

Companies expanding to the eastern and southern Africa market through mergers and acquisitions will now be vetted and approved by a regional competition authority.

The Common Market for East and South Africa (Comesa) Competition Commission became operational on January 14 and is now pursuing its mandate to monitor and investigate monopolistic behaviour within the bloc.

Companies from the 20 member states will have to notify the commission of any impending mergers and acquisitions that may have regional impact at a fee of Sh43.5 million (\$500,000 at current exchange rates).

The commission will then assess whether such commercial decisions could result in uncompetitive behaviour that may negatively affect free and fair trade in the region.

“This therefore means that mergers with a regional dimension that are concluded without notification of the commission shall be null, void and without legal effect,” the commission’s mergers and acquisitions manager, Mr Willard Mwemba, told the Sunday Nation in a statement.

There have been concerns that the commission could increase the number of bureaucratic procedures that businesses have to go through thereby making the region less attractive to investors.

The Competition Commission has the power to issue cease and desist orders to any companies it determines to be carrying out anti-competitive agreements.

It can also impose fines and sanctions for breaches of competition regulations as well as order compensation to be paid to any parties affected by anti-competitive behaviour.

Beyond ensuring that companies adhere to the principles of fair competition, the commission also has the mandate to protect consumer rights in the Comesa region.

Investigations carried out at the behest of citizens that uncover conduct that erodes consumer welfare in the region could lead to sanctions or legal proceedings at the Comesa Court of Justice.

The Competition Commission was established in 2004 with the passage of the Comesa Competition Regulations. However, the body has since remained largely toothless due to resource challenges.

Although no mergers or acquisitions had been reported to the commission in the first week of operation, it has the potential to cause wide ranging repercussions in the business processes of companies within the region.

For one, there is no prescribed lower threshold for merger notifications. Companies of any size that wish to merge with firms in other Comesa states will have to notify the commission.

Further, companies do not necessarily need to be based in Comesa countries in order to fall under the jurisdiction of the law.

Any company whose operations significantly affect the Comesa region will also have to notify the Commission of all its mergers and acquisitions.

Kenyan firms have over the last decade adopted strategies that have seen them spread their wings into neighbouring Comesa countries.

In its June 2012 Kenya Economic Update, the World Bank noted that 56 per cent of the banks operating in the East African region have hubs in Kenya.

**SOURCE:** By MUTHOKI MUMO - [Daily Nation](#) (KENYA)