****

**Distr.**

**LIMITED**

**CS/ADM/SC/XXII/9.3**

**Original: ENGLISH**

**COMMON MARKET FOR EASTERN AND**

**SOUTHERN AFRICA**

Twenty Second Meeting of the Sub-Committee on Audit and Budgetary Matters

Lusaka, Zambia

28 October – 1 November 2019

**REPORT ON THE 2019 INTERNAL AUDIT OF THE UTILIZATION OF**

**MERGER FEE INCOME OF COMESA COMPETITION COMMISSION (CCC)**

**AO/hcm**

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# 

# INTRODUCTION

The COMESA Competition Commission was established under the Article 6 of the COMESA Competition Commission Regulations (‘the Regulation”). The Regulations were promulgated by the COMESA Council of Ministers (“Council’) in 2014 under Article 55 of the COMESA Treaty.

Pursuant to Article 2 of the Regulations, the purpose of the Regulations is to promote and encourage competition by preventing restrictive business practices and other restriction that deter the efficient operations of the markets, thereby enhancing the welfare of the consumers in the common market, and to protect consumers against offensive conduct by market actors

**The functions of the Commission include:**

1. The Commission shall apply the provisions of the 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(i) above, the Commission shall:
3. Monitor and investigate anti-competitive practices of undertakings within the Common Market, and mediate disputes between Member States concerning anti-competitive;
4. 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;
5. Help Member States promote national competition laws and institutions, with the objective of the harmonisation of those national laws with regional Regulations to achieve uniformity of interpretation and application of completion law and policy within the Common Market;
6. Co-operate with competition authorities in Member States
7. Co-operate and assist Member States in the implementation of its decisions;
8. Provide support to Member States in promoting and protecting consumer welfare;
9. Facilitate the exchange of relevant information and expertise;
10. enter into such arrangements as will enhance its ability to monitor and investigate the impact of conduct outside the Common Market bust which nevertheless has, or may have, an impact on trade between Member States;
11. be responsible for developing and disseminating information about competition policy and consumer protection policy; and
12. co-operate with other agencies that may be established or recognised by COMESA to monitor and regulate any specific sector

Internal Audit has completed the following:

1. Expenditure review for the period from August 2018 to June 2019;
2. Follow up on implementation of prior internal and external audit findings;
3. Reviewed performance of the approved 2018 work plan;
4. Reviewed the implementation of Council and Board decisions;
5. Reviewed compliance with International financial reporting standards

We therefore wish to report on areas where we noted that control and risk management weaknesses need to be addressed.

# AUDIT OBJECTIVES

# In undertaking this audit, we aimed to achieve the following:

1. Provide assurance on the completeness and accuracy of financial transactions undertaken by COMESA Competition Commission on the utilization of the merger fees accruing to the Commission;
2. Determine the implementation of prior internal and external audit findings;
3. Establish performance of the approved 2018 work plan;
4. Review the implementation of Council and Board decisions; and
5. Communicate our findings and recommendations to COMESA Competition Commission

# AUDIT STRATEGY/SCOPE

In conducting the audit, the following approach was undertaken:

1. Reviewed expenditures for the period from August 2018 to June 2019;

(ii) Checked accuracy and completeness of payroll for period August 2018 to June 2019;

1. Identified internal control weaknesses during the audit and recommended corrective actions to be taken by management;
2. Reviewed the Budget Performance for 2018 and from January 2019 to June 2019;
3. Reviewed Council and Board decisions and ensured that the decisions have been implemented;
4. Reviewed the 2018 work plan and assessed the level of implementation;
5. Discussed our findings with COMESA Competition Commission Management.

# 

# AUDIT OBSERVATIONS, RISKS, RECOMMENDATIONS AND MANAGEMENT COMMENTS

# MERGER FEES INCOME

# **2019 Merger fees Budget Performance**

Activity based budgeting as promoted by COMESA enhances optimal budget absorption.

**Observation**

We noted the following:

The overall budget absorption was 26% as at 30th June 2019.

1. Effective and timely assessment of competition cases, the budget absorption was 23.50%;
2. Strengthening Research, the budget absorption was 0%;
3. Enhance consumer protection in the Common Market, the budget absorption was 0%;
4. Enhance compliance with the decisions of the Commission, the budget absorption was 40%;
5. Enhance the organizational capacity for the Commission, the budget absorption was 14%;
6. Enhance capacity to enforce the COMESA Competition Regulations by case officers at National Competition and Consumer Agencies, the budget absorption was 52%;
7. Enhance the visibility of the Commission, the budget absorption was 14%;
8. Enhance corporate governance, the budget absorption was 33%;
9. Improve the record keeping system of the Commission, the budget absorption was 7%;
10. Ensure accessibility of Commission's Documents in all the three Official languages, the budget absorption was 28%;
11. Enhance organizational capacity, the budget absorption was 25%.

**Risk/Impact**

Under expenditure on certain budget lines may portray that the budgeting process is not activity based.

**Recommendations**

We recommend that the budgeting process of the Commission be activity-based where all the budget lines are analyzed and provided based on the level of activities planned.

**Management comment**

1. Effective and timely assessment of competition cases, the budget absorption was 23.50%;

This budget absorption represents the period from January to June. It is anticipated that the investigation of cases currently underway, will attract further utilization of the budgeted amount. The Commission is currently investigation the biggest case involving the awarding of media and broadcasting rights in football covering all COMESA Member States. This will attract huge investigating costs. It is envisaged that most cases under investigations shall finalized in the third and fourth quarter when hearings and visits to Member States will be undertaken.

1. Strengthening Research, the budget absorption was 0%;
   1. The budget line was to cover a regional study in the aviation industry. However, it was discovered that the African Competition Forum (ACF) a regional body has commissioned a similar study in the aviation industry which will cover the Common Market. Consequently, the Commission felt that it would be duplication and waste offunds to undertake a similar research in the same markets. However, the Commission is participating through providing technical expertise to ACF.
   2. The Commission as in the previous year will be co-hosting the COMESA Research Forum with the COMESA Trade Division which will be held in in Nairobi September 2019.
2. Enhance consumer protection in the Common Market, the budget absorption was 0%;

The expenditure on this budget line remains suspended as the Division is not yet operational. This is due to inadequate office space. We envisage the host government to provide adequate office space for the officers to be employed and commence operations of the Division.

1. Enhance compliance with the decisions of the Commission, the budget absorption was 40%;

The Commission was finalizing the logistics for capacity building attachments for six Ethiopian Competition Investigators to the Kenyan Competition Commission and the Zambia Competition Commission which commenced in July 2019 and has since absorbed 86%. This will be followed by finalization of the negotiations leading to the bilateral enforcement cooperation agreement with the Competition and Tariff Commission of Zimbabwe scheduled for November 2019.

1. Enhance the organizational capacity for the Commission, the budget absorption was 14%;
   1. This activity is anchored with the participation of the Commission to the programs which are conducted by the ICN Mergers Workshop and the ICN Unilateral Conduct Workshop. The ICN sets the dates for the two events. These two programs shall take place in the last quarter of 2019.
   2. It was envisaged that the 2rd Phase of recruitment was to be completed by March 2019. However, the recruitment has been suspended due to inadequate office space to be made available by the host government.
2. Enhance capacity to enforce the COMESA Competition Regulations by case officers at National Competition and Consumer Agencies, the budget absorption was 52%;

More substantial expenditure is budgeted for -:

* 1. Regional Training for Case Handlers of Mergers will be held in August 2019
  2. Mission to carry out needs assessment of Tunisia and Eritrea to be carried out in November 2019

1. Enhance the visibility of the Commission, the budget absorption was 14%;

More budgeted expenditure to be on - :

* 1. Business Reporters Workshop to be held in September 2019
  2. Judges Workshop planned for August has been rescheduled to October 2019 due to street demonstrations taking place in the host country.
  3. The Commission will participate is scheduled to participate at the 10th Universally celebrations of the Competition Commission and the Fair-Trade Commission of the Seychelles to take place in October and December respectively.
  4. The Commission will further participate at the Africa Bar Conference to take place in Cairo, Egypt in September 2019.

1. Enhance corporate governance, the budget absorption was 33%;
   1. Training of Commissioners on Merger assessment to be conducted in August 2019
   2. Board Meetings to be held in August and November 2019
   3. Three Committee Meetings of the Board to be held in the third and fourth quarter of 2019.
2. Improve the record keeping system of the Commission, the budget absorption was 7%;

More budgeted expenditure on -:

* 1. The money will be utilized to purchase reference competition law text books and Kenya and Zimbabwe Law Reports.
  2. Subscription online news and research platforms is ongoing, and the budget absorption shall continue up to the last quarter.
  3. The Commission shall utilize this budget line in the last quarter.

1. Ensure accessibility of Commission's Documents in all the three Official languages, the budget absorption was 28%;
   1. The budget is utilized on a need basis when there are documents to be translated.

* 1. The budget line shall also be used to translate the Market Definition Guidelines, the COMESA Merger Assessment Guidelines, Guidelines on Vertical and Horizontal Restraints, Guidelines on Abuse of Dominance among others. The approximate number of pages for all these documents is 365

1. Enhance organizational capacity, the budget absorption was 25%.
   1. The contribution towards retention of non-established staff members included emoluments for 10 staff Members yet to be recruited.
   2. Recruitment is pending provision of adequate office space by the host government.
   3. The establishment of the Consumer Protection and HR Divisions is pending provision of adequate office space by the host government
      * 1. **User Designed Applications**

User Designed Applications are application software designed to perform a group of coordinated functions, tasks, or activities for the benefit of the user. Examples of an application include a spreadsheet. These spreadsheets are part of the working papers which supports the figures in the financial statements, and they are required to be validated and formulas protected.

COMESA Competition Commission is currently using excel spreadsheets for its financial reporting sub-processes.

**Observation**

We noted that the formulas for the spreadsheet used for the payment of merger fees to member States were not protected and subjected to an independent review. As a result the payment for the merger fees between BSA International S.A and Infant Nutrition merger fees were wrongly paid to Uganda and Zimbabwe in December 2018. This resulted into overpayment of Uganda by USD7,792.60 and Zimbabwe by USD 49,129.49. These amounts were recovered when the 2019 second quarter disbursements were paid.

**Risk/Impact**

Over/understatement of financial statements.

**Recommendations**

We recommend that all the User Designed Applications in use be identified, verified, and formulas protected to avoid misstatement in the financial statements.

**Management comment**

The Commission has taken note of the recommendation and shall plan to engage an expert in the field to assist with designing the application

* + - 1. **COMESA Consumer Protection Committee**

The COMESA Competition Commission has put in place Rules and Regulations for its operationalization.

**Observation**

The Commission undertook a mission on 3rd March 2018 to 8th March 2018 for a meeting with Chairperson of the COMESA Consumer Protection Committee to finalize the operational Framework of the COMESA Consumer Protection Committee and Outline the work plan for the Committee for the year 2018. The follow up actions were:

1. The Commission to finalize the Operational Framework of the COMESA Consumer Protection Committee;
2. The Commission to set up the first meeting of the Steering Group during the last week of April 2018.

We noted that the COMESA Competition Commission Rules and Regulations do not have a provision for the formation of the COMESA Consumer Protection Committee.

**Risk/Impact**

Noncompliance with the COMESA Competition Commission Rules and Regulations which may result into non-enforceable decisions following the Committee meetings.

**Recommendations**

The possibility of the Committee of initial determination also handling consumer protection matters should be explored.

**Management comment**

The Consumer Protection Committee is an operative tool established under Article 7 of the Regulations. The Committee operates as a virtual network.

The Consumer Protection Committee is a project oriented, consensus based, informal network of consumer protecting agencies and associations that addresses enforcement and policy issues in consumer protection and formulates proposals for procedural and substantive convergence. The Committee encourages the dissemination of experiences and best practices in the field of consumer protection, promotes the advocacy role of consumer protection agencies and associations, and seeks to facilitate regional cooperation. The Committee’s activities take place on a voluntary basis and relies on a high level of goodwill and cooperation among Members, as well as effective working relationships with non-governmental advisors and other regional and international bodies working in the same field.

The work of the Committee is project driven. During its regular scheduled meetings, the Committee decides which project to pursue and adapt a work plan for its project. The Committee is not intended to replace or coordinate the work of other organisations, nor does it exercise any rule making function. The objectives of the Committee are three fold;

1. To increase the efficiency of consumer protection in the Common Market by analysing the current regional framework, establish minimum standards for all Member States, and promoting the harmonisation of national consumer protection laws, so as to increase the welfare of citizens of the Common Market
2. To promote the dialogue between government regulators and consumer associations at national level; and
3. To strengthen the enforcement capacity of the CCC and the national consumer agencies of the Member States through training on consumer protection issues in line with international best practices in emerging issues.

The Committee on consumer protection is not a decision-making body but is an informal body for networking and sharing ideas and experiences on consumer protection among COMESA Member States.

The Committee responsible for initial determination makes decisions on consumer protection matters. Therefore, establishing another committee shall be duplication and waste of resources.

**Audit comment on management comments**

The audit recommendation was not to establish another Committee but to explore possibilities for the Committee of initial determination to also handle consumer protection matters for valid and binding decisions that may be taken.

* + - 1. **Suspense Account**

Suspense accounts temporarily store transactions while they are being reconciled for posting in the correct account.

**Observation**

We noted that there were overpayment amounts from merger fees which the Commission is required to pay back, and these have been posted in a suspense account. Below we cite examples:



**Risk/Impact**

Continued stay of these transactions in the suspense account has resulted into the understatement of payables.

**Recommendations**

We recommend that the amounts should be treated as creditors regardless the amounts. Thereafter, a decision should be made to the Board on treatment of small amounts below USD500 that may incur high charges upon transfer to the affected firms.

**Management comment**

The Commission has taken note of the recommendation and has since started recognising these as sundry creditors and shall seek the necessary approvals from the Board

* + - 1. **Airlines statement reconciliations**

The COMESA Financial Rules and Regulations on financial management and budgetary control stipulates that the Secretary General shall through designated senior officers take care that all payments are made on the basis of supporting vouchers and other documents, which ensure that the services of goods have been received and that payments have not previously been made.

**Observation**

Air tickets were paid based on the invoices which were attached to the payment voucher. The Commission obtains tickets from the airlines on credit on an informal basis. The agreement between the Commission and Kenya Airways for a credit facility has reached an advanced stage. The Commission has also engaged Ethiopian Airlines for a credit facility.

We could not trace a reconciliation which was done by the Commission prior to the payment to airlines to ensure accuracy and completeness of payments.

**Risk/Impact**

Loss of funds due to overpayment of air tickets

**Recommendations**

We recommend that Airline creditor’s statements should be collected for reconciliation before any payment is made.

**Management comment**

The Commission has started collecting Statements from airline agents for reconciliation purposes before making payments for the tickets. However, it should be noted that refunds of tickets undergo certain processes by the airlines hence, it is not always immediate on demand.

* + - 1. **VAT payment**

VAT exemptions should be obtained from the host countries before meetings are held to avoid paying VAT on purchases in line with the 2009 Council decision on hosting of COMESA meetings. This decision indicates that a Host Agreement, which should include exemption of the payment of VAT, be signed between the Secretariat and the Host Country prior to the organization of meetings or workshops.

**Observation**

There was a mission for the participation in the Zimbabwe International Trade Fair on 23rd to 27th April 2019 in Bulawayo, Zimbabwe.

We noted that the total cost for Stand fees and stand designs was USD7, 492.00 which included VAT of 15%. This amount was a shared cost with Zimbabwe Competition & Tariff Commission of 50% each. COMESA Competition paid the 50% share amounting to USD3, 746 which had a VAT of 15% component of USD561.90

**Risk/Impact**

Loss of savings due to payment of VAT on purchases during a Commission meeting contrary to the provisions of the COMESA protocol on immunities and privileges.

**Recommendations**

VAT exemptions should be obtained from the host countries before the meetings are held to avoid paying VAT on purchases. A creditor should be recognized in the Commission’s accounts and efforts made to obtain the VAT paid.

**Management comment**

The Commission has taken note of the recommendation and will continue to ensure that VAT Exemption letter is obtained before workshops. The Commission shall engage Zimbabwe Coordinating Ministry on the same.

The issue of VAT refund has continued to be problematic when dealing with Member States. It is advised that the Secretariat should take up this matter with individual Member States to get clarification whether this is an obligation under the Treaty. It would appear Member States are not aware of this requirement.

* + - 1. **Goods Received Notes**

Financial Rules & Regulations Rule 64 on Inspection of Supplies and Equipment stipulates that all supplies, equipment, and other property received by the COMESA shall be immediately inspected to ensure that their condition is satisfactory and in accordance with the terms of the related purchase contract. A Goods Received Note shall be prepared on all items received, and the items shall be immediately entered in the appropriate store ledger and property records.

**Observation**

CCC has a store where goods bought for office use are stored. CCC has Goods Received Note (GRN) and Stores Requisition Form for office supplies and stationery for recording issues from the stores.

We noted that the following items were not recorded in the Goods Received Note (GRN):

1. 35 certificates for participants to the Restrictive Business Workshop on 24th to 26th June 2019 in Nairobi;
2. 50 Name tag holders for participants to the Restrictive Business Workshop on 24th to 26th June 2019 in Nairobi.

**Risk/Impact**

Lack of an audit trail for the goods purchased.

**Recommendations**

All goods purchased should be recorded in the Goods Received Notes before they are distributed for usage.

**Management comment**

The Commission has taken note and shall endeavour to abide to the completion of financial records. The officer responsible, has been given a verbal warning.

* + - 1. **Translators**

COMESA Secretariat has an Organization and Management Procedure Manual which stipulates that a standard rate of fees shall be applied as US$560.00 per person per day.

The Translator shall be paid USD115/1000words.

**Observation**

We noted that the Translator Saeenah Soobye was engaged for translation services in October 2018. The translator translated 13,662 words for CCC documents at a rate of USD115/1,000 words and was paid USD1, 689.13 instead of USD1, 571.13 resulting into overpayment of USD118.00.

**Risk/Impact**

Loss of the Commission’s funds.

**Recommendations**

Payment vouchers and contracts should be checked independently before they are paid. The overpayment should be recognized in the accounts and efforts made for recovery.

**Management comment**

The Commission has taken note and will thoroughly check the Invoices before payment. The overpayment will be recovered from subsequent Invoice. The officer responsible, has been given a verbal warning.

* + - 1. **Merger Fees Bank Accounts**

The Thirty Sixth Meeting of the Council of Ministers on Administrative and Budgetary Matters Antananarivo, Madagascar on 14-15 October 2016 decided that Member States who have not received their share of merger fees should provide the Commission with full bank account details through the office of the Secretary General.

**Observation**

1. On 23rd November 2018, the Director Competition and Tariff Commission wrote a letter to the Director & CEO of CCC for a change of bank account and this was effected when the transfer of Merger fees to Zimbabwe from July to Sept 2018 was made in December 2018;
2. On 23rd July 2018, The Egyptian Competition Commission Authority wrote a letter to the Director & CEO of CCC requesting to direct any future funds constituting the Egyptian Competition Authority's (ECA) share of mergers filling fees and this was effected when transfer of Merger fees to Egypt from Jan to June 2018 was made in August 2018

**Risk/Impact**

Non - compliance with the Council decision.

**Recommendations**

Bank details including changes in the bank details for merger fee income accruing to Member States should be provided through the office of the Secretary General as decided by Council.

**Management comment**

The Commission shall continue to implement this recommendation as is the case currently. It may be noted that the requirement to inform and involve the Secretary General was initited by the Commission.

* + - 1. **Consultant**

A Contract was entered between COMESA Competition Commission and PFI Partnership on 18th October 2018.

**Observation**

1. There was a payment to PFI Partnerships to advice on the determination of Member States where TCCC derived its Turnover for the Merger between Coca-Cola Company and Zambia Breweries. The contract entered into force on 18th October 2018 up to close of business on 29th October 2018. The consultant presented the report on 26th November 2018 and issued the invoice on 28th November 2018 amounting to USD3, 000 as per the contract. On 3rd December 2018, the Manager Mergers & Acquisition wrote a memo requesting for payment.
2. The Consultant did not meet the deliverables during the contract and there was no proof of contract period extension on file to indicate that there was a NO cost extension of the contract until December 2018.

**Risk/Impact**

Payment of Consultants without an enforceable contract.

**Recommendations**

Consultants should be monitored as they deliver on the assignment and if necessary, a No cost extension of the contract be issued in good time for its validity.

**Management comment**

The Commission did not incur any costs for extension of the duration of the consultancy. The extension was occasioned by the merging parties’ delay in submitting the requisite information indispensable to the consultancy.

**Audit comment on management comments**

There is need for CCC management to continuous monitor the deliverables of the Consultant so that the deliverables are met within the contract period and in the event that it is not possible, the contract duration is amended at no cost.

* + - 1. **Mission matrix 2019**

Mission reports are prepared and maintained by the Registrar. There are weekly meetings where follow up actions arising from missions are discussed.

**Observation**

We noted that the mission matrix for 2019 did not have outstanding follow up actions from previous years missions.

**Risk/Impact**

Non implementation of follow up actions arising from previous years.

**Recommendations**

The mission matrix for the current year should also contain follow up actions from previous years that are still outstanding.

**Management comment**

The Commission has taken note of the recommendation

* + - 1. **Banking of Unused cash**

COMESA Financial Manual - Deposit of Amounts Received stipulates the following:

1. All amounts received must be receipted first and deposited in full in an approved bank account not later than the first working day following the date of receipt;
2. Excess funds from missions or servicing meetings that are not deposited in approved bank accounts be kept in the official safe in the COMESA Secretariat and must be banked the next working day;
3. A different person from the one receipting the money should undertake the banking.

The COMESA Financial and Administration Practice No.22 - Imprest Advance and retirement stipulates the following:

1. Below USD10,000 - Administrative Assistants and Project Officers/Managers accountable for the meeting;
2. USD10,000 and above - Officers from the Budget and Finance Division to be assigned by the Director of Budget and Finance.

**Observation**

There was a mission for the sensitization and training of selected District commercial Officers and Private sector Umbrella Organisation on competition law in Uganda on 14th to 28th September 2018. The Imprest Holder, MS Angela Minika Senior Administrative Assistant got imprest amounting to USD41,849.47 and the unused cash was USD3,065.42.

1. There was delay in banking unused cash.

|  |  |  |  |
| --- | --- | --- | --- |
| **Date receipted** | **Receipt No.** | **Amount - USD** | **Date deposited** |
| 01.10.2018 | 3854 | 2,857.05 | 01.10.2018 |
| 10.10.2018 | 3853 | 208.37 | 17.10.2018 |
|  |  | **3,065.42** |  |

On 16th October 2018, the imprest holder wrote a memo to the Director indicating that the formula for calculating imprest did not pick some amounts hence delay in retiring the full imprest.

1. The Senior Administrative Assistant serviced meetings as an imprest holders for amounts above USD10,000.00

**Risk/Impact**

Loss of cash due to delayed banking and handling of huge cash amounts by non-finance staff.

**Recommendations**

1. Management should ensure consistent enforcement of rules on retirement of imprest and banking of cash.
2. Imprest amounts above USD10,000 should be administered by Finance staff.

**Management comment**

* 1. The Commission has taken note of the recommendation and shall ensure compliance.
  2. The Commission is aware of this provision, however at the relevant time, the Finance Officer could not undertake this mission due to the Internal Audit by Mrs. Auleria Olunga that was in progress at the time.
     + 1. **Travel**

The Implementation Procedure 3 stipulates that the DSA retirement form must be filled in by the officer who undertook the mission, stating clearly the itineraries done. It shall be approved by the Supervisory Officer concerned prior to being remitted for retirement.

**Observation**

We noted the following:

1. DSA retirements for the staff are certified by the Director & CEO. However, the DSA retirements for the Director & CEO were not certified;
2. Further, the missions undertaken by the staff are authorized by the Director & CEO. However, we could not find independent approvals for missions that are undertaken by Director & CEO.

Below we cite examples:

1. Competition and Consumer Protection Committee (CCPC) Media Training Workshop on 3rd to 5th April 2018 in Livingstone, Zambia;
2. Proposed meeting on the domestication of the COMESA Competition Regulations on 7th June 2018;
3. The Fact finding mission to Comoros on the status of competition Law Enforcement on 5th to 6th September 2018;
4. The sensitization and training of selected District commercial Officers and Private sector Umbrella Organisation on competition law in Uganda on 14th to 28th September 2018;
5. The African Consumer Protection Dialogue Conference International Consumer Protection Network Conference on 6th to 10th May 2019 in Livingstone Zambia;
6. The Committee of initial determination meeting in Johannesburg, South Africa on 4th to 6th October 2018;
7. The COMESA Competition Commission Committee on Initial Determination meeting in Johannesburg South Africa on 7th to 10th February 2019;
8. The COMESA Competition Commission Committee on Initial Determination meeting in 2nd and 3rd May 2019 in Lusaka Zambia;
9. The Joint Workshop with World bank on Anti Cartel Strategy discussion on draft guidelines of articles 16&20 on 23rd to 26th October 2018;
10. The Implementation of MOU in application of enforcement laws & Sub-Committee meeting on 29th October to 6th November 2018;
11. The Regional training workshop on restrictive business practices for case handlers on 24th to 26th June 2019 Hilton Nairobi Kenya;

**Risk/Impact**

1. Incomplete retirement forms;
2. Lack of segregation of duties in the approval process as staff approving own travel.

**Recommendations**

1. We recommend that the CCC Managers certifies DSA retirements for the Director & CEO;
2. The Mission Clearance and Travel authorizations approvals be obtained and filed with the DSA retirements.

**Management comment**

13.1 All trips undertaken by the Director are derived from the annual work program which is approved by the Board and subsequently by the Council, and in furtherance of Article 7 of the Regulations and Rule 14 of the COMESA Competition Rules and Regulations, invitations by the COMESA Secretariat, Host government invitations to national events, Court attendance.

13.2 Meetings involving the CID are statutory and are summoned by the Chairman of the Board. In so doing, the attendance of the Director is authorised. In the same breath, Meetings called by the Secretariat such as by the SG or ASGs do not require travel approvals.

13.3 As from July 2018, authorisation for travel of the Director is issued by the Chairman in accordance with the Executive Management Rules.

13.4 We take note that authorisation approvals shall in future be filed with the DSA retirement**.**

Audit comment on management comments

CCC management should ensure that travel operational procedures are complied with for the completeness of payments made.

# **Balance Sheet items**

Balance sheet items comprise the net worth of an organization and effort should be made to ensure that this net worth is enhanced at all times. The net worth comprises assets and liabilities that should be monitored regularly. For instance, debtors should be collected on a timely basis while creditors settled timely.

**Observation**

We noted that there was a long outstanding debtor. Below we cite examples:

1. CVTFS



1. Commission incurred withholding tax charges on the investment income from Eco Bank on 31st March 2016 amounting to USD747.42 and USD504.00 on 26th October 2016. The total amount of USD1,251.42 from Malawi Revenue Authority has not been received at the time of our audit;
2. Contingent liabilities such as legal fees are not disclosed in the financial statements;
3. The Commission has unused tickets which have not been refunded at the time of audit. Below we cite examples:



**Risk/Impact**

Under/over statement of balance sheet items.

**Recommendations**

We recommend the following:

1. The Commission should continue engaging the management of CVTFS and agree on a repayment plan for the outstanding amount;
2. The Commission should continue to engage Malawi Revenue Authority for refunds;
3. The Commission should continue to pursue the airlines for refunds;
4. The Commission should search and identify contingent liabilities and include them in the financial statements in a timely manner;

**Management comment**

* 1. The office of the ASG Finance, is assisting the Commission to recover the CVTFS loan who has since engaged its management. The Commission engaged the CVTFS management in March 2019 who made an undertaking to be making quarterly payments beginning May 2019. This has not yet been done and the Commission shall continue to engage them.
  2. The Commission shall continue to engage Malawi Revenue Authority for VAT refunds. As observed above, the institution in the position to engage Member States regarding the VAT exemption obligation is the Secretariat.;
  3. The Commission shall continue to pursue the airlines for refunds;
  4. The Commission shall search and identify contingent liabilities and include them in the financial statements in a timely manner.

# FINANCIAL REPORTING

The Financial Statements of the Commission are prepared in line with the requirements of International Financial Reporting Standards (IFRS), which is a global framework for financial accounting and reporting activities. This globally accepted framework not only enhances completeness and transparency of the financial status and performance of an entity but also ensures comparability of financial information from one period to another. It should be noted that where IFRS have not yet been issued to guide financial reporting, recourse is made to the International Accounting standards.

We reviewed the extent to which the Commission adheres to the requirements of these standards and noted the following gaps which may result into incomplete and non- transparent financial reporting:

|  |  |  |
| --- | --- | --- |
| **Standard** | **Areas of Compliance** | **Areas of non-compliance** |
| IAS 18    Revenue recognition | Merger fees recognized as revenue after CID’s consideration.  Merger fee is measured at fair value.  Merger and application for authorization fees which arise from ordinary operating activities of the Commission are recorded as revenue | Application for Authorization fee not recognized after the Director’s approval as required by the Commission’s Rule 62.  MS income not fully recognized at the beginning of the year as required by the Commission’s Rule 16 and COMESA Financial Rules and Regulations which indicate that MS income falls due at the beginning of each financial year.  The portion of MS income retained at the Secretariat is not recognized in the Commission’s books.  The Commission’s Accounting policy does not acknowledge MS contribution as source of revenue but recognizes the income as a grant from the COMESA Secretariat.  The Accounting policy does not equally indicate that that application for authorization fee is a source of revenue for the Commission despite the Commission recording it as revenue. |
| IAS 16  Property, Plant and Equipment | Motor vehicles that are still in use were revalued in 2015 after exceeding their useful lives.  The disclosure notes contain the following:  Basis for measuring carrying amount  Depreciation method  Useful life  Gross carrying amount, accumulated depreciation and impairment loss  Movement of balances from previous period. | There is no defined model for measurement of fixed assets. It is a hybrid between cost and revaluation models.  The revaluation of assets is not being undertaken regularly  In the disclosure notes, the useful life of assets corresponds to the depreciation period as opposed to the remaining useful of assets; and the name of the valuer of the motor vehicles is not indicated. |
| IFRS 9/IAS 32  Financial Instruments | Financial asset and liabilities have been disclosed and classified as follows:  Term deposits - either held to maturity or recallable at short notice and recorded at fair value.  CVFTs loan classified on the basis of its substance as there is no loan agreement  Merger fee due to MS  Deferred Income | No accounting policy for financial instruments  Risk policy is in place but has not yet been operationalized to manage credit, liquidity and market risks that the Commission may be exposed to in relation to its financial instruments  Commission budget received from MS and held at the Secretariat is not recognized as payables at fair value  CVFTS loan and merger fees due to MS are not measured at fair value. |
| IAS 19  Employment Benefits | Salaries and medical and retirement benefits are recognized when earned  There is a disclosure on contribution to a defined contribution plan which has been outsourced | House and car benefits treated as Commission running expenditures as opposed to employment benefits  Accounts do not disclose amounts contributed to the Zurich fund  Accumulated and payable leave days not accrued in the accounts |
| IAS 10  Events after the BS date | Court award disclosed and provided for  Date of approval of the accounts clearly indicated | Incomplete disclosure of contingent liabilities i.e. 70% legal costs due to the Commission not disclosed in the notes as contingent liability  Qualification of 2016 CVFTS accounts, being a major balance sheet item not disclosed. |
| IAS 8  Accounting policies | Basis of preparation of Financial Statements is disclosed. Significant accounting policies include:  income recognition; expenditure; equipment; provisions; provisions; income tax; financial instruments; foreign currency transactions; retirement benefits; related party; deferred income and capital grants | Policy on events after the Balance sheet date is not part of the Commission’s significant accounting policies |
| IAS 7  Statement of cash flows | Cash flow statement prepared as part of the primary financial statements | Restricted cash flow not disclosed i.e Salaries set aside for Mergers fee funded staff. |
| IAS 37  Provisions | Legal liability disclosed and provided for | Amounts provided for/accrued equally disclosed as contingent liability |
| IAS 27  Consolidated and Separate Financial Statements | Member States and other income are consolidated under similar accounting policies |  |
| IAS 24  Related Party | Nature of relationship between the Secretariat and CVFTS disclosed in regards to the CVFTS loan | The nature of transaction not fully disclosed – e.g. basis of transaction and provisions for bad debts in view of the delayed payment |
| IAS 21  Foreign Currency Translation | Spot exchange rate used  Cash translated using closing rate  Exchange difference recognized in the P&L | VAT payable from Malawi Revenue Authority being a monetary asset not translated using closing rate  Reason for differences in presentation and functional currency not disclosed in the accounts |

**Recommendations**

The Commission should build its capacity in the areas of financial reporting for compliance with the required standards. We further recommend that the requirements of the standard be complied with as follows:

**Revenue recognition:**

* Application for Authorization fee should be recognized as income after the Director’s approval.
* MS income due to the Commission should be fully recognized at the beginning of the year following the approval of the budget by the Council of Ministers.
* The portion of MS income retained at the Secretariat should be recognized in the Commission’s books.
* The Commission’s accounting policy should acknowledge MS contribution as source of revenue as opposed to a grant from the COMESA Secretariat. The policy should also recognize application for authorization fee as a source of revenue for the Commission that is distinct from merger fees.

**Plant, Property and Equipment:**

* A model for measurement of fixed assets should be defined and complied with.
* The revaluation of assets should be undertaken regularly as dictated by the asset valuation model of the Commission alluded to above.
* In the disclosure notes, the remaining useful of assets; and adequate details on valuation of assets should be disclosed. These include the date of valuation and name of the Independent valuer.

**Financial Instruments:**

* Introduce an accounting policy for financial instruments
* Operationalize the Commission’s risk policy
* Recognize the Commission budget received from MS and held at the Secretariat as payables at fair value
* CVFTS loan and merger fees due to MS should also be measured at fair value

**Employment benefits:**

* House and car benefits should be treated as salary costs as to operational expenses
* Gratuity contributions to Zurich Fund should be disclosed as notes to the accounts.
* Accumulated and payable leave days should be accrued and provided for in the accounts

**Events after the Balance Sheet Date:**

* Management should undertake a search of significant events that have a bearing on the completeness, transparency and accuracy of the accounts after the close of the financial year but before the approval of the accounts for incorporation into the financial statements.

**Accounting policies:**

* The Policy on events after the Balance sheet date be incorporated in the Commission’s significant accounting policies.

**Statement of cash flows**:

* Restricted cash flows relating to salaries that have been set aside for Mergers fee funded staff should be closed in order to provide an accurate picture on the cash that is available for use.

**Provisions:**

* Provisions that have already been made in the Financial Statements should not be treated as contingent liability whose certainty of occurrence is not fully confirmed.

**Related Party Transactions:**

* The nature of related party transaction should be fully disclosed and provisions for delayed collection or settlement of debtors/creditors be made.

**Foreign Currency Translation:**

* Monetary assets denominated in local currency should be translated into USD at the close of the reporting period at the closing exchange rate.
* Reason for use for a presentation and functional currency should be adequately disclosed in the accounts.

**Management comment**

**Revenue recognition:**

Fees for Application for Authorization are recognised as income after the Director’s approval for investigation since the money is paid for investigation and is non-refundable. Once the Director approves the commencement of investigations, the money so paid is immediately applied to carry out the investigations.

The Commission shall revert to fully recognising Member States income due to the Commission at the beginning of the year following the approval of the budget by the Council of Ministers just like it used to before. This position was acknowledged by the then Direcor of Budget; Dr. Dave Herman.

The Commission shall revert to fully recognising its portion of Member States income retained at the Secretariat in its books like just like before.

The Commission’s accounting policy shall acknowledge Member States contribution as source of revenue as opposed to a grant from the COMESA Secretariat. The policy shall also recognize Fees for application for authorization as a source of revenue for the Commission that is distinct from merger fees.

**Plant, Property and Equipment:**

A model for measurement of fixed assets shall be defined and complied with.

The Commission shall engage an independent expert to conduct a revaluation of assets this year and this shall be undertaken as dictated by the asset valuation model of the Commission.

In the disclosure notes, in future we shall include the remaining value of the asset. details on valuation of assets shall be disclosed. These include the date of valuation and name of the Independent valuer.

**Financial Instruments:**

All recommendations made on financial instruments have been noted.

**Employment benefits:**

The recommendation on the employment benefits has been noted.

**Events after the Balance Sheet Date:**

The Commission’s management always undertakes a search of significant events that have a bearing on the completeness, transparency and accuracy of the accounts after the close of the financial year but before the approval of the accounts for incorporation into the financial statements.

**Accounting policies:**

The Policy on events after the Balance sheet date shall be incorporated in the Commission’s significant accounting policies.

**Statement of cash flows**:

Restricted cash flows relating to salaries that have been set aside for Mergers fee funded staff shall be disclosed in order to provide an accurate picture on the cash that is available for use.

**Provisions:**

Provisions that have already been made in the Financial Statements were not be treated as contingent liability whose certainty of occurrence is not fully confirmed until the external auditor queried it.

**Related Party Transactions:**

The Commission has taken note of the recommendation.

**Foreign Currency Translation:**

The Commission always translates monetary assets denominated in local currency into USD at the close of the reporting period at the closing exchange rate.

The recommendation has been noted.

1. **2018 WORK PLAN AND BUDGET PERFORMANCE**

Rule 16 of the Commission stipulates the composition of the Commission’s budget as comprising annual subventions from the Member States in accordance with the formula of budgetary contributions to the COMESA Secretariat and grants and subventions from Cooperating partners. The Commission is also authorized to charge and collect fees in respect of programs, publications, seminars, consultancy and other services.

In 2018, the Commission’s budget was drawn from subventions from the Member States and fees in respect to its programs totalling to COM$ 3,645,108 (COM$ 921,108 from Member States Subvention and COM$ 2,724,000 from fees).

1. **Regular Budget**

As regards the subventions from Member States, COM$ 716,008 was allocated to staff costs while COM$ 205,100 was allocated to operations. Below find our analysis of the operational budget expenditure spent.

|  |  |  |  |
| --- | --- | --- | --- |
| **Budget Line** | **% Budget** | **% Spent** | **Activities** |
| Commissioners' honorarium | **7** | **93** | Sitting allowance for the Board |
| Technical expenses | **4** | **95.5** | Conference package for the Board |
| Recruitment expenses | **2** | **78.5** | Shortlisting and interview expenses |
| Travel expenses - official | **20** | **99.5** | COMESA Policy organs; Management retreat; Rwanda - AUC meeting and Zambia Domestication meeting |
| Travel expenses - contractual | **2** | **39.3** | Home leave expenses |
| Publication and Publicity | **5** | **96.92** | Consumer guides; and Quick guide books. |
| Advertising and Annual report | **1** | **0** |  |
| Office supplies | **5** | **96.9** | Office running expenses |
| Public relations and Promotional activities | **5** | **97.57** | Calendars |
| Audit fees | **5** | **100** | COBEA Expenses |
| Legal fees | **4** | **0** |  |
| Translation and Transcription | **5** | **67.14** | Translation fees |
| M/V repair and maintenance | **4** | **82.9** | Motor vehicle expenses |
| Insurance motor vehicles | **2** | **37.8** | Motor vehicle Insurance |
| Insurance other assets | **1** | **48.55** | Other asset Insurance |
| Maintenance of office, utilities for common areas and security | **4** | **100.36** | Office utilities |
| Communication | **10** | **99.112** | Telephone expenses |
| Office Utilities | **1** | **80.5** | Office utilities |
| Hospitality | **1** | **40** | Hospitality |
| Office cleaning services | **1** | **93.6** | Office cleaning |
| Consultancy costs | **3** | **50** | Consultancy fees |
| Bank charges | **1** | **76.4** | Bank fees |
| Office furniture and Equipment | **5** | **82.85** | Laptop and teleconference phone |

**Note:**

The percentage of budget allocation and spent per budget line is shown in figures 1 and 2 below:

Figure 1

Figure 2

1. **Activity based budget**

The Board approved a budget of COM$ 2,724,000 from fees comprising of: COM $ 1,500,000 for staff costs, COM$ 1,184,000 for the Work Program and COM$ 40,000 for litigation. It should be noted that the Board minutes availed to us do not make any reference to an annex of the detailed budget that was approved. Further, we noted a further COM$ 100,000 in the 2018 budget performance report that was availed to us that had been set aside for recruitment and which was not part of the approved COM 2,724,000. This means that the Commission had at its disposal a budget of COM $ 2,824,000 contrary to the Board approved budget of COM$ 2,724,000.

Below find our analysis of the work program budget expenditure which indicates a weakness in the Commission’s work programming, budgeting and performance management systems.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Strategic Objective** | **Budget Line** | **% Budget** | **% Spent** | **Activities and Audit observations** |
| Determination of conduct harmful to competition in the market | Investigations on restrictive business practices | **8.4** | **0** |  |
|  | Negotiations with selected MS | **2.1** | **36** | Engaged Malawi and Zambia to review cooperation frameworks |
|  | Research | **7.6** | **44** | Anti -cartel workshop; Participated in COMESA Research Forum; Consumer Protection Committee follow up meeting |
|  | Training of Consumer protection officers | **5.1** | **6** | Zambia Consumer Protection Media workshop |
|  | Investigation of consumer protection cases | **1.7** | **0** |  |
|  |  |  |  |  |
| Strengthening enforcement | Harmonize competition laws with selected MS and support staff exchange/attachment program | **4.2** | **119** | Malawi workshop to sensitive the private sector and legal practitioners; Sudan and eSwatini attachment and exchange programmes supported; Fact finding mission to Comoros; Training Board Members of Malawi CFTC and service workshop for merger case officers. |
|  | Constant review of the Commission's rule, regulations and guidelines | **5.1** | **10.5** | Participated in Legal Affairs Committee meeting |
|  |  |  |  |  |
| Advocacy and strategic collaboration | Business reporter’s sensitization workshop | **6.8** | **57.63** | Business reporter’s sensitization workshop |
|  | Participations, donations and social responsibility | **0.2** | **24.55** |  |
|  | Advocacy publications and branding | **1.3** | **47.85** |  |
|  | Advocacy and visibility | **5.1** | **20.83** | Participated in Egypt and Kenya Trade Fairs; World Competition Day and World Consumer rights day. |
|  | National and Regional sensitization workshop targeting Govt officials; judges; lawyers; business community etc | **8.4** | **97.27** | National sensitization workshop targeting the Kenya business community: National workshop for Uganda District Commercial Officers |
|  | Joint Diplomatic conference on regional awareness of COMESA programmes | **5.9** | **99.8** | Diplomatic conference on regional awareness of COMESA programmes |
|  | International cooperation, outreach and networking | **3.4** | **99.3** | Attended: ABA meeting; Consumer Dialogue Conference; OECD Global forums; Hogan Law Competition Seminar; Nigeria annual business law conference and AUC assessment of regional Integration Seminar. |
|  |  |  |  |  |
| Institutional strengthening | Staff attendance on training workshops | **1.7** | **45.8** | Attended: ICN & ICPEN workshops; and World Bank capacity strengthening to design and implement regulations for the Telecommunication sector |
|  | Regional Training workshops | **6.8** | **41.4** | Mergers Investigators workshop |
|  | Board Meetings | **10.1** | **107** |  |
|  | CID meetings | **3.8** | **71.8** |  |
|  | Board Committee meetings | **2.5** | **0** |  |
|  | Library, subscriptions to competition forums and other online platforms | **0.2** | **8.3** |  |
|  | Website, web exchange service, internet and e filling | **2.5** | **13.3** |  |
|  | Translation and transcription | **2.5** | **141** |  |
|  | Legal fees | **4.2** | **224** |  |
|  | Bank charges | **0.4** | **216** |  |

**Note:**

The percentage of budget allocation and spent per strategic area is show in figures 3 and 4 below:

**Figure 3**

**Figure 4**

**Recommendations**

We recommend that the Commission allocates adequate time and resources to the work programming and budget preparation process. All staff should participate in these processes in order to align the operational and work programme budgets to the Commission’s work plan. The work plan should not only identify planned activities but also the means of achieving these activities to enhance accurate costing of the budgets.

Quarterly reviews of the budgets’ performance and work plan should be undertaken at Management level for identification of reasons for significant or non -movement of budget lines for prompt corrective action.

As regards Board approvals, there should be accurate, transparent and detailed recording of the approved budget in the Board minutes which is supported with detailed amounts that have been allocated for various activities in the work programme.

We further recommend specific internal control improvements for the following budget lines:

**Recruitment Expenses:**

* Prepare annual recruitment plan and align budget line.
* Identify and cost various recruitment processes and activities.

**Travel –Contractual:**

* Prepare annual leave plan and align budget line based on air ticket costs for staff with their registered dependents resident in the host country.

**Advertising expenditures:**

* Prepare a procurement plan on the basis of the work plan and identify procurements that will be competitively sought through advertisements.
* Prepare a Publicity plan on the basis of the work plan.
* Planned recruitments, procurements and publicity activities should then inform the budget.

**Motor vehicle repairs and maintenance:**

* Identify scheduled motor vehicle maintenance and major overhauls required then seek quotations from service providers to inform budgeting

**Insurance:**

* Budget on the basis of quotes received from service providers

**Office utilities and Communication:**

* Undertake trend analysis to inform reason for increase and prepare realistic budgets. Should the increases require strengthening of controls, adjust the budgets accordingly.

**Office furniture and equipment:**

* Budget should be informed by capital needs of the Commission.

**Consultancy**

* Budget should be informed by consultancy needs of the Commission as highlighted as a means to achieving planned activities.

As regards the work programme budget items, we recommend the following:

**Negotiations with selected Member States**

* To enhance collaboration with National Competition Authorities, consider increasing and optimizing the budget line for creation of more cooperation structures with Member States for the achievement of the Commission’s strategic objectives.
* Create a separate budget line for operationalization of the cooperation frameworks

**Research**

* Consider increasing and optimizing the budget line to create linkages with research Institutions that can undertake research work for the Commission.

**Training of Consumer Protection officers**

* Target training to National Competition Authorities that have operationalized cooperation frameworks with the Commission in order to attain maximum value from investment made in such trainings.

**Constant review of the Commission rules, regulations and guidelines**

* The budget line should be informed by the inventory of legal instruments that shall be developed in a given period

**Advocacy and Strategic Collaboration**

* In view of the numerous and diverse stakeholders, the Commission should consider introducing an advocacy week whereby different stakeholders converge together to build the required relationships and synergies. This shall also ease the numerous logistic arrangements that go into planning of various advocacy activities.

**Board oversight**

* Given that the Board’s oversight budget and spent is the highest, the Commission should consider introducing a budget for the Board that is funded by Member States as stipulated in Rule 27.

**Management comment**

The Commission would like to report that the figures quoted in the first table on the Regular Budget are for 2017 and not 2018.

**Audit comment on management comment**

The budget spent has been adjusted as per management response. CCC Management should implement the suggested internal controls to strengthen the budgeting and work programming process.

**Recruitment Expenses:**

The Commission would like to report expenditure of 79% on this budget line and not 32% as reported, however the recommendation has been noted.

**Travel –Contractual:**

The Commission would like to report expenditure of 39% on this budget line and not 0% and that some officers opted to drive home with their families instead of flying.

**Advertising expenditures:**

In 2018 the Commission did not budget for advertising since it had not been utilised in 2017. The recommendation has been noted and advertising costs have included in the 2019 budget.

**Motor vehicle repairs and maintenance:**

The Commission would like to report expenditure of 83% on this budget line and not 60% and that

the recommendation has been noted and shall act accordingly.

However, the modern way of maintaining vehicles is determined by mileage covered. The franchisor always gives us the due date for servicing the vehicles when the stipulated mileage by franchisor is due.

**Insurance:**

The Commission has taken note of the recommendation and shall obtain quotations as a guide.

Office utilities and Communication:

The Commission would like to report expenditure of 100% and 99% on these budget line and not 101% and 105% respectively. The Commission has however taken note of the recommendation.

**Consultancy**

The Commission will budget according to consultancy needs of the Commission as highlighted as a means to achieving planned activities. Consultancy needs of the Commission arise from the nature of enforcement interventions carried out by the Commission from time to time such as where the Commission does not possess the required in-house skills, it outsources the relevant skills and competences in order to work within the statutory time-frames. It should be noted that competition law analysis and the application of econometrics can be complex and will always require outsourcing of relevant skills.

**Work programme budget items,**

**Negotiations with selected Member States**

The Commission enforces the Regulations in collaboration with the Member States. This is a requirement under the Regulations. For example, Article 7 of the Regulations mandates the Commission to:

* Help Member States promote national competition laws and institutions with the objective of 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;
* Cooperate with competition authorities in Member States;
* Cooperate and assist Member States in the implementation of its decisions;
* Provide support to Member States in promoting and protecting consumer welfare;
* Facilitate the exchange of relevant information and expertise.

Rule 40 requires the Commission to carry out investigations on restrictive business practices in close and constant liaison with the competent authorities of the Member States. Rule 43 provides that, the Commission can request officials of the competent authorities of the Member States to assist the Commission in its investigations.

The Commission provides advisory opinions to Member States on their investigations into restrictive business practices.

The Commission currently is involved in a joint anti-cartel project with the World Bank in collaboration with all the Member States.

Bilateral enforcement and cooperation agreements with national competition authorities provide further avenues for inter-agency information sharing and more generally in establishing long term cooperation frameworks.

MOUs and cooperation framework agreements have been signed with Egypt, Kenya, Madagascar, Malawi, Mauritius, Seychelles, Eswatini and Zambia.

The Commission has taken note of the recommendation and will enhance collaboration with National Competition Authorities for creation of more cooperation structures with Member States for the achievement of the Commission’s strategic objectives. This approach is recognised internationally as an effective tool on competition law enforcement.

**Research**

The Commission has taken note of the recommendation and shall consider increasing and optimizing the budget line to create linkages with research Institutions that can undertake research work for the Commission. This explains why the Commission is participating in the Research Forum. It is important to note that that Rule 42 of the Regulations mandates the Commission to carry out identified economic sectors likely to harm competition.

The Commission research program has been in collaboration with WB, UNCTAD, ACF. These collaborations are important to avoid duplication and to encourage coherence and transparency. More importantly, it is cost saving in that in certain instances we have spared budget if we are able to negotiate with an international donor to fund the project.

**Training of Consumer Protection officers**

Training has been on-going, for example in May 2019, the Commission sponsored two officers doing consumer work and advocacy from each Member State for training in Encouraging Cooperation between Member States Enforcement Agencies which was organised by the International Consumer Protection Network in Livingstone, Zambia. The Commission and the Member States are expended to also participate in another training course to be held in Mexico in September 2019.

**Constant review of the Commission rules, regulations and guidelines**

The review of the Regulations and Rules is inevitable, otherwise we wouldn’t be operational. The Commission, since its inception has continued to review the rules and regulation e.g. Rules on Merger Notification Fees and Rules on Merger Notification Thresholds. As regards Guidelines, these are ever changing due to court precedents, international best practices, changing market conditions, the Commission’s culture and customs etc.

The review mechanism is inevitable. It’s a continues process.

**Advocacy and Strategic Collaboration**

It is important to note that unlike other COMESA institutions, the Commission is a regional competition and consumer regulator. Its attraction with the various stakeholders is not guided by a common principle or objective but different strategic collaborations. There is no one size fit all in the field of competition law enforcement. In competition law collaboration means to cooperate in the enforcement of the regulations which combines both hard enforcement and soft enforcement. The choice of the type of competition advocacy message depends on the degree of knowledge of the target audience/stakeholders in anti-trust matters as well as on the ability of a particular types of stakeholders to organise themselves for defending their interests in anti-trust litigation or/and promoting their interest in the cause of development of competition legislation and public interest. Examples of target audience/stakeholders grouped by degree of their organisation and knowledge in anti-trust matters may be presented as follows:

1. Big businesses and their associations, government bodies/policy makers, legislators, and powerful consumer associations.
2. Private lawyers and scholars
3. Mass end customers and the general public
4. Local authorities, small consumer associations and part of the judiciary.

Currently the Commission’s advocacy strategy consists of:

* Information bulletings/notices
* Enforcement guidelines
* Discussion papers
* Reports on specific issues
* Pamphlet series
* Summary of decisions
* Annual/quarterly reports which the Commission’s activities and pick out key themes/issues
* Fact sheets educating businesses and consumers about competition and consumer law
* Media workshops
* Media briefings
* Social media – tweets, facebook

From the above our advocacy strategy has proven to be very effective as the Commission is now known by the key stakeholders in the Common Market.

**Board oversight**

This is noted. However, the Board under Article 11 is the supreme policy body of the Commission with the power to formulate their own systems of operation.

1. **IMPLEMENTATION OF AUDIT, BOARD AND COUNCIL DECISIONS AS AT 31ST JULY 2019**

We conducted a follow up review of implementation of Audit, Board and Council decisions which are aimed at strengthening the Commission’s internal controls and risk management system and noted various implementation statuses as outlined in the table below.

We have inserted Audit comments in areas where management requires redoubling of its efforts in addressing the risks that were identified.

1. **Internal and External Audit Recommendations**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** |  | **Observation** | **Audit Recommendation** | **Status of Implementation as at July 2019** |
| **1** |  | Value Added Tax (VAT) was paid for the following: Presidential Hotel; Corporate Promotions; Xerographic Ltd; Royal Motors; Electro Care; CFAO Malawi; and Blantyre Hotels Ltd. These are all based in Malawi. | Obtain VAT exemptions before the meetings are held.  VAT being claimable should be recognized in the Commission’s accounts and promptly followed up. | **Management Comment**  The Commission is adhering to the recommendation.  The Commission will implement the recommendation once the Accounting software is in place however the Commission will claim from MRA once the figure is consolidated on all expenditures of VAT amounts of less than USD40.  **Audit Comment**  The control should be further enforced by introduction of meeting/workshop organization checklist and appointment of an administrator for meetings and workshops.  We noted that VAT claimable is not timely recorded in the accounts.  We recommend that all VAT be claimed regardless of the threshold.  **Management comment**  The recommendation has been noted and shall be implemented. |
| **2** |  | The Commission has been paying to Imperial Marketing and Advertising Agency for rental of office at Mpingo House which is used as archives for the Commission's documents. The expectation is that the Host Country should provide office space for the Commission. | The Commission through the Division of Legal and Corporate Affairs should make a follow up. | **Management Comment**  The Commission has been engaging the Government of Malawi on office space. Recently the Commission was requested to submit itemised office space requirements which it duly did on 14th June 2019.  **Audit Comment**  The Commission should still engage the Legal Division in view of the impending demand for more office space to accommodate additional staff that shall be recruited. It should be noted that the Authority appoints a Member State to host an Institution on the basis of favourable privileges proposed by the said Member State following a competitive bidding process.  **Management comment**  The Commission has taken note and shall do the needful. |
| 3 |  | The following Translators were engaged during the period under review are not on COMESA’s updated approved list. (i) Yohane Chivwara and  (ii) Sekeenah Soobye  The Commission did not demonstrate the mechanism that it has put in place to ensure good quality service from Translators. | Put in place a mechanism that evaluates service delivery of the Translators. | **Management Comment**  The Commission is implementing the recommendation by assessing translators before renewing their contracts and upon admitting new translators. |
| 4 |  | Payments for official dinner did not have the details on the type of delegates that were being hosted by the Commission. | Official dinners should have details of the activities being hosted by the Commission. | **Management Comment**  The Commission narrates properly on payment vouchers the activities it carries out.  Suffice to mention that the Director is sometimes under confidentiality cover with the people he has dinner with as regards his mandate under Pars 3, 4 and 5 of the Regulations. |
| 5 |  | Tickets were bought on 15th December 2017 from South African Airways for the special select committee of Board meeting of the Commission to be held on 17th December 2017.  Air tickets to attend the International Network (ICN) Annual Conference 2018 in Delhi India on 20th March 2018 to 23rd March 2018. The Aide memoire was prepared on 13th March 2018 and tickets were bought on 15th March 2018. | Tickets should be bought 2 weeks before the missions are undertaken and immediately upon approval of aide memoires and travel authorizations;  Quarterly aide memoire should be prepared so that invitations are sent in good time for the nomination of delegates by MS;  Member States should be reminded about meeting dates and the need to nominate delegates to attend the meeting in good time. | **Management Comment**  The tickets were bought for an urgent meeting which was convened in response to a court decision which needed to be complied with within prescribed time frames.  The Commission continues to send the invitations to Member States on time but Member States take their time to nominate representatives. The Commission has however been proactive in sending reminders.  **Audit Comment**  As recommended during the last review, Quarterly activity plans should be prepared then missions and workshops within the quarter identified for timely preparation of meetings.  We further recommend that an annual schedule of meetings and workshops be prepared after the approval of the workplan for dissemination to stakeholders. This will inform stakeholders about planned meetings and workshops in good time.  **Management Comment**  The Commission shall prepare detailed schedule of meetings and share with Member States at the beginning of the year.  However, it should be noted that the schedule of meetings are always disturbed by other factors that may take precedent such as the Policy Organ Meetings whose dates are not certain, availability of resource persons, politicalenvironments in host countries among other factors. Moreover, our annual work programmes give an indicative date for all our activities. |
| 6 |  | The Commission does not track air tickets using ticket tracking forms to follow up unutilized tickets. | Maintain an air ticket tracking form to follow up unutilized tickets; and unutilized tickets should be recognized as debtors. | **Management Comment**  The Commission maintains an air ticket tracking form.  The Commission shall recognise the unutilised tickets as a debtor when preparing the financial statements.  **Audit Comment**  Unutilized tickets should be recognized immediately refunds are received by the Commission  **Management comment**  The Commission has taken note of the recommendation. |
| 7 |  | There was no request from the Administrative Assistant for replenishments of office supplies which should have indicated what has left and required. | The Administrative Assistant should maintain a re-order levels and make formal request to the Director & CEO for purchases of stores. | **Management Comment**  The Commission maintains stores records to observe re-order. |
| 8 |  | Some missions which were undertaken by the Commission did not have confirmation of budget availability by the Accountant. | The Accountant should confirm the availability of funds before missions are undertaken. | **Management Comment**  The Accounts Division has been implementing this recommendation.  Before the aide memoir is presented to the Director for approval, the Accountant confirms availability of funds. |
| 9 |  | Mileage claim from delegates did not have Mileage distance covered and calculations to support the claim. | Mileage distances covered and calculations should be attached to support the claims. | **Management Comment**  The Commission attaches supporting documentation to the claims. |
| 10 |  | Over and underpayment of staff emoluments.  Alfred Chima, underpaid education allowance by $ 283.15; increment effected in June 2018 instead of July 2017.  Angela Minika – increment effected in June 2018 instead of July 2017; overpaid house allowance by $ 2,165.85.  Underpayment of basic pay for: Meti $ 164.76; Sandya, Mwesige and Maseko each underpaid by $ 597.96  Lucy – education claim of $ 1288.40 without receipts; under payment of $ 93.69 and overpayment of 283.19 in medical.  Mwesige – Overpayment of 1,150.75 in education allowance  Maseko – overpayment in $ 190.45 in medical allowance | Monthly payroll should be checked by the Finance Officer to ensure that amounts are correctly captured by comparing with the payroll inputs; and Management should provide guidance on circumstances under which non original receipts should be used for making financial claims from the organization.  The Commission shall liaise with the Secretariat on the issues raised. | **Management Comment**  The matter has been notified to the Secretariat.  The Secretariat has failed to provide to staff members in a timely manner.  **Audit Comment**  Staff debtors/Creditors should be recognized immediately an over/under payment is noted. The reversal should be undertaken upon corrective action having been taken.  **Management Comment**  The Commission has taken note of this and shall continue to engage the Secretariat to send the payroll ledger quartely.  The anomalies shall be communicated to the secretariat. |
| 11 |  | Council decided that Member States who have not received their share of merger fees should provide the Commission with full bank account details through the office of the Secretary General. eSwatini Competition Commission Chief Executive Officer wrote a letter to the Commission providing details of the bank accounts for the merger funds to be transferred. The confirmation of the bank details were necessitated by the funds that were returned by the bank to the Institution upon transfer to eSwatini.  Djibouti provided bank details to the Commission that were different from the account number that the Commission had earlier received through the Secretary General’s office. The change of the bank account was necessitated by the funds that were returned by the bank to the Commission upon transfer to Djibouti in 2018. | All bank details including changes in the bank details for merger fee income accruing to Member States should be provided through the office of the Secretary General as decided by Council. | **Management Comment**  This is being implemented and the Commission shall continue to remind the Member States to submit bank details or changes on the same through the office of the Secretary General.  Suffice to mention that this was initiated by the Commission to ensure transparency and  safeguard the merger notification fees. |
| 12 |  | Air tickets were bought before the approval of the Aide Memoire by the Director & CEO. | Aide memoires should be approved by the Director and CEO before air tickets are bought. | **Management Comment**  This is being adhered to |
| 13 |  | 3 regular staff of the Commission were paid Home leave allowance from Merger fees. | Regular staff costs should be paid from Regular budget and where there is no budget provision, the same should be communicated to COMESA Secretariat. | **Management Comment**  The money has since been refunded from Operations to Merger Fees Account.  This was for administrative convenience. |
| 14 |  | There was 5 working days delay in banking of unused imprest  Put what happened | Management should ensure consistent enforcement of rules on retirement of imprest and banking of cash. | **Management Comment**  Management has been ensuring that unused imprest is banked within the stipulated time. |
| 15 |  | Dispatch of Board Papers for the 15th Board Meeting which was held in Mauritius on 28th February 2018 were dispatched on 21st February 2018, 7 days before the meeting days contrary to the Board Charter. | Board Papers should be dispatched 14days before the meeting as stipulated in the Board Charter. | **Management Comment**  The Board Charter approved in 2015 provides that the meeting papers should be circulated to Board Members at least 10 working days before the date set down before the meeting, In this respect the Commission is ensuring Board Packs are circulated within the stipulated time period.  Note that the Board Charter refers to 10 days and not 14 days. |
| 16 |  | The Commission incurred a withholding tax charges on the investment income from ECO Bank on 31st March 2016 amounting to USD747.42 and USD504.00 on 26th October 2016. The refund for these amounts have not been received and these amounts have not been recognized in the 2017 financial statements as receivables totalling to USD1,251.42. | The Commission should follow up on the withholding tax claims with the Malawi Revenue Authority and recognize a debtor in the books of the Commission. | **Management Comment**  The Commission has been engaging and shall continue to engage the Malawi Revenue Authority to refund the withheld tax.  The Commission has also voiced this concern to the Secretariat for them to engage the Member States on the matter of non VAT payments for COMESA and institutions |
| 17 |  | Long outstanding debt of CVFTS – $ 2,673,202 and under provision of COBEA audit fee- provision was $ 14,930 while allocation was $ 31,605.70 | The Commission should engage the management of CVTFS and agree on the repayment plan for the outstanding amount.  The under provision of audit fee should be recognized in the books of the Commission in the 2017 financial statements. | **Management Comment**  The proper provision on COBEA audit fee was made in the 2017 Financial Statements.  On CVTFS the Commission followed up with the COMESA Secretariat on 27th March 2019. The ASG Administration and Finance responded and assured the Commission that repayments would be done quartely over a period of 24 months from May 2019 to April 2021.  However, to date only US$500,000 has been paid. The Assistant Secretary General Finance communicated that he will be following up on the matter.  **Audit Comment**  The provision for the COBEA Audit fee excludes shared costs that were paid by the Secretariat. These should be included in the expenditures of the Commission. |
| 18 |  | The Commission prepares mission reports for workshops, trainings and meetings conducted for internal use. However, workshop reports and meetings reports are not prepared where technical matters are discussed with the Commission’s stakeholders. | The Commission should prepare workshop and meeting reports for distribution to participants for further action;  Recommendations arising from such meetings and workshops should be shared with the Board for strategic intervention. | **Management Comment**  The Commission is implementing the recommendations.  **Audit Comment**  As per the previous audit recommendation, meeting and workshop reports should be prepared and adopted to enhance ownership of the deliberations by stakeholders.  Recommendations arising from such meetings should be presented to the Board and where need be Council for pronouncement of policy directives that shall enhance achievement of the Commission’s objectives.  **Management Comment**  The Commission has taken note of the recommendation**.** |
| 19 |  | The Commission hired three Economists in 2016 with funding from the merger fee income. The payroll cost of the Economists for the period 2016 to 2017 amounted to COM$ 574,048 against a budget of COM $ 1,000,000. The Commission has been setting aside COM$ 500,000 annually since 2016 as restricted funds for payment of staff salaries that are funded by merger fee. We noted that the Financial Statements of the Commission do not disclose the restrictions that have been made on part of the cash. | The Commission should make a disclosure in its financial statements on the restriction that has been made in the cash for payment of staff emoluments under merger fee. At close of 2017, the restricted amounts within the cash amounted to COM $ 425,952. | **Management Comment**  The Commission shall adhere to the recommendation when preparing the 2018 Financial Statements. |
| 20 |  | A review of rule 17(6) revaled that the operationalization of the recruitment procedures as outlined in the rules shall be hindered by lack of a quota system which the Commission has not put in place. It should be recalled that Council in 2015 decided that the recruitment quota that is applied by COMESA Secretariat during recruitment of staff from the Member states be implemented by Institutions that are funded by Member States.  Further, the provisions of rule 18(1) are likely to contradict the requirements of the host agreement which requires that General Service staff be recruited from the host country. Rule 18(1) stipulates that to the extent possible, positions in the General Service category will be occupied by staff from the host country.  Finally, the Commission’s staff contracts have not been aligned to the requirements of these rules. For instance, staff are currently bound by COMESA staff rules and regulations whereas the Commission has its own rules. | The Commission should come up with a quota system on the basis of the approved organization structure. This could benchmark with the COMESA’s quota system given that the budget funding model structure for the Commission and the Secretariat are similar.  Rule 18(1) should be reviewed for alignment with the requirements of the host agreement.  Staff contracts should be aligned to the requirements of the Commission’s staff rules. | **Management Comment**  The Commission is preparing a Recruitment Manual in which it is addressing these recommendations.  Up to date the issue has not arisen to attract material attention.  The Commission is of the view that there’s no contradiction between the Host Agreement and Rule 18(1). The interpretation of the staff rules under Rule 4 of the Staff Rules rests with the Director.  Matter has been addressed.  **Audit Comment**  As earlier recommended, there is need to look at the provisions of the Host Agreement vis a vis the provisions of Rule 18(1) as the risk has not been addressed.  **Management Comment**  The Commission is of the view that there’s no contradiction between the Host Agreement and Rule 18(1). Under Article 4 of the staff Rules, the interpretation of Staff Rules shall rest with the Director. |
| 21 |  | The Board constituted three Committees for detailed technical work before certain matters are considered by the full Board. The Committees include: Committee of Initial Determination (CID); Committee of Budget and Finance; and the Technical and Strategic Committee  We noted that other than the CID, the other Committees have not been active during the period 2016 to 2018. As result, strategic, administrative and financial matters are not subjected to expert scrutiny before consideration by the full Board. | The Committee of Budget and Finance; and the Technical and Strategic Committee should be constituted to provide the necessary technical expertise to the Commission. In cases where these Committees require special expertise, these should be outsourced as provided for in the Commission’s regulations and rules | **Management Comment**  The relevant Committees were constituted and have been sitting |
| 22 |  | The Commission since its inception has been recording its transactions in excel. As a result, the Commission’s accounts are prepared on the basis of analyzing cash book transactions as opposed to the accounts being prepared from general ledgers. General ledgers allow for transactions to be entered in the books of accounts as either debits or credits and at any given time, the debits must equal the credits leading to the balancing of the accounting equation. It should be noted that this issue has consistently featured in all audit reports since the inception of the Commission. | The Commission should fast track the procurement of an accounting system that will enhance the double entry accounting principle. The accounting system should then capture all transactions of the Commission since its inception to enhance the credibility of the Commission’s accounting records. | **Management Comment**  Implementation has commenced. The Commission is in the process of procuring servers, thereafter the software licence will be bought. |
| 23 |  | The Board set aside COM$ 500,000 for emoluments of the Economists and this amount was not fully appropriated from the budget. Instead, actual salaries were appropriated from the budget. | The Commission should plan activities that are matched with its Human Resource base to ensure high budget absorption. The costing for the budget should to the extent possible be based on standard costs.  Amounts set aside by the Board for future payment of Economists salaries should be fully appropriated from the approved budget. | **Management Comment**  The Commission is implementing this recommendation.  **Audit Comment**  As recommended in the last review, the Commission activities should match its human resources for optimal budget absorption  **Management Comment**  The Commission shall endeavour to match its activities with the human resources. |
| 24 |  | The mission to South Africa for the African Union sponsored strategy on ratification, domestication and implementation of legal instruments and research seminar and the mission for the Africa Competition Forum and the US Federal Trade Capacity building workshops lacked missions’ reports. | The Commission should undertake missions that positively impact and enhance the realization of its objectives while achieving value for the investment made into these missions. | **Management Comment**  The Commission always undertakes missions that positively impact and enhance the realization of its objectives |
| 25 |  | We reviewed the staff contracts and noted that these contracts have different clauses on the Termination clause. This issue was raised in our last internal audit report for staff under Member States funding for a need to harmonize the contracts. | Human Resources and Legal should harmonize the termination clause for all the contracts for COMESA Competition Commission as guided by the Commission’s rules and regulations as well as COMESA Staff rules and regulations. | **Management Comment**  All new contacts have been harmonized |
| 26 |  | There was no proof that the mission was authorized by the Secretary General for the Director and CEO for the Staff retreat which was held on 19 – 22 January 2017. The travel for both staff and the Director & CEO was approved by the Director & CEO.  We also noted that there was a Second Extra Ordinary Board meeting of the COMESA Competition Commission which was held on 30 May - 31st May 2017 in Lusaka Zambia. Ms Meti Disasa retired the DSA however the retirement form and the Authority to Travel was not signed and approved by the Director and CEO. | All travel authorizations should be sought before all the travels are undertaken and attached to the retirement form.  By approving on mission, there is simply no segregation of duty. We propose that bi-annual schedule of local missions be approved by the SG | **Management Comment**  This has been implemented  **Audit Comment**  As recommended in the last audit, staff should not approve own missions.  **Management Comment**  Approval for the Director shall always be attached to the DSA retirement form as recommended. You may wish to know that when the audit was taking place, the Director had a bereavement in the family and hence was not available to avail you with the necessary approvals. |
| 27 |  | We noted a number of unutilized tickets that had not been refunded. These are annexed at I. | The Commission writes an official letter to the respective airlines with the copies of the payment vouchers and the tickets and request for a prompt response;  The Commission should enter into corporate arrangements with airlines for cheaper tickets and guarantee on prompt refund of tickets;  Every retirement of imprest of meetings should have a status of unutilized tickets;  Unutilized tickets should be recognized in the Commission’s accounts | **Management Comment**  The Commission wrote to all concerned airlines and travel agents on the issue of unused tickets and several follow ups were made through email and telephone calls. Following this most tickets have been refunded.  The Commission has engaged the three major airlines in Malawi on entering corporate agreements. Only Kenya Airlines has shown interest and discussions towards this are at an advanced stage whilst South African Airways and Ethiopian Airlines are still consulting with their headquarters.  The air ticket tracking form is being used for this purpose  This is being implemented |
| 28 |  | Documents were sent using courier services without the approval of the Director & CEO of the Commission. The Commission has overpaid FEDEX Courier company MK4,793.58 for the invoice paid twice. | Non-approval of authority to send documents by courier may result into the Commission incurring financial commitments without the authorization of Director & CEO. | **Management Comment**  FedEx has since paid back the money and approvals are being sought |
| 29 |  | Depreciation is not calculated on a monthly basis. This observation was raised in the 2016 Internal Audit report. | Depreciation should be done on a monthly basis to ensure that assets values are monitored. A revaluation exercise should be arranged for the assets whose useful life will soon be coming to an end, yet they are still being used by the Commission | **Management Comment**  This being implemented  The Commission shall engage an expert to revalue the assets to determine their usefulness |
| 30 |  | There was excess expenditure on Commissioners' honorarium and translation and transcription budget lines contrary to the provisions of the financial rules and regulations | Budget monitoring should be strengthened to identify budget lines with depleted balances in good time so that reallocations can be undertaken prior to committing expenditures in the affected budget lines. | **Management Comment**  This is being implemented |
| 31 |  | The authority to reallocate budgets under merger fees was obtained from the Board in November 2016 as required. Both the request to the Board and the approval from the Board were not detailed enough to indicate the movement of funds. COM $ 105,000 was reallocated from market study and research to budget lines that were either exhausted or had low balances. Budget lines whose balances were boosted included: bilateral enforcement; translation; Business Reporters; National sensitization; labour dispute; and finance charges. These budget lines were increased with a total of COM $ 145,000 which represented COM $ 40,779 more than the Board approved reallocations. Further, new budget lines were created in the process of reallocation and include: Finance charges; translation and labour dispute. | Amounts allocated over and above the Board's approval should be submitted to the Board for ratification and future reallocation requests should be more detailed to indicate the movement of budgets and be made before budget lines are exhausted. In addition, supplementary budgets should be obtained for unforeseen budget lines as opposed to creating new budget lines. | **Management Comment**  This is being implemented |
| 32 |  | The commission recognises grant income in profit or loss upon receipt in error. This is not in line with IAS 20.12 “Government grant” which requires that grants shall be recognised in profit or loss on a systematic basis over the periods in which the entity recognises as expense the related costs for which the grants are intended to compensate | Management should ensure full compliance with IAS 20.12 | **Management Comment**  The Commission is complying with this recommendation |
| 33 |  | Commission paid $ 280 out of pocket allowance for participation I the SADC-COMESA workshop and policy research seminar in April 2017, which was fully sponsored by World Bank and Oxfam | The payment should be collected and expenses that are permitted as per IP 1 be incurred by the commission. | **Management Comment**  The amount has been refunded |
| 34 |  | Water dispenser and UPS batteries valued at $ 2,019 were purchased in 2019 and assumed as 2017 additions.  There is no purchase date recorded for the boardroom furniture though these are depreciated.  There is also no consistency in the accounting policy for assets depreciation | Undertake monthly depreciation and update the fixed asset register on a regular basis | **Management Comment**  This is being done |
| 35 |  | Undepreciated assets and unutilized COMESA funds are treated as differed income leading to misrepresentation of the accounts. | The deferred income should be fully analyzed | **Management Comment**  The deferred income is being fully analysed |
| 36 |  | Underutilization of the activity based budget by 39% | Budgets should be prepared on the basis of planned activities | **Management Comment**  The Commission is now preparing budgets based on planned activities. |
| 37 |  | Lack of risk assessment processes;  No continuous annual performance appraisal evaluation for staff;  60% posts are still vacant; and  No budget is raised for the merger fees | Institute mechanisms for risk and performance management  Comply and implement a disaster recovery plan  Proceed to staff performance appraisal in due time  Address key vacant positions within the Commission  Budget process should include budgets for all significant items of the revenue | **Management Comment**  Risk Policy has been developed and approved by the Board on 2nd April 2019 and the Commission has started the recruitment of the Internal Auditor to be done before the end of the year has also been approved by the Board.  The Commission conducted performance appraisals for staff members for 2018. In addition, the Commission advertised for experts to come up with an appropriate performance appraisal system.  The recruitment for the 10 additional staff members was approved by the Board at its 17th Meeting and the adverts for these posts have been prepared in liaison the Director of Administration of COMESA Secretariat. However, recruitment is pending until the Commission secures adequate office premises  The Commission raises a budget which is approved by the Board.  **Audit Comment**  Risk management activities being a management role should kick off.  **Management Comment**  The Commission shall implement the risk policy. |
| 38 |  | There was a variance of 17% in the 2017 annual budget that was approved by Council | Healthy estimation of budgets should be undertaken by Management | **Management Comment**  This has been noted.  Suffice to mention that sometimes the Commission’s budget performance is affected by the Policy Organs whose dates are communicated later and may conflict with dates the Commission had earlier planned to undertake some missions. |

1. **Implementation of Board Resolutions**

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| **Year** | **No** | **Resolution** | **Status of Implementation as at July 2019** |
| 2014 | 1 | Develop leniency policy for adoption by MS | The Commission has commenced the development of the Leniency Program under the auspices of the World Bank |
| 2015 | 1 | Ensure a clear legal mandate from the regulations for the Commission to adopt the leniency programme | The mandate to develop the leniency policy is provided for under the Regulations |
|  | 2 | Undertake study on the effects of cartels | The Commission has commenced undertaking the study on the effects of cartels in collaboration with the Word Bank |
| 2016 | 1 | Commission to come up with own rules and procedures on how to deal with complaints and related matters | The draft Disciplinary Code of Conduct was finalised and awaiting to be presented to the Board through the relevant Sub Committee |
|  | 2 | Conduct a further need assessment of the electronic case management system and its integration with other electronic applications in order to have a robust and holistic system | The Commission is carrying out further assessments and more investigations regarding the necessity of the system at the moment given the high cost of acquiring the same. |
|  | 3 | Recruitment of additional staff – HR, Translator and 2 Consumer Welfare Officers | HR: The Commission conducted interviews but no candidate was successful. The position will be re-advertised.  2 Consumer Welfare Officers: Interviews were conducted and two candidates were successful. Their recruitment is pending until the Commission secures adequate office space.  Translator: The Board at its 12th Meeting resolved that the position of the Translator should be outsourced until such time the Commission is able to recruit a full time Translator depending on the workload. |
|  | 4 | Subject to the approval of the SG, establish own medical scheme to be administered by an insurance company | The Commission has submitted the proposed scheme to the SG and awaits guidance and subsequent approval. |
| 2018 | 1 | Approved the recruitment of an Accountant in the Finance Division | Advert is ready and recruitment is pending until the Commission gets adequate office space |
|  | 2 | Invite Chief Justice of Zimbabwe to make a presentation to the Board Members on the domestication of the COMESA Treaty and the Regulations | The Chief Justice will be invited to be among the main speakers at the regional Judge’s Colloquium to speak on the subject in August 2019 and Commissioners shall be in attendance. |
|  | 3 | Budget for estimated costs to be paid to the court | The advice from the Board was made when the 2019 budget had already been finalised so the estimated costs will be reflected in the 2020 Commission’s budget. |
|  | 4 | Comply with quarterly disbursement of merger filing fees to MS | The Commission is adhering to this recommendation. The Merger Fee Disbursement Committee has been established and it has taken over the mandate of disbursing the merger fees. The Committee meets every quarter. |
|  | 5 | Registrar to monitor Board performance and compliance to its charter on a quarterly basis | The Registrar has prepared a matrix of indicators of Board performance and compliance to its Charter |
|  | 6 | Prepare an advocacy strategy | Competition advocacy is beyond the mandate of the Board. However, the Board is being trained in competition law and policy. |
|  | 7 | Finance and Administration Committee to review recruitment procedures and report back to the Board | The Finance and Administrative Committee consider the Recruitment Procedure of the Commission and submitted its recommendations to the Board at its 17th Meeting which resolved that the Commission develops its Recruitment Manual. The drafting of the Manual is work in progress. |
|  | 8 | CCC rules to be amended to provide for the forms prescribed under Rules 61 and 74 | The draft forms were prepared and approved by the Board at its 18th Meeting. |
|  | 9 | Draft guidelines on part three of the regulations to be submitted to the Technical and strategic Committee before submission to the Board | The draft Guidelines under part three of the Regulations were approved by the Board at its 18th Meeting |
|  | 10 | Follow up of undertakings at national level for informing stakeholders affected by the transaction | This has been implemented |
|  | 11 | Close DFID account that was opened in 2003 with GBP 22,824.54 and balance transferred to its operational account | The Commission consulted the Secretariat and was told that they need to check on conditions that were attached to the grant before transferring to the Commission. The Commission extensively engaged secretariat on this and we await response from them.  The Commission was liaising with Charles Phiri and Gordon Jeranyama. |
|  | 12 | Engage organizational development or management consultants to assess management of the Commission | The Commission has commenced the process of engaging consultants to assess the performance management systems. |
| 2019 | 1 | Technical and Strategy Committee to explore further the establishment of the competition and consumer training school | The committee directed management to explore this possibility.  This was subsequently reported to the Board that the approach was not viable as COMESA was doing something similar under the COMESA Virtual University. The Board therefore directed that the Commission should work closely with the Virtual University. Interactions on the matter have began with Mr, Benedict Musengele from the Secretariat. |
|  | 2 | Commission should build/purchase own building after informing the host | The Commission is currently discussing with the Host Government on the issue on all options available. |
|  | 3 | Set a Task force to develop consultancy TORs, project implementation plan, | This issue is pending until discussions regarding the building are concluded. |
|  | 4 | Create a SPV to carry this project to completion | This matter is pending whilst waiting conclusion of discussions on the office building with the Host Government. |
|  | 5 | Rent office premises for newly recruited staff while awaiting host to provide adequate space | The Commission cannot rent the offices since this will be going against the Host Agreement. This matter awaits conclusion of discussions on the office building with the Host Government. |
|  | 6 | Communicate Board decision to the COMESA SG on purchase or construction of own offices. | The letter was sent to the Secretary General. |
|  | 7 | Launch the 3 guidelines – guidelines on market definition; restrictive business practises; and abuse of dominant position as a way of creating awareness and informing users of the competition law system | These are being launched at relevant regional workshops to save on resources. For example, the Guidelines on Restrictive Business Practices and Abuse of Dominance were launched at the recently held regional workshop on restrictive business practices in Kenya on 24 – 26 June 2019. The Market Definition Guidelines will be launched at the Regional Mergers Workshop in August 2019. |
|  | 8 | Expedite drafting of guidelines on fines and penalties. | This is work in progress, the first draft is ready. |
|  | 9 | Develop recruitment manual | This is work in progress, the first draft is ready. |
|  | 10 | Approved recruitment of an Internal Auditor at P3 from merger fees | Advert is ready and recruitment is pending until the Commission gets adequate office space. |
|  | 11 | Provide travel insurance for commissioners and staff members during travel | The insurance for staff members is being implemented but the Commission is facing logistical challenges to buy for Commissioners since it can only be bought for people travelling from Malawi. The Commission shall explore the possibility of Commissioners buying insurance from their point of origin and later on refunded by the Commission |
|  | 12 | Inform the SG of COMESA on Board approved donations of $ 5000 each to Malawi and Zimbabwe for cyclone IDAI victims | The SG was informed. |

1. **Implementation of Council Decisions**

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| **No** | **Decision** | **Context** | **Management Status Update as at July 2019** |
| 1 | Draft Financial Rules and Regulations, and the draft Procurement Rules and Regulations be submitted to the Legal Drafting Committee before submission to the Budget and Administrative Committee and Policy Organs meetings for review and approval; | Council considered the Commission’s draft Financial and Procurement Rules at length and emphasized the need for the COMESA Secretariat to be involved in the financial management of the Commission for oversight purposes and providing the necessary expertise and guidance during budget preparation | The Financial Rules and Regulations, and the draft Procurement Rules and Regulations will be considered at this year’s Minister of Justice Committee Meeting. |
| 2 | An accounting package be procured for both the Commission and FEMCOM from the merger fees income. | Council noted the corrective actions put in place by CCC to address the audit findings and proposed that the Commission should utilise merger fees to procure an accounting package that shall be used by both the Commission and FEMCOM. This will address the audit finding that was noted by the external auditors. | Implementation has commenced. The Commission is in the process of procuring servers, thereafter the software licence will be bought. |
| 3 | All COMESA Institutions should put in place and implement an IT policy; | Council noted that some of the key audit observations considered by the Sub-Committee included; lack of a Marketing Plan for the COMESA Regional Investment Authority; lack of offsite back up for COMESA Leather and Leather Products Institute’s information resources; and non-comprehensive confidential clause for the Secretariat staff and its consultants. | The Commission has drafted the IT Policy which shall be taken to the Board for approval. |
| 4 | A mechanism on the utilization of the fifty per cent of the Merger Filing Fees accruing to the Commission be developed and presented to the next Policy Organs meetings | The Audit and Budget Sub-Committee applauded the Commission for generating revenue which will lead towards self-financing of the Organisation. Though this is a step in the right direction, it was observed that a mechanism should be put in place to enable the Organisation to effectively use and control the fifty per cent major filing fees that accrue to the Organisation. | The Commission is currently guided by its strategic plan and annual work plans in the utilisation of fees however the Commission is trying to come up with a policy on the utilisation of the merger fees. |
| 5 | The Regulations on the fifty per cent revenue that accrues to the Commission be amended to enable the COMESA Policy Organs to have control on the utilization of the funds | The Sub Committee also observed that the Regulation dealing with the revenue accruing to the Commission be amended to enable the fund to be transferred to the COMESA Secretariat.  Rule 6 on merger revenue sharing be amended to include a provision for an Internal Audit of the financial statements and that a report be submitted annually to the Sub-Committee.  Rule 8 of the merger revenue sharing to be amended to include the submission of a detailed record on the utilization of the merger fees accruing to the Commission to the Sub-Committee. | The amendments were done and duly approved by the council.  **Audit Comment**  The amendments should be revisited to confirm whether they addressed the Council decision.  **Management comment**  The Commission is satisfied that the amendment addressed the Council decision**.** |
| 6 | All COMESA Institutions re-classify all amounts and costs recorded under miscellaneous activities budget line to a relevant budget line in order to facilitate meaningful monitoring, reporting and control of expenditure. | Budget lines should meaningfully describe transactions that are similar. This facilitate monitoring, reporting and control. | This is being implemented. |
| 7 | All COMESA Institutions adopt uniform chart of accounts to facilitate a focus on significant general ledger accounts and benchmarking with experiences of comparable organisations | COMESA Institutions have established chart of general ledger accounts that are different from each other, which makes it impossible to compare amounts allocated and charged to general ledger accounts. | This will be done during the implementation of an accounting software.  **Audit Comment**  Reclassification of costs to appropriate ledger accounts should commence even before the procurement system to comply with the Council decision.  **Management comment**  The recommendation has been noted. |

Annex I

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **DATE** | **NAME OF PASSENGER** | **DETAILS OF TICKET** |  |  |  | **STATUS OF REFUND** |
|  |  | **AIRLINE/AGENT** | **FROM** | **TO** | **AMOUNT OF TICKET** |  |
| 19-Mar-14 | Commissioner Rostom Omar ROSTOM | South African Airways | Egypt | Malawi | 1,602,838.00 | Not yet refunded |
| 28-Sep-14 | George K. LIPIMILE | Ultimate Travel | Lilongwe | Seychelles; Livingstone | MK1,029,457.00 | Not yet refunded |
| 10-Jul-15 | Paulos Netabay ABRAHAM | Ultimate Travel | Asmara, Eritrea | Livingstone | MK1,635,617.00 | Not yet refunded |
| 21-Jul-15 | Steven KAMUKAMA | Kenya Airways | Kampala, Uganda | Malawi | MK265,026.00 | Not yet refunded |
| 21-Apr-17 | Matthews CHIKANKHENI | Malawian Airlines | Lilongwe | Lusaka | MK281,856.00 | Not yet refunded |
| 28-Apr-17 | Abera BERHE | South African Airways | Addis Ababa, Ethiopia | Victoria Falls, Zimbabwe | MK662,974.00 | Not yet refunded |
| 14-Jun-17 | George K. LIPIMILE | Malawian Airlines | Lilongwe | Blantyre | MK103,641.00 | Not yet refunded |

**Regulatory Compliance**

The Commission through its Legal and Compliance Division identifies and proposes measures to address legal and compliance risks that it is exposed. We noted noncompliance with Article 13(4) as regards the composition of the Committee responsible for initial determination (CID). The rules stipulate that Commissioners serving on this Committee should possess suitable qualifications and experience in law and economics.

**Risk**

Decisions made by the Committee may be contested on the basis of the suitability of Commissioners serving in this Committee.

**Recommendation**

The Commission should review the extent to which this rule is being complied with for corrective action.

**Management comment**

Competition Law is a wide subject that cuts across all sectors of the economy. Therefore, officials involved with the subject may have varied qualifications. The Regulations also talk about suitable qualifications and not just law and economics. As pointed out already, many qualifications may be suitable in the effective enforcement of a competition law.

**Audit Comment on the management comment**

Article 13(4) is quite specific on the composition of CID whose decisions have ramification on competition in the Common Market.