



OFFICIAL GAZETTE

of the
COMMON MARKET FOR
EASTERN AND SOUTHERN AFRICA
(COMESA)

Volume 17

THE COMESA AUTHORITY – HEADS OF STATE AND GOVERNMENT

As at 20 November 2012

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(As at 20 November 2012)

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LEGAL AND GENERAL NOTICES

TABLE OF CONTENTS

Page

Gender and Women's Affairs

Science and Technology

Immigration

Transport, Communications, Information Technology; and Energy

Ministers of Justice and Attorneys-General

Customs Union

COMESA Institutions

Inter-Country Markets

LEGAL AND GENERAL NOTICES



IT IS HEREBY NOTIFIED that the Council of COMESA Ministers at its Thirty First Meeting held on 20 November 2012 at Kampala, Uganda, issued the following Legal and General Notices:

GENDER AND WOMEN'S AFFAIRS

Contributions to and support of the Secretariat Gender and Social Affairs Division

Decisions

1. Council made the following decisions:

- (a) The Ministers agreed to retain the 1 percent allocation of the annual contribution towards the Secretariat Gender and Social Affairs Division budget, as recommended by the 8th Technical Committee on Gender; and urged the Secretariat to continue lobbying for additional funds;
- (b) Ministers of Gender should lobby Ministers of Finance and COMESA Coordinating Ministers to affirmatively provide a budget line for the Gender Division in the Secretariat's regular annual budget for programmes;
- (c) Gender Ministries should designate a COMESA focal point person to follow up on communication and implementation of decisions made from COMESA Gender Meetings;
- (d) The Secretariat should adopt an Affirmative Action policy in the recruitment of professional staff at the Secretariat;
- (e) The COMESA Gender Mainstreaming Manuals should be posted on the COMESA website for easy access by all Sectoral Ministries in the Member States;
- (f) Member States should develop a compendium of female experts to be submitted to the COMESA Secretariat for reference during future recruitment of professional staff;
- (g) The Secretariat should develop a database of women in decision making positions at the Secretariat and disseminate to Ministers of Gender and Women's Affairs in order to provide evidence – based argument for lobbying with regard to increasing women in decision-making;
- (h) The Bureau of Ministers Responsible for Gender and Women's Affairs should participate in the Council of Ministers' meeting in order to advocate for gender issues at Policy Organs' level;
- (i) The ministerial mission to the trading house in Mauritius should take place in 2013 as decided by previous Ministerial Meetings on Gender, and Council decisions; and the Ministers responsible for Trade, Commerce and Industry and SMEs to join the mission at the expense of their national budgets;
- (j) The staffing capacity of the COMESA Gender and Social Affairs Division at the Secretariat should be strengthened to enable it fully execute its mandate; and
- (k) The Secretariat should disseminate the information on advertised professional positions to all ministries, and not only the COMESA Coordinating Ministries and Ministry of Foreign Affairs.

Cluster Development Initiative Programme

Decisions

2. Council made the following decisions:

- (a) Member States were not homogeneous, and as such, each one of them should profile enterprises according to what is existing and encourage the formation of clusters;
- (b) The Secretariat should provide technical assistance to Member States in order to mobilize artisans into groups to tap into expertise in all Member States;
- (c) The Secretariat should provide financial and technical assistance to Member States in business management, processing and modalities for accessing loans; and
- (d) The Secretariat should provide support in capacity building for women entrepreneurs at Member States level.

COMESA Women Economic Empowerment Fund (WEEF)

Decisions

3. Council made the following decisions:

- (a) The Ministers responsible for Gender and Women's Affairs should hold bilateral meetings with Ministers of Commerce, Industry and Trade, COMESA Coordinating Ministries, and Ministers of Finance to advocate for funding the Women Economic Empowerment Fund (WEEF) which was directed by the 15th COMESA Summit which was held in Lilongwe, Malawi in October 2011 to be established;
- (b) The Base Fund of the WEEF could be realized through 1 percent of annual contributions that Member States already make to the COMESA regular budget. The other budgetary contributions should be mobilised from donors and private sector foundations;
- (c) The Secretariat should revisit the proposal of 1 percent and explore further strategies to establish the basis of this percentage and report the findings to the Ministers; and
- (d) The consultant working on the development of the WEEF should work out the 1 percent details in order to come up with empirical evidence to justify it.

SCIENCE AND TECHNOLOGY

Decisions

4. Council made the following decisions:

- (a) Member States domesticate the COMESA model policy, law and regulations on cyber security;
- (b) The Secretariat organizes capacity building workshops and conferences on the issues related to cyber security for the police, investigators, prosecutors, judges and technical expertise.
- (c) In addition to allocating not less than 1% of GDP to research and development, measures should be taken to prioritize the following:
 - i. Applied research;
 - ii. Scholarships for engineering and science education;
 - iii. Mobilization of the vast amount of already existing knowledge;
 - iv. Harnessing and absorption of existing innovations; and
 - v. Establishment of departments in Intellectual Property Offices and any relevant ministries, dedicated to monitoring of expiring patents so that the patents can be put to immediate use upon expiry.
- (d) An innovation Council should be established by the COMESA Member States consisting of eminent personalities drawn from academia, business and government that can use their stature, experience, knowledge, and their repertoire of contacts.
- (e) The Innovation Council should have, as its primary responsibility, the task of providing advice to Member States relating to existing and new knowledge and innovations, and best ways of applying the knowledge and innovations in the Member States.
- (f) Workshops should be organized for the Diaspora to support the COMESA STI parks and cluster programmes as a vast amount of knowledge exists among the Diaspora, who in many cases are assisting governments across the world;
- (g) Teaching in institutions of higher learning should be oriented towards producing job-creators rather than job-seekers, following the models of the entrepreneurial university; and in this regard, ministers responsible for education should be mobilized to the effort of accordingly reshaping teaching methods in institutions of higher learning in COMESA;
- (h) Ministries and public corporations dealing with activities related to the STI parks and cluster programmes should be encouraged to include training programmes in their priorities and make budgetary allocations, which should support the establishment of specialized institutions of higher learning to support the programmes in partnership with Government and Industry;
- (i) COMESA Secretariat should explore partnerships with institutions such as GlobalCures, Harvard Medical School and MIT in areas such as agriculture, health, energy and new materials, to provide vehicles for channeling into the COMESA region the knowledge these institutions may have to share;
- (j) The Member States were urged to establish: National Innovation Funds, if possible in the amount of not less than US \$1 million; and National Innovation Prizes; and

- (k) The Member States should establish offices of Chief Innovation Advisors as well as broad cross-sectoral national advisory committees to assist harness and provide advice on knowledge and innovations that could be diffused into the economies.
- (l) High priority should be given to the investment and implementation of projects in green technology and that a holistic programme be developed to enable Member States to collaborate in research, development and innovation in green technology.
- (m) NEPAD and COMESA should synergize STI activities and expand the scope of co-operation in programme implementation to avoid duplication.
- (n) The Secretariat and NEPAD Agency should identify programmes for joint implementation, develop an action plan and communicate to Member States.
- (o) Adopted the TOR for the COMESA innovation Council and Innovation Award. (Annex 16)
- (p) Designated the following institutions as regional centers of excellence:
 - i. Kenya University of Nairobi Science and Technology Park and FabLab; and the Egerton University Agro Park;
 - ii. Malawi: the Lilongwe University of Agriculture and Natural Resources, and the Biwi Industrial Park;
 - iii. Swaziland: the Royal Science and Technology Park;
 - iv. Egypt: the Technology Innovation and Entrepreneurship Center (TIEC) and Information Technology Institute (ITI) under the Ministry of Communication Information Technology;
 - v. Sudan: the National Renewable Energy Center, the National Research Center, and the Applied Science Academy in the Africa City of Technology;
 - vi. Uganda; the e-Governance Academy; and
 - vii. The meeting urged the Member States that have offered the regional centers of excellence to set aside seed funds to attract support from development partners to these institutions; and the Member States that had not offered centers of excellence to do so when they are ready.
- (q) Appointed the following nominees to the Innovation Council:
 - i. Prof. Meoli Kashorda (Kenya)
 - ii. Prof. Venasius Baryamureeba (Uganda)
 - iii. Prof. Marie Claire Yandju (DRC)
 - iv. Dr Dhanjay Jhurry (Mauritius)
 - v. Prof. Silas Lwakabamba (Rwanda)
 - vi. Prof. Aggrey Ambali (Malawi)
 - vii. Dr Jonathan M. Tambatamba (Zambia)
 - viii. Prof. Lydia Makhubu (Swaziland)
- (r) Gave the Bureau of the Council of STI Ministers the mandate to appoint the two extra nominees to the Innovation Council once selected.

IMMIGRATION

Implementation of Protocols and Council Decisions

Decisions

5. Council made the following decisions:

- (a) The Secretariat should work together with Member States and cooperating partners to mobilise resources for rolling out the OSBP;
- (b) Immigration authorities in all Member States should actively participate in the implementation of the OSBP;
- (c) Chiefs of Immigration in all Member States should provide guidance to officials operating at points of entry in terms of implementation of decisions in relation to the COMESA Protocol on Gradual Relaxation and Eventual Elimination of visa requirements;
- (d) Member States must undertake national stocktaking of implementation of the two Protocols and Model Law and come up with national plans for implementing them;
- (e) The Secretariat should play a proactive role in consultations with Member States towards the implementation of the Protocol that is in force, decisions of Council on free movement of persons and the acquisitions of signatures and ratification on the Protocol that is not yet in force;
- (f) The Secretariat should develop terms of reference for the National Monitoring Committee;
- (g) Resources should be mobilised so that the Task Forces can actively monitor implementation at the Member State level through a bilateral engagement with the Member State concerned;
- (h) Member States should emulate Kenya and Rwanda's experiences on information sharing;
- (i) Where there are common borders, Member States should endeavour to convene regular meetings and staff exchange programmes in order to accelerate the harmonization of migration policies and to improve border management;
- (j) Immigration authorities in each Member State should be involved in the implementation of the OSBP, which has to date been spearheaded by customs or revenue authorities;
- (k) COMESA should facilitate a review meeting between Zambia and Zimbabwe on operations of the Chirundu border post before replicating it at Kariba and Kasumbalesa border posts; and
- (l) Member States, with assistance from the COMESA Secretariat, need to develop an awareness campaign on the benefits and challenges of migration with an inbuilt focus on change of mindset of the immigration officials and other stakeholders from immigration control to immigration management.

Cooperation on Immigration Matters among Member States

Decisions

6. Council made the following decisions:

- (a) Member States should consider replicating the OSBP model implemented at the Zambia-Zimbabwe border, throughout the region in order to facilitate trade by reducing processing times at border posts;
- (b) Member States should establish common contact offices and appoint Immigration Liaison Officers in order to improve information sharing amongst officials;
- (c) Member States should implement Regional Visa Free Travel;
- (d) Member States should develop targeted actions which would assist them to meet some of the objectives of the COMESA Model Law on Immigration and the Protocols;
- (e) Member States should develop formal Inter-Agency Co-ordination Structures which will act as a single unit to analyze shared migration data;
- (f) Member States should establish a central research and analysis unit for the region as a way of improving the co-operation on immigration; and
- (g) The Secretariat should address the issue of the signatures, ratification and domestication of the Protocols to the Parliaments of the Member States and follow up on the same.

Information Sharing and Development of a Regional Database

Decisions

7. Council made the following decisions:

- (a) Member States need to review legislation in line with the COMESA Model Law on Immigration and share it via a common database;
- (b) Member States, with the assistance of the Secretariat and development partners, should develop a database which shall be built on the example of the Interactive Map for Migration (I-MAP);
- (c) Member States should agree on the information that can be shared and uploaded onto the common database;
- (d) When organizing meetings of Chief Immigration Officers, Member States should invite officers from key ministries such as Ministry of Trade, Industry and Commerce and Finance, as information sharing works more effectively with a multi-agency approach;
- (e) Member States should appoint common contact offices/immigration liaison officers as focal points following a multi-agency approach; and provide the Secretariat and the Task Forces on progress on the free movement agenda; and
- (f) Member States should prioritize the various stages of the implementation of the immigration agenda beginning with the signature and ratification of the two Protocols.

Trafficking in Human Beings as a Key Component of Migration Management

Decisions

8. Council made the following decisions:

- (a) Member States should implement national and regional anti-trafficking in persons awareness raising campaigns;
- (b) Member States should strengthen data collection, analysis and sharing of information;
- (c) Member States should use data to develop targeted policies and programmes at national and regional level;
- (d) Member States should harmonize national immigration and anti-trafficking in persons legislation with particular emphasis on countries sharing a common border; and
- (e) Member States should develop an anti-trafficking in persons' action plan at national and regional level under the coordination of the Secretariat.

Free Movement of Business Persons in the COMESA Region

Decisions

9. Council made the following decisions:

- (a) The discussion on business passports/visas should be carefully re-examined especially that a business visa could suffice;
- (b) Further analysis and study should be done among the Member States by the Task Force before implementation in order to consider options and concerns raised by Council;
- (c) The recommendations made by Member States in conjunction with the private sector should be taken into account during the upcoming Tripartite Negotiations on the Protocol on the Gradual Relaxation and Eventual Elimination of Visa requirements;
- (d) Member States should have a dedicated meeting at the Tripartite level which should be held as a public-private dialogue between the dedicated government offices of immigration and other stakeholders, to establish a model of cooperation and commitment to various issues incumbent on the elimination of visa requirements, ratification and implementation of the Protocols on free movement of persons and services in the region;
- (f) Member States should strive to gradually remove visa controls within a short period of time; and
- (g) Member States should engage the private sector through the COMESA Business Council and other stakeholders in order to move forward with the free movement agenda.

Status of Implementation of Protocols and Council Decisions

Decisions

10. Council made the following decisions:

- (a) Member States should put more effort into implementing the Protocol on the Gradual Relaxation of Visa Requirements;

- (b) Member States should implement fully the Agreement on Immunities and Privileges regarding visa free travel of COMESA Laissez Passer Holders;
- (c) The timetable for the free movement of persons leading to the right of establishment and residence which is incorporated in the Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence, should be revised in order to take account of the fact that the Protocol has not entered into force and some Member States have not complied with the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements;
- (d) Kenya, Burundi, Rwanda, Zambia and Zimbabwe be commended for attaining high levels of compliance and implementation of the Protocol and decisions of Council on the free movement of persons;
- (e) Burundi, Kenya, Rwanda and Zimbabwe be commended for signing the Protocol on the free movement of persons; and urged to ratify the Protocol;
- (f) Member States that have not yet signed or ratified the Protocol were urged to do so; and
- (g) The Protocol on the Free Movement of Business Persons should be discussed with various sectoral committees before it is implemented.

Migration EU Expertise (MIEUX) Project

Decisions

11. Council made the following decisions:

- (a) The MIEUX project in collaboration with the COMESA Secretariat should consider the development of a handbook to assist Member States in the implementation of the COMESA Immigration programme; and
- (b) Member States are encouraged to continue to engage the MIEUX project and tap into the technical expertise that the project can provide in light of the broadened scope of the project.

Information Sharing and Interagency Cooperation

Decisions

12. Council made the following decisions:

- (a) Member States should begin the process of documenting existing migration data for use at the national and regional levels for policy making on migration issues; and
- (b) Member States should encourage inter-agency cooperation in order to gather more reliable and accurate data on migration mainly through cooperation between the various national authorities involved in migration management and national statistical offices.

Data Collection and Information Sharing Systems

Decisions

13. Council made the following decisions:

- (a) Member States should consider the content of the questionnaire and communicate to the Secretariat, whether the topics covered are sufficient in order for the Secretariat to adapt it to the needs of the COMESA region;
- (b) Member States were invited to review the proposed questionnaire and propose the adequate adaptation; and
- (c) The Secretariat should formally submit the proposed questionnaire to Member States and Member States should submit their comments to the Secretariat before the next meeting of the Task Force.

COMESA Regional Consultative Process (RCP)

Decisions

14. Council made the following decisions:

- (a) Member States should be encouraged to endorse the concept of establishing a COMESA RCP and grant authority to proceed with the launch of the COMESA RCP in June 2013.

Cyber Security Programme

Decisions

15. Council made the following decisions:

- (a) Member States be urged to fast track the implementation of the policy and the model law on cyber security;
- (b) Member States to establish national Computer Incident Response Teams (CIRTs); and
- (c) Regulators should cooperate with the judiciary and assist in implementation of policy and laws, raise awareness and build their capacity.

ARICEA Hosting Agreement

Decisions

- 16. Council adopted the ARICEA host agreement.**

Liberalisation of Air Transport

Decisions

17. Council made the following decisions:

- (a) Member States should cooperate with the consultant and provide the necessary information for the study;
- (b) Member States should exercise caution when considering to grant fifth freedom traffic rights to non-African air carriers;
- (c) Member States - in line with Legal Notice No. 2 - should continue to extend the fifth freedom rights to COMESA operators; and
- (d) The Secretariat should convene a joint meeting of the Directors of Civil Aviations and Chief Executive Officers of airlines and other stakeholders to consider the study report on the status of the air transport liberalization.

Railways Operations and Management

Decisions

18. Council made the following decisions:

- (a) That the following instruments be developed with the RRI:

- i. Model concession agreements where applicable;
- ii. Model open access agreement that provide for separation in the ownership and management of infrastructure and operation; and
- iii. Model inter-railway working agreements to enable single invoicing and locomotive and rolling stock interchange.

Digital Broadcasting Migration

Decisions

19. Council made the following decisions:

- (a) The digital migration completion date should be December 2013 and the analogue switch off date for the COMESA region should be April 2014;
- (b) Member States should integrate the implementation of the roadmap into their respective national digital migration plans in order to ensure effective implementation and harmonization at regional levels;
- (c) The digital migration process should be coordinated at the COMESA-EAC-SADC Tripartite level to harmonize the process and maximize the economic value;
- (d) Member States choose the DVB-T2 standard for signal distribution to avoid dumping of equipment of old standards in the region;
- (e) The Secretariat should develop a multilateral spectrum coordination framework by June 2013 so as to address cross borders issues; and
- (f) Capacity building programmes should be developed and implemented for policy makers; regulators and services providers.

IT Master Plan

Decisions

20. Council made the following decisions:

- (a) The Secretariat should fast-track the realization of the two regional systems;
- (b) Member States should provide the required data for the regional information systems once they become operational; and
- (c) The Secretariat should develop a draft five-year regional IT Strategy within six months.

Geographical Information Systems (GIS)

Decisions

21. Council made the following decisions:

- (a) The Secretariat should continue with its efforts to have more layers added onto the COMESA GIS System;
- (b) Member States should ensure that they upload the relevant information onto the COMESA GIS System; and
- (c) The Secretariat should integrate the GIS system with other relevant COMESA information systems in order to fully utilize the system.

Sustainability of Information Systems

Decisions

22. **Council made the following decisions:**

(a) Member States should within twelve months:

- i. Appoint focal points, to update COMESA web based information system that is: GIS, Cross Border Traders Information systems and the COMESA Portal, and
- ii. Provide content for the information systems in accordance with the guidelines provided by the Secretariat in order to ensure sustainability of the systems.

Free and Open Source Software (FOSS)

Decision

23. **Council made the following decision:**

- (a) The Secretariat should, within six months, draft regional FOSS guidelines and circulate them to Member States.

E-Government Programme

Decisions

24. **Council made the following decisions:**

- (a) The Secretariat together with the Government of Uganda finalise the MoU providing for the establishment of the Regional e-Governance Academy; and
- (b) The Secretariat together with the Government of Uganda prepares a business plan and programme for the establishment of the Regional e-Governance Academy.

E-Legislation

Decisions

25. Council made the following decisions:

- (a) A workshop be held to sensitize Member States on the adopted Electronic Transaction Model Bill;
- (b) The Secretariat conducts a study to draw up a Regional Model Policy on e-Waste, as part of a wider study on municipal waste;
- (c) That the MoU with the StEP initiative be concluded and signed; and
- (d) The development of a regional e-waste management system be finalised.

E-Learning

Council decided that the Secretariat:

- (a.) Should work with the Government of Kenya to develop a business model for the successful implementation of the COMESA Regional e-Learning Strategy within twelve months; and
- (b.) Together with Member States work out a strategy, within twelve months, to monitor and oversee the implementation of the strategy.

ICT Trade Facilitation

Decisions

26. Council made the following decisions:

- (a) The Secretariat should continue to sensitise the remaining Member States to migrate to the latest version of ASYCUDA (ASYCUDA World) and secure funding for their implementation projects;
- (b) The mobilisation of funding for establishment of the support centre should be stepped up;
- (c) The Secretariat should continue its support to Member States in all ICT trade facilitation areas and deliver more training, capacity building activities, workshops and technical assistance in those areas; and
- (d) Member States should share with the Secretariat the progress on the implementation of ICT Trade Facilitation initiatives such as customs modernization.

COMESA Common Market Information Systems

Decisions

27. Council made the following decisions:

- (a) The Secretariat should speedily implement the CVFTS and CEMES systems;

- (b) The Secretariat should provide capacity building to Member States to facilitate the speedy implementation of the system when it is fully rolled out;
- (c) The Secretariat should invite the private sector, through Expressions of Interest, to bid for the development of the software for the second phase. The Expressions of Interest should also include a request for the Co-Management of the CVFTS with the Secretariat; and
- (d) The Secretariat should coordinate with Member States to ensure that there is no duplication of resources due to similar initiatives being undertaken at Member State level.

COMESA-EAC-SADC Tripartite Infrastructure Programme

Decision

28. Council made the following decision:

- (a) There should be speedy integration of EAPP and SAPP under the COMESA-EAC-SADC Tripartite Framework.

COMESA Strategic Meteorological Programme

Decision

29. Council made the following decision:

- (a) The Secretariat should formally request the Member States to second a Meteorology Expert to the Secretariat to coordinate the implementation of the Meteorological programme.

COMESA CNS/ATM Systems Project

Decisions

30. Council made the following decisions:

- (a) The Secretariat should arrange for a site visit by the consultant to Ethiopia;
- (b) The consultant should complete the study review and the revised final report should be circulated to all Member States;
- (c) The report should be considered by the CNS/ATM Working Group; and
- (d) The report should be submitted to the next meeting of the Directors of Civil Aviation.

COMESA-EAC-SADC Tripartite CNS/ATM Systems Project

Decisions

31. Council made the following decisions:

- (a) The COMESA CNS/ATM Steering Committee should be expanded to include members from EAC and SADC CNS/ATM Steering Committees to oversee the development of the Tripartite CNS/ATM Project; and
- (b) All stakeholders should be included in those steering committees as members.

Great Lakes Railway Project

Decisions

32. Council made the following decisions:

- (a) Further project preparatory work should be carried out taking into account the larger area in order to enhance interfacing;
- (b) Coordination should be undertaken with other railway projects in order to ensure effective connectivity and inter-operability;
- (c) Capacity should be developed for expertise to manage the railways; and
- (d) Railways should be developed through collective ownership by Member States and other partners in order to achieve trans-country networks with joint ownership.

New Railway Developments

Decisions

33. Council made the following decisions:

- (a) Council decided that new railway projects should be planned in Member States; and
- (b) The Tripartite should be urged to co-ordinate the development of the various sections (between Lamu and Douala) to ensure that the Tripartite Summit decision of 2008 is fully implemented.

COMTEL Project

Decisions

34. Council made the following decisions:

- (a) The Cross-connect Technologies Company and Huawei be appointed to implement the project; and

- (b) Member States should be requested to provide the necessary information and participate actively in the project.

Power Generation Projects

Decisions

35. Council made the following decisions:

- (a) The Secretariat should prepare a dossier of all energy projects showing their status including time lines for implementation within six months; and
- (b) An Energy Investment Conference should be convened within twelve months.

Facilitation of Regional Integration and Trade through Infrastructure Development; and the Preparation of Spatial Infrastructure Maps

Decisions

36. Council made the following decisions:

- (a) The Secretariat should within a period of six months:
 - i. Prepare appropriate spatial maps containing an inventory of infrastructure facilities, to identify gaps and to develop plans to address them;
 - ii. Put in place regional, special purpose vehicles for the implementation of regional projects on the basis of Public Private Sector Partnerships;
 - iii. As part of COMESA Infrastructure Fund, explore the possibility of floating regional Infrastructure bonds;
 - iv. Within the framework of the COMESA-EAC-SADC Tripartite scale up resource mobilization from within the region and our development partners for the COMESA-EAC-SADC Tripartite Project Implementation Unit (PPIU); and
 - v. Coordinate the implementation of the programmes by Member States and convene meetings of Member States to evaluate progress in their implementation.

MINISTERS OF JUSTICE AND ATTORNEYS-GENERAL

Decisions

37. Council made the following decisions:

- (a) Adopted the following Rules and Regulations:
 - i. Draft Regulations on the Treatment of Products in the Education Sector of the Harmonised Consumer Price Indices (HCPIs) in COMESA Member States;

- ii. Draft Regulations concerning the Treatment of Temporary Price Reductions in the Harmonized Consumer Price Indices (HCPI);
- iii. Draft Regulations on the Treatment of Products in the Healthcare Sector of the Harmonized Consumer Price Indices (HCPIs) in COMESA Member States;
- iv. Draft Regulations on Statistics Derived from the Harmonized Consumer Price Indices (HCPIs) in COMESA Member States;
- v. Draft Regulations on Sampling for the Harmonized Consumer Price Indices (HCPIs) in COMESA Member States;
- vi. Draft Regulations on Procedures for Quality Adjustment in the Harmonized Consumer Price Indices (HCPIs) in COMESA Member States;
- vii. Draft Regulations on Extended Product Coverage in the Harmonized Consumer Price Indices (HCPIs) in COMESA Member States;
- viii. Draft Regulations on the Harmonized Treatment of Certain Products in the harmonized Consumer Price Indices (HCPIs) in COMESA Member States;
- ix. Draft Regulations on the Treatment of Tariff Prices in the Harmonized Consumer Price Indices (HCPIs) in COMESA Member States;
- x. Draft Regulations on Price Data Validation and Editing HCPIs in COMESA Member States;
- xi. Draft Regulations on Price Collection Procedures in the HCPIs in COMESA Member States;
- xii. Draft Rules on COMESA Revenue Sharing of Merger Filing Fees;
- xiii. Draft Amendments to the COMESA Competition Rules, 2004;
- xiv. Draft Rules on the Determination of Merger Notification Threshold.

COMESA Court of Justice

Decisions

38. Council made the following decisions:

- (a) Member States should facilitate the Court, as soon as possible to redouble its efforts to publicize itself and sensitize its users in all Member States; and
- (b) Seminars should be organized in conjunction with the national judiciaries, law societies, Chambers of Commerce and similar court users.

Enhancing Procurement Reform and Capacity Project (EPRCP)

Enhancing the utilization of PROMIS in the development and integration of the regional procurement market

Decisions

39. Council made the following decisions:

- (a) Member States should publish tenders on PROMIS without further delay in line with the recommended thresholds;
- (b) The regulatory institutions and central procurement monitoring agencies in their respective countries should assume leadership and mobilize their procuring entities to publish tenders on PROMIS;
- (c) Suppliers should be sensitized about PROMIS in order to access procurement opportunities in the region; and
- (d) The Secretariat should immediately embark on the advertisement of PROMIS among the countries as a free medium for advertising tenders.

EPRCP Capacity Building Programme

Decisions

40. Council made the following decisions:

- (a) National training institutions should adopt the COMESA Public Procurement Training manual and integrate it in their training programmes;
- (b) COMESA should pay special attention to capacity and skills challenges affecting effective performance of Member States' procurement systems by taking measures to address this incapacitating hindrance;
- (c) COMESA should facilitate mutual coaching and mentorship programmes between the institutions in different Member States as a short term strategy to mitigate professional skills deficiency among the Member States' institutions; and
- (d) COMESA should continue its collaboration with the training institutions and urge the ones which are not offering short term courses to develop them.

Enhancing support for Micro, Small and Medium Enterprises (MSMEs) through public procurement

Decisions

41. Council made the following decisions:

- (a) MSMEs should be encouraged and supported to access procurement markets by providing

information on markets and standards, advice on strategies, and access to technology and innovation coupled with appropriate financing packages; and

- (b) The relevant authorities should be urged to formulate policy mechanisms that promote tools, such as value chain analysis, which enable entrepreneurs to see what problems and challenges they need to address and the kind of partners they need to help them access opportunities for growth.

CUSTOMS UNION

Decisions

42. Council made the following decisions:

- (a) The transition period for the Customs Union be extended for a further two years to June 2014;
- (b) Member States use the two year extension period to notify the Secretary General of their decision to implement the COMESA Customs Union in accordance with Regulation 33 of the Council Regulations Governing the COMESA Customs Union, Vol. 15, No. 1;
- (c) Member States that submitted their provisional lists of sensitive products should confirm that these are their final lists within the two year period;
- (d) Member States that have not submitted their lists of sensitive products do so within the two year extension period;
- (e) Member States that have not submitted their tariff alignment schedules do so within the two year extension period;
- (f) Member States submit their lists of excluded products where applicable by the end of the two year transition period beyond which it will be concluded that the countries have no such lists;
- (g) Member States indicate their plans for domestication of the CTN, CET, and CMRs instruments within the two year transition period and ensure that these instruments are Gazetted and implemented before the end of the two year extension;
- (h) Member States take advantage of the Tripartite negotiations to review and internalize all Council Decisions on the Customs Union and ensure that they are domesticated given that the Tripartite FTA and the COMESA Customs Union are complementary;
- (i) The Secretariat continues to work closely with Member States to provide technical assistance in implementing the Council Decisions on the Customs Union;
- (j) The Secretariat works with Member States to address the following concerns raised by Member States before the full implementation of the Customs Union:
 - i. Fear for loss of revenue on imported goods;
 - ii. The feeling that benefits from the FTA can suffice;
 - iii. Fear of closure of indigenous industries due to competition from imported goods;
 - iv. Fear of loss of sovereignty with regard to decision making on national trade and tax policies;

- v. The need to create a 5% tariff band in the CET to cater for national interests;
 - vi. Some countries have more than 50% of their national tariff lines at 0% rate and are finding it very difficult to move them upwards;
 - vii. Some countries have had very bad economic and industrial break down that they need some considerable space to allow their economies and industries to recover;
 - viii. Some Member States seem to be of the view that since the Tripartite Agenda is now in progress, there is no need to pursue the CU agenda at this point in time;
 - ix. The question of the four COMESA Member States being already in the EAC CU; and
 - x. There is lack of capacity, information and co-ordination on the ground despite the existence of national working committees.
- (k) Council undertakes a mid-term review after one year to assess progress and a final review to make recommendations on the readiness of Member States to implement the Customs Union;
- (l) The Secretariat prepares a paper on similarities and differences between COMESA and EAC Customs Unions covering the CTN/CET and CMRs.
- (m) The Secretariat continues working closely with both the EAC Secretariat and the four COMESA/ EAC Member States to expedite the ongoing consultations on the harmonization of the two trade regimes (especially the harmonization of the two CETs and the two Customs laws) and that the exercise be completed by the end of 2013;
- (n) The Secretariat urgently convenes a meeting of customs, Ministries of finance and trade officials by the first quarter of 2013 to review the HS 2012 COMESA CET before submission for Council approval;
- (o) The Secretariat organizes national stakeholder consultative meetings/workshops along the same lines as those organized in the DR Congo and Zambia;
- (p) The Secretariat expeditiously convenes meetings to negotiate and finalise the harmonization of exemption regimes and industrial rebates in the COMESA region; and
- (q) The Secretariat develops draft Terms of Reference for the Ministerial Task Force for consideration at its next meeting.

Negotiation of the COMESA, EAC and SADC Tripartite Free Trade Area (FTA)

Decisions

43. Council made the following decisions:

- (a) The Chairperson of the Council should consult with his counterparts the Chairpersons of EAC and SADC ministerial councils to arrange for a COMESA-EAC-SADC Tripartite Ministerial Council to map a way forward for the Tripartite process which was progressing slowly;
- (b) The Secretary-General of COMESA should liaise with his counterparts at the EAC and SADC secretariats to facilitate the holding of the said Tripartite Council of Ministers' Meeting before 31 March 2013;
- (c) COMESA should organize preparatory meetings for the Member States before the Tripartite

FTA Negotiations;

- (d) The principles, including consensus, single undertaking and variable geometry, should be reconsidered after further consultations;
- (e) There should be more frequent meetings to catch up on the road map;
- (f) The Secretariat should prepare a paper on the state of play on all the pillars to be presented to the next Policy Organs' meetings;
- (g) COMESA should undertake a regular monitoring and evaluation exercise of the Tripartite FTA negotiations, to feed into the overall Tripartite Monitoring and Evaluation Mechanism provided for in the instruments launching the Tripartite FTA Negotiations.

The ESA/EPA Negotiations

Decisions

44. Council made the following decisions:

- (a) The Secretariat should convene a meeting of the COMESA Member States to deliberate and agree on the Administrative Cooperation Procedures, among other issues, in the first quarter of 2013 to facilitate cumulation under the interim EPA; and
- (b) Negotiations on the full EPA be pursued and completed by 2016.

Extension of Africa Growth and Opportunity Act (AGOA) and Third Country Fabric Provision

Decisions

45. Council made the following decisions:

- (a) The US be commended for enacting the extension of the third country fabric provision to synchronize it with AGOA to 30 September 2015;
- (b) The US be urged to avail AGOA and the third country fabric on a long-term and sustainable basis beyond 2015;
- (c) In extending the AGOA, the US be requested to consider addressing the issues of enhancing US investments in Africa, supporting regional integration in Africa, and increasing AGOA eligible products to include more products of export interest to Africa;
- (d) The US be urged to enhance the capacity of AGOA eligible countries to comply with the SPS, TBT and other standards so as to better utilize the AGOA market access opportunities;
- (e) The US be urged to duly take into account the preference erosion to Africa-AGOA eligible countries before extending similar preferences to LDCs in other regions;
- (f) All AGOA eligible countries prepare to attend the forthcoming AGOA Forum to be held in Addis Ababa 2013 and prepare to engage the US on the extension of AGOA and the third country fabric on a long-term and sustainable basis beyond 2015; and

- (g) The Trade and Customs Committee be mandated to deliberate on strategies to be pursued for the post 2015 AGOA, including the examination of all possible options.

COMESA INSTITUTIONS

PTA Bank

Decisions

- 46. Council made the following decisions:
 - (a) All Member States that have not joined the PTA Bank should join the Bank and effectively participate in its activities; and
 - (b) The Member States that have not yet fully settled their contributions to the Bank should do so.

COMESA Clearing House

Decisions

- 47. **Council made the following decisions:**
 - (a) Commended the Central Banks of Mauritius and Rwanda for going into live operations on 03 October 2012;
 - (b) Urged the Central Banks of Kenya, Egypt, Sudan, Swaziland and Uganda to go live on REPSS expeditiously;
 - (c) Urged the Central Banks of Malawi and Zambia to get into live operations by December 2012 at latest;
 - (d) Urged those Central Banks that have not yet signed the various agreements pertaining to REPSS and its operations to do so at the earliest;
 - (e) Urged the other Central Banks to prefund their USD and EUR accounts to the tune of USD 100,000 and EUR 100,000 respectively at the Settlement Bank;
 - (f) Urged all Central Banks and Stakeholders in the COMESA Region, as directed by the Fifteenth Summit of the COMESA Authority of Heads of State and Government, held in Lilongwe, Malawi on 14-15 October 2011, to aggressively market and use the Regional Payment and Settlement System (REPSS) in order to enhance intra-regional trade; and
 - (g) Requested the Secretariat, through the CBC to look at revival of the COMESA Bankers' Association for the effective utilisation of REPPS.

African Trade Insurance

Decisions

48. Council made the following decisions:

- (a) Commended the Republic of South Sudan and the African Development Bank for taking up membership in ATI, and;
- (b) Urged COMESA Member States which are not yet members of the ATI to consider joining the Agency.

COMESA Business Council

Decisions

49. Council made the following decisions

- (a) Member States should support the formation of national industrial clusters under the recognised sectoral and multi-sectoral apex bodies; and
- (b) Member States should support the organisation of the COMESA international trade fair and the COMESA Business Forum with the hosting Member State for a period of nine months before the next event.

FEMCOM

Decisions

50. Council made the following decisions:

- (a) FEMCOM Secretariat be facilitated with at least two additional permanent, professional staff;
- (b) The roles, responsibilities and lines of authority of FEMCOM Secretariat be clearly articulated to promote harmony and avoid future misconceptions for sustainability;
- (c) The FEMCOM Charter should be urgently reviewed to incorporate global emerging issues; and
- (d) Commended the Government of Malawi for allocating land for the construction of the FEMCOM Complex.

COMESA Competition Commission

Decision

51. Council made the following decision:

- (a) That the Competition Rules and Regulations (2004) should be gazetted as well as the rules on COMESA revenue sharing of merger filing fees; and the amendment to the competition rules of 2004. (Annexes 12,13 and 14).

ACTESA

Decisions

52. Council made the following decisions:

- (a) Member States actively participate in the implementation of the ACTESA five-year operational plan;
- (b) Member States continue to support the implementation of ACTESA's new activities namely the Regional Food Balance Sheet and the ACTESA Knowledge Portal; and
- (c) ACTESA presents the Draft Regional Policy on Bio-Technology and Bio-Safety; and the Draft COMESA Seed Trade Harmonization Regulations to the next meeting of Ministers of Agriculture, Environment and Natural Resources.

COMESA Monetary Institute

Decision

53. Council made the following decision:

- (a) Member States who have not signed the CMI Charter should do so in line with the decisions of the Council of Ministers and the COMESA Authority.

COMESA Infrastructure Fund

Decisions

54. Council made the following decisions:

- (a) A manager should be recruited for the COMESA Infrastructure Fund; and
- (b) A seed investor should be identified for the fund.

INTER-COUNTRY MARKETS

Decision

55. Council made the following decision:

- (a) The Secretariat should develop a model that will among other things look at the establishment and operationalization of the Inter Country markets to enable Member States set up these markets in their countries.

ANNEX 1: COMESA REGULATIONS CONCERNING THE TREATMENT OF PRODUCTS IN THE EDUCATION SECTOR IN THE HARMONISED CONSUMER PRICE INDICES (HCPI)



COMESA REGULATIONS CONCERNING THE TREATMENT OF PRODUCTS IN THE EDUCATION SECTOR IN THE HARMONISED CONSUMER PRICE INDICES (HCPI)

THE COUNCIL OF MINISTERS OF THE COMMON MARKET OF EASTERN AND SOUTHERN AFRICA (COMESA)

Having regard to Article 140 of the Treaty establishing COMESA through which Member States made an undertaking to cooperate in the field of statistics in order to create an enabling environment for up-to-date reliable, harmonized and comparable statistical data on various sectors of economic activity, through the harmonization and adoption of common methodologies concepts and definitions to be used in collecting and compiling statistics;

Having regard to COMESA Regulation No [xx] of [date] concerning the establishment of harmonized consumer price indices (HCPIs) in Member States;

Having regard to existing COMESA Member States Legislation on statistics and the confidentiality clauses therein;

HEREBY ADOPTS THESE REGULATIONS:

Article 1

Citation

These Regulations shall be cited as the COMESA Regulations concerning the Treatment of Products in the Education Sector in the Harmonized Consumer Price Indices (HCPI).

Article 2

Definitions

In these Regulations, unless the context otherwise requires:

“**COICOP**” means the international Classification of Individual Consumption according to Purpose;

“**Council**” means the Council of Ministers of the Common Market established by Article 7 of the Treaty;

“**Harmonized Consumer Price Indices (HCPI)**” the comparable consumer price indices compiled by each Member State;

“**ISCED 1997**” means International Standard Classification of Education;

“**NPISHs**” means Non-Profit Institutional Saving Households;

“**Member States**” means COMESA Member States

“**Reimbursements**” means payments made to households by government units or non-profit institutions serving households (NPISHs) that are made as direct consequences of purchases of individually specified services, initially paid for by households;

“**Secretariat**” means the COMESA Secretariat.

Article 3

Objective

The objective of these Regulations is to set minimum standards for the HCPI treatment of goods and services in the education sector in conformity with COICOP Division 10, as set out in the Annex 2(i).

Article 4

Types of expenditure

1. Member States shall classify expenditure on educational services in the appropriate sub-heading of COICOP Division 10.
2. Member States shall allocate expenditure on education-related goods, such as textbooks, and on education-related services, such as school catering or healthcare services, to the appropriate Division and sub-heading of COICOP as set out in the COMESA Regulations on Product Coverage.
3. Member States shall separate and allocate the components of a price to the COICOP divisions concerned where a price is charged for educational services combined with educational materials or education support services, provided that where such a separation cannot be made, the inclusive price shall be allocated to the most appropriate class in COICOP Division 10.
4. Member States shall assign pre-primary level institutions to social protection or education according to the standards set out in ISCED 1997.

Article 5

Providers of educational services

All fee-charging providers of educational services, including organs of central and local government, NPISHs, religious organisations, private institutions and companies, and private self-employed persons, shall be covered in the HCPI.

Article 6

Coverage of educational services

1. Member States shall extend the initial coverage set out in Annex 1 of the Product Coverage Regulations in conformity with COICOP Division 10 and its sub-headings in accordance with Annex 1 of the Extended Product Coverage Regulations.
2. HCPIs which include price indices and weights for each of the categories referred to in paragraph 1 accounting for more than one part in a thousand of total expenditure covered by the HCPI shall be deemed comparable.
3. Member States shall compile HCPI sub-indices for the COICOP Division 10 and its sub-headings referred to in paragraph 1 where the weights account for more than one part in a thousand of total expenditure covered by the HCPI.

Article 7

Weights

1. Member States shall determine weights in accordance with total household expenditure on educational services as classified in COICOP Division 10, less reimbursements and shall be based on the following:
 - (a) results of household expenditure surveys;
 - (b) National Accounts data using the expenditure concept of private consumption; or
 - (c) any other appropriate source.
2. Where fees for educational services are paid for partially or fully by means of a loan, the weights shall include the gross fees payable without regard to the amount of the loan, its repayment period or any interest chargeable.

Article 8

Prices

1. The purchaser prices of educational services shall be the amounts payable by households net of any reimbursements.
2. Member States shall obtain prices of educational services from the fee-charging providers referred to in Article 5.
3. Where a service is provided to households:
 - (a) free of charge and subsequently an actual price is charged, whether or not subsidised, the change from zero to the actual price shall be taken into account in the HCPI;
 - (b) at a fee and subsequently is provided free of charge the change from the actual price to zero shall be taken into account in the HCPI; and
 - (c) jointly with other services or goods free of charge, and is subsequently charged for on a separate basis, the change shall be taken into account in the HCPI.

Article 9

Calculation of HCPI for educational services

Member States shall compute the HCPI for educational services based on the requirements of Articles 4 to 8.

Article 10

Transmission of sub-indices to Secretariat

1. Member States shall compile sub-indices of the HCPI in accordance with Article 6 and transmit them monthly to the Secretariat.
2. Member States shall transmit to the Secretariat the corresponding weights and household final monetary consumption expenditures together with the first HCPIs relating to COICOP Division 10 and thereafter whenever the weights are changed.

Article 11

Quality Control

Member States shall provide to the Secretariat information sufficient to evaluate compliance with the procedures laid down in Articles 4 to 8.

Article 12

Amendments

1. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing who shall, within 30 days of its receipt, communicate it to the Member States.
2. The Member States which wish to comment on the proposals shall do so within 90 days from the date of the dispatch of the proposals by the Secretary General.
3. After the expiration of the period prescribed under paragraph 2, the Secretary General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee on Legal Affairs.
4. Any amendment to these Regulations shall be adopted by Council and shall enter into force upon publication in the Official Gazette of the Common Market.

Article 13

Entry into force

These Regulations shall enter into force on the date of publication in the Official Gazette of the Common Market.

Done and adopted at the Thirty First Meeting of the COMESA Council of Ministers held at Kampala, Uganda on 21 November 2012.

[Signature].....

Chairperson

COMESA Council of Ministers

Annex 1(i)

CLASSIFICATION OF ITEMS IN COICOP DIVISION 10 AND OTHER EDUCATION-RELATED ITEMS

COICOP Examples of specific types of service

GROUP CLASS

10.1 Pre-primary and primary education (ISCED 0 & 1)

10.1.0 Pre-primary and primary education

- Public pre-primary school fees (kindergarten, Montessori, nursery etc)
- Private pre-primary school fees (kindergarten, Montessori, nursery etc)
- Public primary school fees
- Private primary school fees
- Examination fees
- Registration fees

10.2 Secondary education (ISCED 2 & 3)

10.2.0 Secondary Education

- Public secondary school fees
- Private secondary school fees
- Examination fees
- Registration fees

10.3 Post-secondary non-tertiary education (ISCED 4)

10.3.0 Post-secondary non-tertiary education

- Fees for computer courses
- Fees for language courses
- Fees for professional Courses
- Examination fees
- Registration fees

10.4 Tertiary education (ISCED 5 & 6)

10.4.0 Tertiary education

Public University fees: Bachelor degree

Private University fees: Bachelor degree

Public University fees: Masters degree

Private University fees: Masters degree

Public University fees: Doctorate degree

Private University fees: Doctorate degree

Examination fees

Registration fees

10.5 Education not definable by level

10.5.0 Education not definable by level

Adult literacy courses

Examination fees

Correspondence courses

Education by television or radio broadcasting

Not included in COICOP Division 10 Examples include (COICOP heading in brackets):

Fees for subsistence while at school or college (COICOP 11.1.1, 11.2.0)

Accommodation charges (COICOP 11.2.0)

Catering charges (COICOP 11.1.1)

Transport charges (COICOP 07.3)

Charges for healthcare products (COICOP 06)

Expenditure on educational materials, e.g. books, stationery (COICOP 09.5)

Fees for driving lessons (COICOP 07.2.4)

Fees for out-of-school sports training (COICOP 09.4.1)

Cost of school uniforms and sports clothing (COICOP 03)

**ANNEX2:COMESA REGULATIONS CONCERNING THE
TREATMENT OF TEMPORARY PRICE REDUCTIONS IN
THE HARMONISED CONSUMER PRICE INDICES (HPCI)**



COMESA REGULATIONS CONCERNING THE TREATMENT OF TEMPORARY PRICE REDUCTIONS IN THE HARMONISED CONSUMER PRICE INDICES (HPCI)

THE COUNCIL OF MINISTERS OF THE COMMON MARKET OF EASTERN AND SOUTHERN AFRICA (COMESA),

Having regard to Article 140 of the Treaty establishing COMESA through which Member States made an undertaking to cooperate in the field of statistics in order to create an enabling environment for up-to-date reliable, harmonized and comparable statistical data on various sectors of economic activity, through the harmonization and adoption of common methodologies concepts and definitions to be used in collecting and compiling statistics;

Having regard to COMESA Regulations No [xx] of [date] concerning the establishment of harmonized consumer price indices (HCPIs) in Member States;

Having regard to existing COMESA Member States legislation on statistics and the confidentiality clauses therein;

HEREBY ADOPTS THESE REGULATIONS:

Article 1 Citation

These Regulations shall be cited as the COMESA Regulations concerning the Treatment of Temporary Price Reductions in the Harmonized Consumer Price Indices (HCPI).

Article 2 Definitions

In these Regulations, unless the context otherwise requires:

“**Bulk purchase**” means a purchase in which a purchaser buys a large quantity of a product in order to obtain a reduced unit price;

“**COICOP**” means the international Classification of Individual Consumption according to Purpose

“**Discount card**” means a slip of paper or similar item, which, when presented at an outlet, gives the purchaser the right to purchase a product at a reduced price and can be used on more than a single occasion, subject to a final date of validity;

“**Discount**” means a deduction from the advertised price of a product that is available to specific customers under specific conditions;

“**Discounted price**” means a price which is reduced from its normal price in a sale or for some other reason;

“**End of range price**” means the price of a product which has been discontinued or is in the process of being replaced by a newer version;

“**Expiry date**” means a date shown on a product which indicates the date up to which the product keeps its best features or that it should be consumed no later than the date shown.;

“**Harmonised Consumer Price Indices (HCPI)**” means the comparable consumer price indices compiled by each Member State;

“**Inducement**” means a type of temporary offer made to consumers to persuade them to purchase a particular product;

“**Loyalty card**” means a card, normally containing a microchip, by which a retailer can record the value of a customer’s purchase so as to accumulate credit points for later redemption;

“**Member States**” means COMESA Member States;

“**Money-off coupon**” means a slip of paper or similar item, which, when presented at an outlet, gives the purchaser the right to purchase a product at a reduced price;

“**Non-discriminatory**” means a price which is available to all potential consumers with no special conditions attached;

“**Rebate**” means return of a part of the value of a purchase made by a customer;

“**Refund**” means the return of money to a customer, normally if the product is faulty or otherwise unsatisfactory thereby cancelling the purchase;

“**Sale**” means an event at which goods or services are sold or offered at reduced prices, often held at regular periods in the year;

“**Secretariat**” means the COMESA Secretariat;

“**Shop-soiled goods**” means goods which have become damaged, faded or worn out through being displayed in outlets;

“**Standard price**” means the price of a good or service without any conditions or qualifications, and not described as a special price or similar term;

“**Stock-clearing sale**” means a sale at which goods are reduced in price in order to allow the retailer to create space for new stock.

Article 3

Objective

The objective of these Regulations is to establish a harmonized approach to the method of treating temporary price reductions and discounts of goods and services in the HCPI.

Article 4

General principles

Member States shall take into account price reductions in determining purchaser prices to be used in the HCPI, provided that such reductions:

- (a) can be attributed to the purchase of an individual product;
- (b) are non-discriminatory;
- (c) are known to purchasers at the time when they enter into the agreement with the supplier to purchase the product concerned; and
- (d) can be claimed either at the time of purchase or within such period following the actual purchase that the reduction might be expected to have a significant influence on the quantities purchasers are willing to purchase.

Article 5

Inducements

Member States shall deduct the market value of an inducement from the price of the product, where it is known and is significant, relative to the value of the product being purchased.

Article 6

Specification changes

Member States shall treat the price of an item in accordance with Article 12 of Regulations on Weights, Product Sample and Item Substitution, where the specification of a product changes as part of a temporary offer.

Article 7

Types of price reduction

Member States shall treat the HCPI in accordance with the methods set out in the Annex.

Article 8

Applicable Standards

Member States shall apply the standards referred to in Articles 5 to 7 to the procedures used for establishing the HCPI.

Article 9

Quality Control

Member States shall provide information sufficient to evaluate compliance with these Regulations.

Article 10
Amendments

1. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing who shall, within 30 days of its receipt, communicate it to the Member States.
2. The Member States which wish to comment on the proposals shall do so within 90 days from the date of the dispatch of the proposals by the Secretary General.
3. After the expiration of the period prescribed under paragraph 2, the Secretary General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee on Legal Affairs.
4. Any amendment to these Regulations shall be adopted by Council and shall enter into force upon publication in the Official Gazette of the Common Market.

Article 11
Entry into force

These Regulations shall enter into force on the date of publication in the Official Gazette of the Common Market.

Done and adopted at the Thirty First Meeting of the COMESA Council of Ministers held at Kampala, Uganda on 20 November 2012.

[Signature].....

Chairperson

COMESA Council of Ministers

TREATMENT OF SPECIFIC TYPES OF PRICE REDUCTION:

The aim of the Annex below, referred to in Article 7 of these Regulations is to specify the treatment in the HCPI of the various types of discounts and inducements relating to the prices of goods and services. The examples given in this Annex are not necessarily comprehensive, but they should enable national statistical offices to use the examples as a guide to particular types of price reduction which are not mentioned. Specific examples are given as an aid to comprehension.

The list is organised into two broad groups. Group A describes situations where the price reduction should be included in the HCPI. In other words, the reduced price, not the original price, is the one that should be collected and used in the HCPI calculations. Note that a necessary condition for inclusion is that the reduction should be non-discriminatory, i.e. applicable to all households, and must be applied to individual products (e.g. accumulated points which can be used as a credit against the purchase of a range of products cannot be treated as applying to an individual product).

Group B comprises those situations, in which the reduced prices should not normally be collected, that is, the price before the reduction should be collected.

GROUP A PRICE REDUCTIONS NORMALLY INCLUDED IN THE HCPI

Number	Type of price reduction	Description	Exceptions	Notes
A1	Seasonal sales	In some countries, it is a widespread practice for shops to reduce their prices at certain times of the year, such as New Year and during a summer period.	Goods which have deteriorated in quality (e.g. shop-soiled), or, for food items, stale or close to the "sell-by" date. Their specifications are inconsistent with those of the representative items normally covered by the HCPI survey (See B1 regarding stock-clearing sales).	Seasonal sales do not necessarily cover all the stock in the shop, but just some selected ranges.
A2	Inducements in the form of extra quantities	This term applies to the type of offer which is made particularly by supermarkets. Examples are "Buy two and the second item is half price" or "Buy one and get one free". There are different versions of this general type of inducement. For example, it may be that two items are packaged together, and cannot be purchased separately as usual, or when the "free" item is separately available and thus does not need to be accepted by the customer.	If the offer has a low value relative to the price of the item concerned, it should be excluded from the HCPI.	In these types of offer, the "free" good is exactly the same as the good being purchased. See B2 for inducements in the form of "free gifts".

Number	Type of price reduction	Description	Exceptions	Notes
A3	O t h e r temporary price reductions	Ad hoc sales may be held at any time in the year, regardless of the season. Shops may display signs announcing, say, "all stock reduced by up to 50%". Shoppers may not know for how long such reductions will apply – and the retailers themselves may not know, as it may depend on the degree of success of the sale.	As for seasonal sales (A1).	As for seasonal sales (A1).
A4	G e n e r a l rebates	A common type of general rebate is the returnable deposit on glass bottles. Anybody who buys a bottle must pay a deposit, and only if the bottle is returned to a particular place will the deposit be returned. Note that the definition of a "rebate" (Article 2) is a refund of a part of the value of a purchase made by a customer, equivalent to a postponed discount. The customer may regard it less as a refund of part of the original price, but the return of a deposit made at the time of purchase.	None.	The HCPI should record the net price excluding the deposit.
A5	B u l k purchases	Some outlets give discounts when certain goods are bought in large quantities. Sometimes the goods are packaged together in bulk, and sold at a lower unit price than if sold singly (Example: multipacks of toilet paper). Another type is when a discount is applied to a group of purchases if a minimum value or quantity is purchased together. (Example: 10% reduction if 6 bottles of wine are bought at the same time).	If the discount is of the second type, it would be impractical to include the discount in the HCPI.	If the discounts are regular and sold in multi-packs, they should be treated as separately specified items, and priced as such.

GROUP B PRICE REDUCTIONS NORMALLY EXCLUDED FROM THE HCPI

Number	Type of price reduction	Description	Reason for exclusion from the HCPI	Exceptions	Notes
B1	S t o c k - c l e a r i n g (“clearance”) sales	When shops accumulate stocks of goods which need to be reduced (for reasons of economy or of storage space, or, in the case of clothing, to make way for new fashions, for example), they may offer items at reduced rates for a certain period of time.	The products on sale are often old stock, which have deteriorated in quality (e.g. shop-soiled or close to the “sell-by” date). Such products would not meet the normal specifications for price collection.	If the sale items are in fact of normal quality, and they meet the specifications of the representative items, they should be included in the HCPI at the reduced price.	Such sales may be part of a more general seasonal sale or they may be separate.
B2	Inducements in the form of “free gifts”	This has some similarity to the “extra quantities” situation (A2). But in this case the item offered free or at a reduced price is different from the item to which the offer relates. For example, a customer buying a camera may be offered a case for the camera, either free or at a reduced price.	If the value of the “free gift” is relatively small in comparison with the item purchased, it is unlikely that it will have a significant effect on the quantities purchased.	If the value of the “free gift” is relatively large in comparison with the item purchased, it may have a significant effect on the quantities purchased, and should therefore be included in the HCPI	In these types of offer, the “free gift” is different from the item being purchased.
B3	Incentives for future purchases	This type of scheme may involve the use of vouchers. For example, a customer buys three tickets for an event (say, a sports or cultural event) and is given a voucher enabling him or her to obtain a free or reduced price ticket at the same venue during a limited future period.	Mainly practical: the value of the incentive may not be known until the time when it is “spent”. It is also discriminatory, as conditions apply.	As for “free gifts” (B2) – provided the value of the “gift” can be estimated with reasonable accuracy.	This is similar in principle to the “inducements in the form of free gifts”. The difference is that the gift is not supplied with the purchase, and may only be obtained under certain conditions at a later date.

Number	Type of price reduction	Description	Reason for exclusion from the HCPI	Exceptions	Notes
B4	Discounts for particular groups of customers	Discounted prices for certain products (especially services) may be available to pensioners, or to people below or above a certain age, e.g. discounts on public transport. Organised groups of people, such as trade union members, may have access to discounts with specified retailers.	Discriminatory; and sometimes not applied to individual products.	None – but see Notes.	If the total expenditure on a certain type of discount of this type is considered to be significant, it may be included in the HCPI by treating it as a separate item, e.g. the cost of a certain rail journey for a pensioner. This may form part of a tariff price (see [Regulations on tariffs]).
B5	Loyalty rebates	Loyalty (sometimes known as “fidelity”) schemes exist to encourage customers to return regularly to a certain shop, or chain of shops. These may involve regular customers being given special discounts, or it may be that regular customers can build up a credit (often using a special card) which can later be used instead of cash when a purchase is made. At the customer’s request, the points can be used to pay for all or part of a normal shopping basket.	Discriminatory, and usually not applicable to individual products.	None.	Airline schemes which allow travellers to accumulate points (e.g. “air miles”) enabling them to obtain free or reduced price air tickets fall within this category, and should be excluded from the HCPI. Similar types of scheme exist for regular users of certain chains of hotels.

B6	Discount cards.	These are sometimes available for purchases of a particular type or with a particular group of retailers. They are different from loyalty rebates as they must first be purchased by the consumer. An example is a card which, when purchased, may be used to gain access (free, or at a reduced price) to business lounges in airports.	Discriminatory.	None.	
Number	Type of price reduction	Description	Reason for exclusion from the HCPI	Exceptions	Notes
B7	Discount coupons	Coupons may be cut out from newspapers or magazines, which, after purchase, are used to obtain discounts. The coupons may relate to a single product or more than one, and may be redeemable at one or more stores or chains of stores.	Discriminatory. They apply only to consumers who have seen the coupons in a certain newspaper etc. and require special action by the consumer. They may also not relate to individual products.	None.	
B8	Discount codes from websites	For internet shoppers "discount codes" can be found on certain websites, which allow purchasers to obtain discounted prices on particular products from particular internet outlets. The discount codes are free and can sometimes give substantial discounts.	Discriminatory. They apply only to consumers who have seen the relevant websites and taken special action.	None.	Internet purchases are in any case currently excluded from the HCPI.
B9	Credit provided free or at a reduced rate of interest	This is a form of incentive used to encourage customers to purchase high-value items such as cars or durables. A loan is given to the customer on favourable credit terms compared with the normal market. The price payable for the item may be higher in such cases.	Interest payments are outside the scope of the HCPI, and finance charges are dealt with under a different part of COICOP from durable goods.	None.	Finance charges are in any case currently excluded from the HCPI.

B10	Trade-in discounts	<p>This concerns situations when a discount is obtainable if the customer offers a used item of a certain type at the point of sale. The most popular example is motor cars: a new car may be bought at a reduced price if the customer offers his or her old car in part-exchange.</p> <p>The retailer of a durable such as a refrigerator may dispose of the customer's old model, provided certain conditions are met, e.g. the new model must cost more than a certain minimum amount.</p>	<p>For the motor cars, the procedures incl. in the [Regulations on seasonal products and second-hand goods] ensure the correct treatment. No additional adjustments need to be made under these Regulations. In the case of other durables, the discount is discriminatory.</p>	None.	
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**ANNEX 3: COMESA REGULATIONS CONCERNING THE
TREATMENT OF PRODUCTS IN THE HEALTHCARE
SECTOR IN THE HARMONISED PRICE INDICES (HCPI)**



COMESA REGULATIONS CONCERNING THE TREATMENT OF PRODUCTS IN THE HEALTHCARE SECTOR IN THE HARMONISED PRICE INDICES (HCPI)

THE COUNCIL OF MINISTERS OF THE COMMON MARKET OF EASTERN AND SOUTHERN AFRICA (COMESA),

Having regard to Article 140 of the Treaty establishing COMESA through which Member States made an undertaking to cooperate in the field of statistics in order to create an enabling environment for up-to-date reliable, harmonized and comparable statistical data on various sectors of economic activity, through the harmonization and adoption of common methodologies concepts and definitions to be used in collecting and compiling statistics;

Having regard to COMESA Regulation No [xx] of [date] concerning the establishment of harmonized consumer price indices (HCPIs) in Member States;

Having regard to existing COMESA Member States' legislation on statistics and the confidentiality clauses therein;

HEREBY ADOPTS THESE REGULATIONS:

**Article 1
Citation**

These Regulations shall be cited as the COMESA Regulations concerning the Treatment of Products in the Healthcare Sector in the Harmonized Consumer Price Indices (HCPI).

**Article 2
Definitions**

In these Regulations, unless the context otherwise requires:

“**COICOP**” means the international Classification of Individual Consumption according to Purpose;

“**Harmonized Consumer Price Indices (HCPI)**” means the comparable consumer price indices compiled by each Member State;

“**In-patient services**” means the provision of healthcare services in hospitals and the like, including accommodation for the patient, normally overnight or for longer periods;

“**Member States**” means COMESA Member States;

“**Out-patient services**” means medical, dental or therapeutic services delivered at home, in individual or group consulting facilities, dispensaries or the out-patient clinics of hospitals. and the like;

“**Reimbursements**” means payments made to households by government units or non-profit institutions serving households (NPISHs) that are made as direct consequences of purchases of individually specified products, initially paid for by households;

“**Secretariat**” means the COMESA Secretariat.

Article 3

Objective

The objective of these Regulations is to set minimum standards for the HCPI treatment of goods and services in the healthcare sector in conformity with COICOP Division 06, as set out in the Annex 4(i).

Article 4

Types of expenditure

1. Member States shall classify expenditure on healthcare products in the appropriate sub-heading of COICOP Division 06.
2. Member States shall separate and allocate the components of a price to the appropriate COICOP classes using estimated data where necessary, where a price is charged for healthcare services combined with healthcare materials or support services.

Article 5

Providers of healthcare products

All fee-charging providers of healthcare products, including organs of central and local government, NPISHs, religious organisations, private institutions and companies, and private self-employed persons, shall be covered in the HCPI.

Article 6

Weights

1. Member States shall determine the weights in accordance with total household expenditure on health care services as classified in COICOP Division 06, less reimbursements and shall be based on the following:
 - (b) results of household expenditure surveys;
 - (c) National Accounts data using the expenditure concept of private consumption; or
 - (d) any other appropriate source.
2. Where fees for healthcare products are paid for partially or fully by means of a loan, the weights shall include the gross fees payable without regard to the amount of the loan, its repayment period or any interest chargeable.

Article 7

Prices

1. The purchaser prices of health care services shall be the amounts payable by households net of any reimbursements.
2. Member States shall obtain prices of health care services from the fee-charging providers referred to in Article 5.
3. Where a service is provided to households:
 - (a) free of charge and subsequently an actual price is charged (whether or not subsidised) the change from zero to the actual price shall be taken into account in the HCPI;
 - (b) at a fee and subsequently is provided free of charge the change from the actual price to zero shall be taken into account in the HCPI; and
 - (c) jointly with other services or goods free of charge, and is subsequently charged for on a separate basis, the change shall be taken into account in the HCPI.

Article 8

Coverage of healthcare products

1. Member States shall extend the initial coverage set out in Annex 1 of the Product Coverage Regulations in conformity with COICOP Division 06 and its sub-headings in accordance with Annex 1 of the Extended Product Coverage Regulations.
2. HCPIs which include price indices and weights for each of the categories referred to in paragraph 1 accounting for more than one part in a thousand of total expenditure covered by the HCPI shall be deemed comparable.
3. Member States shall compile HCPI sub-indices for the COICOP Division 06 and its sub-headings referred to in paragraph 1 where the weights account for more than one part in a thousand of total expenditure covered by the HCPI.

Article 9

Calculation of HCPI for healthcare products

Member States shall compute the HCPI for healthcare products based on the requirements of Articles 4 to 8.

Article 10

Transmission of sub-indices to Secretariat

1. Member States shall compile sub-indices of the HCPI in accordance with Article 6 and transmit them monthly to the Secretariat.

2. Member States shall transmit to the Secretariat the corresponding weights and household final monetary consumption expenditures together with the first HCPIs relating to COICOP Division 06 and thereafter whenever the weights are changed.

Article 11

Quality Control

Member States shall provide the Secretariat with information sufficient to evaluate compliance with the procedures laid down in Articles 4 to 8.

Article 12

Amendments

1. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing who shall, within 30 days of its receipt, communicate it to the Member States.
2. The Member States which wish to comment on the proposals shall do so within 90 days from the date of the dispatch of the proposals by the Secretary General.
3. After the expiration of the period prescribed under paragraph 2 the Secretary General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee on Legal Affairs.
4. Any amendment to these Regulations shall be adopted by Council and shall enter into force upon publication in the Official Gazette of the Common Market.

Article 13

Entry into force

These Regulations shall enter into force on the date of publication in the Official Gazette of the Common Market.

Done and adopted at the Thirty First Meeting of the COMESA Council of Ministers held at Kampala, Uganda on 20 November 2012.

[Signature].....

Chairperson

COMESA Council of Ministers

Annex 3(i)

CLASSIFICATION OF ITEMS IN COICOP DIVISION 06 AND OTHER HEALTHCARE-RELATED ITEMS

COICOP GROUP	Examples of specific types of product CLASS
6.1	MEDICAL PRODUCTS AND APPLIANCES (NB: No services, all goods)
6.1.1	PHARMACEUTICAL PRODUCTS Medicines bought without prescription Medicines bought with prescription Herbal medicines, vitamins, minerals Oral contraceptives Vaccines
6.1.2	OTHER MEDICAL PRODUCTS Clinical thermometers Bandages, plasters Syringes Condoms First aid kits Elasticated stockings
6.1.3	THERAPEUTIC APPLIANCES AND EQUIPMENT Spectacles, contact lenses Hearing aids Dentures (not fitting costs) Artificial limbs Wheelchairs, crutches Orthopaedic devices Blood pressure monitors Trusses Repair of such items
6.2	OUTPATIENT SERVICES (NB No goods: all services)

6.2.1 MEDICAL SERVICES

General practitioners (family doctors)

Specialist consultants

Orthodonticians

Services of day clinics

6.2.2 DENTAL SERVICES

Dentists

Dental hygienists and auxiliaries

Fitting costs of dentures

6.2.3 PARAMEDICALSERVICES

Medical laboratory services, including X-rays, scans etc

Freelance nurses, midwives

Freelance physiotherapists, chiropractors, acupuncturists etc

Ambulance services

Practitioners of traditional medicine

6.3 HOSPITAL SERVICES

6.3.0 HOSPITAL SERVICES (In-patient care supervised by medical doctors)

Services to in-patients in hospitals, psychiatric hospitals, maternity units, nursing homes, hospices for the terminally ill, etc

Medical and paramedical services

Cost of specific operations/interventions

Provision of operating theatre and support

Nursing

Accommodation

Catering

Ambulance transport

Provision of pharmaceutical products

Not included in COICOP Division 06 (COICOP headings in brackets):-

Articles for personal hygiene, including medicinal soaps (12.1.3)

Health insurance premiums (12.5.3)

Institutions for disabled people (12.4.0)

Protective goggles (09.3.2)

Retirement homes for the elderly (12.4.0)

Sunglasses (other than those with corrective lenses) (12.3.2)

Veterinary products (09.3.4/5)

**ANNEX 4 :COMESA REGULATIONS CONCERNING
STATISTICS DERIVED FROM THE HARMONISED
CONSUMER PRICE INDICES (HCPI)**



COMESA REGULATIONS CONCERNING STATISTICS DERIVED FROM THE HARMONISED CONSUMER PRICE INDICES (HCPI)

THE COUNCIL OF MINISTERS OF THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

Having regard to Article 140 of the Treaty establishing COMESA through which Member States made an undertaking to cooperate in the field of statistics in order to create an enabling environment for up-to-date reliable, harmonized and comparable statistical data on various sectors of economic activity, through the harmonization and adoption of common methodologies concepts and definitions to be used in collecting and compiling statistics;

Having regard to COMESA Regulation No [xx] of [date] concerning the establishment of harmonized consumer price indices (HCPIs) in Member States;

Having regard to existing COMESA Member States' legislation on statistics and the confidentiality clauses therein;

HEREBY ADOPTS THESE REGULATIONS:

**Article 1
Citation**

These Regulations shall be cited as the COMESA Regulations Concerning Statistics Derived from the Harmonized Consumer Price Indices (HCPI).

**Article 2
Definitions**

In these Regulations, unless the context otherwise requires:

“Annual average HCPI” means the arithmetic mean of twelve consecutive monthly indices;

“COICOP” means the international Classification of Individual Consumption according to Purpose;

“Contribution to overall inflation rate” means the change that would have occurred in the all-items HCPI if a particular component index had undergone its observed change but all other component indices and weights had remained unchanged;

“Core inflation” means an index derived from the HCPI which is intended to show the underlying trend in inflation by excluding price movements arising from transient or volatile product groups;

“Harmonized Consumer Price Indices (HCPI)” means the comparable consumer price indices compiled by each Member State;

“COMESA Harmonized Consumer Price Index (HCPI-COMESA)” means the aggregated consumer price index produced by COMESA, based on the HCPIs of Member States;

“Inflation rate” means the percentage change between any pair of HCPI indices, whether based on monthly, annual or any other time period;

“Member States” means COMESA Member States;

“Rounding” means the process in which a numerical figure is shortened to a smaller number of digits with minimum loss of accuracy;

“Secretariat” means the COMESA Secretariat; and

“Truncation” means the process in which a numerical figure is shortened to a specified number of decimal places by removing the trailing digits.

Article 3

Objective

The objective of these Regulations is to establish harmonised methods for the derivation of certain statistics based on the HCPI.

Article 4

Rounding prices during collection, processing, transmission and publication

1. Member States shall:
 - (a) record prices and compute indices for the HCPI with the full number of decimal places, if any, from the observed prices;
 - (b) calculate prices and weights for inclusion in the HCPI computations without rounding or truncation;
 - (c) use the full number of decimal places available in calculating HCPI indices, sub-indices and the weights; and
 - (d) round HCPI indices and weights in parts per thousand to four or more decimal places for purposes of transmitting to the Secretariat.
2. The Secretariat shall:
 - (a) carry out all calculations using the full decimal places transmitted by Member States;
 - (b) publish the index and sub-index levels for each Member State rounded to two decimal places; and
 - (c) publish the weights applied to each Member State to calculate the HCPI-COMESA, and any other country aggregates, rounded to two decimal places.
3. Member States and the Secretariat shall:
 - (a) Publish index levels for the HCPI and any of its sub-indices rounded to two decimal places;

- (b) Publish inflation rates for the HCPI and any of its sub-indices rounded to one decimal place;
 - (c) Calculate averages of more than one monthly HCPI index number, including annual averages, using the full number of decimal places available;
 - (d) Round the published averages of more than one monthly HCPI index number, including annual averages, to two decimal places; and
 - (e) Calculate the inflation rates comparing periods of more than one single month, including the calculation of average inflation in one year compared with another year, using averages of monthly index numbers calculated as in paragraph 3(c).
4. The production, transmission and publication of other derived statistics shall be in accordance with the rules on rounding set out in this Article.

Article 5

Calculation of inflation rates

1. Member States and the Secretariat shall calculate the percentage inflation rate between any two months using the formula set out in Annex 4(i) for a period where a rebasing of the HCPI has not occurred.
2. Where the period over which the inflation rate is calculated includes one or more periods when the HCPI index reference period has been changed, the calculation of the percentage inflation rate between any two months shall be done in two or more stages, using the formula set out in the Annex.

Article 6

Calculation of average indices

Member States and the Secretariat shall calculate the annual average HCPI and averages for other periods using the arithmetic mean of monthly indices and the formula set out in the Annex.

Article 7

Indices for sub-groups and special aggregates

1. Member States and the Secretariat shall, where indices are produced for specific subgroups or aggregates of the HCPI, calculate the indices using the same weights and indices used in the calculation of the published HCPIs.
2. Member States and the Secretariat shall calculate indices, using identical reference periods, in accordance with the formula set out in the Annex provided that the formula may be adapted for any number of components where applicable.
3. Member States and the Secretariat shall agree on the methods to be used in calculating indices intended to provide measures of core inflation and relating to specific population groups,

geographical areas or other economic sectors.

Article 8

Contributions to the overall inflation rate

Member States and the Secretariat shall calculate the contribution of a particular HCPI component to the change in the all-items HCPI between month t0 and month t1 in accordance with the formula set out in the Annex.

Article 9

Quality Control

Member States shall provide to the Secretariat information sufficient to evaluate compliance with the procedures laid down in Articles 4 and 5.

Article 10

Amendments

1. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing who shall, within 30 days of its receipt, communicate it to the Member States.
2. The Member States which wish to comment on the proposals shall do so within 90 days from the date of the dispatch of the proposals by the Secretary General.
3. After the expiration of the period prescribed under paragraph 2, the Secretary General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee on Legal Affairs.
4. Any amendment to these Regulations shall be adopted by Council and shall enter into force upon publication in the Official Gazette of the Common Market.

Article 11

Entry into force

These Regulations shall enter into force on the date of publication in the Official Gazette of the Common Market.

Done and adopted at the Thirty First Meeting of the COMESA Council of Ministers held at Kampala, Uganda on 20 November 2012.

[Signature].....

Chairperson

COMESA Council of Ministers

Annex 4(i)

Formulae referred to in Articles 5-8 of the Regulations on Derived Statistics

ARTICLE 5.1 – calculation of inflation rates

$$R_{t_0}^t = (I_t / I_{t_0} - 1) \times 100$$

where $R_{t_0}^t$ is the percentage rate of inflation between periods t_0 and t , and I_t and I_{t_0} are the indices for periods t and t_0 respectively.

ARTICLE 5.2 – calculation of inflation rates

$$R_{t-12}^t = I_{B1}^t \times \frac{I_{B0}^{B1}}{I_{B0}^{t-12}} \times 100$$

where:

R_{t-12}^t is the percentage rate of inflation between month $(t-12)$ and month t ;

I_{B1}^t is the index for month t based on reference period $B1$;

I_{B0}^{B1} is the index for the reference period $B1$ based on the reference period $B0$;

I_{B0}^{t-12} is the index for month $(t-12)$ based on reference period $B0$;

and where the index was rebased firstly on period $B0$ and secondly on period $B1$.

ARTICLE 6 - Calculation of average indices

$$I_{12av} = \frac{1}{12} \sum_{i=1}^{12} I_i$$

where:

I_{12av} is the average index over a 12-month period and I_i is the index for a particular month within that 12-month period. The formula assumes that the same index reference period applies to all the monthly indices.

ARTICLE 7.2 – Indices for subgroups and special aggregates

$$I_{(i+j)} = [(W_i \times I_i) + (W_j \times I_j)] / (W_i + W_j)$$

where:

$I(i+j)$ is an index for the sum of components i and j

W_i is the weight for component i

I_i is the index for component i

W_j is the weight for component j

I_j is the index for component j.

ARTICLE 8 - Contributions to the overall inflation rate

$$C_{t1}^i = (I_{t1}^i - I_{t0}^i) / I_{t0}^a \times 100 \times W^i / 1000$$

where:

C_{t1}^i is the contribution of component i to the change in the all-items index in month t1;

I_{t1}^i is the index for component i in month t1;

I_{t0}^i is the index for component i in month t0;

I_{t0}^a is the all-items index in month t0;

W_i is the weight for component i in parts per thousand.

The formula assumes that there is no change in weights between the two months in the comparison.

**ANNEX 5: COMESA REGULATIONS CONCERNING
STATISTICS DERIVED FROM THE HARMONISED
CONSUMER PRICE INDICES**



COMESA REGULATIONS CONCERNING STATISTICS DERIVED FROM THE HARMONISED CONSUMER PRICE INDICES

THE COUNCIL OF MINISTERS OF THE COMMON MARKET OF EASTERN AND SOUTHERN AFRICA (COMESA),

Having regard to Article 140 of the Treaty establishing COMESA through which Member States made an undertaking to cooperate in the field of statistics in order to create an enabling environment for up-to-date reliable, harmonized and comparable statistical data on various sectors of economic activity, through the harmonization and adoption of common methodologies concepts and definitions to be used in collecting and compiling statistics;

Having regard to COMESA Regulation No [xx] of [date] concerning the establishment of harmonized consumer price indices (HCPIs) in Member States;

Having regard to existing COMESA Member States' legislation on statistics and the confidentiality clauses therein;

HEREBY ADOPTS THESE REGULATIONS:

Article 1 Citation

These Regulations shall be cited as the COMESA Regulations Concerning Sampling for the Harmonized Consumer Price Indices (HCPI).

Article 2 Definitions

In these Regulations, unless the context otherwise requires:

“**Dimension**” means one of the main aspects of a good or service which may have an influence on its price;

“**Harmonized Consumer Price Indices (HCPI)**” means the comparable consumer price indices compiled by each Member State;

“**Member States**” means COMESA Member States;

“**Non-probability sampling**” means the deliberate, non-random, selection of a sample of units, such as outlets or products, based on the knowledge or judgment of the person responsible;

“**Probability sampling**” means the random selection of a sample of units, such as outlets or products such as outlets or products, in such a way that each unit in the universe of such units has a known, non-zero, probability of selection;

“**Secretariat**” means the COMESA Secretariat;

“**stratum**” means one of a group of relatively homogeneous populations within a particular dimension of a good or service;

“**Target sample**” means the set of prices of goods and services which a Member State plans to obtain for the production of the HCPI from a particular point in time[date], or plans at some subsequent date, in order to meet the comparability requirements laid down in the [Framework Regulations];

“**Universe**” means the entire set of units being sampled;

“**Outlet-type**” means a set of outlets which have strongly marked and readily defined similarities in terms of physical characteristics, the range of products they sell, and their legal status., e.g. shops which are individually owned or which are part of a chain or group.

Article 3

Objective

The objective of these Regulations is to ensure a harmonized approach to the procedures used in sampling for the HCPI to meet the comparability criteria set out in Article 5 of the Framework Regulations.

Article 4

Sampling methods

1. Member States shall use appropriate methods of probability sampling where it is practicable to do so.
2. Member States shall use non-probability methods using one or more of the techniques set out in these Regulations, or other techniques which meet the comparability criteria set out in Article 5 of the Framework Regulations where probability sampling methods are not practicable
3. Member States shall use a combination of probability sampling and non-probability sampling methods depending on the availability of information.

Article 5

Sample construction

1. Member States shall stratify a sample based on the following dimensions:
 - (a) Geographic;
 - (b) Outlet;
 - (c) Product; and
 - (d) Time.
2. Each Member State shall establish a target sample for the HCPI, which shall be representative of the consumption of the reference population in that Member State.

3. The target sample referred to in paragraph 2 shall comprise a matrix of numbers relating to the target sample sizes in all the sample dimensions listed in paragraph 1.
4. Each Member State shall propose to the Secretariat an appropriate sample design reflecting size and composition based on the economic structures within each Member State.
5. Member States shall make the details of the sample design referred to in paragraph 4 publicly accessible.

Article 6

Sample replenishment

1. Member States shall, at the time of the general re-basing of the HCPI, review and replenish the sample strata in accordance with Article 4 of the Regulations on Weights, Product Sample and Item Substitution in order to maintain its representativeness.
2. Member States shall review the product sample annually in accordance with Article 8 of the Regulations on Weights, Product Sample and Item Substitution.
3. Where factors affecting the stratum appear likely to have a significant effect on the HCPI, Member States shall make changes within any stratum of the sample.

Article 7

Sample variance

Where practicable, Member States shall optimise the sample size and design to minimise the variance of the HCPI.

Article 8

Geographic sampling

1. Member States shall design the geographic dimension of the sample of prices to provide a national sample which is representative of household expenditure in the country as a whole.
2. The sample of prices collected in each Member State shall cover, as a minimum, all those regions of the country in which the total value of household expenditure, as a proportion of total national household expenditure, is large enough to have a potentially significant effect on the national HCPI: provided that a Member State may exclude a region where its exclusion would have no effect on the national HCPI at the published level of significance.
3. Where probability sampling is used for the geographic dimension of the sample, the sampling frame shall be related to a measure of regional household expenditure, or as estimated using data obtained from other statistical or administrative sources.

Article 9

Outlet sampling

1. Member States shall design the outlet dimension of the sample of prices to provide a national sample which is representative of household expenditure in the country as a whole.
2. Member States shall select Outlet types to be covered in the HCPI sample in accordance with Articles 3 and 4 of the Regulations on Outlets.
3. Member States shall select individual outlets in accordance with Article 3(2) of the Regulations on Outlets.

Article 10

Product sampling

1. Member States shall design the product dimension of the sample of prices to provide a national sample which is representative of household expenditure in the country as a whole.
2. Member States shall cover each of the product categories listed in Annex 1 of the Regulations on Product Coverage in the sample of prices collected, which account for more than one part in a thousand of total expenditure covered by the HCPI.
3. Member States shall, within each product category, determine the selection of items for inclusion in the price sample in accordance with Article 7 of the Regulations on Weights, Product Sample and Item Substitution.

Article 11

Time sampling

Member States shall design the time dimension of the sample of prices to provide a national sample in accordance with Article 5 of the Regulations on Price Collection, which:

- (a) is representative of household expenditure; and
- (b) ensures the comparability of prices between successive months.

Article 12

Quality Control

Member States shall provide to the Secretariat information sufficient to evaluate compliance with the procedures laid down in Articles 4 to 11.

Article 13
Amendments

1. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing who shall, within 30 days of its receipt, communicate it to the Member States.
2. The Member States which wish to comment on the proposals shall do so within 90 days from the date of the dispatch of the proposals by the Secretary General.
3. After the expiration of the period prescribed under paragraph 2, the Secretary-General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee on Legal Affairs.
4. Any amendment to these Regulations shall be adopted by Council and shall enter into force upon publication in the Official Gazette of the Common Market.

Article 14
Entry into force

These Regulations shall enter into force on the date of publication in the Official Gazette of the Common Market.

Done and adopted at the Thirty First Meeting of the COMESA Council of Ministers held at Kampala, Uganda on 20 November 2012.

[Signature].....

Chairperson

COMESA Council of Ministers

ANNEX 6: COMESA REGULATIONS CONCERNING THE PROCEDURES FOR THE ADJUSTMENT OF PRICES RESULTING FROM CHANGES IN THE QUALITY OF PRODUCTS IN THE HARMONISED CONSUMER PRICE INDICES (HCPI)



COMESA REGULATIONS CONCERNING THE PROCEDURES FOR THE ADJUSTMENT OF PRICES RESULTING FROM CHANGES IN THE QUALITY OF PRODUCTS IN THE HARMONISED CONSUMER PRICE INDICES (HCPI)

THE COUNCIL OF MINISTERS OF THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA);

Having regard to Article 140 of the Treaty establishing COMESA through which Member States made an undertaking to cooperate in the field of statistics in order to create an enabling environment for up-to-date reliable, harmonized and comparable statistical data on various sectors of economic activity, through the harmonization and adoption of common methodologies concepts and definitions to be used in collecting and compiling statistics;

Having regard to COMESA Regulation No [xx] of [date] concerning the establishment of harmonized consumer price indices (HCPIs) in Member States;

Having regard to existing COMESA Member States' legislation on statistics and the confidentiality clauses therein;

HEREBY ADOPTS THESE REGULATIONS:

Article 1 Citation

These Regulations shall be cited as the COMESA Regulations Concerning the Procedures for the Adjustment of Prices Resulting from Changes in the Quality of Products in the Harmonized Consumer Price Indices (HCPI).

Article 2 Definitions

In these Regulations, unless the context otherwise requires:

“Characteristics” means the tangible or intangible attributes of a good or service that serve to identify it and enable it to be classified;

“Class mean imputation” means the imputation of the price of a missing item by reference to the average price change of comparable items;

“Direct comparison” means that the price of a replacement item is compared with the price of a missing item without any quality adjustment;

“Expert judgment” means a method of quality adjustment where the value of a change in an item's characteristics is made on the basis of informed expert knowledge;

“Harmonized Consumer Price Indices (HCPI)” means the comparable consumer price indices compiled by each Member State;

“Hedonic method” means a method of quality adjustment where hedonic regression is used to estimate the value of changes in an item’s characteristics;

“Item” means an individual, specified goods or service in the sample of products selected for pricing;

“Matched models” means pricing similar items in consecutive months, so as to ensure that the observed price changes are unaffected by quality change;

“Member States” means COMESA Member States;

“Option pricing” means a method of quality adjustment in which the prices of specific options are used to enable price comparisons of hypothetical items which have identical characteristics;

“Overall mean imputation” means the imputation of the price of a missing item by reference to the average price change of the remaining unchanged items in the same elementary aggregate;

“Overlap” means a method of quality adjustment based on the difference in price between a missing item and its replacement when both are available for pricing in the same month;

“Price-determining characteristics” means those characteristics which have, or may have, an effect on the price of a good or service;

“Pure price change” means a change in the price of an item whose characteristics are unchanged; or the change in price following any quality adjustment;

“pure price index” means an index that is based on pricing a constant representative basket of products at the current period;

“Quality adjustment” means an adjustment to the change in price of an item whose characteristics change over time, designed to remove the contribution of the change in characteristics to the observed price change;

“Replacement item” means an item which replaces another item whose price was previously collected, but whose availability disappears at a time outside the annual revision of products;

“Secretariat” means the COMESA Secretariat; and

“Secretary-General” means the Secretary-General of the Common Market provided for by Article 17 of the Treaty.

Article 3 Objective

The objective of these regulations is to ensure a harmonized approach to the procedures used for quality adjustment in the HCPI to meet the comparability requirements as laid down in Article 5 of the Framework Regulations.

Article 4

Circumstances requiring quality adjustment

1. Member States shall make a quality adjustment to the price of the replacement item where:
 - (a) an item whose price is collected for the HCPI needs to be replaced by another, because the first item is no longer available; and
 - (b) there is a change in one or more of the price-determining characteristics of the item.
2. Member States shall use overlap pricing where:
 - (a) an item whose price is collected for the HCPI needs to be replaced by another because the original item is considered likely to become unavailable within a short time in order to address any price difference between the two items; and
 - (b) one item replaces another during a general revision of the sample in accordance with Article 8 of the Regulations on Weights, Product Sample and Item Substitution to address any price difference between the two items.

Article 5

Methods of quality adjustment

1. Member States shall make all quality adjustments in accordance with the principle of pure price index.
2. Member States shall carry out quality adjustments in the circumstances stated in Article 4, by using any of the following options:
 - (a) Explicit methods, including:
 - i. option pricing;
 - ii. expert judgment; or
 - iii. hedonic method.
 - (b) Implicit methods, including:
 - i. Overlap;
 - ii. matched models;
 - iii. overall mean imputation; or
 - iv. class mean imputation.
3. No Member State shall estimate the value of a quality change as the whole of the difference between the prices of the replaced item and the replacement item, unless this can be justified as being a reasonable estimate.
4. Member States shall, where none of the options referred to in paragraph 2 is possible, take the pure price change to be the whole of the difference between the prices of the replaced item and the replacement item.

Article 6
Quality Control

Member States shall provide to the Secretariat information sufficient to evaluate compliance with the procedures laid down in Articles 4 and 5.

Article 7
Amendments

1. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing who shall, within 30 days of its receipt, communicate it to the Member States.
2. The Member States which wish to comment on the proposals shall do so within 90 days from the date of the dispatch of the proposals by the Secretary General.
3. After the expiration of the period prescribed under paragraph 2, the Secretary General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee on Legal Affairs.
5. Any amendment to these Regulations shall be adopted by Council and shall enter into force upon publication in the Official Gazette of the Common Market.

Article 8
Entry into force

These Regulations shall enter into force on the date of publication in the Official Gazette of the Common Market.

Done and adopted at the Thirty First Meeting of the COMESA Council of Ministers held at Kampala, Uganda, on 20 November 2012.

[Signature].....

Chairperson

COMESA Council of Ministers

**ANNEX 7: COMESA REGULATIONS CONCERNING
THE EXTENSION OF PRODUCT COVERAGE IN THE
HARMONISED CONSUMER PRICE INDICES (HCPI)**



COMESA REGULATIONS CONCERNING THE EXTENSION OF PRODUCT COVERAGE IN THE HARMONISED CONSUMER PRICE INDICES (HCPI)

THE COUNCIL OF MINISTERS OF THE COMMON MARKET OF EASTERN AND SOUTHERN AFRICA (COMESA),

Having regard to Article 140 of the Treaty establishing COMESA through which Member States made an undertaking to cooperate in the field of statistics in order to create an enabling environment for up-to-date reliable, harmonized and comparable statistical data on various sectors of economic activity, through the harmonization and adoption of common methodologies concepts and definitions to be used in collecting and compiling statistics;

Having regard to COMESA Regulation No [xx] of [date] concerning the establishment of harmonized consumer price indices (HCPIs) in Member States;

Having regard to existing COMESA Member States' legislation on statistics and the confidentiality clauses therein;

HEREBY ADOPTS THESE REGULATIONS:

**Article 1
Citation**

These Regulations shall be cited as the COMESA Regulations concerning the Extension of Product Coverage in the Harmonized Consumer Price Indices (HCPI).

**Article 2
Definitions**

In these Regulations, unless the context otherwise requires:

“Actuarial provisions” means allocations by the insurance company to technical provisions against outstanding risks;

“COICOP” means the international Classification of Individual Consumption according to Purpose;

“Claims” means the amounts which the insurance company pays to the policyholder and other parties in settlement of injuries or damage suffered by persons or goods;

“Gross insurance premiums” means the amount paid by the policyholder for a specific insurance policy to obtain insurance cover;

“Index-linked” means the periodic adjustment of the money values of some regular scheduled payments based on the movement of a price index.

“ISCED” means the International Standard Classification of Education;

“Harmonized Consumer Price Indices (HCPI)” means the comparable consumer price indices compiled by each Member State;

“COMESA Harmonized Consumer Price Index (HCPI-COMESA)” means the aggregated consumer price index produced by COMESA, based on the HCPIs of Member States;

“Member States” means COMESA Member States;

“Premium supplements” means the income earned by insurance enterprises by investing their insurance technical provisions, which comprise prepayments for insurance premiums, provisions for outstanding claims, and provisions against outstanding risks;

“Reimbursements” means payments made to households by government units or non-profit institutions serving households (NPISHs) that are made as direct consequences of purchases of individually specified products, including social protection services, initially paid for by households;

“Secretariat” means the COMESA Secretariat;

“Service charge” means gross insurance premiums plus premium supplements minus claims minus changes in the actuarial provisions; and

“UNESCO” means United Nations Educational, Scientific and Cultural Organization.

Article 3

Objective

The objective of these Regulations is to extend the range of product coverage in the HCPI to ensure that all products other than those which are permanently excluded in accordance with Annex 8 (2) are within the scope of the HCPI.

Article 4

Extensions to product coverage

1. Member States shall extend the initial product coverage set out in Annex 1 of the COMESA Regulations on Product Coverage in accordance with Annex 8(1) of these Regulations.
2. Member States shall permanently exclude the products set out in Annex 8(2) from the HCPI.
3. The Secretariat shall publish the product headings and related information in accordance with the revised list of COICOP sub-indices set out in Annex 8(3).
4. Member States shall define product headings included in Annexes 1 and 2 in accordance with the definitions and descriptions in COICOP.
5. HCPIs which include price indices and weights for each of the COICOP headings listed in Annex 8(1) accounting for more than one part in a thousand of total expenditure covered by the HCPI shall be deemed comparable in respect of product coverage.
6. Member States shall compile HCPI sub-indices for each of the COICOP headings set out in

Annex 8(1) where the weights account for more than one part in a thousand of total expenditure covered by the HCPI.

7. Each Member State shall transmit to the Secretariat the sub-indices of the HCPI referred to in paragraph 6 on a monthly basis.
8. Each Member State shall transmit to the Secretariat the corresponding weights and household final monetary consumption expenditures together with the first HCPIs relating to the extended coverage.
9. The Secretariat shall:
 - (a) produce and publish the monthly total HCPI-COMESA and the sub-indices set out in Annex 8(3); and
 - (b) publish the corresponding HCPIs of Member States.
10. The Secretariat may, after consultation with Member States, publish sub-indices at a more disaggregated level than those set out in Annex 8(3).

Article 5

Package holidays

1. The price to be recorded for the HCPI shall be the price of the entire holiday including travel, catering, accommodation and any other included elements.
2. Member States shall enter the price of a package holiday in the HCPI during the month in which the price is recorded, regardless of the month to which the holiday relates.
3. The COMESA Regulations on Seasonal and Second-Hand Products shall, where appropriate, apply to package holidays to the extent that package holidays are strongly seasonal products.

Article 6

Social protection services

1. Member States shall assign services to childcare under social protection, COICOP 12.4.0 or under pre-primary education COICOP 10.1.0 in accordance with the standards set out in ISCED1997, published by UNESCO.
2. The HCPI weights shall be:
 - (a) determined according to total household expenditure on social protection services as classified in COICOP 12.4.0, less reimbursements in accordance with Article 2;
 - (b) based on the results of household expenditure surveys, National Accounts data using the expenditure concept of private consumption; and
 - (c) any other appropriate source.
3. Member States shall select representative items within COICOP 12.4.0 which are amenable to pricing on a regular basis.

4. In the case of retirement homes and other residential institutions, the prices and weights shall:
 - (a) relate to items of personal expenditure made by the residents of the institution, including fees to the institution itself; and
 - (b) exclude purchases made by the institution whether or not for the direct benefit of the residents.

Article 7 Insurance

1. The element of insurance to be included in the HCPI shall be the service charge associated with the specified types of insurance policy.
2. The weights for insurance shall be:
 - (a) an estimate of the expenditure by households on service charges for insurance expressed as a proportion of the total expenditure on all products covered; and
 - (b) based on the average annual aggregate expenditure over a three year period including the weights reference year.
3. The prices used for compiling the insurance sub-index of the HCPI shall be the gross insurance premiums paid by households.
4. Where the gross premium and the cover value of a policy are index-linked, the price for the purpose of the HCPI shall not be adjusted with respect to index-linking.

Article 8 Financial and Legal Services

1. Member States shall extend the coverage of the HCPI to COICOP 12.6.2 and to legal services included in COICOP 12.7.0.
2. Member States shall select representative items within the classes referred to in paragraph 1 which are amenable to pricing on a regular basis.
3. Weights for COICOP classes 12.6.2 and 12.7.0 shall relate to household consumption expenditure on the entire classes.

Article 9 Quality Control

Member States shall provide the Secretariat with information sufficient to evaluate compliance with the procedures laid down in Articles 4 to 8.

Article 10
Amendments

1. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing who shall, within 30 days of its receipt, communicate it to the Member States.
2. The Member States which wish to comment on the proposals shall do so within 90 days from the date of the dispatch of the proposals by the Secretary General.
3. After the expiration of the period prescribed under paragraph 2, the Secretary General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee on Legal Affairs.
4. Any amendment to these Regulations shall be adopted by Council and shall enter into force upon publication in the Official Gazette of the Common Market.

Article 11
Entry into force

These Regulations shall enter into force on the date of publication in the Official Gazette of the Common Market.

Done and adopted at the Thirty First Meeting of the COMESA Council of Ministers held at Kampala, Uganda, on 20 November 2012.

[Signature].....

Chairperson

COMESA Council of Ministers

Annex 7(1)

Extended coverage of goods and services in the COMESA HCPI

01-12 INDIVIDUAL CONSUMPTION EXPENDITURE OF HOUSEHOLDS

01 FOOD AND NON-ALCOHOLIC BEVERAGES

01.1 Food

01.1.1 Bread and cereals

01.1.2 Meat

01.1.3 Fish and seafood

01.1.4 Milk, cheese and eggs

01.1.5 Oils and fats

01.1.6 Fruit

01.1.7 Vegetables

01.1.8 Sugar, jam, honey, chocolate and confectionery

01.1.9 Food products n.e.c.

01.2 Non-alcoholic beverages

01.2.1 Coffee, tea and cocoa

01.2.2 Mineral waters, soft drinks, fruit and vegetable juices

02 ALCOHOLIC BEVERAGES, TOBACCO (excluding 02.3 Narcotics)

02.1 Alcoholic beverages

02.1.1 Spirits

02.1.2 Wine

02.1.3 Beer

02.2 Tobacco

02.2.0 Tobacco

03 CLOTHING AND FOOTWEAR

03.1 Clothing

03.1.1 Clothing materials

03.1.2 Garments

03.1.3 Other articles of clothing and clothing accessories

03.1.4 Cleaning, repair and hire of clothing

03.2 Footwear

03.2.1 Shoes and other footwear

03.2.2 Repair and hire of footwear

04 HOUSING, WATER, ELECTRICITY, GAS AND OTHER FUELS

(excluding 04.2 Imputed rentals for housing)

04.1 Actual rentals for housing

04.1.1 Actual rentals paid by tenants

04.1.2 Other actual rentals

04.3 Maintenance and repair of the dwelling

04.3.1 Materials for the maintenance and repair of the dwelling

04.3.2 Services for the maintenance and repair of the dwelling

04.4 Water supply and miscellaneous services relating to the dwelling

04.4.1 Water supply

04.4.2 Refuse collection

04.4.3 Sewerage collection

04.4.4 Other services relating to the dwelling n.e.c.

04.5 Electricity, gas and other fuels

04.5.1 Electricity

04.5.2 Gas

04.5.3 Liquid fuels

04.5.4 Solid fuels

04.5.5 Heat energy

05 FURNISHINGS, HOUSEHOLD EQUIPMENT AND ROUTINE HOUSEHOLD MAINTENANCE

05.1 Furniture and furnishings, carpets and other floor coverings

05.1.1 Furniture and furnishings

05.1.2 Carpets and other floor coverings

- 05.1.3 Repair of furniture, furnishings and floor coverings
- 05.2 Household textiles
 - 05.2.0 Household textiles
- 05.3 Household appliances
 - 05.3.1 Major household appliances whether electric or not
 - 05.3.2 Small electric household appliances
 - 05.3.3 Repair of household appliances
- 05.4 Glassware, tableware and household utensils
 - 05.4.0 Glassware, tableware and household utensils
- 05.5 Tools and equipment for house and garden
 - 05.5.1 Major tools and equipment
 - 05.5.2 Small tools and miscellaneous accessories
- 05.6 Goods and services for routine household maintenance
 - 05.6.1 Non-durable household goods
 - 05.6.2 Domestic services and household service

06 HEALTH

- 06.1 Medical products, appliances and equipment
 - 06.1.1 Pharmaceutical products
 - 06.1.2 Other medical products
 - 06.1.3 Therapeutic appliances and equipment
- 06.2 Outpatient services
 - 06.2.1 Medical services
 - 06.2.2 Dental services
 - 06.2.3 Paramedical services
- 06.3 Hospital services
 - 06.3.0 Hospital services

07 TRANSPORT

- 07.1 Purchase of vehicles
 - 07.1.1 Motor cars

- 07.1.2 Motor cycles
- 07.1.3 Bicycles
- 07.1.4 Animal-drawn vehicles
- 07.2 Operation of personal transport equipment
 - 07.2.1 Spare parts and accessories for personal transport equipment
 - 07.2.2 Fuels and lubricants for personal transport equipment
 - 07.2.3 Maintenance and repair of personal transport equipment
 - 07.2.4 Other services in respect of personal transport equipment
- 07.3 Transport services
 - 07.3.1 Passenger transport by railway
 - 07.3.2 Passenger transport by road
 - 07.3.3 Passenger transport by air
 - 07.3.4 Passenger transport by sea and inland waterway
 - 07.3.5 Combined passenger transport
 - 07.3.6 Other purchased transport services

08 COMMUNICATION

- 08.1 Postal services
 - 08.1.0 Postal services
- 08.2 Telephone and telefax equipment
 - 08.2.0 Telephone and telefax equipment
- 08.3 Telephone and telefax services
 - 08.3.0 Telephone and telefax services

09 RECREATION AND CULTURE (excluding 09.4.3 games of chance)

- 09.1 Audio-visual, photographic and information processing equipment
 - 09.1.1 Equipment for the reception, recording and reproduction of sound and pictures
 - 09.1.2 Photographic and cinematographic equipment and optical instruments
 - 09.1.3 Information processing equipment
 - 09.1.4 Recording media
 - 09.1.5 Repair of audio-visual, photographic and information processing equipment

- 09.2 Other major durables for recreation and culture
 - 09.2.1 Major durables for outdoor recreation
 - 09.2.2 Musical instruments and major durables for indoor recreation
 - 09.2.3 Maintenance and repair of other major durables for recreation and culture
- 09.3 Other recreational items and equipment, gardens and pets
 - 09.3.1 Games, toys and hobbies
 - 09.3.2 Equipment for sport, camping and open-air recreation
 - 09.3.3 Gardens, plants and flowers
 - 09.3.4 Pets and related products
 - 09.3.5 Veterinary and other services for pets
- 09.4 Recreational and cultural services (excluding 09.4.3 games of chance)
 - 09.4.1 Recreational and sporting services
 - 09.4.2 Cultural services
- 09.5 Newspapers, books and stationery
 - 09.5.1 Books
 - 09.5.2 Newspapers and periodicals
 - 09.5.3 Miscellaneous printed matter
 - 09.5.4 Stationery and drawing materials
- 09.6 Package holidays
 - 09.6.0 Package holidays

10 EDUCATION

- 10.1 Pre-primary and primary education
 - 10.1.0 Pre-primary and primary education
- 10.2 Secondary education
 - 10.2.0 Secondary education
- 10.3 Post-secondary non-tertiary education
 - 10.3.0 Post-secondary non-tertiary education
- 10.4 Tertiary education
 - 10.4.0 Tertiary education

10.5 Education not definable by level

10.5.0 Education not definable by level

11 RESTAURANTS AND HOTELS

11.1 Catering services

11.1.1 Restaurants, cafés and the like

11.1.2 Canteens

11.2 Accommodation services

11.2.0 Accommodation services

12 MISCELLANEOUS GOODS AND SERVICES (excluding 12.5.1 Life insurance and 12.6.1 FISIM)

12.1 Personal care

12.1.1 Hairdressing salons and personal grooming establishments

12.1.2 Electric appliances for personal care

12.1.3 Other appliances, articles and products for personal care

12.3 Personal effects n.e.c.

12.3.1 Jewellery, clocks and watches

12.3.2 Other personal effects

12.4 Social protection

12.4.0 Social protection

12.5 Insurance (excluding 12.5.1 Life insurance)

12.5.2 Insurance connected with the dwelling

12.5.3 Insurance connected with health

12.5.4 Insurance connected with transport

12.5.5 Other insurance

12.6 Financial services n.e.c. (excluding 12.6.1 FISIM)

12.6.2 Other financial services n.e.c.

12.7 Other services n.e.c.

12.7.0 Other services n.e.c.

Annex 7(2)

Goods and services excluded from the COMESA HCPI

(COICOP categories shown where appropriate)

Narcotics (02.3)

Imputed rentals for owner-occupied dwellings (04.2)

Gambling (09.4.3)

Prostitution (12.2)

Life insurance (12.5.1)

Financial intermediation services indirectly measured (FISIM) (12.6.1)

Illegal transactions

Annex 7(3)

PRODUCT HEADINGS FOR WHICH THE HCPI AND RELATED INFORMATION ARE PUBLISHED

01 Food and non-alcoholic beverages

02 Alcoholic beverages and tobacco

03 Clothing and footwear

04 Housing, water, electricity, gas and other fuels

05 Furnishings, household equipment and routine household maintenance

06 Health

07 Transport

08 Communication

09 Recreation and culture

10 Education

11 Restaurants and hotels

12 Miscellaneous goods and services

Note: Headings listed above exclude products shown in Annex 1.

**ANNEX 8: COMESA REGULATIONS CONCERNING THE
HARMONISED TREATMENT OF CERTAIN PRODUCTS IN
THE HARMONISED CONSUMER PRICE INDICES**



COMESA REGULATIONS CONCERNING THE HARMONISED TREATMENT OF CERTAIN PRODUCTS IN THE HARMONISED CONSUMER PRICE INDICES

THE COUNCIL OF MINISTERS OF THE COMMON MARKET OF EASTERN AND SOUTHERN AFRICA (COMESA),

Having regard to Article 140 of the Treaty establishing COMESA through which Member States made an undertaking to cooperate in the field of statistics in order to create an enabling environment for up-to-date reliable, harmonized and comparable statistical data on various sectors of economic activity, through the harmonization and adoption of common methodologies concepts and definitions to be used in collecting and compiling statistics;

Having regard to COMESA Regulation No [xx] of [date] concerning the establishment of harmonized consumer price indices (HCPIs) in Member States;

Having regard to existing COMESA Member States' legislation on statistics and the confidentiality clauses therein;

HEREBY ADOPTS THESE REGULATIONS:

Article 1 Citation

These Regulations shall be cited as the COMESA Regulations Concerning the Harmonized Treatment of Certain Products in the Harmonized Consumer Price Indices (HCPIs).

Article 2 Definitions

In these Regulations, unless the context otherwise requires:

“Harmonized Consumer Price Indices (HCPI)” the comparable consumer price indices compiled by each Member State;

“HFMCE” means Household Final Monetary Consumption Expenditure;

“Member States” means COMESA Member States; and

“Secretariat” means the COMESA Secretariat.

Article 3

Objective

The objective of these Regulations is to set out the principles underlying the harmonised treatment of certain types of products whose characteristics differ significantly from other goods and services so as to meet the comparability requirements as laid down in Article 5 of the Framework Regulations.

Article 4

Scope

The products covered in these Regulations relate to the following COICOP categories:

- (a) Actual rentals for housing; Actual rentals paid by tenants;
- (b) Other actual rentals;
- (c) Domestic services and household services;
- (d) Other services in respect of personal transport equipment;
- (e) Cultural services; and
- (f) Other services not elsewhere classified.

Article 5

General

1. Member States shall record the purchaser price for the HCPI as the value of a representative transaction multiplied by the specified proportion in the base or reference period, where a service charge is expressed as a proportion of the transaction value. .
2. Member States shall record the changes in the purchaser prices resulting from changes in the specified proportions of the representative transactions referred to in paragraph 1 as price changes in the HCPI.
3. Member States may estimate any change in the market value of the subject of a representative transaction based on the change in a price index which represents appropriately the changing value of the subject of the transaction concerned.
4. Price change for the HCPI shall be based on the assumption that the following remain constant:
 - (a) the household consumption pattern in the weights reference period; and
 - (b) the characteristics of the household population in the weights reference period.
5. Member States shall record changes in purchaser prices resulting from changes in the rules determining purchaser prices as price changes in the HCPI.

Article 6

Rentals

1. Actual rentals to be covered in the HCPI shall include:
 - (a) payment for the use of the land on which the property stands;
 - (b) the dwelling occupied;
 - (c) the fixtures and fittings such as heating, plumbing and lighting; and
 - (d) in the case of furnished dwellings, payment for the use of the furniture.
2. The weights used for COICOP 04.1.1 and 04.1.2 shall be the total value in the weights reference period of actual rentals as described in paragraph 1.
3. Member States shall consider the rental of a dwelling house to be its price for the purposes of the HCPI.
4. The rental to be included in the HCPI shall relate to the actual rental payable for a sample of specified dwelling houses, measured on a regular basis, in accordance with Article 5 of the Framework Regulation.
5. The source of regular data on rental payable shall be based on a survey of tenants, owners or agents, or any other reliable source of actual current rental payable.

Article 7

Domestic services

1. Prices and weights for domestic services shall cover the full expenditure by households on the employment of resident or non-resident domestic staff.
2. Member States shall base product specifications for domestic services on the cost of a specified unit of time or a specified task.
3. Member States shall allocate expenditure on child-minding to COICOP 05.6.2 or COICOP 12.4.0 depending on the place where the service occurs.
4. In selecting representative items within COICOP Class 05.6.2 which are amenable to pricing on a regular basis, Member States shall exclude items whose prices are likely to depend on individual and specific circumstances.

Article 8

Miscellaneous fees and taxes

1. The inclusion or exclusion of taxes and fees in the HCPI shall be based on the eligibility of the item for inclusion as part of the HFMCE.
2. For purposes of paragraph 1, payments by households for the following, shall be regarded as the purchase of services and included in HFMCE:

- (a) Driving licence;
 - (b) Pilot's licence;
 - (c) Television or radio licence;
 - (d) Firearms licence;
 - (e) Hunting or fishing licence;
 - (f) Museum or library admission fee;
 - (g) Garbage disposal charge;
 - (h) Parking fee, including parking meters;
 - (i) Tolls for roads, bridges, tunnels, ferries;
 - (j) Vehicle roadworthiness test fee;
 - (k) Driving test fee;
 - (l) Passport fee;
 - (m) Postage stamp;
 - (n) Burial or cremation fee; and
 - (o) Estate agency fee.
3. Notwithstanding paragraph 2, where licences or permits are granted automatically on payment of the amount due, such payments shall be treated as direct taxes, and excluded from HFMCE and the HCPI.
4. The following payments shall be excluded from the HFMCE and the HCPI:
- (a) Subscriptions to NPISHs, unless they relate to payments for services rendered;
 - (b) Voluntary contributions by households to charities, relief and aid organisations;
 - (c) Payments of property income;
 - (d) Compulsory or voluntary social contributions, whether private or governmental;
 - (e) Contributions to pension funds;
 - (f) Fines and penalties;
 - (g) Taxes on income or wealth; and
 - (h) Local or municipal taxes.

Article 9

Quality Control

Member States shall provide the Secretariat with information sufficient to evaluate compliance with the procedures laid down in Articles 4 to 7.

Article 10
Amendments

1. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing who shall, within 30 days of its receipt, communicate it to the Member States.
2. The Member States which wish to comment on the proposals shall do so within 90 days from the date of the dispatch of the proposals by the Secretary General.
3. After the expiration of the period prescribed under paragraph 2, the Secretary General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee on Legal Affairs.
4. Any amendment to these Regulations shall be adopted by Council and shall enter into force upon publication in the Official Gazette of the Common Market.

Article 11
Entry into force

These Regulations shall enter into force on the date of publication in the Official Gazette of the Common Market.

Done and adopted at the Thirty First Meeting of the COMESA Council of Ministers held at Kampala, Uganda, on 20 November 2012.

[Signature].....

Chairperson

COMESA Council of Ministers

**ANNEX 9: COMESA REGULATIONS CONCERNING THE
TREATMENT OF TARIFF PRICES IN THE HARMONISED
CONSUMER PRICE INDICES (HCPI)**



COMESA REGULATIONS CONCERNING THE TREATMENT OF TARIFF PRICES IN THE HARMONISED CONSUMER PRICE INDICES (HCPI)

THE COUNCIL OF MINISTERS OF THE COMMON MARKET OF EASTERN AND SOUTHERN AFRICA (COMESA).

Having regard to Article 140 of the Treaty establishing COMESA through which Member States made an undertaking to cooperate in the field of statistics in order to create an enabling environment for up-to-date reliable, harmonized and comparable statistical data on various sectors of economic activity, through the harmonization and adoption of common methodologies concepts and definitions to be used in collecting and compiling statistics;

Having regard to COMESA Regulation No [xx] of [date] concerning the establishment of harmonized consumer price indices (HCPIs) in Member States;

Having regard to existing COMESA Member States' legislation on statistics and the confidentiality clauses therein;

HEREBY ADOPTS THESE REGULATIONS:

Article 1 Citation

These Regulations shall be cited as the COMESA Regulations Concerning the Treatment of Tariff Prices in the Harmonized Consumer Price Indices (HCPI).

Article 2 Definitions

In these Regulations, unless the context otherwise requires:

“Harmonized Consumer Price Indices (HCPI)” the comparable consumer price indices compiled by each Member State;

“Homogeneous Tariff” means elements of a tariff which are of a similar type and measured in the same units;

“Member States” means COMESA Member States;

“newly significant product” means revolutionary or evolutionary type which is introduced into the HCPI because it has become widely consumed;

“Secretariat” means the COMESA Secretariat;

“Significant tariffs” means tariffs that take a large share of consumers' expenditures relative to others;

“Tariff” means a list of pre-established prices for the purchase of a particular kind of product under different

terms and conditions; and

“**Tariff price**” means a price within a tariff which applies to a component element or unit of consumption of the product concerned.

Article 3

Objective

The objective of these Regulations is to establish a harmonized approach to the method of treating tariff prices of goods and services in the HCPI.

Article 4

General principles

1. Member States shall ensure consistency in the treatment of tariff prices and other prices in the HCPI sub-indices.
2. Member States shall ensure that changes in tariff prices reflect the price change on the basis of the changed expenditure required to maintain the same consumption pattern of households as before the change in the tariff in accordance with Article 5(2) of the Index Formulae Regulations.
3. Member States shall assign weights to the tariff components which are included in the price collection, where tariff prices fall within an elementary aggregate index.

Article 5

Basic information

Member States shall ensure that a tariff includes, as a minimum, tariff prices and weights which reflect the consumption of the goods or services in accordance with the characteristics of the consumers and the level, structure or timing of the consumption, as set out in the tariff.

Article 6

General procedure

1. Member States shall directly compare the prices for a component element or unit in the previous tariff and the new tariff taking into account the price difference in the HCPI, where the specification of the element or unit of consumption remains unchanged following a change in tariff.
2. Member States shall calculate the price change using weights which relate to the expenditure required to preserve the same consumption pattern which applied before the tariff change, where the specification of a component element or unit of consumption changes, or a new component element is added which does not constitute a new product following a change in

tariff.

3. For purposes of paragraph 2, Member States shall ensure that methods of any quality adjustments are consistent with those used for other sub-indices of the HCPI.
4. Member States shall treat a component element or unit of consumption as a newly significant product, where a component element or unit of consumption with a new and distinct specification is added to the tariff following a change in tariff.

Article 7

Types of Tariffs

Member States shall identify all significant tariffs available to consumers and assign them one or more of the following categories, as appropriate:

- (a) Tariffs based on demand conditions;
- (b) Tariffs dependent on the type of customer;
- (c) 2-part tariffs:
 - i. charge for the right or permission to use a product;
 - ii. charges for actual usage;
- (d) Block pricing; and
- (e) Tariffs dependent on the contents of a bundle of goods or services.

Some tariffs include more than one of these broad tariff types, for example, electricity tariffs may be a combination of (a) and (d).

Article 8

Price measurement methods

Member States shall select the method of measurement of changes in tariff prices from the list set out in the Annex.

Article 9

Classification

Member States shall categorise the components of a tariff within the same COICOP class:

provided that where the components of the tariff do not fall within the same COICOP class, the tariff may be included in its entirety in the COICOP class within which the greater part of the tariff expenditure occurs.

Article 10

Applicable Standards

Member States shall apply the standards referred to in Articles 4 to 9 to the procedures used for establishing the HCPI.

Article 11

Quality Control

Member States shall provide information sufficient to evaluate compliance with these Regulations:

- (a) On the tariffs identified under Article 7(1); and
- (b) On the procedures laid down in Articles 6, 8 and 9.

Article 12

Amendments

1. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing who shall, within 30 days of its receipt, communicate it to the Member States.
2. The Member States which wish to comment on the proposals shall do so within 90 days from the date of the dispatch of the proposals by the Secretary General.
3. After the expiration of the period prescribed under paragraph 2 the Secretary General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee on Legal Affairs.
4. Any amendment to these Regulations shall be adopted by Council and shall enter into force upon publication in the Official Gazette of the Common Market.

Article 13

Entry into force

These Regulations shall enter into force on the date of publication in the Official Gazette of the Common Market.

Done and adopted at the Thirty First Meeting of the COMESA Council of Ministers held at Kampala, Uganda, on 20 November 2012.

[Signature].....

Chairperson

COMESA Council of Ministers

Annex 9 (1)

Price Measurement Methods

- (a) Representative items: matched samples. In this method, changes in tariff prices are compared using weights applicable to the individual components of the tariff. This method may be appropriate to tariffs of types (a) and (c) as listed in Article 7. It should not be used in situations where there are major changes in tariff structures;
- (b) Representative items: customer profiles. In this method, one or more customer types are selected as being representative of all customers of the tariff concerned. The estimated value of the consumption of all elements of the tariff before the change in the tariff is compared with the value of the same volume of consumption after the change in the tariff. This method may be appropriate to tariffs of type (e) as listed in Article 7. It should not be used where, for any reason, it is impractical to make sufficiently precise definitions of representative customers;
- (c) Sample of bills. This method is a variant of method (b), using information obtained from the suppliers of the good or service to customers with pre-defined characteristics as in (b) above. This method may be appropriate to tariffs of type (e) as listed in Article 7.2. It should not be used where, for any reason, it is impractical to make sufficiently precise definitions of typical customers;
- (d) Unit values. Where none of methods (a) to (c) of this Article is possible, and the elements of the tariff are homogeneous, the average price change resulting from a tariff change may be calculated using overall revenue and quantity data, as supplied by the provider of the good or service.

**ANNEX 10: THE COMESA REGULATIONS CONCERNING
PRICE DATA VALIDATION AND EDITING IN THE
HARMONIZED CONSUMER PRICE INDICES (HCPI)**



THE COMESA REGULATIONS CONCERNING PRICE DATA VALIDATION AND EDITING IN THE HARMONIZED CONSUMER PRICE INDICES (HCPI)

THE COUNCIL OF MINISTERS OF THE COMMON MARKET OF EASTERN AND SOUTHERN AFRICA (COMESA),

Having regard to Article 140 of the Treaty establishing COMESA through which Member States made an undertaking to cooperate in the field of statistics in order to create an enabling environment for up-to-date reliable, harmonized and comparable statistical data on various sectors of economic activity, through the harmonization and adoption of common methodologies concepts and definitions to be used in collecting and compiling statistics;

Having regard to COMESA Regulations No [xx] of [date] concerning the establishment of harmonized consumer price indices (HCPIs) in Member States;

Having regard to existing COMESA Member States' legislation on statistics and the confidentiality clauses therein;

HEREBY ADOPTS THESE REGULATIONS:

Article 1 Citation

These Regulations shall be cited as the COMESA Regulations Concerning Price Data Validation and Editing in the Harmonized Consumer Price Indices (HCPI).

Article 2 Definitions

In these Regulations, unless the context otherwise requires:

“**Validation of data**” means the process of checking to ensure that all inputs to the HCPI calculations are correct;

“**Editing of data**” means the process of adjusting or eliminating erroneous inputs to the HCPI calculations;

“**Outlier**” means a term used to describe any extreme value in a set of data, such as a price or price relative that requires further investigation or has been verified as correct;

”**Extreme outlier**” means an extreme price or price change which falls outside a specified boundary;

“**Ineligible price**” means a price which should not be entered into the HCPI computation; and

“**Reported price**” means a price quotation which the price collector has submitted for inclusion in the HCPI.

Article 3

Objective

The objective of these Regulations is to establish a harmonized approach to the standards applied to checking and, where appropriate, modifying the data inputs to the HCPI.

Article 4

General principles

1. Member States shall ensure that reported prices are verified before entering the HCPI.
2. Member States shall accept the reported prices when validating the prices reported for the HCPI. Member States shall reject or adjust reported prices only by reference to specific information on the individual price observations.

Article 5

Validation of reported prices

1. Reported prices shall be subject to a rigorous validation process to ensure that :
 - (a) all planned price quotations have been obtained, or, if temporarily unavailable, imputed or based on a replacement item, following the rules on item substitution in accordance with Article 12 of Regulations on Weights, Product Sample and Item Substitution;
 - (b) prices relate to items which are representative of the elementary aggregates to which they belong; and
 - (c) price changes compared with the previous month are within a pre-determined range of tolerance, taking into account any significant expected price changes.
2. Member States shall conduct the validation process referred to in paragraph 1 before the price collectors report the data.
3. Member States shall carry out further checks through their regional and/or central office, making use of all relevant data held as set out in the Annex.

Article 6

Editing of reported prices

1. Member States shall reject a reported price, whether or not an outlier, where it can be shown to be ineligible, or relates to an item which is not representative of its elementary aggregate.
2. Member States shall correct an incorrect price which has been validated in accordance with Article 5 where revised information is available.
3. Member States shall retain an outlier price that has not been verified before the final date required for the computation of the current monthly HCPI.

4. Member States shall impute the price by reference to the monthly price change of other items within the same elementary aggregate in the case of an extreme outlier.
5. In order to prevent recurrences of the cases referred to in paragraphs 3 and 4, Member States shall:
 - (a) Subject all outlier and extreme outlier prices to further investigation; and
 - (b) Make the necessary changes to the price survey rules before the following month's survey.

Article 7

Data validation and editing procedures

Member States shall choose the validation and editing procedures referred to in Articles 5 and 6 in accordance with the methods described in the Annex.

Article 8

Applicable Standards

Member States shall apply the standards referred to in Articles 4 to 7 to the procedures used for establishing the HCPI.

Article 9

Quality Control

Member States shall provide to the Secretariat information sufficient to evaluate compliance with the procedures laid down in Articles 4 to 7.

Article 10

Amendments

1. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing who shall, within 30 days of its receipt, communicate it to the Member States.
2. The Member States which wish to comment on the proposals shall do so within 90 days from the date of the dispatch of the proposals by the Secretary General.
3. After the expiration of the period prescribed under paragraph 2, the Secretary General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee on Legal Affairs.
4. Any amendment to these Regulations shall be adopted by Council and shall enter into force upon publication in the Official Gazette of the Common Market.

Article 11

Entry into force

These Regulations shall enter into force on the date of publication in the Official Gazette of the Common Market.

Done and adopted at the Thirty First Meeting of the COMESA Council of Ministers held at Kampala, Uganda, on 20 November 2012.

[Signature].....

Chairperson

COMESA Council of Ministers

ANNEX 11: COMESA COMPETITION REGULATIONS (AS AT DECEMBER 2004)



ARRANGEMENT OF ARTICLES

Preamble

Part 1: Preliminary

Article

1. Definition and Interpretation
2. Purpose of the Regulations
3. Scope of Application
4. Exclusions
5. Obligations of Member States

Part 2: Institutional Arrangements

6. Establishment of the Commission
7. Functions of the Commission
8. Powers of the Commission
9. Appointment of Director
10. Removal of Director
11. Staff of Commission
12. Board of Commissioners
13. Composition of Board of Commissioners
14. Tenure of Commissioners
15. Functions of the Board

Part 3: Anti-Competitive Business Practices and Conduct

16. Restrictive Business Practices
17. Determination of a Dominant Position
18. Abuse of a Dominant Position
19. Prohibited Practices

20. Request for Authorisation
21. Determination of Anti-Competitive Conduct: Procedure of Commission on Request
22. Determination of Anti-Competitive Conduct: Procedure of Commission on its own initiative

Part 4: Mergers and Acquisitions

23. Merger Control
24. Notification of a Proposed Merger
25. Merger Proceedings
26. Consideration of a Merger

Part 5: Consumer Protection

27. False or Misleading Representation
28. Unconscionable Conduct in Consumer Transactions
29. Unconscionable Conduct in Business Transactions
30. Warning Notice to the Public
31. Product Safety Standards and Unsafe Goods
32. Product Information Standards
33. Compulsory Product Recall
34. Power of Commission to Declare Product Safety or Information Standards
35. Liability in Respect of Unsuitable Goods
36. Liability for Defective Goods Causing Injury or Loss
37. Unidentified Manufacturer
38. Defences
39. Rules

PREAMBLE

HAVING REGARD TO Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA) (hereinafter referred to as “the Treaty”);

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;

THAT the continued growth in regionalisation of business activities correspondingly increases the likelihood that anti-competitive practices in one country may adversely affect competition in another country;

THE NEED for Member States to give effect to the principles of a Regional Competition Regulations and Rules and to use moderation and self-restraint in the interest of co-operation in the field of anti-competitive business practices;

THE DESIRABILITY of setting standards for procedures by which the regional competition agency can act as a forum for exchange of views, consultations and conciliation on matters related to anti-competitive practices affecting COMESA regional and international trade;

THAT THE GROWTH of foreign direct investment, trade, regional and sub-regional economic integration and co-operation have led to such restrictive business practices as price cartels, market sharing and other practices which adversely impact upon competition and therefore are inimical to consumer welfare;

CONSIDERING thereof that Member States should co-operate at regional level in the implementation of their respective national legislation in order to eliminate the harmful effects of anti-competitive practices;

CONSIDERING also that closer co-operation between COMESA Member States in the form of notification, exchange of information, co-ordination of actions, consultation among Member States should be encouraged;

CONSCIOUS of the relative presence of national competition authorities in Member States and the desirability of establishing national competition authorities in all COMESA Member States;

THE MEMBER STATES HAVE AGREED AS FOLLOWS:

PART 1

PRELIMINARY

Article 1

Definitions and Interpretation

In these Regulations, unless the context provides otherwise:

“**Anti-competitive**” means a conduct which appreciably restrains competition between the Member States and is not otherwise exempt by law or authorised in a manner required by the Regulations;

“**Arrangement**” includes a contract, agreement or understanding whether or not legally enforceable;

“**Board**” means the Board of Commissioners as established by Article 12 of these Regulations;

“**Commission**” means the COMESA Competition Commission established by Article 6 of these Regulations;

“**Commissioner**” means a member of the Board of Commissioners;

“**Common Market**” means the Common Market for Eastern and Southern Africa (COMESA) established by Article 1 of the “Treaty”;

“Competition” means the striving or potential striving of two or more persons or organisations engaged in production, distribution, supply, purchase or consumption of goods and services in a given market against one another which results in greater efficiency, high economic growth, increasing employment opportunities, lower prices and improved choice for consumers;

“Concerted practice” means an action planned and done in unison by a firm or combination of firms which is anti-competitive;

“Consumer” includes any person -

(a) (a) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production and manufacture of any other goods or articles for sale; and

(b) to whom a service is rendered;

“Council” means the Council of Ministers of the Common Market established by Article 7 of the “Treaty”;

“Court” means the Court of Justice of the Common Market established by Article 7 of the “Treaty”;

“Dominant position” means a dominant position as stipulated in Article 17 of these Regulations;

“Goods” when used with respect to particular goods, includes any other goods that are reasonably capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints;

“Market” means a market in the Common Market and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services;

“Merger” means merger as defined in Article 23 of these Regulations; **“Member State”** means a Member State of the Common Market; **“Person”** means a natural or legal person;

“Respondent party” means a “person” against whom a complaint of a prohibited practice has been initiated under these Regulations;

“Secretary-General” means the Secretary General of the Common Market;

“Services” includes the sale of goods, where the goods are sold in conjunction with the rendering of a service;

“Trade” includes any business, industry, profession or occupation relating to the supply or acquisition of “goods” or “services”;

“Treaty” means the Treaty establishing the Common Market for Eastern and Southern Africa;

“Undertaking” includes any “person”, public or private, involved in the production of, or the trade in, goods, or the provision of services.

Article 2

Purpose of the Regulations

1. 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.

Article 3

Scope of Application

1. These Regulations apply to all economic activities whether conducted by private or public persons within, or having an effect within, the Common Market, except for those activities as set forth under Article 4.
2. These Regulations apply to conduct covered by Parts 3, 4 and 5 which have an appreciable effect on trade between Member States and which restrict competition in the Common Market.
3. These Regulations shall have primary jurisdiction over an industry or a sector of an industry which is subject to the jurisdiction of a separate regulatory entity (whether domestic or regional) if the latter regulates conduct covered by Parts 3 and 4 of these Regulations. This Article does not apply to conduct expressly exempted by national legislation.

Article 4

Exclusions

1. These Regulations shall not apply to:
 - (a) Arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;
 - (b) Activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;
 - (c) Activities of professional associations designed to develop or enforce professional standards reasonably necessary for the protection of the public interest.
2. These Regulations do not derogate from the direct enjoyment of the privileges and protections conferred by other laws protecting intellectual property, including inventions, industrial models, trademarks and copyrights. They do apply to the use of such property in such a manner as to cause the anti-competitive effects prohibited herein.

Article 5

Obligations of Member States

1. Pursuant to Article 5(2)(b) of the Treaty, Member States shall take all appropriate measures, whether general or particular, to ensure fulfillment 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.

PART 2

INSTITUTIONAL ARRANGEMENTS

Article 6

Establishment of the Commission

1. There is hereby established the COMESA Competition Commission which shall enjoy international legal personality.
2. The Commission shall have in the territory of each Member State:
 - (a) the legal capacity required for the performance of its functions under the Treaty; and
 - (b) power to acquire or dispose of movable and immovable property in accordance with the laws and regulations in force in each Member State.

Article 7

Functions of the Commission

1. The Commission shall apply the provisions of these Regulations with regard to trade between Member States and be responsible for promoting competition within the Common Market.
2. In order to accomplish that which is set out in paragraph 1 above, 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;
 - (b) regularly review regional competition policy so as to advise and make representations to the Council with a view to improving on the effectiveness of the Regulations;
 - (c) 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;
 - (d) co-operate with competition authorities in Member States;
 - (e) co-operate and assist Member States in the implementation of its decisions;
 - (f) provide support to Member States in promoting and protecting consumer welfare;
 - (g) facilitate the exchange of relevant information and expertise;
 - (h) enter into such arrangements as will enhance its ability to monitor and investigate the impact of conduct outside the Common Market but which nevertheless has, or may have, an impact on trade between Member States;

- i) be responsible for developing and disseminating information about competition policy and consumer protection policy; and
- j) co-operate with other agencies that may be established or recognised by COMESA to monitor and regulate any specific sector.

Article 8

Powers of the Commission

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 whose business activities appreciably restrains competition within the Common Market.
2. In conducting its investigations, the Commission may, in accordance with the applicable provisions of these Regulations and in keeping with the principles of natural justice:
 - a) order any person to appear before it to give evidence;
 - b) require the discovery or production of any document or part thereof; and
 - c) take any other reasonable action which may be necessary in furtherance of the investigation.
3. Based on the findings of the investigation, the Commission may make a determination that there has been a breach of the Regulations in that the conduct at issue has, or is likely to have, an appreciable negative competitive impact and is inconsistent with the objectives of the Common Market.
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.
5. Any person who contravenes or fails to comply with any provision of these Regulations or any Rules made hereunder, or any directive or order lawfully given, or any requirement lawfully imposed under these Regulations or any Rules made hereunder, for which no penalty is provided shall be determined to have breached the Regulations and shall be liable pursuant to that determination to a fine (in an amount to be determined by Rules) and/or such other penalty as may be assessed.
6. The Commission may enter into such arrangements for the provision of goods and services as may be necessary for the efficient performance of its functions.

7. The Commission, pursuant to the provisions of Article 55 of the Treaty, may establish its own rules of procedure to effectively implement the Regulations.
8. The Commission may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions under these Regulations.

Article 9

Appointment and Duties of Director

1. The Council shall appoint a citizen of a Member State to be the Director of the Commission.
2. The Director shall be responsible for administering the Commission's affairs, funds and property and for performing any other functions that may be conferred or imposed upon him/her by or under these Regulations or that the Commission may delegate or assign to him/her.
3. Commissioners shall not be eligible for appointment as the Director.
4. The Director shall have suitable qualifications and experience in law, economics, commerce, industry or public administration.
5. The terms and conditions of the Director's appointment shall be as fixed by the Board of Commissioners with the approval of the Council.
6. The Director shall hold office for a term of five years and shall be eligible for re- appointment only for one further term of five years.

Article 10

Removal of Director

1. The Director shall not be removed from office except by the Council for stated misbehavior or for inability to perform the functions of his office due to infirmity of mind or body or as rendered appropriate by applicable law.
2. The Director, on three months' written notice addressed to the Council, may resign as Director.
3. The Council may remove the Director from office if that person becomes subject to any of the disqualifications referred to in Article 14 of these Regulations.

Article 11

Staff of the Commission

1. The Director, with the approval of the Board, may appoint one or more Deputy Director(s), Registrar and such other officers as may be necessary for the due administration of these Regulations.

Article 12

Board of Commissioners

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

Article 13

Composition of the Board of Commissioners

1. The Board shall consist of not less than nine (9) and not more than thirteen (13) Commissioners appointed by the Council on the recommendation of the Secretary-General. The nominations of the Secretary-General shall reflect the regional character of the Common Market.
2. The Chairperson and the Vice-Chairperson shall be elected by the Board from among its members.
3. The persons to be recommended under paragraph 1 above shall be chosen for their ability and experience in competition law and policy, industry, commerce, public administration, labour, economics, law, consumer protection and small scale business matters. No person shall be recommended for appointment as a Commissioner unless he/she is a citizen of a Member State.
4. The Chairperson shall assign three of the Commissioners to be full-time members of the Board. The full-time Commissioners shall each have suitable qualifications and experience in law and economics and will form the committee responsible for initial determinations.
5. No member of the Board shall involve himself/herself in any way in the day to day administration of the Commission.

Article 14

Tenure of Commissioners

1. The Commissioners shall hold office for an initial term of three to five years.
2. No Commissioner may serve for more than two terms.
3. The office of a Commissioner shall become vacant:
 - (a) upon his/her death;
 - (b) if the Commissioner is absent without reasonable excuse from three consecutive meetings of the Board of which there has been due notice;
 - (c) if the Commissioner is lawfully detained or his/her freedom of movement is restricted for a period exceeding six months;
 - (d) if a Commissioner becomes an un-discharged bankrupt;

- (e) if a Commissioner becomes of unsound mind or permanently incapacitated;
- (f) if a Commissioner engages in any activity that may undermine the integrity of the Commission and/or the Board or amounting to serious misconduct; or
- (g) ceases to be a citizen of any of a Member State.

Article 15

Functions of the Board

1. The Board 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) hear appeals from, or review any decision of, the Commission that may, in terms of these Regulations, be referred to it;
 - (d) hear appeals from initial determinations made by the committee responsible for determination;
 - (e) make any ruling or order necessary or incidental to the performance of its functions in terms of these Regulations; and
 - (f) delegate any of its functions to another COMESA agency established to co-ordinate and regulate a specific sector.
2. The Board may recommend to the Council Rules governing:
 - (a) anything which under these Regulations is required or permitted to be prescribed;
 - (b) any forms necessary or expedient for purposes of these Regulations;
 - (c) any fees payable in respect of any service provided by the Commission; or
 - (d) such other matters as are necessary or expedient for the better carrying out of the purposes of these Regulations.

PART 3

ANTI-COMPETITIVE BUSINESS PRACTICES AND CONDUCT

Article 16

Restrictive Business Practices

1. The following shall be prohibited as incompatible with the Common Market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which:
 - (a) may affect trade between Member States; and
 - (b) have as their object or effect the prevention, restriction or distortion of competition within the Common Market.
2. Paragraph 1 applies only if the agreement, decision or concerted practice is, or is intended to be, implemented within the Common Market.
3. Any agreement or decision which is prohibited by paragraph 1 is void.
4. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
 - (a) any agreement or category thereof between undertakings;
 - (b) any decision by associations of undertakings;
 - (c) any concerted practice or category thereof -
 - 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 market for the goods or services in question.

Article 17

Determination of a Dominant Position

1. For the purposes of these Regulations:
 - (a) an undertaking holds a dominant position in a market if by itself or together with an interconnected company, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors;
 - (b) any two companies shall be treated as interconnected companies if one of them is a subsidiary or associate of the other, or both of them are subsidiaries of the same parent company;
 - (c) a “dominant position” means an ability to influence unilaterally price or output in the Common Market or any part of it.

Article 18

Abuse of a Dominant Position

1. 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.

In determining whether an undertaking is in a dominant position, consideration shall be given to the:

- (a) relevant market defined in terms of the product and the geographic context;
- (b) level of actual or potential competition in terms of number of competitors, production capacity and product demand;
- (c) barriers to entry of competitors; and
- (d) history of competition and rivalry between competitors in the sector of activity.

Article 19

Prohibited Practices

1. It shall be an offence for undertakings engaged in the market in rival or potentially rival activities to engage in the practices appearing in paragraph 3 provided that this paragraph shall not apply where undertakings are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.
2. This Article applies to formal, informal, written and unwritten agreements, arrangements and understandings.

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.

Article 20

Request for Authorisation

1. The Commission may, upon application by or on behalf of an undertaking, grant an authorisation to the undertaking to enter and/or give effect to contracts, arrangements or understandings even if they are anti-competitive, if the Commission determines that there are public benefits outweighing the anti-competitive detriment of the contract, arrangement or understanding.
 - (a) while the authorisation remains in force no party to the contract, arrangement or understanding will be in breach of the applicable Articles of these Regulations by entering or giving effect to it;
 - (b) authorisation may be granted to cover those who subsequently become parties to the contract, arrangement or understanding, as long as that is its expressed effect.
2. Where an application made to the Commission under this Article for an authorisation in relation to a particular contract or proposed contract is expressed as set out hereinabove, the application shall set out:
 - (a) the names of the parties to each contract; and
 - (b) the names of the parties to a proposed contract where those names are known to the applicant at the time when the application is made.
3. If an authorisation is granted in respect of a proposed contract the names of the parties to which were not so known to the applicant, the authorisation shall, by force of this paragraph, be deemed to be expressed to be subject to a condition that any party to the contract will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract.
4. 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 21

Determination of Anti-Competitive Conduct: Procedure of Commission on Request

1. Any person may request an investigation referred to in Article 8 where he/she has reason to believe that activity by an undertaking located in a Member State has the effect, or is likely to have the effect, of restricting competition in the Common Market.
2. Any consumer organisation which has reason to believe that activities by an undertaking in the Common Market have the effect, or are likely to have the effect, of restricting competition in the Common Market, may request an investigation as referred to in Article 8.
3. Requests under paragraphs 1 and 2 above shall be in writing and shall disclose sufficient information for the Commission to make a preliminary assessment whether it should proceed with the investigation.
4. Upon receipt of a request mentioned in paragraph 3 above, the Commission shall consult with the interested parties and shall determine on the basis of such consultations whether:
 - (a) the investigation is within the jurisdiction of the Commission, and
 - (b) the investigation is justified in all the circumstances of the case.
5. The consultations shall be concluded within 30 days of the date of receipt of the request for investigation, unless the Commission has determined that a longer period is necessary and has so notified the parties. In any event, that longer period shall not exceed 45 additional days from the date of notification from the Commission.
6. Where the Commission decides to conduct the investigation, the Commission shall:
 - (a) notify the interested parties;
 - (b) complete the investigation within 180 days from the date of receipt of the request for the investigation; and
 - (c) where the circumstances so warrant, extend the time period for completion of the investigation and notify the interested parties.
7. Where the Commission decides, following an investigation, that there has been a breach of the Regulations, it shall notify the Respondent party and shall afford that party an opportunity to defend its interest.
8. If the respondent party avails itself of the opportunity to be heard and the hearing has been convened, within 30 days from that hearing, the Commission shall notify the interested parties as to its determination both as regards to the breach of the Regulations and the sanctions to be imposed.
9. Within 10 days of the hearing mentioned in paragraph 8 above, the Commission will notify the interested parties of its determination.
10. The Commission may decide, based on its determination, that the party in breach should:

- (a) cease its conduct immediately, and/or
 - (b) pay a fine in an amount to be determined by the Commission; and/or
 - (c) take whatever action the Commission deems necessary to remove and/or diminish the effect of the illegal conduct.
11. Within 15 days of the Commission's notification, the affected party may appeal the Commission's determination in the manner set forth in the Regulations.
 12. Where a specific course of action is required pursuant to paragraph 10 above, the undertaking concerned shall do as directed within 30 days of the date of notification unless the Commission determines otherwise.
 13. If the undertaking concerned cannot comply, it shall so notify the Commission and request an extension.
 14. If the undertaking cannot comply within the time period specified and fails to inform the Commission, the Commission may apply to the relevant national court for an appropriate order.

Article 22

Determination of Anti-Competitive Conduct: Procedure of Commission on its own Initiative

1. Where the Commission has reason to believe that business conduct by an undertaking restrains competition in the Common Market, the Commission will so notify the undertaking involved and will launch an investigation.
2. The Commission shall complete its investigation within 180 days of the notification mentioned in paragraph 1 above, unless it determines that a longer period is necessary.
3. At the end of the investigation, the Commission shall notify the undertaking of its findings.
4. Within 20 days of the notification mentioned in paragraph 3 above, the undertaking in question may respond to the Commission to take issue with its findings.
5. If the undertaking fails to respond within the required time frame set out in paragraph 4 above, the Commission may proceed to assess sanctions pursuant to the process as set forth in paragraphs 8 to 13 of Article 21 of these Regulations.

PART 4

MERGERS AND ACQUISITIONS

Article 23

Merger Control

1. For the purpose of this Article, “merger” means the direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person whether that controlling interest is achieved as a result of:
 - (a) the purchase or lease of the shares or assets of a competitor, supplier, customer or other person;
 - (b) the amalgamation or combination with a competitor, supplier, customer or other person; or
 - (c) any means other than as specified in sub-paragraph (a) or (b).
2. For the purpose of this Article, “controlling interest”, in relation to:
 - (a) any undertaking, means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the undertaking; and
 - (b) any asset, means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the asset.
3. This Article shall apply where:
 - (a) both the acquiring firm and target firm or either the acquiring firm or target firm operate in two or more Member States; and
 - (b) the threshold of combined annual turnover or assets provided for in paragraph 4 is exceeded.
4. The Board shall, subject to approval by Council, prescribe:
 - (a) a threshold of combined annual turnover or assets in the region, either in general or in relation to specific industries, at or above which this Article will apply with regard to mergers with a regional dimension;
 - (b) a method for the calculation of annual turnover and assets.
5. For the purposes of this Article:
 - (a) “notifiable merger” means a merger or proposed merger with a regional dimension with a value at or above the threshold prescribed in terms of paragraph 4;
 - (b) “non-notifiable merger” means a merger or proposed merger with a value below the threshold prescribed in terms of paragraph 4.
6. The Commission may require parties to a non-notifiable merger to notify the Commission of that merger if it appears to the Commission that the merger is likely to substantially prevent or lessen competition or is likely to be contrary to public interest.

Article 24

Notification of a Proposed Merger

1. A party to a notifiable merger shall notify the Commission in writing of the proposed merger as soon as it is practicable but in no event later than 30 days of the parties’ decision to merge.

2. Any notifiable merger carried out in contravention of this part shall have no legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger shall be legally enforceable in the Common Market.
3. Notification in terms of paragraph 1 shall be made in such form and manner as may be prescribed and shall be accompanied by the prescribed fee and such information and particulars as may be prescribed or as the Commission may reasonably require.
4. The Commission in addition to the sanction under paragraph (1) may impose a penalty if the parties to a merger fail to give notice of the merger as required by paragraph 1.
5. A penalty imposed in terms of paragraph 3 may not exceed ten per centum of either or both of the merging parties' annual turnover in the Common Market as reflected in the accounts of any party concerned for the preceding financial year.
6. When determining an appropriate penalty, the Commission shall consider the following factors:
 - (a) the nature, duration, gravity and extent of the contravention;
 - (b) any loss or damage suffered as a result of the contravention;
 - (c) the behaviour of the parties concerned;
 - (d) the market circumstances in which the contravention took place;
 - (e) the level of benefits derived from the contravention;
 - (f) the degree to which the parties have co-operated with the Commission; and
 - (g) whether the parties have previously been found in contravention of competition Regulations in the region.
7. Civil proceedings for the recovery of any penalty imposed in terms of paragraph (3) may be brought against the party or parties concerned by the Commission.
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 within 21 days of the receipt of the request 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 25

Merger Proceedings

1. The Commission shall examine a merger as soon as the notification is received and must make a decision on the notification within 120 days after receiving the notification:
 - (a) Provided that if the notification is incomplete, the examination period begins on the day following receipt of complete information.
2. If, prior to the expiry of the 120-day period provided for in paragraph (1), the Commission has decided that a longer period is necessary, it shall so inform the parties and seek an extension from the Board.

Article 26

Consideration of a Merger

1. 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.
2. When determining whether the merger would have the effect, or be likely to have the effect, of substantially lessening competition in the market, the following matters must be taken into account:
 - (a) the actual and potential level of import competition in the market;
 - (b) the ease of entry into the market, including tariff and regulatory barriers;
 - (c) the level, trends of concentration and history of collusion in the market; the degree of countervailing power in the market;
 - (d) the likelihood that the acquisition would result in the merged parties having market power;
 - (e) the dynamic characteristics of the market including growth, innovation and product differentiation;
 - (f) the nature and extent of vertical integration in the market;
 - (g) whether the business or part of the business of a party to the merger or proposed merger has failed or likely to fail; and

- (h) whether the merger will result in the removal of efficient competition.
3. A merger shall be contrary to public interest if the Commission is satisfied that the merger:
 - (a) has lessened substantially or is likely to lessen substantially the degree of competition in the Common Market or any part thereof; or
 - (b) has resulted, or is likely to result in, or strengthen a position of dominance which is or will be contrary to the public interest.
 4. In order for the Commission to determine whether a merger is or will be contrary to the public interest, the Commission shall take into account all matters that it considers relevant in the circumstances and shall have regard to the desirability of:
 - (a) maintaining and promoting effective competition between persons producing or distributing commodities and services in the region;
 - (b) promoting the interests of consumers, purchasers, and other users in the region, in regard to the prices, quality and variety of such commodities and services;
 - (c) promoting through competition, the reduction of costs and the development of new commodities, and facilitating the entry of new competitors into existing markets.
 5. For the purposes of determining whether or not to approve any merger, the Commission may, where necessary, undertake any inquiry to ascertain any competition concerns.
 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. The notice shall include:
 - (a) the nature of the proposed inquiry;
 - (b) calling upon any interested persons who wish to submit written representations to the Commission in regard to the subject matter of the proposed inquiry.
 7. If the Commission is satisfied, having regard to the matters referred to in paragraph 4, that an actual or proposed merger will be contrary to the public interest, the Commission may make any one or more of the following orders:
 - (a) declaring the merger unlawful, except to such extent and in such circumstance as may be provided by or under the order;
 - (b) prohibiting or restricting the acquisition by any person named in the order of the whole or part of an undertaking or the assets of an undertaking, or the doing by that person of anything which will or may result in such an acquisition if the acquisition is likely, in the Commission's opinion, to lead to a merger;
 - (c) requiring any person to take steps to secure the dissolution of any organisation, whether corporate or unincorporated, or the termination of any association where the Commission is satisfied that the person is concerned in or is a party to a merger;
 - (d) requiring that if any merger takes place, any party thereto who is named in the order shall observe such prohibitions or restrictions in regard to the manner in which he carries on business as are specified in the order;
 - (e) generally making such provisions as, in the opinion of the Commission, are reasonably necessary to terminate or prevent the merger or alleviate its effects.

8. An order made in respect of a merger may provide for any of the following matters:
 - (a) the transfer or vesting of property, rights, liabilities or obligations;
 - (b) the adjustment of contracts, whether by their discharge or the reduction of any liability or obligation or otherwise;
 - (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
 - (d) the formation or winding up of any undertaking or the amendment of the memorandum or articles of association or any other instrument regulating the business of any undertaking.
9. An order shall be in writing and served on every person named therein:
 - (a) Provided that, if the order applies to persons generally or if, in the Commission's opinion, it is impractical to serve it individually on all the persons to whom it applies, the Commission shall take all reasonable steps to appropriately inform the concerned Member States.
10. Before making an order under this Article, the Commission shall ensure that every person affected thereby is informed of the general content of the order it proposes to make and is given an adequate opportunity to make representations in the matter:
 - (b) Provided that, if the proposed order will apply to persons generally or if, in the Commission's opinion, it is impractical to notify its terms to all the persons to whom it will apply, the Commission shall cause the general content of the proposed order to be published in the manner as the Commission considers will bring it to the attention of the persons to whom it will apply.
11. The Commission may amend or revoke an order at any time.
12. Any person aggrieved by the decision of the Commission, may appeal to the Board of Commissioners as prescribed by the Regulations.

PART 5

CONSUMER PROTECTION

Article 27

False or Misleading Representation

1. A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:
 - (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;
 - (b) falsely represent that services are of a particular standard, quality, value or grade;

- (c) falsely represent that goods are new;
- (d) falsely represent that a particular person has agreed to acquire goods or services;
- (e) falsely represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
- (f) represent that the person has a sponsorship, approval or affiliation it does not have;
- (g) make a false or misleading representation with respect to the price of goods or services;
- (h) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods;
- (i) make a false or misleading representation concerning the place of origin of goods;
- (j) make a false or misleading representation concerning the need for any goods or services;
or
- (k) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

Article 28

Unconscionable Conduct in Consumer Transactions

1. A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.
2. Without in any way limiting the matters to which the Commission may have regard for the purpose of determining whether a person has contravened paragraph 1 in connection with the supply or possible supply of goods or services to a person (in this paragraph referred to as the consumer), the Commission may have regard to:
 - (a) the relative strengths of the bargaining positions of the person and the consumer;
 - (b) whether, as a result of conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the person;
 - (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the person acting on behalf of the person in relation to the supply or possible supply of the goods or services; and
 - (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from another supplier.
3. A person shall not be taken for the purposes of this Article to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a person by reason only that the person institutes legal proceedings in relation to that supply or possible

- supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.
4. For the purpose of determining whether a person has contravened paragraph 1 in connection with the supply or possible supply of goods or services to a person:
 - (a) the Commission shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
 - (b) the Commission may have regard to conduct engaged in, or circumstances existing, before the commencement of these Regulations.
 5. A reference in this paragraph to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.
 6. A reference in this paragraph to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.

Article 29

Unconscionable Conduct in Business Transactions

1. A person must not, in trade or commerce, in connection with:
 - (a) the supply or possible supply of goods or services to a person; or
 - (b) the acquisition or possible acquisition of goods or services from a person;
 - (c) engage in conduct that is, in all the circumstances, unconscionable.
2. Without in any way limiting the matters to which the Commission may have regard for the purpose of determining whether a person (the supplier) has contravened paragraph 1 in connection with the supply or possible supply of goods or services to a person (the business consumer), the Commission may have regard to:
 - (a) the relative strengths of the bargaining positions of the supplier and the business consumer;
 - (b) whether, as a result of conduct engaged in by the supplier, the business consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
 - (c) whether the business consumer was able to understand any documents relating to the supply or possible supply of the goods or services;
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the business consumer or a person acting on behalf of the business consumer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services;
 - (e) the amount for which, and the circumstances under which, the business consumer could have acquired identical or equivalent goods or services from a person other than the supplier;
 - (f) the extent to which the supplier's conduct towards the business consumer was consistent

with the supplier's conduct in similar transactions between the supplier and other like business consumers;

- (g) the requirements of any applicable industry code;
- (h) the requirements of any other industry code, if the business consumer acted on the reasonable belief that the supplier would comply with that code;
- (i) the extent to which the supplier unreasonably failed to disclose to the business consumer:
 - i. any intended conduct of the supplier that might affect the interests of the business consumer; and
 - ii. any risks to the business consumer arising from the supplier's intended conduct (being risks that the supplier should have foreseen would not be apparent to the business consumer);
- (j) the extent to which the supplier was willing to negotiate the terms and conditions of any contract for supply of the goods or services with the business consumer; and
- (k) the extent to which the supplier and the business consumer acted in good faith.

Article 30

Warning Notice to the Public

1. The Commission shall publish a notice in the Member States concerned containing one or both of the following:
 - (a) a statement that goods of a kind specified in the notice are under investigation to determine whether the goods will or may cause injury to any person;
 - (b) a warning of possible risks involved in the use of goods of a kind specified in the notice.

2. Where an investigation referred to in paragraph 1 has been completed, the Commission shall, as soon as practicable, by notice in writing published in the Member States involved or concerned, announce the results of the investigation, and shall announce in the notice whether, and if so, what action is proposed to be taken in relation to the goods under these Regulations.

Article 31

Product Safety Standards and Unsafe Goods

1. A person shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind:
 - (a) in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard;
 - (b) in respect of which there is in force a notice under this Article declaring the goods to be

unsafe goods; or

- (c) in respect of which there is in force a notice under this Article imposing a permanent ban on the goods.
2. A person shall not export goods, the supply in the Common Market of which is prohibited by paragraph 1 unless the Commission has, by notice in writing given to the person, approval for the export of those goods.
 3. Where the Commission denies a request for approval as mentioned in paragraph (2) the affected party may appeal to the Board pursuant to the procedures set out in the Regulations.
 4. Where:
 - (a) the supplying of goods by a person constitutes a contravention of this paragraph by reason that the goods do not comply with a prescribed consumer product safety standard
 - (b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information in relation to the goods; and
 - (c) the person would not have suffered the loss or damage if the goods had complied with that standard;
 - (d) the person shall be deemed for the purposes of these Regulations to have suffered the loss or damage by the supplying of the goods.
 5. Where:
 - (a) the supplying of goods by a person constitutes a contravention of this Article by reason that there is in force a notice under this Article declaring the goods to be unsafe goods or imposing a permanent ban on the goods; and
 - (b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods;
 - (c) the person shall be deemed for the purposes of these Regulations to have suffered the loss or damage by the supplying of the goods.

Article 32

Product Information Standards

1. A person shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed, unless the person has complied with that standard in relation to those goods.
2. The regulations may, in respect of goods of a particular kind, prescribe a consumer product information standard consisting of such requirements as to:
 - (a) the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and

- (b) the form and manner in which that information is to be disclosed on or with the goods;
 - (c) are reasonably necessary to give persons using the goods information as to the quantity, quality, nature or value of the goods.
3. Paragraph (1) does not apply to goods that are intended to be used outside the Common Market.
4. If it is applied to goods - a statement that the goods are for export only; or
- (a) a statement indicating by the use of words authorised by the Regulations to be used for the purposes of this Article that the goods are intended to be used outside the Common Market;
 - (b) it shall be presumed for the purposes of this paragraph, unless the contrary is established, that the goods are intended to be so used.
5. For the purposes of paragraph (4), a statement shall be deemed to be applied to goods if:
- (a) the statement is woven in, impressed on, worked into or annexed or affixed to the goods; or
 - (b) the statement is applied to a covering, label, reel or thing in or with which the goods are supplied.
6. A reference in paragraph (5) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and a reference in that paragraph to a label includes a reference to a band or ticket.
7. The person shall be deemed, for the purposes of these Regulations, to have suffered the loss or damage by the supplying of the goods where:
- (a) the supplying of goods by a person constitutes a contravention of this paragraph by reason that the person has not complied with a prescribed consumer product information standard in relation to the goods;
 - (b) a person suffers loss or damage by reason of not having particular information in

Article 33

Compulsory Product Recall

1. Where:
- (a) a person (in this Article referred to as the “supplier”), in trade or commerce, supplies goods that are intended to be used, or are of a kind likely to be used, by a consumer;
 - (b) one of the following subparagraphs applies:
 - i. it appears to the Commission that the goods are goods of a kind which will or may cause injury to any person;
 - ii. the goods are goods of a kind in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard;
 - iii. the goods are goods of a kind in relation to which there is in force a notice under Article 33.

- c) it appears to the Commission that the supplier has not taken satisfactory action to prevent the goods causing injury to any person.
2. The Commission shall by appropriate notice in the Member States, require the supplier to do one or more of the following:
- (a) take action within the period specified in the notice to recall the goods;
 - (b) disclose to the public, or to a class of persons specified in the notice, in the matter and within the period specified in the notice, one or more of the following:
 - i. the nature of a defect in, or a dangerous characteristic of, the goods identified in the notice;
 - ii. the circumstances, being circumstances identified in the notice, in which the use of the goods is dangerous; or
 - iii. procedures for disposing of the goods specified in the notice;
 - (c) inform the public, or a class of persons specified in the notice, in the matter and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
 - i. except where the notice identifies a dangerous characteristic of the goods - repair the goods;
 - ii. replace the goods;
 - iii. refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods -
- within the period specified in the notice.
3. Prior to the publication by the Commission of the notice mentioned in paragraph 1 (c) above, the Director shall so notify the affected party and give him/her an opportunity to be heard as to why such notice should not be published. Within 10 days of that hearing, the Director must inform the party of the Commission's decision. If the party disagrees, he/she may appeal pursuant to the procedure set forth in the Regulations.

Article 34

Power of the Commission to declare

Product Safety or Information Standards

1. The Commission shall notify the public in the Member States concerned, that, in respect of goods of a kind specified in the notice, a particular standard, or a particular part of a standard, prepared or approved by a prescribed association or body, or such a standard or part of a standard with additions or variations specified in the notice, is a consumer product safety standard for the purposes of the Articles 31 and 32 of these Regulations.
2. Where a notice has been given, the standard, or the part of the standard, referred to in the notice, or the standard or part of a standard so referred to with additions or variations specified in the notice, as the case may be, shall be deemed to be a prescribed consumer product safety

standard for the purposes of Articles 31 and 32, as the case may be.

Article 35

Liability in respect of Unsuitable Goods

1. Where:
 - (a) a person, in trade or commerce, supplies goods manufactured by the person to another person who acquires the goods for re-supply;
 - (b) a person (whether or not the person who acquired the goods from the Person) supplies the goods (otherwise than by way of sale by auction) to a consumer;
 - (c) the goods are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the Person, either directly, or through the person from whom the consumer acquired the goods or a person by whom any prior negotiations in connection with the acquisition of the goods were conducted;
 - (d) the goods are not reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied; and
 - (e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not reasonably fit for that purpose -

- the Person is liable to compensate the consumer or that other person for the loss or damage and the consumer or that person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.
2. Paragraph 1 does not apply:
 - (a) if the goods are not reasonably fit for the purpose referred to in paragraph (1) by reason of:
 - i) an act or default of any person (not being the corporation or a servant or agent of the Person); or
 - ii) a cause independent of human control;occurring after the goods have left the control of the Person; or
 - (b) where the circumstances show that the consumer did not rely, or that it was unreasonable for the consumer to rely, on the skill or judgement of the Person.

Article 36

Liability for Defective Goods causing Injury and Loss

1. If a Person, in trade or commerce, supplies goods manufactured by it; and the goods have a defect; and because of the defect, an individual suffers injuries or loss, then:

- (a) the Person is liable to compensate the individual for the amount of the individual's loss suffered as a result of the injuries; and
 - (b) the individual may recover that amount by action against the Person; and
2. If the individual dies because of the injuries referred to in paragraph 1 above, a law of COMESA or of a Member State about liability in respect of the death of individuals applies as if:
- (a) the action were an action under the law of COMESA or of a Member State for damages in respect of the injuries; and
 - (b) the defect were the person's wrongful act, neglect or default.

Article 37

Unidentified Manufacturer

1. If a person who wishes to institute a liability action does not know who manufactured the action goods, the person may serve on a supplier, or each supplier, of the action goods who is known to the person a written request to give the person particulars identifying:
- (a) the person which manufactured the goods; or
 - (b) the supplier of the goods to the supplier requested.
2. If, 30 days after the person has made the request or requests, the person still does not know who manufactured the action goods, then the person, or each person, that is a supplier:
- (a) to whom a request was made; and
 - (b) who did not comply with the request -
- is taken, for the purposes of the action, to have manufactured the action goods.

Article 38

Defences

1. In a liability action, it is a defence if it is established that:
- (a) the defect in the action goods that is alleged to have caused the loss did not exist at the supply time; or
 - (b) they had that defect only because there was compliance with a mandatory standard for them; or
 - (c) the state of scientific or technical knowledge at the time when they were supplied by their actual manufacturer was not such as to enable that defect to be discovered; or
 - (d) if they were comprised in other goods (finished goods) - that defect is attributable only to:
 - i. the design of the finished goods; or

- ii. the markings on or accompanying the finished goods; or
- iii. the instructions or warnings given by the manufacturer of the finished goods.

Article 39

Rules

The Board may make Rules which shall become effective upon approval by the Council.

ANNEX 12: RULES ON COMESA REVENUE SHARING OF MERGER FILING FEES



RULES ON COMESA REVENUE SHARING OF MERGER FILING FEES

It is hereby notified that the Board, having regard to “Article 39 of the Regulations and with the approval of the Council, makes the following Rules:

Rule 1

Citation

These Rules may be cited as the “Rules on COMESA Revenue Sharing of Merger Filing Fees.”

Rule 2

Interpretation

In these Rules, unless the context otherwise requires:

“**Board**” means the Board of Commissioners established by Article 12 of the Regulations;

“**Commission**” means the COMESA Competition Commission established by Article 6 of the Regulations;

“**Commissioner**” means a member of the Board of Commissioners;

“**Common Market**” means the Common Market for Eastern and Southern Africa (COMESA) established by Article 1 of the Treaty;

“**Common Market Merger filing fees**” means the filing fees for a merger which involves both the acquiring firm and target firm or either the acquiring firm or target firm operating in two or more Member States; and meets the threshold of combined annual turnover or assets as prescribed;

“**Council**” means the Council of Ministers of the Common Market established by Article 7 of the Treaty;

“**Court**” means the Court of Justice of the Common Market established by Article 7 of the Treaty;

“**Designated Member State**” means a Member State stated in the Merger Application Form as a Member State(s) to be covered by the transaction or the merger;

“**Director**” means the Director appointed under Article 9 of the Regulations;

“**Member State**” means a Member State of the Common Market;

“**Merger**” means merger as defined in Article 23 of the Regulations;

“**Non-notifiable merger**” means a merger or proposed merger with a value below the threshold prescribed under Article 23 (4) of the Regulations;

“**Regulations**” means the COMESA Competition Regulations of 2004;

“**Relevant Competition Authority**” means a government institution in a Member State responsible for administering and enforcing the national competition law or policy;

“**Secretary-General**” means the Secretary-General of the Common Market provided for by Article 17 of the Treaty;

“**Treaty**” means the Treaty establishing the Common Market for Eastern and Southern Africa.

Rule 3

Purpose of the Rules

1. The purpose of these Rules is to devise an equitable method of sharing revenue generated by merger filings with a Common Market dimension.

Rule 4

Scope of Application

1. These Rules shall apply to all mergers:
 - (a) whether conducted by private or public persons, or having an effect within, the Common Market; and
 - (b) which fall within the threshold prescribed by the Board under Article 23(4) of the Regulations.

Rule 5

Exclusions

1. These Rules shall not apply to mergers:
 - (a) that do not fall within the thresholds prescribed under Article 23(4) of the Regulations;
 - (b) where the Commission may require parties to a non-notifiable merger to notify the Commission of that merger where it appears to the Commission that the merger is likely to substantially prevent or lessen competition or is likely to be contrary to public interest in accordance with Article 23 (6) of the Regulations;
 - (c) where the Commission has approved a request by a Member State to refer the merger for consideration under the national competition law of the Member State where 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; or
 - (d) which fall within the exclusive jurisdiction of national competition authorities.

Rule 6

Management of the Common Market Merger filing fees

1. The Commission shall manage the Common Market Merger filing fees.
2. The Commission shall specify the accounts:
 - (a) into which all Common Market Merger filing fees shall be paid; and
 - (b) from which all Common Market Merger filing fees payments shall be made.
3. The Director shall:
 - (a) report all transactions into and out of the Common Market Merger filing fees account to the Board; and
 - (b) ensure that the books of accounts relating to all transactions involving the Common Market Merger filing fees are audited by external auditors appointed by the Board.

4. The Commission shall cause to be kept separate books of accounts relating to all transactions involving the Common Market Merger filing fees.

Rule 7

Revenue Sharing Mechanism

1. The share of the total Common Market Merger filing fees, collected in the Common Market during any financial year, accruing to each designated Member State shall be calculated in accordance with Rule 8.
2. The Commission shall deduct an amount determined in accordance with Rule 8 from the gross Common Market Merger filing fees collected for the benefit of the Commission, before distribution of the share of to the designated Member States referred to in sub-rule 1.

Rule 8

Revenue Sharing Formula

1. The Commission shall retain fifty percent of the Common Market merger filing fees and distribute the remaining fifty percent among the relevant Competition Authorities in the designated Member States in accordance with sub-rule (2).
2. The share of the Common Market Merger filing fees for each relevant Competition Authority in the designated Member State shall be proportional to the value of the turnover in each Member State relative to the total value of the turnover in the Common Market.

Rule 9

Dispute Resolution

1. Any dispute arising out of the implementation of these Rules shall first be referred to the Board for resolution.
2. Where the Board fails to resolve the dispute within sixty days, then any Member State to the dispute may refer the matter to the Court.

Rule 10

Timing of Payments

The Commission shall transmit the respective share of the Common Market Merger filing fees of the designated Member State on the first day of each quarter of a financial year.

Rule 11

Amendment of Rules

The Board may amend these Rules and the amendments shall enter into force upon approval by the Council.

Rule 12

Entry into Force

These Rules shall enter into force upon approval by the Council.

**ANNEX 13: AMENDMENT TO THE COMPETITION RULES
OF 2004**



AMENDMENT TO THE COMPETITION RULES OF 2004

The COMESA Competition Rules (2004) are hereby amended as follows:

1. **Rule 55(4) is deleted and replaced with:**
“Notification of a notifiable merger shall be accompanied by a fee calculated at 0.5% or COM \$500,000 or whichever is lower of the combined annual turnover or combined value of assets in the Common Market, whichever is higher.”

2. **Rule 63(1) is deleted and replaced with:**
“A fee of COM \$10,000 is payable on application for authorization.”

3. **Rule 77(4) is deleted and replaced with:**
“The fee for an application for exemption order is COM \$10,000.”

4. **A new rule is inserted after Rule 77 as follows:**
“Power to Revise Fees:

The Board shall, with the approval of the Council, revise any fee prescribed under these Rules.”

5. **Rule 79 is deleted and replaced with:**
 1. The maximum monetary penalties for contravention of this Rule by a corporation, as long as it does not exceed 10% of the annual turnover, are:
 - (a) for each contravention of Article 19, 750,000 units;
 - (b) for each contravention of Article 18, 500,000 units;
 - (c) for each contravention of Article 16, 300,000 units; or
 - (d) for each contravention of Part 5 of the Regulations, 300,000 units.
 2. A penalty unit is equivalent to COM \$1.
 3. Monetary penalties may be paid in a COMESA Member State currency or in any convertible currency specified by the Commission or the Board in respect of a particular matter.

6. **A new Rule 83 is inserted as follows:**
“Amendment of Rules:

The Board may amend these Rules and the amendments shall enter into force upon approval by the Council.

**ANNEX 14: RULES ON THE DETERMINATION OF MERGER
NOTIFICATION THRESHOLD**



RULES ON THE DETERMINATION OF MERGER NOTIFICATION THRESHOLD

It is hereby notified that the Board, having regard to Article 39 of the Regulations and with the approval of the Council, makes the following Rules:

Rule 1

Citation

These Rules may be cited as the Rules on the Determination of Merger Notification Threshold.

Rule 2

Interpretation

In these Rules unless the context otherwise requires:

“Acquiring firm” means a firm that as a result of a merger:

- i. would directly or indirectly acquire, or establish direct or indirect control over the whole or part of the business of another firm; or
- ii. has direct or indirect control over the whole or part of the business of the firm contemplated in paragraph (i);

“Board” means the Board of Commissioners established by Article 12 of the Regulations;

“Common Market” means the Common Market for Eastern and Southern Africa (COMESA), established by Article 1 of the Treaty;

“Council” means the Council of Ministers of the Common Market established by Article 7 of the Treaty;

“Member State” means a Member State of the Common Market;

“Merger” means merger as defined in Article 23 of the Regulations;

“Regulations” means the COMESA Competition Regulations of 2004;

“Target firm” means a firm that as a result of a merger:

- i. the whole or part of whose business would be directly or indirectly controlled by an acquiring firm; or
- ii. would directly or indirectly transfer control of the whole or part of its business to an acquiring firm.

Rule 2

Purpose

The purpose of these Rules is to prescribe the threshold and a method of the calculation of the annual turnover of the assets in relation to the notification of mergers in the Common Market.

R

ule 3

Scope

These Rules shall apply to all mergers with a regional dimension.

Rule 4

Threshold

Where both the acquiring and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, the merger shall be notified in accordance with Article 23 of the Regulations subject to the following thresholds:

- (a) the combined worldwide aggregate annual turnover or the combined worldwide aggregate value of assets, whichever is higher, of all firms to the merger in the Common Market equals or exceeds COM\$ Zero; and
- (b) the aggregate annual turnover or the aggregate value of assets, whichever is higher, of each or at least two firms to the merger in the Common Market equals or exceeds COM\$ Zero.

Rule 5

Method of Calculation

Notwithstanding the provisions of Article 23 (4)(b) of the Regulations, no method is prescribed for the calculation of annual turnover and assets.

Rule 6

Amendment of Rules

The Board may amend these Rules and the amendments shall enter into force upon approval by the Council.

Rule 7

Entry into Force

These Rules shall enter into force upon approval by the Council.

**ANNEX 15: TERMS OF REFERENCE FOR THE COMESA
INNOVATION COUNCIL AND INNOVATION AWARDS**



TERMS OF REFERENCE FOR THE COMESA INNOVATION COUNCIL AND INNOVATION AWARDS

Introduction

1. Exponential growth in scientific and technical knowledge provides unique opportunities for Africa to solve its critical challenges related to meeting basic needs, participating in the growing economy, addressing ecological and climate change problems and improving governance. African leaders have in recent years been placing increasing emphasis on the role of science, technology and innovation. Decisions taken (8th African Union Summit, 2007; 28th Meeting of the COMESA Council of Ministers, 2010) represent a clear expression of political will and interest in introducing specific reforms and actions to endorse the role of science and technology in regional development.
2. COMESA Member States recognize the importance of science and technology in socio-economic and cultural development and have agreed to cooperate in various fields as stated in the decision of the 2010 COMESA Summit on Science and Technology Development. The need for concrete projects that will deliver tangible results for the region is the greatest priority, while mainstreaming science and technology in all COMESA programmes and adopting a cost effective approach that does not financially overburden the Member States were also emphasized as equally important. Concrete proposals include the establishment of common science and technology parks, the establishment of an ICT Training and Skill Development Fund, the elaboration of a common curriculum for COMESA in ICT and the establishment of data bases of individuals that can assist in the implementation of science and technology initiatives

Enabling Decision:

3. The first meeting of COMESA Ministers responsible for science, technology and innovation was held on 28 June 2012. During the meeting, the Ministers recognized the critical urgency of putting in place mechanisms for harnessing and mobilizing existing knowledge from around the world, and of doing this in a structured manner that benefits all COMESA Member States. The experts underscored that there is need for adequate absorptive capacity in the Member States that can be deployed to put the knowledge to immediate practical use. In this regard, the Ministers decided to establish a COMESA Innovation Council.
4. The Innovation Council should be made up of eminent personalities drawn from academia, business and government that can use their stature, experience, knowledge, and their repertoire of contacts. The Innovation Council should have, as its primary responsibility, the task of providing advice to Member States relating to existing and new knowledge and innovations, and best ways of applying the knowledge and innovations in the Member States. The Council will be responsible, in addition, for choosing winners of the COMESA Innovation Award, which should be given annually. Procedures for the awards will be modeled along those for the Queen Elizabeth Price for Engineering (worth £1 million). The Ministers noted that this prize will mean that the UK will increasingly be a repository of outstanding engineering ideas accumulated through the search for winners of the prize. This will open up new opportunities for cooperation on knowledge-sharing with COMESA Member States.
5. The Innovation Council will operate under the auspices of and be convened by the Secretary-

General, but it will be available to any Member State that may wish to seek its assistance.

Terms of Reference for the Innovation Council

- (a) Assist the Secretary-General in ensuring that scientific and technological aspects of development are integrated in the functioning of COMESA;
- (b) The Innovation Council shall serve as an advisory council to the committee on Science Technology and Innovation, Members States and the regional centers of excellence;
- (c) Contribute to the development of a COMESA Innovation Roadmap and advise on strategies for its implementation;
- (d) The Council shall promote STI collaboration with International and regional Institutions such NEPAD, AUC African Ministers Conference on Science and Technology (AMCOST)
- (e) The council shall oversee the design and launch of annual innovation forum to provide platform for sharing innovation experience in the region.
- (f) Identify issues for which science, technology and innovation advice to the Secretary-General is needed;
- (g) Determine the procedures needed for proving the said advice, which may range from ad hoc assessments to working groups on specific issues of relevance to COMESA;
- (h) Oversee the preparation and submission of advisory reports, regular briefings and statements;
- (i) Liaise with other functional departments of COMESA and other organs on matters related to science, technology and innovation;
- (j) Determine areas where COMESA needs the appointment of science, technology and innovation fellows to work in Secretary-General's Office on specific tasks;
- (k) Oversee the design and launch of the COMESA Innovation Award aimed at recognizing and celebrating individuals or organizations that have used science, technology and innovation to make outstanding contributions to the regional integration and development agenda;
- (l) Advise COMESA on the design and publication of an annual COMESA Innovation Report;
- (m) Undertake any other functions as determined by the Secretary-General

Composition of the Innovation Council

6. The 10-person Council shall be made up of eminent personalities drawn from government, academia, business and civil society appointed for three years renewable once in their personal capacities and their participation in the innovation council shall be on a non-remunerative basis.

Meetings and Funding of the Innovation Council

- (a) The council shall meet at least once a year in person with the other meetings being conducted electronically.
- (b) The Secretary-General shall convene the meetings of the Innovation Council and the Council shall nominate a chairperson from among themselves.
- (c) The secretariat shall provide funding for the innovation council operations

Terms of Reference for the COMESA Annual Innovation Awards

7. The aim of the COMESA Innovation Awards, worth US \$1,000,000, is to recognize and celebrate individuals and institutions that have used STI in practical applications to further the COMESA regional integration and development agenda. The proposed Award categories will include: entrepreneurship, women, and young innovators.
8. The prize shall be awarded annually on the occasion of the COMESA Summit and presented to the winner or winners by the Chairperson of the COMESA Authority.
9. There will be an open nomination process but individuals or institutions will not be allowed to nominate themselves. The eligibility will be restricted to the COMESA region.
10. The criteria for nomination shall be:
 - a) What has the person or institution done that has made significant contributions to regional development and integration?
 - b) In what way has the innovation been of benefit to COMESA/ Member States?
 - c) Creativity of the innovator will among others be assessed on the:
 - i. Novelty of the idea
 - ii. Job creation and poverty alleviation
 - iii. Positive impact on human development
 - d) Contribution to the development of the green economy in the region
11. The terms of reference shall be reviewed from time to time to respond to the emerging needs of the region.
12. The COMESA Secretary-General with the advice of the Innovation Council will establish a 10-person judging panel. The name of the winner will be submitted to the COMESA Council

of Ministers who will recommend the successful nominees to the Summit of the Heads of State and Governments.

