



TRIPARTITE PROTOCOL ON COMPETITION POLICY

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PREAMBLE

We, the Member States of the Common Market for Eastern and Southern Africa, the Partner States of the East African Community, and the Member States of the Southern African Development Community, hereinafter referred to as “Tripartite Member/Partner States”:

Recognising that the Tripartite Member/Partner States have concluded an Agreement Establishing a Tripartite Free Trade Area;

Having regard to Article 45(1)(b) of the Agreement Establishing a Tripartite Free Trade Area which obligates Tripartite Member/Partner States to, *inter alia*, conclude a Tripartite Protocol on Competition Policy;

Recognising the goal of the Tripartite Free Trade Area, hereinafter referred to as “TFTA” to progressively liberalise trade in goods and services, promote industrial development, facilitate movement of business persons, support the strengthening of infrastructure, promote competitiveness, build the capacity of micro, small and medium scale enterprises, and contribute to the deepening of integration in the Tripartite Member/Partner States;

Recognising that anti-competitive and unfair trade practices constitute an obstacle to the achievement of consumer welfare, economic efficiency, inclusive growth, and trade liberalisation in the Tripartite Member/Partner States;

Recognising the need for increased cooperation amongst the Tripartite Member/Partner States in tackling cross-border anti-competitive and unfair trade practices;

Affirming Tripartite Member/Partner States’ willingness to engage in closer cooperation at national, regional and tripartite levels, in the implementation of their respective competition and consumer protection laws in order to eliminate the harmful effects of anti-competitive practices and ensure protection of consumers;

Recognising the need to establish institutions to effectively implement competition and consumer protection policy and law;

Conscious of the important role that national and regional competition and consumer protection policy and law institutions will continue to play in promoting competition and consumer protection in the TFTA;

Conscious of the relative presence of national competition and consumer protection institutions in the Tripartite Member/Partner States and the desirability of establishing

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autonomous national competition and consumer protection institutions in all Tripartite Member/Partner States;

Committed to championing and expediting the TFTA integration process under the Agreement;

HAVE AGREED AS FOLLOWS:

**PART I
DEFINITIONS AND SCOPE**

**Article 1
Definitions**

For the purposes of this Protocol, the following definitions shall apply:

- a) **"Agreement"** when used in relation to a prohibited practice includes a contract, arrangement or understanding, whether or not legally enforceable;
- b) **"Association of undertakings"** means an association of two or more undertakings that may not perform economic activity directly, but which has or may have an influence on the economic activities of the undertakings, regardless of the legal form of association;
- c) **"Bait advertisement"** means an advertising practice in which low-priced goods, few or any of which are actually in stock, are advertised to attract consumers to a store or selling place;
- d) **"Competent authority"** means the respective person or body designated to enforce competition and/or consumer protection matters in a Member/Partner State or Regional Economic Communities of the TFTA ("RECs");
- e) **"Concerted practices"** mean a form of coordination between undertakings by which, without them having entered a contract, arrangement or understanding, practical cooperation between them is knowingly substituted for the risks of competition;
- f) **"Consumer"** in respect of any particular goods or services, means —
 - i. a person to whom those particular goods or services are marketed in the ordinary course of the supplier's business;
 - ii. a person who has entered into a transaction with a supplier in the ordinary course of the supplier's business;
 - iii. Where appropriate a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user,

- recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and,
- iv. a franchisee in terms of a franchise agreement
- g) **"Dominant position"** means a position of market power exercised by an undertaking, whether by itself or together with other undertakings, that gives the undertaking concerned the ability to unilaterally influence prices, output or any other competitive element, or to behave to an appreciable extent independently of its competitors, customers or suppliers;
- h) **"Market inquiry"** means formal inquiry in respect of the general state of competition and consumer protection in a market for particular goods or services, to establish if there are any feature or combination of features that affect competition or consumer protection;
- i) **"Market study"** means general research in respect of a conduct or market to establish if further consideration of the conduct or market is required;
- j) **"Merger"** means the direct or indirect acquisition or establishment of a controlling interest or decisive influence by one or more persons in the whole or part of the business of another undertaking;
- k) **"Protocol"** means the Tripartite Protocol on Competition Policy;
- l) **"Person"** means a natural or juridical person and includes firms, partnerships, associations, organizations and any other body of persons involved in the production of, or the trade in goods, or the provision of services;
- m) **"Pyramid scheme"** means an arrangement, agreement, practice or scheme where participants in the scheme receive compensation derived primarily from their respective recruitment of other persons as participants, rather than sale of any goods or services;
- n) **"RECs"** means the Regional Economic Communities of the TFTA;
- o) **"Tripartite Competition and Consumer Protection Policy Committee"** means the committee of competition authorities in the TFTA established pursuant to Article 5 of this Protocol;
- p) **"Undertaking"** means any private or public entity, including persons and affiliated groups of companies under joint control, irrespective of their legal form, involved in the production of, or the trade in goods, or the provision of services;

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- q) **“Unconscionable conduct”** means very unjust or overwhelmingly one sided conduct in favour of the party who has the superior bargaining power contrary to good conscience;
- r) **“Unfair trade practices”** means any business practice or act that is deceptive, fraudulent, or causes injury to a consumer, customer or supplier.

Article 2 Objectives

The objectives of this Protocol are to:

- (a) enhance the welfare of the people in the TFTA by:
 - (i) protecting all market participants' freedom to compete fairly by prohibiting anti-competitive practices;
 - (ii) protecting the opening of Member/Partner States' markets against the creation of barriers to interstate trade and economic transactions by market participants;
 - (iii) protecting consumers in the TFTA against unfair trade practices;
 - (iv) promoting economic integration and sustainable development in the TFTA;
- (b) enhance the competitiveness of TFTA undertakings in global markets by exposing them to competition within the TFTA; and
- (c) bring the TFTA's competition and consumer protection policy and practice in line with international best practices.

Article 3 Scope of Application

- (1) This Protocol shall apply to the following:
 - (a) economic activities conducted by persons or undertakings having a cross-border effect within the TFTA or a substantial part of it; and
 - (b) conduct that may affect competition, consumer protection and trade between Tripartite Member/Partner States and has an effect in the TFTA or a substantial part of it.
- (2) This Protocol shall not apply to matters falling within the respective jurisdiction of the national and regional competition and consumer protection institutions.

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Article 4
Exceptions

- (1) Tripartite Member/Partner States agree that the following agreements and activities are exceptions to this Protocol:
 - (a) collective bargaining agreements between 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 expressly identified as exceptions under national and regional competition and consumer protection laws; and
 - (d) actions by the Tripartite Member/Partner States which do not fall under the category of economic activities.
- (2) For purposes of sub-Article (1)(d) of this Article, the following do not constitute engaging in economic activities by a State:
 - (a) the imposition or collection of taxes;
 - (b) the grant or revocation of licences, permits and authorities;
 - (c) the collection of fees for licences, permits and authorities; and
 - (d) internal transactions within the Government, a State body or a local government body.

Article 5
Obligations of the National and Regional Laws

- (1) Tripartite Member/Partner States agree that each Member/Partner State shall have national laws in force addressing restrictions on competition and consumer protection within their jurisdiction and an autonomous institution designated for the implementation of such national laws.
- (2) For the purposes of effective cooperation regarding the implementation of this Protocol, Tripartite Member/ Partner States shall take appropriate measures to ensure that their respective competition and consumer protection laws are compatible with the following principles:

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- (a) transparency in the making and publication of national laws, authority notifications, policy statements and notifications affecting the interpretation or application of those laws;
 - (b) impartiality and independence in the investigations and decision-making of their respective competent authorities;
 - (c) procedural fairness in handling cases, the right to be heard, opportunity to provide written submissions, judicial or quasi-judicial decisions and the right of appeal or review of such decisions; and
 - (d) non-discrimination on the basis of nationality.
- (3) Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that provide for effective investigation powers to their respective competent authorities. These investigation powers include, *inter alia*:
- (a) The power to request any information or data from any undertaking within the time set by the competent authority;
 - (b) The power to conduct inspections on undertakings, including dawn raids in accordance with national and REC laws.
- (4) Upon entry into force of the Agreement Establishing a Tripartite Free Trade Area, Tripartite Member/Partner States that will not have adopted national competition and consumer protection laws, nor designated competent authorities for their implementation, shall do so within a period of five years. Pending the adoption of national competition and consumer protection laws and establishment of national institutions, such Member/Partner State shall designate a competent authority on competition and consumer protection matters.
- (5) Upon entry into force of the Agreement Establishing a Tripartite Free Trade Area, Tripartite Member/Partner States shall ensure that their national and REC laws are meeting the requirements set forth in the Protocol within a period of five years.

PART II INSTITUTIONAL ARRANGEMENTS

Article 6

Establishment of the Tripartite Competition Policy and Consumer Protection Committee

- (1) The Tripartite Member/Partner States shall establish a standing Committee to be known as the Tripartite Competition Policy and Consumer Protection Committee to implement a mechanism of cooperation in the application of Tripartite Member/Partner States' respective competition and consumer protection laws.



- (2) The Committee shall comprise of experts from competent authorities to be nominated by each Tripartite Member/Partner State and RECs.
- (3) The Committee shall make its own rules of procedures.

Article 7

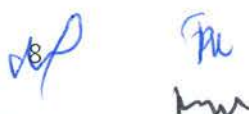
Cooperation on Competition and Consumer Protection

- (1) Tripartite Member/Partner States and RECs shall pursue case specific cooperation to the extent consistent with each Member/Partner State's and RECs' cooperation framework, laws, regulations, and important common interests in preventing anti-competitive agreements, abuse of dominance, anti-competitive mergers and unfair trade practices;
- (2) Tripartite Member/Partner States and RECs shall review provisions in their cooperation framework and laws that conflict with this Protocol with the view to align the same with this Protocol; and
- (3) Cooperation shall proceed in a gradual and phased approach with the ultimate aim of achieving alignment of the national and REC competition and consumer protection laws to this Protocol and establishing an appropriate enforcement model to regulate competition and consumer protection matters at a tripartite level.

Article 8

Functions of the Tripartite Competition Policy and Consumer Protection Committee

- (1) The Tripartite Task Force shall coordinate the activities of the Tripartite Competition Policy and Consumer Protection Committee.
- (2) The Tripartite Competition Policy and Consumer Protection Committee shall perform the following functions:
 - (a) foster cooperation among competition authorities and consumer protection institutions aimed at encouraging convergence of laws and policies, analysis, common understandings and common competition culture;
 - (b) foster cooperation and dialogue in the field of competition and consumer protection and facilitate further convergence in these areas;
 - (c) facilitate and coordinate capacity building and technical assistance programmes for the development and implementation of competition and consumer protection laws of the Tripartite Member/Partner States and RECs;



- (d) facilitate and coordinate ways and means to deal with regional and global effects of anticompetitive and unfair trade practices and facilitate the coordination of negotiating positions with third parties;
- (e) consider the nexus between trade, competition and consumer protection policies in promoting growth and the alleviation of poverty;
- (f) cooperate with other relevant national, regional and international institutions and where appropriate seek convergence in approaches to competition and consumer protection matters;
- (g) assist in preparing and conducting advocacy programmes, research and studies *inter alia* on constraints on competition, regional and international competitiveness; the treatment of parallel imports as an aspect of the application of competition policy in relation to intellectual Property Rights; the benefits of competition law and policy for consumers; the link between competition policy and investment; the link between competition policy, privatization and development; the impact of international cartels on the development of developing countries; and
- (h) cooperate in the exchange of information, experiences and best practices.

PART III
ANTI-COMPETITIVE BUSINESS PRACTICES

Article 9
Restrictive Business Practices

- (1) Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that prohibit agreements between undertakings, decisions by associations of undertakings and concerted practices by undertakings, if the agreements or decisions or concerted practices:
 - (a) have as their object, effect or likely effect to prevent, restrict or distort competition within the TFTA; and
 - (b) may affect trade between Tripartite Member/Partner States.
- (2) Sub-Article (1) of this Article applies to agreements between undertakings which are engaged in the TFTA as competitors or potential competitors (horizontal agreements) and agreements between undertakings operating at different levels of the economic supply chain (vertical agreements).
- (3) Any category of agreement, decision or concerted practice under sub-Article(1) of this Article may be exempt, for a specified period of time, from application of





this Protocol provided that parties to such agreements, decisions and/or concerted practices can demonstrate that these are indispensable to pursue certain legitimate goals for the public benefit and development of the TFTA and the resulting public benefits outweigh the anti-competitive detriment of the agreement/decision/concerted practice, while allowing consumers a fair share of the resulting benefits where they contribute to, *inter alia*:

- (a) cooperation on research and development;
 - (b) improvement of production and distribution of goods;
 - (c) environmental protection; or
 - (d) efficiency gains that promote employment or industrial expansion.
- (4) The Tripartite Member/Partner States shall ensure that any agreement between undertakings, decision by associations of undertakings and concerted practice by undertakings who are engaged in the TFTA as competitors or potential competitors is *per se* prohibited where it results in, *inter alia*:
- (a) direct or indirect fixing of prices and trading conditions;
 - (b) collusive tendering or bid-rigging;
 - (c) market, quota or customer allocation; or
 - (d) collective boycotts or output restriction.
- (5) [The Tripartite Member/Partner States shall ensure that any agreement between undertakings operating at different levels of the economic supply chain is *per se* prohibited where it results in fixing of minimum resale price maintenance.]
- (6) Sub-Articles (1), (4) and (5) of this Article shall not apply where undertakings are dealing with each other in the context of a single economic entity wherein they are under common control.

Article 10 **Abuse of dominance**

- (1) Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that prohibit any abuse by an undertaking of a dominant position within the TFTA or a substantial part of it insofar as it may affect competition and trade between the Tripartite Member/ Partner States and if it, *inter alia*:
- (a) restricts, or is likely to restrict, the entry of any other undertaking(s) into a market;
 - (b) eliminates or removes, or is likely to eliminate or remove, any other undertaking(s) from a market;

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- (c) directly or indirectly imposes unfair purchase or selling prices or other restrictive practices;
 - (d) limits the production of goods or services for a market to the detriment of consumers;
 - (e) as a party to an agreement, making 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;
 - (f) refusing to give a competitor or customer access to an essential facility or input when it is economically feasible to do so; or
 - (g) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.
- (2) In determining whether an undertaking is in a dominant position, consideration shall be given to, *inter alia*, the:
- (a) relevant markets, both product and geographic;
 - (b) market shares;
 - (c) barriers to entry and exit;
 - (d) level of actual or potential competition in terms of number of competitors, production capacity and product demand; and
 - (e) history of competition and rivalry between competitors.

PART IV CONTROL OF MERGERS

Article 11 Mergers

- (1) Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that require undertakings seeking to enter into a merger to notify, where prescribed thresholds are met, the competent authority at national or regional level, within the period specified in the respective laws and in the prescribed manner.
- (2) Tripartite Member/Partner States and RECs agree that a merger shall come into effect upon fulfilment of the conditions prescribed under their respective laws.

- (3) In determining whether a merger is likely to prevent, restrict or distort competition within the respective national or REC laws, the competent authority shall take into account all the relevant factors, including:
 - (a) the creation or strengthening of a dominant position;
 - (b) the competitive structure of all markets affected by the merger;
 - (c) barriers to entry including consideration of the ease of entry, including tariff and regulatory barriers;
 - (d) the level and trends of concentration; or
 - (e) whether the merger will result in the removal of an effective competitor.
- (4) The competent authority may approve an otherwise anti-competitive merger if there are any efficiency gains arising, or likely to arise from the merger, which may outweigh the harmful effects on competition.
- (5) The competent authority may approve a merger if it is satisfied that the merger is to fulfil an overriding public interest that outweighs the anti-competitive effects resulting from the merger.
- (6) In determining whether a merger is to fulfil an overriding public interest, the competent authority shall take into account the relevant public interest factors, including:
 - (a) employment;
 - (b) the ability of small and medium sized businesses to become or remain competitive; or
 - (c) the ability of industries in the TFTA to compete in other international markets.

PART V CONSUMER PROTECTION

Article 12 General Principles

Tripartite Member/Partner States should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each Member/Partner State must set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, and bearing in mind the costs and benefits of proposed measures.

- (1) The Tripartite Member/Partner States shall ensure that their national and REC laws establish consumer protection policies that encourage:
- (a) the protection of vulnerable and disadvantaged consumers;
 - (b) consumer information and education, including on the environmental, social and economic consequences of consumer choice;
 - (c) availability of effective consumer dispute resolution and redress;
 - (d) freedom to form consumers and other relevant groups or organisations and the opportunity of such organisations to present their views in decision-making processes affecting them;
 - (e) the promotion of sustainable consumption patterns;
 - (f) Member/Partner States to work towards enhancing consumer confidence in electronic commerce by the continued development of transparent and effective consumer protection policies;
 - (g) the protection of consumer privacy and data security.

Article 13
False and Misleading Representation

- (1) The Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that ensure that a person engaging in trade in connection with the supply or acquisition or possible supply of goods or services, or in connection with the promotion by any means of the supply of goods or services does not:
- (a) falsely represent that:
 - i. goods are of a particular standard, quality, quantity, value, grade, composition, style, nature or model or have had a particular history or particular previous use, or any other material fact;
 - ii. services are of a particular standard, quality, value or grade;
 - iii. goods or services are new;
 - iv. a particular person has agreed to acquire goods or services; or
 - v. goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;

- (b) represent that the person has a sponsorship, approval or affiliation the person does not have;
- (c) make a false or misleading representation with respect to the price of goods or services, the availability of facilities for the repair of goods or of spare parts for goods, the place of origin of goods, the need for any goods or services, or the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy;
- (d) falsely make a promotional offer with the intention of not fulfilling it; or
- (e) contract on terms that are not clear, concise and easy to understand;
- (f) involve bait advertisement in the sale of goods and services.

Article 14

Unconscionable Conduct in Consumer Transactions

- (1) The Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that ensure that a person engaging in trade, in connection with supply or possible supply of goods or services to another person, or acquisition or possible acquisition of goods or services from another person does not engage in conduct that is, in all the circumstances, unconscionable.
- (2) For the purpose of determining whether a person has contravened sub-Article (1) of this Article in connection with the supply or possible supply of goods or services to a consumer, the competent authority 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;

- (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from another supplier;
- (f) whether an undertaking has taken advantage of a consumer's mental incapability, illiteracy or ignorance or inability to understand the language of the transaction; or
- (g) whether an undertaking involves pyramid schemes in the sale of goods or services.

Article 15

Unconscionable Conduct in Business Transactions

- (3) The Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that ensure that a person engaging in trade, in connection with supply or possible supply of goods or services to another person, or acquisition or possible acquisition of goods or services from another person does not engage in conduct that is, in all the circumstances, unconscionable.
- (4) For the purpose of determining whether a person (the supplier) has contravened sub-Article (1) of this Article in connection with the supply or possible supply of goods or services to a business consumer, the competent authority may have regard to:
 - (a) the relative strengths of the bargaining positions of the person 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 person;
 - (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 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 another supplier;







- (f) whether the supplier has taken advantage of the business consumer's mental incapability, illiteracy or ignorance or inability to understand the language of the transaction; or
- (g) whether an undertaking involves pyramid schemes in the sale of goods and services.

Article 16

Obligation to make consumer aware of certain terms and conditions in contracts

- (1) The Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that ensure that a supplier shall ensure that every term and condition in a contract is brought to the attention of the consumer, especially terms or conditions that —
 - (a) limit the liability of the supplier;
 - (b) constitute an assumption of risk or liability by a consumer;
 - (c) impose an obligation on the consumer not to hold the supplier responsible for any loss or cause; or
 - (d) requires a consumer to be aware of any risk associated with a good or service, that under normal circumstances the consumer could not be aware of.
- (2) A supplier shall explain the implications of the terms and conditions specified in sub Article (1) of this Article to a consumer before the consumer makes a decision to consent to the terms and conditions.
- (3) A supplier shall ensure that where a consumer consents to the terms and conditions specified in sub Article (1) of this Article, the consumer shows such consent by signing or initialling next to each term and condition that the consumer consents to.
- (4) The terms and conditions specified in sub Article (1) of this Article shall be written in plain and clear language, in a manner that could be expected to be comprehended or understood by an ordinary consumer.



Article 17
Financial services

- (1) Tripartite Member/Partner States should establish or encourage, as appropriate:
- (a) Financial consumer protection regulatory and enforcement policies;
 - (b) Oversight bodies with the necessary authority and resources to carry out their mission;
 - (c) Appropriate controls and insurance mechanisms to protect consumer assets, including deposits.

Article 18
Product Safety Standards and Unsafe Goods or Services

- (1) The Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that ensure that a person engaging in trade does not supply goods or services in respect of which there is:
- (a) a prescribed consumer product safety standard and the goods or services do not comply with that standard;
 - (b) in force a notice under this Article declaring the goods to be unsafe goods or services; or
 - (c) in force a notice under this Article imposing a permanent ban on the goods or services.
- (2) A Tripartite Member/Partner State shall ensure that a person shall not export goods or services in the TFTA which are prohibited by sub-Article (1) unless the competent authority has, by notice in writing given to the person, approval for the export of those goods or services.

Article 19
Warning Notice to the Public

- (1) The Tripartite Member/Partner States and RECs shall ensure that they shall publish a notice in the Tripartite Member/Partner States containing one or both of the following:
- (a) a statement that goods or services of a kind specified in the notice are under investigation by the competent authority 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 or services of a kind specified in the notice.
- (2) Where an investigation by the competent authority has been completed, the Tripartite Member/Partner States and RECs shall, as soon as practicable, by notice in writing published in the Member/Partner States, 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 or services.

Article 20

Liability in respect of Unsuitable Goods or Services

- (1) The Tripartite Member/Partner States and RECs shall ensure that their respective laws provide for provisions that where:
- (a) a person, in trade or commerce, supplies goods manufactured or services provided by the person to another person who acquires the goods for re-supply;
 - (b) a person supplies the goods or services (otherwise than by way of sale by auction) to a consumer;
 - (c) the goods or services are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the supplier, either directly, or through the person from whom the consumer acquired the goods or services or a person by whom any prior negotiations in connection with the acquisition of the goods or services were conducted;
 - (d) the goods or services are not reasonably fit for that purpose, whether or not that is a purpose for which such goods or services are commonly supplied; and
 - (e) the consumer or a person who acquires the goods or services from, or derives title to the goods or services through or under, the consumer suffers loss or damage by reason that the goods or services are not reasonably fit for that purpose -
 - i. 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) Sub Article (1) of this Article does not apply:
- (a) if the goods or services are not reasonably fit for the purpose referred to in sub Article (1) of this Article 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 or services 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 21

Liability for Defective and Dangerous Goods or Services causing Injury and Loss

- (1) The Tripartite Member/Partner States and RECs shall ensure that their respective laws provide for provisions that if a Person, in trade or commerce, supplies goods manufactured or services provided by it; and the goods or services have a defect; and because of the defect, a consumer suffers injuries or loss, then:
- (a) the Person is liable to compensate the consumer for the amount of the consumer's loss suffered as a result of the injuries; and
 - (b) the consumer may recover that amount by action against the Person; and
- (2) If the consumer dies because of the injuries referred to in sub Article (1) of this Article above, a law of the Tripartite Member/Partner State or REC about liability in respect of the death of consumer applies as if:
- (a) the action were an action under the law of a Tripartite Member/Partner State or REC for damages in respect of the injuries; and
 - (b) the defect were the person's wrongful act, neglect or default.

Article 22

Unidentified Manufacturer

- (1) The Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that ensure that if a person who wishes to institute a liability action does not know who manufactured the defective and dangerous goods or services, the person may serve on a supplier, or each supplier, of the defective and dangerous goods or services who is known to the person a written request to give the person particulars identifying:
 - (a) the person which manufactured the goods or provided the services; or
 - (b) the supplier of the goods or services 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 defective and dangerous goods or services, 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 the defective and dangerous goods or services.

Article 23

Compulsory Product Recall

- (1) The Tripartite Member/Partner States shall ensure that their national and REC laws have provisions that ensure that where a supplier engaging in trade supplies goods or services that are intended to be used, or are of a kind likely to be used, by a consumer, and;
 - (a) it appears to the competent authority that the goods or services are of a kind which will or may cause injury to any person;
 - (b) the goods or services are of a kind in respect of which there is a prescribed consumer product safety standard but do not comply with that standard; or
 - (c) the goods or services are of a kind in relation to which there is in force a notice under Article 19;

and it appears to the competent authority that the supplier has not taken satisfactory action to prevent the goods or services causing injury to any person, the competent authority shall by notice in the Member/Partner States, require the supplier to take action by recalling the goods or services and disclosing to the public, or to a class of persons specified in the matter the nature of a defect in, or a dangerous characteristic of, the goods or services identified in the notice, the circumstances in which the use of the goods or services is dangerous and the procedures for disposing of the goods or services.

- (2) The notice in sub-Article (1) of this Article shall be given within the specified period in accordance with the applicable national or regional laws.

Article 24

Market Inquiry and Study

- (1) The Tripartite Member/Partner States and RECs agree to cooperate in carrying out joint market inquiries in priority areas which affect the TFTA.
- (2) The Tripartite Member/Partner States and RECs agree to cooperate in carrying out joint market studies in priority areas which affect the TFTA.

Article 25

Sanctions

- (1) The Tripartite Member/Partner States and RECs shall ensure that their national and REC laws have appropriate sanctions for undertakings or persons that infringe the principles of competition and consumer protection.
- (2) In providing for sanctions in their respective laws, the Tripartite Member/Partner States and RECs shall have due consideration to the following:
 - (a) deterrent effects of the sanctions;
 - (b) local nexus consideration of the turnover and/or assets of the undertakings;
- (3) In executing those sanctions, the Tripartite Member/Partner States and RECs shall have due consideration to the following:
 - (a) nature, duration, gravity and extent of the offence;
 - (b) any loss or damage suffered as a result of the offence;
 - (c) behaviour of the undertaking or person;


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- (d) market circumstances in which the offence took place, including whether and to what extent the offence had an impact on small businesses;
 - (e) the level of profits derived from the offence;
 - (f) the degree to which the undertaking cooperated with the competent authority;
 - (g) whether the undertaking had previously been found in contravention of the national and REC competition and consumer protection laws.
- (4) Member/Partner State and RECs may cooperate in enforcement of sanctions against persons or undertakings within, or having effects within the TFTA.

Article 26

Conflict of Provisions

- (1) In the event of a conflict between this Protocol and the Agreement Establishing A Tripartite Free Trade Area, the latter shall prevail.
- (2) [In the event of a conflict between this Protocol and the REC laws, this Protocol shall prevail.]
- (3) [In the event of a conflict between this Protocol and the national laws, this Protocol shall prevail.]

Article 27

Dispute Settlement

Where any Member/Partner State fail to agree on implementation of any of the provisions of this Protocol and a dispute arises, the matter shall be addressed in accordance with Article 30 of the Agreement Establishing a Tripartite Free Trade Area.

Article 28

Amendment

This Protocol may be amended in accordance with Article 37 of the Agreement Establishing a Tripartite Free Trade Area.

Article 29

Signature, Ratification and Entry into Force

- (1) This Protocol shall be signed by the Tripartite Member/Partner States.

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- (2) This Protocol shall be ratified by Tripartite Member/Partner States in accordance with their national laws.
- (3) This Protocol shall enter into force upon adoption of the Ministers/Summit.

[Article xx]
[Public Procurement]

[This Protocol shall not apply to provisions of public procurement as provided for in the national and REC laws (other than as provided for under Article 9(4) and Article 10 of this Protocol)].

[Article xx]
[State Aid]

[This Protocol shall not apply to provisions of State Aid as provided for in the national and REC laws.]