

**NEW DAWN FOR BUSINESS IN AFRICA AS COMESA MERGER REGIME MONETARY THRESHOLDS ESTABLISHED AND FILING FEES LOWERED**



The COMESA Competition Commission (“the **Commission**”) informed the general public on 8<sup>th</sup> April, 2015 that the COMESA Council of Ministers at its meeting held in Addis Ababa on 26<sup>th</sup> March, 2015 adopted the following amendment legislation (“the **Amendments**”):

- Amendment to the COMESA Competition Rules on the Determination of Merger Notification Thresholds and Method of Calculation, 2012;
- Amendment to the COMESA Competition Rules, 2004 (Merger Filing Fees); and
- Form 12 on Notice of Merger.

The Amendments bring about significant relief and certainty to firms doing business in the COMESA Common Market.

The Amendment to the COMESA Competition Rules on Determination of Merger Notification Thresholds and Method of Calculation, 2012 (the “**Rules on Determination of Merger Notification Thresholds and Method of**

**Calculation**”) provides that any merger shall be notifiable where both the acquiring firm and target firm or either the target or acquiring firm operate in two or member states if:

- (i) Where the combined annual turnover or value of assets (whichever is higher) of the all merging parties in the COMESA Common Market equals or exceeds COM\$50 million; and
- (ii) Where each of the merging parties have an annual turnover or asset value in the COMESA Common Market of at least COM\$10 million unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the COMESA Common Market within one and the same Member State.

Prior to the Amendments, the monetary thresholds for merger notifications for transactions in the COMESA Common Market was set at zero.

The Rules on Determination of Merger Notification Thresholds and Method of Calculation provide specifically for the method of determination and valuation of annual turnover and assets of a firm in accordance to Part 4 of the COMESA Competition Regulations, 2004.

Rule 3 on Determination of Merger Notification Thresholds and Method of Calculation provides that the annual turnover and value of assets of a firm shall be calculated by adding together, respectively, the turnover or value of assets of the following:

- (i) the party to a merger concerned;
- (ii) its subsidiaries;

- (iii) its parent companies; and
- (iv) other subsidiaries of the parent companies not included in (ii)

The turnover and assets of a firm shall be calculated in accordance with GAAP:

- (i) standards that apply to the recognition of revenue, depreciation and amortization of assets; and
- (ii) material events or transactions that occurred subsequent to the relevant date or period.

The Rules on Determination of Merger Notification Thresholds and Method of Calculation provide that should the merging firms financial statements be in a currency other than COM\$ or United States Dollars its turnover and assets at the end of the financial year shall be converted to COM\$ or United States Dollars according to the average over the 12 months of the financial year of the foreign exchange rate reported by the Central Bank where such currency is issued.

In addition to the above, the Amendment to the COMESA Competition Rules, 2004 (Merger Filing Fees) brings about a significant reduction in merger filing fees. The filing fee, prior to the Amendment, is calculated at 0.5% of the combined annual turnover or combined asset value (whichever is higher) of the merging parties in the Common Market, capped at a maximum fee of COM\$500 000. The filing fee post the Amendment is calculated at 0.1% of the combined annual turnover or combined asset value (whichever is higher) of the merging parties in the Common Market, capped at a maximum fee of COM\$200 000.

Finally, a revised Form 12 on Notice of Merger has also been provided and can be accessed from the following link [www.comesacompetition.org/wpcontent/uploads/2015/04/Revised-Form-12.pdf](http://www.comesacompetition.org/wpcontent/uploads/2015/04/Revised-Form-12.pdf) or the COMESA Competition Commission website.

All in all the reduction in the merger filing fee brings relief to firms eyeing new opportunities in the region and is certainly good news for business in Africa.

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For further information, please contact:-

Michael Kontos – Partner  
[mkontos@walkerkontos.com](mailto:mkontos@walkerkontos.com)

Anjli Maru – Associate  
[amaru@walkerkontos.com](mailto:amaru@walkerkontos.com)

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