAEMU*

*Article 3 - Regulation No 02/2002/CM/WAEMU*

4. National structures provide assistance to Commission officials when it conducts investigations itself.

*Article 4 - Regulation No 02/2002/CM/WAEMU*

Member States participate in the work of the Consultative Committee on Competition under the conditions laid down in Article 28 of Regulation No. 03/2002/CM/UEMOA, on the procedures applicable to cartels and abuses of dominant position within the Community of UEMOA.

#### 4.5. Provisions on subject matter jurisdiction

##### *CAN*

###### *Article 34 - Decision 608*

If the result of the investigation establishes an infringement of articles 7 or 8, the General Secretariat may order the immediate cessation of the restrictive conduct and, if merited, the application of corrective and / or sanctioning measures.

###### *Article 94 - Cartagena Agreement*

The Member Countries may not take corrective measures without prior authorization from the [Andean Community] General Secretariat.

##### *CARICOM*

###### *Article 174 - Revised Treaty of Chaguaramas*

1. The Commission may, in respect of cross-border transactions or transactions with cross-border effects, monitor, investigate, detect, make determinations or take action to inhibit and penalise enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the CSME.

4. The Commission shall, to the extent required to remedy or penalise anti-competitive business conduct:

(a) order the termination or nullification as the case may require, of agreements, conduct, activities or decisions prohibited by Article 170;

(b) direct the enterprise to cease and desist from anti-competitive business conduct and to take such steps as are necessary to overcome the effects of abuse of its dominant position in the market, or any other business conduct inconsistent with the principles of fair competition set out in this Chapter;

(c) order payment of compensation to persons affected; and

(d) impose fines for breaches of the rules of competition.

##### *CEMAC*

###### *Article 19 - No. 1/99 - UEAC-CM-639*

The Executive Secretariat of CEMAC shall take decisions on infringements of the common competition rules and state aid.

###### *Article 27 - No. 1/99 - UEAC-CM-639*

The Executive Secretariat of CEMAC may impose on any undertaking that has participated in a prohibited agreement a fine of [...].

*Article 29 - No. 1/99 - UEAC-CM-639*

The Regional Council may also, by decision, impose a fine on companies and associations of companies that have carried out a prohibited conspiracy transaction.

*Article 37 - No. 1/99 - UEAC-CM-639*

The Regional Council may, by decision, impose a fine on the undertakings which participated in a merger operation[...].

**COMESA**

*Article 8 - COMESA Competition Regulations*

3. Based on the findings of the investigation, the Commission may make a determination that there has been a breach of the Regulations.

4. The Commission shall, to the extent required to remedy or penalise anti-competitive activity:

- a) order the termination or nullification as the case may require of agreements, conduct, activities or decisions prohibited by Part 3 of these Regulations;
- b) direct the enterprise to cease and desist from anti-competitive conduct and to take such steps as it believes may be necessary to overcome the effects of abuse of its dominant position in the market, or any other business conduct inconsistent with the principles as set out in these Regulations;
- c) order payment of compensation to persons affected;
- d) impose fines for breaches of the provisions of these Regulations.

*Article 26 - COMESA Competition Regulations*

[The Commission has the power of]

(a) declaring the merger unlawful, except to such extent and in such circumstance as may be provided by or under the order; [...]

**EAC**

*Article 42 - EAC Competition Act*

1.(d) The Authority has the power to issue legally binding decisions.

*Article 44 - EAC Competition Act*

1. The determination of any violation of this law is within the exclusive original jurisdiction of the Authority.

2. Resolutions and decisions of the Authority shall be legally binding upon Partner States's authorities and Sub ordinate courts. [...]

***EAEU****Section III - Annex 19 to the EAEU Treaty*

10. The Commission shall [...]

3) issue rulings, adopt decisions binding for economic entities (market participants) of the Member States, including on the application of penalties to economic entities (market participants) of the Member States in the cases provided for in Section XVIII of the Treaty and in this Protocol, on actions aimed at termination of violations of the general rules of competition, elimination of consequences of such violations, ensuring competition, avoidance of actions that may constitute an obstacle to the emergence of competition and/or may result in restriction or elimination of competition in the transboundary market and violation of the general rules of competition in the cases provided for in Section XVIII of the Treaty and in this Protocol;

***ECOWAS****Article 4 - Supplementary Act A/SA.2/06/08*

1. Without prejudice to the provisions relating to the powers of the Community Court of Justice, the Authority, in the execution of its functions under the Supplementary Act, shall have the powers to issue injunctions:

- (i) ordering the termination of a contract;
- (ii) prohibiting the conclusion or implementation of a contract;
- (iii) prohibiting the imposition of terms external to any transaction, the effect of which is to reduce competition;
- (iv) prohibit discrimination or preferences in price matters and other related aspects, and
- (v) requiring the transparent publication of commercial information (prices, scale of rates, general terms of scale, product composition and expiry dates)

*Article 7 - Supplementary Act A/SA.2/06/08*

1. Where the Authority, upon conclusion of investigations, is convinced that there is evidence to presume a violation of the provisions of this Supplementary Act adopting the Community Competition Rules, it shall pronounce the appropriate sanctions against the offender(s).

***EFTA****Chapter 2, Article 5 - Protocol 4 of the Surveillance and Court Agreement*

The competition authorities of the EFTA States shall have the power to apply Articles 53 and 54 of the EEA Agreement in individual cases. For this purpose, acting on their own initiative or on a complaint, they may take the following decisions:

- requiring that an infringement be brought to an end,
- ordering interim measures,
- accepting commitments,

- imposing fines, periodic penalty payments or any other penalty provided for in their national law.

Where on the basis of the information in their possession the conditions for prohibition are not met they may likewise decide that there are no grounds for action on their part.

*Chapter 2, Article 7 - Protocol 4 of the Surveillance and Court Agreement*

1. Where the EFTA Surveillance Authority, acting on a complaint or on its own initiative, finds that there is an infringement of Article 53 or of Article 54 of the EEA Agreement, it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. For this purpose, it may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end. Structural remedies can only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. If the EFTA Surveillance Authority has a legitimate interest in doing so, it may also find that an infringement has been committed in the past.

2. Those entitled to lodge a complaint for the purposes of paragraph 1 are natural or legal persons who can show a legitimate interest and EFTA States.

*Chapter 2, Article 8 - Protocol 4 of the Surveillance and Court Agreement*

1. In cases of urgency due to the risk of serious and irreparable damage to competition, the EFTA Surveillance Authority, acting on its own initiative may by decision, on the basis of a prima facie finding of infringement, order interim measures.

2. A decision under paragraph 1 shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.

*Chapter 2, Article 9 - Protocol 4 of the Surveillance and Court Agreement*

1. Where the EFTA Surveillance Authority intends to adopt a decision requiring that an infringement be brought to an end and the undertakings concerned offer commitments to meet the concerns expressed to them by the EFTA Surveillance Authority in its preliminary assessment, the EFTA Surveillance Authority may by decision make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the EFTA Surveillance Authority.

2. The EFTA Surveillance Authority may, upon request or on its own initiative, reopen the proceedings:

- (a) where there has been a material change in any of the facts on which the decision was based;
- (b) where the undertakings concerned act contrary to their commitments; or
- (c) where the decision was based on incomplete, incorrect or misleading information provided by the parties.

*Chapter 2, Article 10 - Protocol 4 of the Surveillance and Court Agreement*

Where the public interest under the EEA Agreement relating to the application of Articles 53 and 54 of the EEA Agreement so requires, the EFTA Surveillance Authority, acting on its own initiative, may by decision find that Article 53 of the EEA Agreement is not applicable to an agreement, a decision by an association of undertakings or a concerted practice, either because the conditions of Article 53(1) of the EEA Agreement are not fulfilled, or because the conditions of Article 53(3) of the EEA Agreement are satisfied.

The EFTA Surveillance Authority may likewise make such a finding with reference to Article 54 of the EEA Agreement.

*EU**Article 7 - Regulation 1/2003*

1. Where the Commission, acting on a complaint or on its own initiative, finds that there is an infringement of Article 81 or of Article 82 of the Treaty, it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. For this purpose, it may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end. Structural remedies can only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. If the Commission has a legitimate interest in doing so, it may also find that an infringement has been committed in the past.

*Article 9 - Regulation 1/2003*

1. Where the Commission intends to adopt a decision requiring that an infringement be brought to an end and the undertakings concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment, the Commission may by decision make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission.

*Article 10 - Regulation 1/2003*

Where the Community public interest relating to the application of Articles 81 and 82 of the Treaty so requires, the Commission, acting on its own initiative, may by decision find that Article 81 of the Treaty is not applicable to an agreement, a decision by an association of undertakings or a concerted practice, either because the conditions of Article 81(1) of the Treaty are not fulfilled, or because the conditions of Article 81(3) of the Treaty are satisfied.

The Commission may likewise make such a finding with reference to Article 82 of the Treaty.

*Article 8 – Regulation No 139/2004*

1. Where the Commission finds that a notified concentration fulfils the criterion laid down in Article 2(2) and, in the cases referred to in Article 2(4), the criteria laid down in Article 81(3) of the Treaty, it shall issue a decision declaring the concentration compatible with the common market.

[...]

2. Where the Commission finds that, following modification by the undertakings concerned, a notified concentration fulfils the criterion laid down in Article 2(2) and, in the cases referred to in Article 2(4), the criteria laid down in Article 81(3) of the Treaty, it shall issue a decision declaring the concentration compatible with the common market.

[...]

3. Where the Commission finds that a concentration fulfils the criterion defined in Article 2(3) or, in the cases referred to in Article 2(4), does not fulfil the criteria laid down in Article 81(3) of the Treaty, it shall issue a decision declaring that the concentration is incompatible with the common market.

[...]

***MERCOSUR***

*Article 19 - Fortaleza Protocol*

The Committee for the Defense of Competition, taking into account the ruling of the national enforcement bodies, ad referendum of the Trade Commission of the MERCOSUR, shall decide on the infringing practices and shall establish the sanctions to be imposed or any other appropriate measures.

If the Committee for the Defense of Competition should not arrive at a consensus, it shall bring its conclusions before the Trade Commission of the MERCOSUR, noting existing differences.

***WAEMU***

*Article 90 - WAEMU Treaty*

The Commission is responsible, under the supervision of the Court of Justice, for the application of the competition rules prescribed by Articles 88 and 89. In the context of this task, it has the power to take decisions.

#### 4.6. Provisions on the enforcement jurisdiction

##### *CAN*

###### *Article 3 - Treaty Creating the Court of Justice of the Cartagena Agreement*

Decisions of the Andean Council of Foreign Ministers or of the Commission and Resolutions of the General Secretariat shall be directly applicable in Member Countries as of the date they are published in the Official Gazette of the Agreement, unless they indicate a later date.

When their text so stipulates, Decisions must be incorporated into national law through an express act stipulating the date they will enter into effect in each Member Country.

###### *Article 35 - Decision 608*

The enforcement of interim or final measures provided for in this Decision shall be the responsibility of the governments of the Member Countries.

##### *CARICOM*

###### *Article 174 - Revised Treaty of Chaguaramas*

6. Member States shall enact legislation to ensure that determinations of the Commission are enforceable in their jurisdictions.

Article 21 - Addendum to the CEMAC Treaty relating to the institutional and legal system of the Community

The regulations are binding in their entirety and directly applicable in all Member States. The framework regulations are directly applicable only for some of their elements.

The directives bind each recipient Member State as to the result to be achieved, while leaving to the national authorities their competence as regards the form and the means.

##### *CEMAC*

###### *Article 19 - No. 1/99 - UEAC-CM-639*

When the companies do not collaborate and oppose the action of the experts of the Regional Council of Competition, by any of the processes described above, the assistance of the national authorities must be required.

##### *COMESA*

###### *Article 8 - COMESA Competition Regulations*

2. [...] the Commission shall:

(e) co-operate and assist Member States in the implementation of its decisions.

###### *Article 21 - COMESA Competition Regulations*

14. If the undertaking cannot comply within the time period specified [regarding a specific course of action required by the Commission] and fails to inform the Commission, the Commission may apply to the relevant national court for an appropriate order.

***EAC****Article 44 - East African Community Competition Act*

5. Decisions made by the Authority shall be enforceable by Partner States' enforcement authorities. Partner States are under obligation to enforce decisions of the Authority.

**EAEU***Section III - Annex 19 to the EAEU Treaty*

14. Decisions of the Commission on the imposition of a penalty, decisions of the Commission binding the offender to perform certain actions shall be deemed enforcement documents and shall be enforceable by authorities enforcing judicial acts and acts of other authorities and officials of the Member State of registration of the offending economic entity (market participant), non-profit organisation that is not an economic entity (market participant), or of the Member State of permanent or temporary residence of the offending natural person.

***ECOWAS****Article 11 - Supplementary Act A/SA.2/06/08*

1. Decisions of the Authority and the Community Court of Justice that entail pecuniary obligations on individuals and or corporate bodies shall be binding.

2. Enforcement, which shall be submitted by the Senior Registrar of the court of the Member State concerned, shall be governed by the rules of civil procedure prevailing in the said Member State.

3. The enforcement formula shall be applied by the national authority appointed by the Government of each Member State, without any control except for that of verifying the authenticity of the decision.

4. Member States shall appoint the competent national authority, which shall receive or implement the decisions of the Competition Authority and those of the Community Court of Justice and notify their appointment to the latter.

***EFTA****Article 110 - EEA Agreement*

Decisions under this Agreement by the EFTA Surveillance Authority and the EC Commission which impose a pecuniary obligation on persons other than States, shall be enforceable. The same shall apply to such judgments under this Agreement by the Court of Justice of the European Communities, the Court of First Instance of the European Communities and the EFTA Court.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the authority which each Contracting Party shall designate for this purpose and shall make known to the other Contracting Parties, the EFTA Surveillance Authority, the EC Commission, the Court of Justice of the European Communities, the Court of First Instance of the European Communities and the EFTA Court.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement, in accordance with the law of the State in the territory of which enforcement is to be carried out, by bringing the matter directly before the competent authority.

[...]

## ***EU***

### *Article 299 - TFEU*

Acts of the Council, the Commission or the European Central Bank which impose a pecuniary obligation on persons other than States, shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice of the European Union.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

## ***MERCOSUR***

### *Article 13 - Fortaleza Protocol*

In case of emergency or threat of irreparable damage to competition, the Committee for the Defense of Competition of the MERCOSUR shall determine, ad referendum of the Trade Commission of the MERCOSUR, the application of preventive measures, including the immediate cessation of the practice subject to inquiry, and the reestablishment of the prior situation or other measures which it deems necessary.

1. In case of non observance of the preventive measure, the Committee for the Defense of Competition may define, ad referendum of the Trade Commission of the MERCOSUR, application of a fine of the infringing party.
2. Application of the preventive measure or of the fine shall be effected by the national organ of application of the State in the territory of which the defendant is domiciled.

### *Article 20 - Fortaleza Protocol*

1. The sanctions shall be applied by the national enforcement bodies of the State Party whose territory the infringing party is domiciled.

## ***WAEMU***

### *Article 3(3)(b) of Directive N° 02/2002/CM/UEMOA*

Competent national competition authorities are in charge, in cooperation with any other authority, of the enforcement of decisions imposing pecuniary obligations on persons other than the State and periodically report to the Commission.

#### **4.7. Provisions on enhancing harmonisation**

##### *CAN*

###### *Article 36 - Decision 608*

In the adoption and application of regulatory policies and market measures, Member Countries shall not impede, hinder or distort competition in the subregional market. The Committee may submit recommendations tending to eliminate, when appropriate, these procedures and requirements to promote the exercise of economic freedom and competition.

###### *Article 37- Decision 608*

The Member Countries shall establish mechanisms to ensure the improvement of the common instruments and the strengthening of the competent national authorities in matters of free competition, through programs of exchange of information and experiences, of technical training, and of compilation of jurisprudence and administrative doctrine, related to the defense of free competition.

###### *Article 42 - Decision 608*

The Member Countries shall notify the General Secretariat of their national laws on matters of free competition. Likewise, they will notify the modifications or substitutions to it.

###### *Article 47 - Decision 608*

The provisions on free competition contained in other Decisions or Resolutions shall be adapted to the provisions of this Decision.

###### *Article 49 - Decision 608*

Bolivia may apply the provisions of this Decision, as applicable, for cases that arise outside the scope described in Article 5.

##### *Preamble - Revised Treaty of Chaguaramas*

Convinced further that the application and convergence of national competition policies and the cooperation of competition authorities in the Community will promote the objectives of the CSME

##### *CARICOM*

###### *Article 170 - Revised Treaty of Chaguaramas*

1.(b) the Member States shall:

(i) take the necessary legislative measures to ensure consistency and compliance with the rules of competition and provide penalties for anti-competitive business conduct

5. Within 24 months of the entry into force of this Treaty, the Member States shall notify COTED of existing legislation, agreements and administrative practices inconsistent with the provisions of this Chapter. Within 36 months of entry into force of this Treaty, COTED shall establish a programme providing for the repeal of such legislation, and termination of agreements and administrative practices.

*Article 173 - Revised Treaty of Chaguaramas*

2(c) The Commission shall promote the establishment of institutions and the development and implementation of harmonised competition laws and practices by the Member States to achieve uniformity in the administration of applicable rules.

*Article 174 - Revised Treaty of Chaguaramas*

6. Member States shall enact legislation to ensure that determinations of the Commission are enforceable in their jurisdictions.

*Article 180 - Revised Treaty of Chaguaramas*

In any case where a Member State is uncertain whether business conduct is prohibited by paragraph 1 of Article 177, such a Member State may apply to the Commission for a ruling on the matter. If the Commission determines that such conduct is not prohibited by paragraph 1 of Article 177, it shall issue a negative clearance ruling to this effect.

2. Subject to paragraph 3, a negative clearance ruling shall be conclusive of the matters stated therein in any judicial proceedings in the Community.

3. The Court may, on an application of the Commission, review a decision of the Commission where the decision was induced by deceit or improper means.

***CEMAC***

*Article 21 - Treaty Establishing the Economic and Monetary Community of Central Africa (CEMAC)*

Member States shall harmonize their position on all matters affecting the functioning of the common market which are dealt with by international organizations of an economic nature.

***COMESA***

*Article 6 - COMESA Treaty*

The Member States, in pursuit of the aims and objectives stated in Article 3 of this Treaty, and in conformity with the Treaty for the Establishment of the African Economic Community signed at Abuja, Nigeria on 3rd June, 1991, agree to adhere to the following principles:

(c) inter-State co-operation, harmonisation of policies and integration of programmes among the Member States;

*Article 55 - COMESA Treaty*

3. The Council shall make regulations to regulate competition within the Member States.

*Article 5 - COMESA Competition Regulations*

Pursuant to Article 5(2)(b) of the Treaty, Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of these Regulations or resulting from action taken by the Commission under these Regulations. They shall facilitate the achievement of the objects of the Common Market. Member States shall abstain from taking any measure which could jeopardize the attainment of the objectives of these Regulations.

*Article 7 - COMESA Competition Regulations*

2.(c) The Competition Commission has the power to help Member States promote national competition laws and institutions, with the objective of the harmonisation of those national laws with the regional Regulations to achieve uniformity of interpretation and application of competition law and policy within the Common Market.

*EAC**Article 3 - EAC Competition Act*

3.(a) The objects of the competition policy and practice in the Community shall be to:

vii) promoting economic integration and development in the Community;

3.(d) bring the Community's competition policy and practice in line with international best practices;

*EAEU**Section IV - Annex 19 to the EAEU Treaty*

47. The authorised authorities of the Member States shall cooperate in the development of national legislation and regulations on competition (antitrust) policy through the exchange of information and methodological assistance.

*Preamble - Model Law on Competition*

This Law ensures consistency in the treatment of the fundamental provisions of the Law on Protection of Competition of the Customs Union member states and the Common Economic Space (hereinafter the states) for the purposes of this Law hereinafter referred to as the national law. The aim of this Law is the approximation of the regulatory environment for economic relations in the field of competition policy on the territory of the Common Economic Space.

**ECOWAS***Article 12 - Supplementary Act A/SA.1/06/08*

2. Where, prior to the entry into force of this Supplementary Act, Member States had concluded agreements or adopted national legislation on competition that are inconsistent with the provisions of this Supplementary Act, they shall take all necessary measures to eliminate the inconsistencies observed in the shortest time possible.

*Article 13 - Supplementary Act A/SA.1/06/08*

6. For the purposes of application of the Community Competition Rules, the Member States shall adopt all measures they deem appropriate, on condition they are not inconsistent with the provisions of this Supplementary Act.

**EFTA***Chapter 2, Article 3 - Protocol 4 of the Surveillance and Court Agreement*

1. Where the competition authorities of the EFTA States or national courts apply national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 53(1) of the EEA Agreement which may affect trade between the Contracting Parties to the EEA Agreement within the meaning of that provision, they shall also apply Article 53 of the EEA Agreement to such agreements, decisions or concerted practices. Where the competition authorities of the EFTA States or national courts apply national competition law to any abuse prohibited by Article 54 of the EEA Agreement, they shall also apply Article 54 of the EEA Agreement.

2. The application of national competition law may not lead to the prohibition of agreements, decisions by associations of undertakings or concerted practices which may affect trade between the Contracting Parties to the EEA Agreement but which do not restrict competition within the meaning of Article 53(1) of the EEA Agreement, or which fulfil the conditions of Article 53(3) of the EEA Agreement or which are covered by an act for the application of Article 53(3) of the EEA Agreement. EFTA States shall not under this act be precluded from adopting and applying on their territory stricter national laws which prohibit or sanction unilateral conduct engaged in by undertakings.

*Chapter 11, Article 3 - Protocol 4 of the Surveillance and Court Agreement*

1. The EFTA Surveillance Authority and the competition authorities of the EFTA States shall apply the EEA competition rules in close cooperation.

[...]

*Chapter 15, Article 3 - Protocol 4 of the Surveillance and Court Agreement*

1. In proceedings for the application of Article 53 or Article 54 of the EEA Agreement, courts of the EFTA States may ask the EFTA Surveillance Authority to transmit to them information in its possession or its opinion on questions concerning the application of the EEA competition rules.

[...]

*Article 16 - Regulation 1/2003*

1. When national courts rule on agreements, decisions or practices under Article 53 or Article 54 of the EEA Agreement which are already the subject of a decision by the EFTA Surveillance Authority, they cannot take decisions running counter to the decision adopted by the EFTA Surveillance Authority. They must also avoid giving decisions which would conflict with a decision contemplated by the EFTA Surveillance Authority in proceedings it has initiated. To that effect, the national court may assess whether it is necessary to stay its proceedings. This obligation is without prejudice to the rights and obligations under Article 34 of the Surveillance and Court Agreement.

2. When competition authorities of the EFTA States rule on agreements, decisions or practices under Article 53 or Article 54 of the EEA Agreement which are already the subject of a decision by the EFTA Surveillance Authority, they cannot take decisions which would run counter to the decision adopted by the EFTA Surveillance Authority.

*EU**Article 3 - Regulation 1/2003*

1. Where the competition authorities of the Member States or national courts apply national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 81(1) of the Treaty which may affect trade between Member States within the meaning of that provision, they shall also apply Article 81 of the Treaty to such agreements, decisions or concerted practices. Where the competition authorities of the Member States or national courts apply national competition law to any abuse prohibited by Article 82 of the Treaty, they shall also apply Article 82 of the Treaty.

2. The application of national competition law may not lead to the prohibition of agreements, decisions by associations of undertakings or concerted practices which may affect trade between Member States but which do not restrict competition within the meaning of Article 81(1) of the Treaty, or which fulfil the conditions of Article 81(3) of the Treaty or which are covered by a Regulation for the application of Article 81(3) of the Treaty. Member States shall not under this Regulation be precluded from adopting and applying on their territory stricter national laws which prohibit or sanction unilateral conduct engaged in by undertakings.

*Article 11 - Regulation 1/2003*

1. The Commission and the competition authorities of the Member States shall apply the Community competition rules in close cooperation.

[...]

*Article 15 - Regulation 1/2003*

1. In proceedings for the application of Article 81 or Article 82 of the Treaty, courts of the Member States may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of the Community competition rules.

[...]

*Article 16 - Regulation 1/2003*

1. When national courts rule on agreements, decisions or practices under Article 81 or Article 82 of the Treaty which are already the subject of a Commission decision, they cannot take decisions running counter to the decision adopted by the Commission. They must also avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated. To that effect, the national court may assess whether it is necessary to stay its proceedings. This obligation is without prejudice to the rights and obligations under Article 234 of the Treaty.

2. When competition authorities of the Member States rule on agreements, decisions or practices under Article 81 or Article 82 of the Treaty which are already the subject of a Commission decision, they cannot take decisions which would run counter to the decision adopted by the Commission.

**MERCOSUR***Article 4 - Treaty of Asuncion*

The States Parties shall ensure equitable trade terms in their relations with third countries. To that end, they shall apply their domestic legislation to restrict imports whose prices are influenced by subsidies, dumping or any other unfair practice. At the same time, States Parties shall co-ordinate their respective domestic policies with a view to drafting common rules for trade competition.

*Article 7 - Fortaleza Protocol*

The States Parties shall adopt, for the purpose of their incorporation in the regulations of the MERCOSUR, within the period of two years, common rules for the control of acts and contracts, of any kind, which may limit or in any way cause prejudice to free trade, or result in the domination of the relevant regional market of goods and services, including which result in economic concentration, with a view to preventing their possible anti-competitive effects in the framework of the MERCOSUR.

**WAEMU***Opinion of the Court No. 003/2000*

Union's legislation must co-exist with national legislations, provided that the latter comply with Union law; in the case of conflict, primacy of Union law must be ensured.

#### **4.8. Provisions on jurisdictional flexibility between national and regional competition authorities**

##### *CAN*

###### *Article 6 - Decision 608*

The Member Countries may submit to the consideration of the Commission, the establishment of exclusions or exceptions to the scope of this Decision, of sensitive economic activities necessary to achieve the fundamental objectives of its policy, as long as these are contemplated in the national legislation of the requesting country and that meet the following conditions:

- a) That they report significant benefits to the development of the production, processing, distribution or commercialization of goods or services, or promote technological or economic progress.
- b) That they mean the granting of preferential conditions to depressed regions or economically sensitive activities or, in any case, in an emergency situation;
- c) That they do not involve to said economic agents, the possibility of eliminating the competition with respect to a substantial part of the production, commercialization or distribution of the goods or services in question;
- d) That are consistent with the Andean legal system.

###### *Article 20 - Decision 608*

Once the term referred to in the previous article has expired, the General Secretariat will have a period of ten (10) business days to prepare the Report on the results of the investigation.

The report will be sent to the members of the Committee [pursuant to Article 38, this is composed of a representative of each national competition authority], to the competent national authorities referred to in article 15, and to the interested parties.

The parties will have a term of fifteen (15) business days from the date of submission of the Report by the General Secretariat, to present their written arguments. The General Secretariat will immediately send the aforementioned allegations to the members of the Committee.

###### *Article 49 - Decision 608*

Bolivia may apply the provisions of this Decision, as applicable, for cases that arise outside the scope described in Article 5.

##### *CARICOM*

###### *Article 170 - Revised Treaty of Chaguaramas*

2. Every Member State shall establish and maintain a national competition authority for the purpose of facilitating the implementation of the rules of competition.
3. Every Member State shall require its national competition authority to:

[...]

(b) investigate any allegations of anti-competitive business conduct referred to the authority by the Commission or another Member State;

*Article 175 - Revised Treaty of Chaguaramas*

A Member State may request an investigation referred to in paragraph 1 of Article 174 where it has reason to believe that business conduct by an enterprise located in another Member State prejudices trade and prevents, restricts or distorts competition in the territory of the requesting Member State.

*Article 176 - Revised Treaty of Chaguaramas*

5. If there is a difference of opinion between the Commission and the Member State regarding the nature and effects of the business conduct or the jurisdiction of the investigating authority, the Commission shall:

- (a) cease any further examination of the matter; and
- (b) refer the matter to COTED for its decision.

**CEMAC**

*Article 18 - Regulation 1/99*

The Regional Council consists of the following designated members of so that every member country can be there represented. [...]

*Article 21 - Regulation 1/99*

Upon automatic referral or at the request of Member States, companies or organizations of consumers for breach of the rules of the competition, the Executive Secretariat may proceed any necessary verification with the companies and groups of companies.

**COMESA**

*Article 5 - COMESA Competition Regulations*

Pursuant to Article 5(2)(b) of the Treaty, Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of these Regulations or resulting from action taken by the Commission under these Regulations. They shall facilitate the achievement of the objects of the Common Market. Member States shall abstain from taking any measure which could jeopardize the attainment of the objectives of these Regulations.

*Article 7 - COMESA Competition Regulations*

2.(d) The Commission shall cooperate with and assist competition authorities of the Member States.

*Article 24 - COMESA Competition Regulations*

8. A Member State having attained knowledge of a merger notification submitted to the Commission may request the Commission to refer the merger for consideration under the Member State's national competition law if the Member State is satisfied that the merger, if carried out, is likely to disproportionately reduce competition to a material extent in the Member State or any part of the Member State.

9. The Commission shall consider the request referred to in paragraph 7 and shall inform the concerned Member State in writing [...] that:

(a) the Commission will deal with the case itself in order to maintain or restore effective competition on the market concerned and the region as a whole; or

(b) the whole or part of the case will be referred to the competent authorities of the Member State concerned with a view to the application of that Member State's national competition law.

*Article 26 - COMESA Competition Regulations*

6. Before embarking on an inquiry in terms of this Article, the Commission shall take all reasonable steps to notify all the relevant Member States. [...]

*Article 39 - COMESA Competition Regulations*

3. As long as the Commission has not initiated any procedure under Rules 32, 33 or 36, the authorities of the Member States shall remain competent to apply Article 16 (1) and Article 18 of the Regulations in accordance with Article 7 of the Regulations; they shall remain competent in this respect notwithstanding that the time limits specified in Rule 35 relating to notification have not expired.

*Article 40 - COMESA Competition Regulations*

1. The Commission shall forthwith transmit to the competent authorities of the Member States a copy of the applications and notifications together with copies of the most important documents lodged with the Commission for the purpose of establishing the existence of infringements of Articles 16 or 18 of the Regulations or of obtaining negative clearance or a decision in application of Article 16 (4) of the Regulations.

2. The Commission shall carry out the procedure set out in subparagraph 1 in close and constant liaison with the competent authorities of the Member States; such authorities shall have the right to express their views upon that procedure.

*EAC**Article 44 - EAC Competition Act*

3. Where a case or legal dispute to be decided by a Partner States' competition authority or court is also pending before the Authority or the Court, the Partner State's competition authority or court shall stay such proceedings until the Authority has made a decision.

4. Where a case or legal dispute within the scope of application of this law is not yet under consideration by the Authority, Partner States' authorities or courts shall refer the case or the legal dispute to the Authority.

6. In case of disagreement between the Authority and Partner States' authorities or courts, the matter shall be referred to the Court.

## *EAEU*

### *Section VI - Annex 19 to the EAEU Treaty*

57. The Commission and the authorised authorities of the Member States shall interact when authorised authorities of the Member States submit statements on violations of the general rules of competition with the Commission, when the Commission examines the statements on violations of the general rules of competition in transboundary markets, during the Commission's investigations of such violations, during examination by the Commission of cases of violation of general rules of competition in transboundary markets, as well as in other cases.

When the authorised authorities of the Member States are mutually interested in the discussion of the most pressing issues of the law enforcement practice, information exchange and problems of harmonisation of the legislation of the Member States, the Commission, in cooperation with the authorised authorities of the Member States, shall organise meetings at the level of the heads of the authorised authorities of the Member States and the member of the Board of the Commission in charge of competition and antitrust regulation.

The Commission shall cooperate with the central offices of the authorised authorities of the Member States.

58. A decision to refer the statement on a violation of the general rules of competition for examination to the Commission may be taken by the authorised authority of a Member State at any stage of its examination, conducted with account of the specific features determined by the legislation of the Member State referring the statement. [...]

59. A decision of the Commission to investigate the violation of the general rules of competition in transboundary markets or to refer the statement (materials) to the authorised authorities of the Member States with appropriate jurisdiction shall be regarded as grounds for termination of examination of the statement by the authorised authority of the Member State.

60. A decision to refer the statement (materials) for examination to the authorised authority of a Member State may be taken at any stage of its examination, if the Commission finds that suppression of the violation of the general rules of competition lies within the jurisdiction of the authorised authority. [...]

## *ECOWAS*

### *Article 13 - Supplementary Act A/SA.1/06/08*

4. A Consultative Competition Committee composed of members who are experts in the area of competition is hereby set up. Each Member State shall be represented by two of such members who can be replaced by other members in case of incapacity. The operation of the Committee shall be governed by rules of procedure adopted by the Commission after consultation with the Committee.

5. When the Committee has to deal with an issue related to an important economic sector, the delegation from each Member State shall include a representative of the national Regulatory Agency of the relevant sector or at least a representative of the professional association of the said sector.

### ***EFTA***

#### *Chapter 2, Article 3 - Protocol 4 of the Surveillance and Court Agreement*

1. Where the competition authorities of the EFTA States or national courts apply national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 53(1) of the EEA Agreement which may affect trade between the Contracting Parties to the EEA Agreement within the meaning of that provision, they shall also apply Article 53 of the EEA Agreement to such agreements, decisions or concerted practices. Where the competition authorities of the EFTA States or national courts apply national competition law to any abuse prohibited by Article 54 of the EEA Agreement, they shall also apply Article 54 of the EEA Agreement.

2. The application of national competition law may not lead to the prohibition of agreements, decisions by associations of undertakings or concerted practices which may affect trade between the Contracting Parties to the EEA Agreement but which do not restrict competition within the meaning of Article 53(1) of the EEA Agreement, or which fulfil the conditions of Article 53(3) of the EEA Agreement or which are covered by an act for the application of Article 53(3) of the EEA Agreement. EFTA States shall not under this act be precluded from adopting and applying on their territory stricter national laws which prohibit or sanction unilateral conduct engaged in by undertakings.

3. Without prejudice to general principles and other provisions of EEA law, paragraphs 1 and 2 do not apply when the competition authorities and the courts of the EFTA States apply national merger control laws nor do they preclude the application of provisions of national law that predominantly pursue an objective different from that pursued by Articles 53 and 54 of the EEA Agreement.

#### *Chapter 2, Article 6 - Protocol 4 of the Surveillance and Court Agreement*

National courts shall have the power to apply Articles 53 and 54 of the EEA Agreement.

#### *Chapter 2, Article 11 - Protocol 4 of the Surveillance and Court Agreement*

6. The initiation by the EFTA Surveillance Authority of proceedings for the adoption of a decision under Section III should relieve the competition authorities of the EFTA States of their competence to apply Articles 53 and 54 of the EEA Agreement. If a competition authority of an EFTA State is already acting on a case, the EFTA Surveillance Authority shall only initiate proceedings after consulting with that national competition authority.

### ***EU***

#### *Article 14 - Regulation 1/2003*

1. The Commission shall consult an Advisory Committee on Restrictive Practices and Dominant Positions prior to the taking of any decision under Articles 7, 8, 9, 10, 23, Article 24(2) and Article 29(1).

2. For the discussion of individual cases, the Advisory Committee shall be composed of representatives of the competition authorities of the Member States. For meetings in which issues other than individual cases are being discussed, an additional Member State representative competent in competition matters may be appointed. Representatives may, if unable to attend, be replaced by other representatives.

5. The Commission shall take the utmost account of the opinion delivered by the Advisory Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

7. At the request of a competition authority of a Member State, the Commission shall include on the agenda of the Advisory Committee cases that are being dealt with by a competition authority of a Member State under Article 81 or Article 82 of the Treaty. The Commission may also do so on its own initiative. In either case, the Commission shall inform the competition authority concerned.

A request may in particular be made by a competition authority of a Member State in respect of a case where the Commission intends to initiate proceedings with the effect of Article 11(6).

The Advisory Committee shall not issue opinions on cases dealt with by competition authorities of the Member States. The Advisory Committee may also discuss general issues of Community competition law.

#### *Article 4 - Regulation 139/2004*

4. Prior to the notification of a concentration within the meaning of paragraph 1, the persons or undertakings referred to in paragraph 2 may inform the Commission, by means of a reasoned submission, that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market and should therefore be examined, in whole or in part, by that Member State. The Commission shall transmit this submission to all Member States without delay. The Member State referred to in the reasoned submission shall, within 15 working days of receiving the submission, express its agreement or disagreement as regards the request to refer the case. Where that Member State takes no such decision within this period, it shall be deemed to have agreed. Unless that Member State disagrees, the Commission, where it considers that such a distinct market exists, and that competition in that market may be significantly affected by the concentration, may decide to refer the whole or part of the case to the competent authorities of that Member State with a view to the application of that State's national competition law.

#### *Article 9 - Regulation 139/2004*

[referral from the Commission to the Member States] 1. The Commission may, by means of a decision notified without delay to the undertakings concerned and the competent authorities of the other Member States, refer a notified concentration to the competent authorities of the Member State concerned in the following circumstances.

2. Within 15 working days of the date of receipt of the copy of the notification, a Member State, on its own initiative or upon the invitation of the Commission, may inform the Commission, which shall inform the undertakings concerned, that:

(a) a concentration threatens to affect significantly competition in a market within that Member State, which presents all the characteristics of a distinct market, or

(b) a concentration affects competition in a market within that Member State, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.

3. If the Commission considers that, having regard to the market for the products or services in question and the geographical reference market within the meaning of paragraph 7, there is such a distinct market and that such a threat exists, either:

(a) it shall itself deal with the case in accordance with this Regulation; or

(b) it shall refer the whole or part of the case to the competent authorities of the Member State concerned with a view to the application of that State's national competition law.

If, however, the Commission considers that such a distinct market or threat does not exist, it shall adopt a decision to that effect which it shall address to the Member State concerned, and shall itself deal with the case in accordance with this Regulation.

#### *Article 4 - Regulation 139/2004*

[referral from the Member States to the Commission] 5. With regard to a concentration as defined in Article 3 which does not have a Community dimension within the meaning of Article 1 and which is capable of being reviewed under the national competition laws of at least three Member States, the persons or undertakings referred to in paragraph 2 may, before any notification to the competent authorities, inform the Commission by means of a reasoned submission that the concentration should be examined by the Commission.

The Commission shall transmit this submission to all Member States without delay.

#### *Article 22 - Regulation 139/2004*

[referral from the Member States to the Commission] 1. One or more Member States may request the Commission to examine any concentration as defined in Article 3 that does not have a Community dimension within the meaning of Article 1 but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request.

### **MERCOSUR**

#### *Note 1 - Fortaleza Protocol*

This Protocol is pending congressional approval by each member country to be enforceable as national law.

#### *Article 10- Fortaleza Protocol*

The national organs of application shall initiate the procedure provided through the present Protocol ex officio or through reasoned presentation by the legitimately concerned party, which should appear before the Committee for the Defense of Competition and present a preliminary technical evaluation.

*WAEMU**Opinion of the Court No. 003/2000*

The Union has the exclusive competence to legislate on anti-competitive practices

*Article 28 / Regulation No. 3/2002/CM/UEMOA*

2. The Commission shall carry out the procedures referred to in paragraph 1 above, in close and constant liaison with the competent authorities of the Member States, which shall be entitled to comment on these procedures.

3. An Advisory Committee on Competition is set up, composed of competent officials in competition matters. Each Member State shall designate two officials who represent it and who may be replaced in case of incapacity by other officials. The functioning of the Committee is governed by Rules of Procedure adopted by the Commission following the opinion of the Committee.

4. The Advisory Committee on Competition is consulted prior to any decision adopted following the procedure set out under paragraph 1 and prior to any decision concerning the renewal, modification or withdrawal of a decision adopted in application of Article 6 of Regulation 02/2002/CM/UEMOA concerning anticompetitive practices within the WAEMU.

[...]

6. The Advisory Committee issues an opinion of the Commission's draft decision [...]

## 5. Substantive provisions

### 5.1. Objectives formulated in regional competition provisions

#### *CAN*

##### *Article 93 - Cartagena Agreement*

the Commission, before December 31, 1971 and at the General Secretariat's proposal, shall adopt the essential provisions to guard against or correct practices that may distort competition within the subregion, such as dumping, improper price manipulations, manoeuvres to upset the normal supply of raw materials, and others with a like effect. In this respect, the Commission shall consider the problems that could be created by imposing duties and other restrictions on exports.

It shall be the General Secretariat's responsibility to ensure the application of those provisions to the particular cases that are reported.

##### *Article 2 - Decision 608*

The purpose of this Decision is to protect and promote free competition within the Andean Community, seeking efficiency in markets and consumer welfare.

##### *Preamble - Decision 608*

The current stage of subregional integration, trade liberalization and globalisation requires Community legislation to protect free competition in the Andean Community and its promotion at the level of economic agents operating in the subregion, to ensure that the benefits achieved within the framework of this integration process are not undermined

#### *CARICOM*

##### *Art. 169 - Revised Treaty of Chaguaramas*

1. The goal of the Community Competition Policy shall be to ensure that the benefits expected from the establishment of the CSME (CARICOM Single Market and Economy) are not frustrated by anti-competitive business conduct.

2. In fulfilment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:

(a) the promotion and maintenance of competition and enhancement of economic efficiency in production, trade and commerce;

(b) subject to this Treaty, the prohibition of anti-competitive business conduct which prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market; and

(c) the promotion of consumer welfare and protection of consumer interests.

*Preamble - Revised Treaty of Chaguaramas*

Recalling the commitment to deepening regional economic integration through the establishment of the CARICOM Single Market and Economy (CSME) in order to achieve sustained economic development based on international competitiveness, co-ordinated economic and foreign policies, functional co-operation and enhanced trade and economic relations with third States.

Conscious further that disadvantaged countries, regions and sectors will require a transitional period to facilitate adjustment to competition in the CSME.

Convinced further that the application and convergence of national competition policies and the cooperation of competition authorities in the Community will promote the objectives of the CSME.

**CEMAC***Preamble - No. 1/99 - UEAC-CM-639*

- Considering that such a development [the establishment of CEMAC] must be assessed positively because it corresponds to the requirements of dynamic competition and is likely to increase the competitiveness of the economy of the subregion, to improve the conditions for growth and to raise the standard of living in the Union.

- Whereas, however, it must be ensured that the restructuring process does not result in a lasting harm to competition and consumer protection; and that the community legislation should therefore include provisions applicable to the practices of undertakings, and in particular, cartels, abuse of a dominant position and concentrations, which could significantly hinder effective competition in the common market or in a part of it.

**COMESA***Article 4 - COMESA Treaty*

[...] abolish all non-tariff barriers to trade among themselves [i.e., the Member States]

*Article 55 - COMESA Treaty*

1. The Member States agree that any practice which negates the objective of free and liberalised trade shall be prohibited. To this end, the Member States agree to prohibit any agreement between undertakings or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Common Market.

*Preamble - COMESA Competition Regulations*

Having Regard to Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA) [...]

Recognising that anti-competitive practices may constitute an obstacle to the achievement of economic growth, trade liberalisation and economic efficiency in the COMESA Member States; [...]

*Article 2 - COMESA Competition Regulations*

The purpose of these Regulations is to promote and encourage competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market, and to protect consumers against offensive conduct by market actors.

The objective of the EAC Competition Act is "to promote and protect fair competition in the Community, to provide for consumer welfare, to establish the East African Community Competition Authority".

*EAC**Article 3 - EAC Competition Act*

The objects of the competition policy and practice in the Community shall be to:

- (a) enhance the welfare of the people in the Community by:
- i) protecting all market participants' freedom to compete by prohibiting anti-competitive practices;
  - ii) protecting the opening of Partner States' markets against the creation of barriers to interstate trade and economic transactions by market participants;
  - iii) guaranteeing equal opportunities in the Community to all market participants in the Community, and especially to small and medium-sized enterprises;
  - iv) guaranteeing a level playing field for all market participants in the Community by eliminating any discrimination by Partner States on the basis of nationality or residence;
  - v) providing consumers access to products and services within the Community at competitive prices and better quality;
  - vi) providing incentives to producers within the Community for the improvement of production and products through technical and organizational innovation;
  - vii) promoting economic integration and development in the Community;
- (b) enhance the competitiveness of Community enterprises in world markets by exposing them to competition within the Community;
- (c) create an environment which is conducive to investment in the Community;
- (d) bring the Community's competition policy and practice in line with international best practices;
- (e) strengthen the Partner States' role in relevant international organizations.

***EAEU****Preamble - EAEU Treaty*

Convinced that further development of Eurasian economic integration shall serve the national interests of the Parties,

Driven by the urge to strengthen the economies of the Member States of the Eurasian Economic Union and to ensure their balanced development, convergence, steady growth in business activity, balanced trade and fair competition,

*Article 74 - EAEU Treaty*

1. This Section determines the general principles and rules of competition ensuring detection and elimination of anti-competitive behaviour on the territories of the Member States and actions producing a negative impact on competition in transboundary markets on the territory of two or more Member States.

*Article 93 - EAEU Treaty*

1. In order to enable stable and efficient development of the economies of the Member States and to create a proper environment for the promotion of mutual trade and fair competition between the Member States, common rules for granting subsidies for industrial goods shall be applied on the territories of the Member States [...]

*Preamble - Model Law on Competition*

The aim of this Law is the approximation of the regulatory environment for economic relations in the field of competition policy on the territory of the Common Economic Space.

***ECOWAS****Preamble - Supplementary Act A/SA.2/06/08*

Reaffirming that the implementation of the Community Competition Rules is necessary to promote the economic integration of Member States and stimulate region-wide economic growth.

*Preamble - Supplementary Act A/SA.1/06/08*

Noting that the promulgation of Community Competition Rules is consistent with the economic development objectives of ECOWAS Member States;

Recognising also that the protection of market conditions through the effective implementation of competition rules is consistent with international best practices and is in the interest of economic integration within the ECOWAS region; and

Desirous of endowing ECOWAS with competition rules that are consistent with international standards in order to promote fairness in trade and effective liberalization of trade.

*Article 3 - Supplementary Act A/SA.1/06/08*

The purposes of this Supplementary Act are to:

- (a) promote, maintain and encourage competition and enhance economic efficiency in production, trade and commerce at the regional level;
- (b) prohibit any anti-competitive business conduct that prevents, restricts or distorts competition at the regional level;
- (c) ensure the consumers' welfare and the protection of their interests;
- (d) expand opportunities for domestic enterprises in Member States to participate in world markets.

*EFTA**Article 1 - EEA Agreement*

1. The aim of this Agreement of association is to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties with equal conditions of competition, and the respect of the same rules, with a view to creating a homogeneous European Economic Area, hereinafter referred to as the EEA.

*EU**Preamble - TFEU*

[...] Recognising that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,

[...]

- 1) Consumer welfare (Österreichische Postsparkasse and Bank für Arbeit und Wirtschaft v Commission [2006] ECR II-1601, para 115 - Post Danmark A/S v Konkurrencerådet [2012] ECLI, para 20 - TeliaSonera Sverige [2011] ECR I-527, para 24);
- 2) Effective competition structure (T-Mobile, Opinion of AG Kokott, para 71 - TeliaSonera, para 22 - GlaxoSmithKline Services Unlimited v Commission)
- 3) Efficiency and Innovation (General Guidelines, para13; Guidance Paper, paras 1, 5-7; Vertical Restraints Guidelines, para 7);
- 4) Consumer well-being;
- 5) Plurality and Economic Freedom (Windows Mediaplayer; Google Android);
- 6) Market Integration;
- 7) Fairness (European Commission, 'Report on Competition Policy 2015' COM (2016) 393 final, 2; European Commission, 'Report on Competition Policy 2016' COM(2017) 285 final, 2.; Liga Portuguesa de Futebol Profissional and Bwin International [2009] ECR I-7633, Opinion of AG Bot, para 245)

***MERCOSUR****Preamble - Fortaleza Protocol*

Considering that it is urgent that directives be established in order to provide guidance to States Parties and the enterprises situated within them in the defense of competition in the MERCOSUR, as an instrument capable of assuring free market access and a balanced distribution of the benefits of the process of economic integration.

***WAEMU****Preamble - Regulation No. 3/2002/CM/UEMOA*

To enhance the effectiveness and competitiveness of the economic and financial activities of the Member States in the framework of an open, competitive market favouring the optimal allocation of resources;

## 5.2. Provisions on the material scope of application of regional competition framework

**Table 4. Material scope of application of regional competition framework**

Region	Anti-competitive agreements	Abuse of dominance	Merger control	State aid/competitive neutrality
CAN	Yes (art. 7, Decision 608)	Yes (art. 8, Decision 608)	No	No
CARICOM	Yes (art. 177, Revised Treaty of Chaguaramas)	Yes (art. 178-179, Revised Treaty of Chaguaramas)	No	No
CEMAC	Yes (art. 3-4, Regulation No. 1/99 - UEAC-CM-639)	Yes (art. 15-16, Regulation No. 1/99 - UEAC-CM-639)	Yes (art. 5-14, Regulation No. 1/99 - UEAC-CM-639)	Yes (Regulation No. 4/99- UEAC-CM-639 )
COMESA	Yes (art. 16 and 19, COMESA Competition Regulations)	Yes (art. 18, COMESA Competition Regulations)	Yes (art. 23, COMESA Competition Regulations)	Yes (art. 52, COMESA Treaty)
EAC (CAE)	Yes (art. 5, EAC Competition Act)	Yes (art. 8, EAC Competition Act)	Yes (art. 11, EAC Competition Act)	Yes (art. 16, EAC Competition Act)
EAEU	yes (art. 76, EAEU Treaty)	Yes (art. 76, EAEU Treaty)	No (art. 75, EAEU Treaty)	No
ECOWAS (CEDEAO)	Yes (art. 5, Supplementary Act A/SA.1/06/08)	Yes (art. 6, Supplementary Act A/SA.1/06/08)	Yes (art. 7, Supplementary Act A/SA.1/06/08)	Yes (art. 8, Supplementary Act A/SA.1/06/08)
EFTA	Yes (Article 53, EEA Agreement)	Yes (art. 54, EEA Agreement)	Yes (art. 57, EEA Agreement and EU Merger Regulation)	Yes (art. 61-64, EEA Agreement)
EU	Yes (art. 101, TFEU)	Yes (art. 102, TFEU)	Yes (EU Merger Regulation)	Yes (art. 107-108, TFEU)
MERCOSUR (MERCOSUL)	Yes (art. 6, Fortaleza Protocol)	Yes (art. 4, Fortaleza Protocol)	No	No
WAEMU (UEMOA)	Yes (Art. 88(a), WAEMU Treaty)	Yes (art. 88(b), WAEMU Treaty)	Voluntary regime (art. 3, Regulation N°3/2002/CM/UEMOA) <sup>2</sup>	Yes (art. 88(c), WAEMU Treaty)

*Note:*

1. Only concentrations with an "EFTA dimension" are dealt with by ESA. To date, no concentrations with an "EFTA dimension" have been notified to ESA.

2. Merger control is carried out by means of the rules on agreements or abuses of dominance.

*Source: OECD analysis*

### 5.3. Provisions on anti-competitive agreements

#### *CAN*

##### *Article 7 - Decision 608*

Presumptions that constitute restrictive conducts to free competition, among others, agreements that have the purpose or effect of:

- a) Directly or indirectly fix prices or other conditions of commercialization;
- b) Restrict the supply or demand of goods or services;
- c) Distribute the market of goods or services;
- d) Prevent or hinder the access or permanence of current or potential competitors in the market; or,
- e) Establish, arrange or coordinate positions, abstentions or results in bids, contests or public auctions.

Intergovernmental agreements of a multilateral nature are excluded.

#### *CARICOM*

##### *Article 177 - Revised Treaty of Chaguaramas*

1. A Member State shall, within its jurisdiction, prohibit as being anti-competitive business conduct, the following:

- (a) agreements between enterprises, decisions by associations of enterprises, and concerted practices by enterprises which have as their object or effect the prevention, restriction or distortion of competition within the Community;
- (b) actions by which an enterprise abuses its dominant position within the Community; or
- (c) any other like conduct by enterprises whose object or effect is to frustrate the benefits expected from the establishment of the CSME.

2. Anti-competitive business conduct within the meaning of paragraph 1 includes the following:

- (a) the direct or indirect fixing of purchase or selling prices,
- (b) the limitation or control of production, markets, investment or technical development;
- (c) the artificial dividing up of markets or restriction of supply sources;
- (d) the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage;
- (e) making the conclusion of a contract subject to the acceptance by the other party to the contract of additional obligations which, by their nature or according to commercial practice, have no connection with the subject matter of the contract;
- (f) unauthorised denial of access to networks or essential infrastructure;
- (g) predatory pricing;
- (h) price discrimination;

- (i) loyalty discounts or concessions;
- (j) exclusionary vertical restrictions; and
- (k) bid-rigging.

4. An enterprise shall not be treated as engaging in anti-competitive business conduct if it establishes that the activity complained of:

- (a) contributes to:
  - (i) the improvement of production or distribution of goods and services; or
  - (ii) the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- (b) imposes on the enterprises affected only such restrictions as are indispensable to the attainment of the objectives mentioned in sub-paragraph (a); or
- (c) does not afford the enterprise engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or services concerned.

### *CEMAC*

#### *Article 3 - Regulation No. 1/99 - UEAC-CM-639*

Are incompatible with the common market and therefore prohibited all agreements between companies, all decisions of association of companies, and all concerted practices which are likely to affect the trade between the Member States and which have the effect of restricting or distorting competition, and in particular those which consist of or are aimed at:

- (a) directly or indirectly fix purchase or selling prices or other trading conditions;
- (b) limit or control production, markets, technical development or investments;
- (c) allocate markets or sources of supply;
- (d) apply unequal conditions to trading partners with equivalent services, thus placing them at a competitive disadvantage.
- (e) make the conclusion of contracts subject to the acceptance by the partners of additional services which, by their nature or according to commercial usage, are not related to the subject of those contracts.
- f) To agree on the conditions of submission to tenders for the purpose of sharing the market to the detriment of other competitors.

However, certain agreements may be exempted from the prohibition provided for in Article 2 above. Such agreements should, however, meet the following conditions:

- Make a contribution to the development of economic efficiency;
- To be indispensable to the achievement of economic efficiency;
- To bring an advantage or a profit to consumers or users. This profit is not only financial.

In order to qualify for an exemption from the prohibition, agreements or understandings must be notified to the Regional Council for Competition by companies concerned.

**COMESA***Article 19 - COMESA Competition Regulations*

3. For the purpose of paragraph 1, the following are prohibited:

- (a) agreements fixing prices, which agreements hinder or prevent the sale or supply or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services;
- (b) collusive tendering and bid-rigging;
- (c) market or customer allocation agreements;
- (d) allocation by quota as to sales and production;
- (e) collective action to enforce arrangements;
- (f) concerted refusals to supply goods or services to a potential purchaser, or to purchase goods or services from a potential supplier; or
- (g) collective denials of access to an arrangement or association which is crucial to competition.

**EAC***Article 5 - EAC Competition Act*

2. Without prejudice to the generality of subsection (1) a person shall not engage in the following practices:

- (a) collusion by competitors to fix prices;
- (b) collusive tendering and bid-rigging;
- (c) collusive market or customer allocation;
- (d) quantitative restraints on investment, input, output or sales;
- (e) barring competitors from access to the market or from access to an association or arrangement which is essential for competition;
- (f) Concerted practice restricting movement of goods within the Community.

**EAEU***Article 76 - EAEU Treaty*

3. Any agreements between economic entities (market participants) of the Member States shall be prohibited if these entities are competitors operating in the same product market and such agreements lead or may lead to:

- 1) setting or maintaining prices (tariffs), discounts, allowances (surcharges), extra charges;
- 2) increasing, decreasing or maintaining prices in tenders;
- 3) dividing the commodity market in the territorial principle, by the volume of sales or purchases of goods, by the range of products sold or composition of sellers or buyers (customers);

- 4) reduction in or cessation of the production of goods;
  - 5) refusal to conclude agreements with certain sellers or buyers (customers).
4. “Vertical” agreements between economic entities (market participants) shall be prohibited, with the exception of “vertical” agreements recognised as admissible in accordance with the admissibility criteria determined by Annex 19 to this Treaty, if:
- 1) such agreements lead or may lead to setting a resale price of goods, except in the case where the seller sets to the buyer the maximum resale price of goods;
  - 2) such agreements obligate the buyer not to sell goods of any economic entity (market participant) that is a competitor of the seller. This prohibition shall not apply to agreements implying organisation by the buyer of the sale of goods under the trademark or other identifications of the seller or manufacturer.
5. Other agreements between economic entities (market participants) shall be prohibited, except for “vertical” agreements recognised as admissible in accordance with the admissibility criteria determined in Annex 19 to this Treaty, if it is determined that such agreements lead or may lead to any restriction of competition.

### ***ECOWAS***

#### *Article 5 - Supplementary Act A/SA.1/06/08*

1). The following shall be prohibited as incompatible with the ECOWAS Common Market: all agreements between enterprises, decisions by associations of enterprises and concerted practices which may affect trade between ECOWAS Member States and the object or effect of which are or may be the prevention, restriction, distortion or elimination of competition within the Common Market, and in

Particular those which:

- (a) directly or indirectly fix purchase or selling prices, terms of sale, or any other, trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets, customers, or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties; thereby placing them at a competitive disadvantage; or
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

### ***EFTA***

#### *Article 53 - EEA Agreement*

1. The following shall be prohibited as incompatible with the functioning of this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between

Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

## *EU*

### *Article 101 - TFEU*

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

### ***MERCOSUR***

#### *Article 6 - Fortaleza Protocol*

The following forms of conduct, inter alia, insofar as they embody the hypotheses advanced in article 4, constitute practices which limit competition;

I. to fix, impose or practice, directly or indirectly, in collaboration with competitors or individually, in any form, the prices and conditions of the purchase or sale of goods, the providing of services or production;

II. to procure or to contribute to the adoption of uniform business practices or concerted action by competitors;

III. to regulate goods or service markets, entering into agreements to limit or control research and technological development, the production of goods or the supply of services, or to hinder investments intended for the production of goods or services or their distribution.

IV. to divide up the markets of finished or semi-finished goods or services, or the supply source of raw materials and intermediate products.

V. to limit or prevent access of new enterprises to the market;

VI. to agree on prices or advantages which may affect competition in public bids;

VII. to adopt, with regard to third parties, unequal conditions for equivalent services, thus placing them at a competitive disadvantage;

VIII. to subordinate the sale of one good to the purchase of another good or to the use of a service, or to subordinate the supply of a service to the use of another or to the purchase of a good;

IX. to prevent the access of competitors to raw materials, investment goods or technologies, as well as to distribution channels;

X. to require or to grant exclusivity with respect to the dissemination of publicity in the communication media;

XI. to subordinate buying or selling to the condition of not using or acquiring, selling or supplying goods or services which are produced, processed, distributed or marketed by a third party;

XII. to sell merchandise, for reasons unfounded on business practices, at prices below the cost price;

XIII. to reject without good reason the sale of goods or the supply of services;

XIV. to interrupt or to reduce production on a large scale, without any justifiable cause;

XV. to destroy, render useless or accumulate raw materials, intermediate or finished goods, as well as to destroy, render useless or obstruct the functioning of equipment designed to produce, transport or distribute them.

XVI. to abandon, cause to be abandoned or destroy crops and plantations without just cause.

XVII. to manipulate the market in order to impose prices.

### *WAEMU*

#### *Article 3 - Regulation No 2/2002/CM/UEMOA*

All agreements between undertakings, decisions by associations of undertakings and concerted practices, that have as their object or effect the restriction or distortion of competition within the Union are prohibited and in particular those that consist in:

- a) limiting access to the market;
- b) directly or indirectly fixing prices, including resale price maintenance;
- c) sharing markets or supply sources;
- d) limiting output, distribution channels, technical development and investments;
- e) applying dissimilar conditions to equivalent transactions;
- f) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts

#### 5.4. Provisions on abuse of dominance

##### *CAN*

###### *Article 8 - Decision 608*

Presumed to constitute conduct of abuse of a dominant position in the market:

- a) Predatory pricing;
- b) The fixation, imposition or unjustified establishment of the exclusive distribution of goods or services;
- c) The subordination of the conclusion of contracts to the acceptance of supplementary benefits that, by their nature or arrangement for commercial use, do not relate to the purpose of such contracts;
- d) The adoption of unequal conditions in relation to contracting third parties of analogous situation, in the case of benefits or equivalent operations, placing them at a competitive disadvantage;
- e) The unjustified refusal, to satisfy demands of purchase or acquisition, or to accept offers of sale or provision, of products or services;
- f) The incitement to third parties not to accept the delivery of goods or the rendering of services; to prevent its provision or acquisition; or, not to sell raw materials or supplies, or provide services, to others;
- g) Those conducts that impede or hinder the access or permanence of current or potential competitors in the market for reasons other than economic efficiency.

##### *CARICOM*

###### *Article 179 - Revised Treaty of Chaguaramas*

1. Subject to paragraph 2 of this Article, an enterprise abuses its dominant position in a market if it prevents, restricts or distorts competition in the market and, in particular but without prejudice to the generality of the foregoing, it:

- (a) restricts the entry of any enterprise into a market;
- (b) prevents or deters any enterprise from engaging in competition in a market;
- (c) eliminates or removes any enterprise from a market;
- (d) directly or indirectly imposes unfair purchase or selling prices or other restrictive practices;
- (e) limits the production of goods or services for a market to the prejudice of consumers;
- (f) 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;
- (g) engages in any business conduct that results in the exploitation of its customers or suppliers, so as to frustrate the benefits expected from the establishment of the CSME.

3. An enterprise shall not be treated as abusing its dominant position if it establishes that:

- (a) its behaviour was directed exclusively to increasing efficiency in the production, provision or distribution of goods or services or to promoting technical or economic progress and that consumers were allowed a fair share of the resulting benefit;
- (b) it reasonably enforces or seeks to enforce a right under or existing by virtue of a copyright, patent, registered trade mark or design; or
- (c) the effect or likely effect of its behaviour on the market is the result of superior competitive performance of the enterprise concerned.

### ***CEMAC***

#### *Article 15 - Regulation No. 1/99 - UEAC-CM-639*

Any monopoly or situation likely to support the acquisition of a market share greater than or equal to 30% constitutes a dominant position.

#### *Article 16 - Regulation No. 1/99 - UEAC-CM-639*

Incompatible with the Common Market and prohibited, to the extent that trade between Member States is likely to be affected, is the fact that one or more companies exploit abusively a dominant position on the Common Market or in part of it. This exploitation may include:

- (a) directly or indirectly impose unfair purchase or sale prices or other transaction conditions;
- (b) engage in abnormally low or unreasonably high prices;
- (c) limit production, markets or technical development to the detriment of consumers;
- (d) apply unequal conditions to trading partners with equivalent benefits, thus placing them at a competitive disadvantage;
- (e) make the conclusion of contracts conditional on the partners accepting additional services which, by their nature or according to commercial usage, are not related to the subject-matter of those contracts.
- f) to agree on the conditions of submissions to calls for tenders with a view to sharing the market to the detriment of other competitors.

### ***COMESA***

#### *Article 18 - COMESA Competition Regulations*

Any abuse by one or more undertakings of a dominant position within the Common Market or in a substantial part of it shall be prohibited as incompatible with the Common Market in so far as it may affect trade between Member States, if it:

- (a) restricts, or is likely to restrict, the entry of any undertaking into a market;
- (b) prevents or deters, or is likely to prevent or deter, any undertaking from engaging in competition in a market;
- (c) eliminates or removes, or is likely to eliminate or remove, any undertaking from a market;

- (d) directly or indirectly imposes unfair purchase or selling prices or other restrictive practices;
- (e) limits the production of goods or services for a market to the prejudice of consumers;
- (f) 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; or
- (g) engages in any business activity that results in the exploitation of its customers or suppliers, so as to frustrate the benefits expected from the establishment of the Common Market.

### *EAC*

#### *Article 8 - EAC Competition Act*

An undertaking holding a dominant position in the relevant market shall not:

- (a) directly or indirectly impose unfairly high selling or unfairly low purchasing prices or other unfair trading conditions;
- (b) limit production or technical development and innovation to the prejudice of consumers;
- (c) discriminate between consumers or suppliers according to non-commercial criteria such as nationality or residence.

#### *Article 9 - EAC Competition Act*

1. An undertaking holding a dominant position in the relevant market shall not engage in any practice that excludes, or is intended to exclude, its competitors from the market by means of:

- (a) predatory pricing;
- (b) price squeezing;
- (c) cross subsidization.

2. An undertaking holding a dominant position in the relevant market shall not engage in a practice that harms the competitive position of competitors on downstream or upstream markets by:

- (a) a refusal to deal;
- (b) a refusal of access to an essential facility;
- (c) tying arrangements;
- (d) Unjustifiably discriminating among customers or suppliers.

#### *Article 10 - EAC Competition Act*

1. An undertaking holding a dominant position in the relevant market shall not engage in a practice whereby:

- (a) the resale prices or conditions are directly or indirectly fixed;

- (b) customers or competitors are foreclosed from access to sources of supply or from access to outlets;
- (c) movement of goods or services between different geographical areas are restricted;
- (d) An intellectual property right is used in any way that goes beyond the limits of its legal protection.

### ***EAEU***

#### *Article 76 - EAEU Treaty*

1. Any actions (omission) of dominant economic entities (market participants) that result or may result in prevention, restriction or elimination of competition and/or infringement of interests of other persons shall be prohibited, including the following actions (omission):

- 1) setting and maintaining monopolistically high or low prices of goods;
- 2) withdrawal of goods from circulation resulting in an increase in the price of such goods;
- 3) forced imposition of any economically or technologically unjustified contract conditions to contractors that are unfavourable for the latter or not related to the subject matter of the agreement;
- 4) economically or technologically unjustified reduction or cessation of production of goods, if the goods are in demand or orders for their delivery have been placed and their production is feasible, as well as if such reduction or cessation of production of the goods is not explicitly provided for by this Treaty and/or other international treaties of the Member States;
- 5) economically or technologically unjustified refusal to enter or evasion from concluding agreements with individual buyers (customers) capable of manufacturing or supplying the relevant goods with account of the specifications set out in this Treaty and/or other international treaties of the Member States;
- 6) economically, technologically or otherwise unjustified setting different prices (tariffs) for the same products, thus creating discriminatory conditions, with account of the specifications set out in this Treaty and/or other international treaties of the Member States;
- 7) creating barriers to entry into the commodity market or exit from the commodity market for other economic entities (market participants).

### ***ECOWAS***

#### *Article 6 - Supplementary Act A/SA.1/06/08*

2. Any abuse, or acquisition and abuse of a dominant position by one or more enterprises within the ECOWAS Common Market or in a substantial part thereof shall be prohibited as incompatible with the Common Market in so far as it may affect trade between Member States. Such abuse may, in particular, consist of:

- (a) limiting access to a relevant market or otherwise unduly restraining competition;
- (b) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (c) limiting production, markets or technical development to the prejudice of consumers;

(d) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

### ***EFTA***

#### *Article 54 - EEA Agreement*

Any abuse by one or more undertakings of a dominant position within the territory covered by this Agreement or in a substantial part of it shall be prohibited as incompatible with the functioning of this Agreement in so far as it may affect trade between Contracting Parties.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

### ***EU***

#### *Article 102 - TFEU*

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

### ***MERCOSUR***

N.A.

*WAEMU**Article 4 - Regulation No 2/2002/CM/UEMOA*

Any abuse by one or more undertakings in a dominant position within the common market or in a substantial part thereof is prohibited as incompatible with the common market.

[...]

In particular, abuses may consist in:

- a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- b) limiting production, markets or technical development to the prejudice of consumers;
- c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

## 5.5. Provisions on merger control

*CAN*

N.A.

*CARICOM*

N.A.

*CEMAC*

*Article 5 - Regulation No. 1/99 - UEAC-CM-639*

1. A concentration operation is carried out:

- (a) where two or more previously independent companies merge;
- (b) where one or more undertakings acquire, directly or indirectly, whether through the acquisition of shares, contracts or any other means, the control of all or any part of one or more other undertakings.

2. A concentration is not prohibited:

- (a) where credit institutions, other financial institutions or insurance companies, whose normal business includes the trading and trading of securities on their behalf or on behalf of others, hold, on a temporary basis, interests they have acquired in a company for resale.
- (b) where the control is exercised provisionally by an undertaking mandated by the public authority under the law of a Member State in the context of insolvency proceedings or bankruptcy of undertakings.

*Article 6 - Regulation No. 1/99 - UEAC-CM-639*

1. This Regulation applies to all concentration operations of Community dimension.

2. A concentration has a Community dimension when at least two (2) of the partner companies achieve a turnover in the Common Market of more than one billion CFA francs each or the participating companies hold together 30% of the market.

*Article 7 - Regulation No. 1/99 - UEAC-CM-639*

1. The concentrations incompatible with the common market are those that:

- significantly restrict the choice of suppliers and / or users;
- limit access to sources of supply or outlets;
- create barriers to entry by specifically prohibiting distributors from perform parallel imports;

2. Mergers which do not create or strengthen a dominant position and which have a low impact on competition in the common market or a part of it must be declared compatible with the common market.

**COMESA***Article 26 - COMESA Competition Regulations*

Whenever called upon to consider a merger, the Commission shall initially determine whether or not the merger is likely to substantially prevent or lessen competition by assessing the factors set out in paragraph 2, and if it appears that the merger is likely to substantially prevent or lessen competition, the Commission shall then determine:

- (a) whether the merger is likely to result in any technological efficiency or other pro-competitive gain which will be greater than and offset the effects of any prevention or lessening of competition that may result or is likely to result from the merger and would not likely be obtained if the merger is prevented;
- (b) whether the merger can be justified on substantial public interest grounds by assessing the factors set out in paragraph 4.

**EAC***Article 13 - EAC Competition Act*

A merger or acquisition shall not be approved by the Authority if that merger or acquisition leads to the creation, or strengthening of an already subsisting dominant position, and thereby substantially lessening competition in the relevant market. [...]

**EAEU**

Only Member States are in charge of merger control.

*Article 75 - EAEU Treaty*

4. The Member States shall, in accordance with their legislation, ensure efficient control over the economic concentration to the extent required for the protection and development of competition on the territory of each Member State.

**ECOWAS***Article 7 - Supplementary Act A/SA.1/06/08*

(1) Every merger, takeover, joint venture, or other acquisition or business combination including interconnected directorships whether of a horizontal, vertical, or conglomerate nature between or among enterprises are prohibited where the resultant market share in the ECOWAS Common Market, or any significant part thereof, attributable to any good, service, line of commerce, or activity affecting commerce shall result in abuse of dominant market position resulting in a substantial reduction of competition.

**EFTA***Article 57 - EEA Agreement*

1. Concentrations the control of which is provided for in paragraph 2 and which create or strengthen a dominant position as a result of which effective competition would be significantly impeded within the territory covered by this Agreement or a substantial part of it, shall be declared incompatible with this Agreement.

2. The control of concentrations falling under paragraph 1 shall be carried out by:

(a) the EC Commission in cases falling under Regulation (EEC) No 4064/89 in accordance with that Regulation and in accordance with Protocols 21 and 24 and Annex XIV to this Agreement. The EC Commission shall, subject to the review of the EC Court of Justice, have sole competence to take decisions on these cases;

(b) the EFTA Surveillance Authority in cases not falling under subparagraph (a) where the relevant thresholds set out in Annex XIV are fulfilled in the territory of the EFTA States in accordance with Protocols 21 and 24 and Annex XIV. This is without prejudice to the competence of EC Member States.

## *EU*

### *Art. 2 - Regulation 139/2004*

1. Concentrations within the scope of this Regulation shall be appraised in accordance with the objectives of this Regulation and the following provisions with a view to establishing whether or not they are compatible with the common market. In making this appraisal, the Commission shall take into account:

(a) the need to maintain and develop effective competition within the common market in view of, among other things, the structure of all the markets concerned and the actual or potential competition from undertakings located either within or outwith of the Community;

(b) the market position of the undertakings concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.

2. A concentration which would not significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared compatible with the common market.

3. A concentration which would significantly impede effective competition, in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared incompatible with the common market.

4. To the extent that the creation of a joint venture constituting a concentration pursuant to Article 3 has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria of Article 81(1) and (3) of the Treaty, with a view to establishing whether or not the operation is compatible with the common market.

5. In making this appraisal, the Commission shall take into account in particular:

— whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market,

— whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

***MERCOSUR***

N.A.

***WAEMU******Article 3 - Regulation No 3/2002/CM/UEMOA***

2. Request for negative clearance: The agreements, decisions and concerted practices referred to in Article 88 (a) and (b) of the Treaty in favor of which the interested parties wish to avail themselves of the benefit of a negative clearance under paragraph shall be notified to the Commission under the conditions laid down in Articles 8 to 11 of this Regulation.

## 5.6. Provisions on state aid / competitive neutrality

*CAN*

N.A.

*CARICOM*

N.A.

*CEMAC*

*Article 2 - Regulation No. 4/99-UEAC-CM-639*

1. Incompatible with the Common Market are direct aids granted by means of State resources in any form whatsoever, in so far as they affect trade between Member States , which distort or threaten to distort competition by favoring certain companies or productions.

2. Compatible with the Common Market are:

(a) aid of a social nature granted to individual consumers, provided that it is granted without discrimination as to the origin of the goods;

(b) aid to remedy damage caused by natural disasters or other unforeseeable and insurmountable events by the enterprise;

3. Can be considered compatible with the Common Market:

(a) aid to undertakings to promote the economic development of less-favored regions or regions with a notable delay in their economic development.

(b) aid to promote the implementation of an important project of common sub-regional interest , or to remedy a serious disturbance in the economy of a Member State .

(c) aid to undertakings intended to facilitate the development of certain activities where they do not adversely affect trading conditions to an extent contrary to the common interest.

(d) aid to promote culture, heritage conservation and environmental protection where it does not affect the conditions of trade and competition in the community to an extent contrary to the common interest

(e) Aid to Small and Medium-sized Enterprises (SMEs)

The list provided for in paragraph 3 will be periodically updated by decision of the Council of Ministers.

The CEMAC Regional Council of Competition has exclusive competence to determine whether they are compatible with the common market or not.

4. State aid may take the form, in particular, of subsidies, exemptions from taxes and duties, tax exemptions, interest rate subsidies, loan guarantees on particularly favorable terms, provision of property on preferential terms, compensation for operating loss.

**COMESA***Article 52 - COMESA Treaty*

Except as otherwise provided in this Treaty, any subsidy granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Member States, be incompatible with the Common Market.[...]

**EAC***Article 14 - EAC Competition Act*

A Partner State may, subject to this Act, grant subsidy to any undertaking if it is of the opinion that it is in the public interest do so. [...]

*Article 16 - EAC Competition Act*

A Partner State shall not grant any subsidy which distorts or threatens to distort competition in the Community.

Without prejudice to the generality of subsection (1), a Partner State shall not grant:

- (a) any subsidy for the promotion of exports or imports between the Partner States;
- (b) any subsidy which is granted on the basis of the nationality or residence of persons or country of origin of goods or service.

*Article 17 - EAC Competition Act*

Section 16 shall not apply to subsidies granted:

- (a) to consumers of certain categories of products or services, to promote social services;
- (b) for the development of small and medium-sized enterprises;
- (c) for the restructuring, rationalizing and modernizing of specific sectors of the economy;
- (d) for less developed regions;
- (e) for research and development;
- (f) for the financing of a public sector;
- (g) for the promotion and protection of food security;
- (h) for the protection of the environment;
- (i) for the education and training of personnel;
- (j) for the conservation of the cultural heritage;
- (k) for the compensation of damages caused by natural disasters or by macroeconomic disturbances.

## *EAEU*

### *Article 93 - EAEU Treaty*

1. In order to enable stable and efficient development of the economies of the Member States and to create a proper environment for the promotion of mutual trade and fair competition between the Member States, common rules for granting subsidies for industrial goods shall be applied on the territories of the Member States, including for the provision or receipt of services that are directly related to the manufacture, sale and consumption of industrial goods, according to Annex 28 to this Treaty. [...]

5. Any investigation aimed at analysing the conformity of subsidies granted on the territory of a Member State to the provisions of this Article and Annex 28 to this Treaty shall be conducted in accordance with the procedure described in Annex 28 to this Treaty.

6. The Commission shall ensure the control of implementation of the provisions of this Article and Annex 28 to this Treaty and shall have the following powers:

1) to monitor and conduct comparative legal analysis of the legislation of the Member States for compliance with the provisions of this Treaty in respect of subsidies, as well as to prepare annual reports on compliance of the Member States with the provisions of this Article and Annex 28 to this Treaty;

2) to facilitate the organisation of consultations between the Member States on the harmonisation and unification of their legislation on the provision of subsidies;

3) to adopt binding decisions for the Member States provided for by Annex 28 to this Treaty on the basis of voluntary coordination of planned and provided specific subsidies, including:

- adoption of decisions on the admissibility or inadmissibility of specific subsidies in accordance with paragraph 6 of Annex 28 to this Treaty on the basis of the criteria outlined in the international agreement within the Union stipulated in paragraph 7 of Annex 28 to this Treaty;
- holding a hearing on provision of specific subsidies and adoption of related binding decisions in cases determined by the international agreement within the Union stipulated in paragraph 7 of Annex 28 to this Treaty;
- resolution of disputes on matters relating to implementation of the provisions of this Article and Annex 28 to this Treaty and provision of explanations on their application;

4) to request and obtain information on subsidies granted in the procedure and on the terms determined under an international treaty within the Union stipulated in paragraph 7 of Annex 28 to this Treaty.

*Section II - Annex 28* provides for the general principles for assessing specific subsidies. *Section III - Annex 28* contains rules on the prohibited types of subsidies. *Section IV - Annex 28* contains rules on permissible subsidies.

## *ECOWAS*

### *Article 7 - Supplementary Act A/SA.1/06/08*

1. Except as otherwise provided in this Supplementary Act, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain enterprises or the production of certain goods shall,

in so far as it affects trade between Member States, be incompatible with the ECOWAS Common Market.

2. The following shall be compatible with the Common Market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; and

(b) aid to remedy the damage caused by natural disasters or exceptional occurrences.

3. The following may be considered to be compatible with the ECOWAS Common Market:

(a) aid to promote the socioeconomic development of areas of the Community where the standard of living is exceptionally low or in which there is serious underemployment;

(b) aid to promote the execution of an important project of Community interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest; and

(e) such other categories of aid as may be specified by a decision of the Authority of Heads of State and Government on the recommendation of the Council of Ministers acting on a proposal from the ECOWAS Competition Authority.

## ***EFTA***

### *Article 61 - EEA Agreement*

1. Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.

2. The following shall be compatible with the functioning of this Agreement:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the functioning of this Agreement:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of an EC Member State or an EFTA State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) such other categories of aid as may be specified by the EEA Joint Committee in accordance with Part VII.

#### *Article 62 - EEA Agreement*

1. All existing systems of State aid in the territory of the Contracting Parties, as well as any plans to grant or alter State aid, shall be subject to constant review as to their compatibility with Article 61. This review shall be carried out:

(a) as regards the EC Member States, by the EC Commission according to the rules laid down in Article 93 of the Treaty establishing the European Economic Community;

(b) as regards the EFTA States, by the EFTA Surveillance Authority according to the rules set out in an agreement between the EFTA States establishing the EFTA Surveillance Authority which is entrusted with the powers and functions laid down in Protocol 26.

2. With a view to ensuring a uniform surveillance in the field of State aid throughout the territory covered by this Agreement, the EC Commission and the EFTA Surveillance Authority shall cooperate in accordance with the provisions set out in Protocol 27.

### *EU*

#### *Article 107 - TFEU*

1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

2. The following shall be compatible with the internal market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

3. The following may be considered to be compatible with the internal market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

#### *Article 108 - TFEU*

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.
2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 258 and 259, refer the matter to the Court of Justice of the European Union direct. On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known. If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.
4. The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109, determined may be exempted from the procedure provided for by paragraph 3 of this Article.

#### **MERCOSUR**

##### *Article 32 - Fortaleza Protocol*

The States Parties undertake, within a two year period following entry into force of the present Protocol, and for purposes of their incorporation in this instrument, to draft joint standards and mechanisms which shall govern State aid which is susceptible to limit, restrict, falsify or distort competition and to affect trade between the States Parties.

*WEAMU*

*Article 88 - WAEMU Treaty and Article 5 - Regulation No 2/2002/CM/UEMOA*

[the Treaty prohibits] public aids that could distort competition by favouring certain undertakings or certain productions.