WACOMP

POSITION PAPER

Policy and Legal Options to Promote and Support MSMEs under the ECOWAS and AfCFTA Competition Frameworks

Funded by the European Union

International Trade Centre

Table of Contents

EXECUTIVE SUMMARY 4
CHAPTER 1: INTRODUCTION 6
CHAPTER 2: DEFINING MSMES INTERESTS IN THE CONTEXT OF ECOWAS AND THE AFCFTA 9
1. DEFINITIONS OF MSMES 9
2. CHALLENGES ENCOUNTERED BY MSMES IN ECOWAS 10
3. HOW CAN COMPETITION LAW AND POLICY ASSIST MSMES IN ECOWAS? 11
4. COMPETITION POLICY FRAMEWORKS WITHIN THE ECOWAS COUNTRIES 11
a. The ECOWAS Regional Competition Policy Framework 12
b. The WAEMU Competition Framework 13
5. THE AFCFTA COMPETITION PROTOCOL FRAMEWORK 14
CHAPTER 3: COMPETITION LAW AND POLICY: OPTIONS TO PROMOTE MSMES 16
1. PROMOTING MSMES THROUGH LEGAL PROVISIONS: EXEMPTIONS AND EXCEPTIONS 16
a. Rationale 16
b. Identifying Options: Relevant National Developments 16
c. AfCFTA & ECOWAS frameworks 18
d. Policy Recommendation: 19
2. PROMOTING MSMES THROUGH GREATER COMPETITION IN PROCUREMENT MARKETS: BID-SPLITTING 21
a. Rationale 21
b. Identifying Options: Relevant National Developments 22
c. The AfCFTA and ECOWAS Frameworks 23
d. Policy Recommendations 24
3. MSMES AND FAIR COMPETITION IN PUBLIC PROCUREMENT: BID-RIGGING 24
a. Rationale 24
b. Identifying Options: Relevant National Developments 25
c. AfCFTA and ECOWAS Frameworks 27
d. Policy Recommendations: 27
4. RIGHTS OF REDRESS FOR MSMES 27
a. Rationale 27
b. Identifying Options: Relevant National Developments 29
c. AFCFTA & ECOWAS frameworks 30
d. Policy Recommendations: 30
ANNEX 32
TABLE 1. OVERVIEW OF COMPETITION REGIMES IN ECOWAS AND ECOWAS MEMBER COUNTRIES 32
TABLE 2: OVERVIEW OF WAEMU COMPETITION CASES (UNCTAD 2020) 60
TABLE 3. OVERVIEW OF MSME POLICIES IN THE ECOWAS MEMBERS 61

List of Abbreviations

ADR – Alternative Dispute Resolution

AU - African Union

AfCFTA - the African Continental Free Trade Area

COMESA - Common Market for Eastern and Southern Africa

CA – Competition Authority

CCC - ECOWAS Competition Consultative Committee

EAC - East African Community

ECCAS - Economic Community of Central African States

ECOWAS - Economic Community of West African States

EU - European Union

GDP – Gross Domestic Product

RCA – Regional Competition Authority

REC - Regional Economic Community (as recognized by the African Union)

MSMEs - Micro, small and medium-sized enterprises

NCA – National Competition Authority

SADC - Southern African Development Community

SMEs – Small and medium-sized enterprises

SMME - Small, medium and micro enterprises

TFEU – Treaty on the Functioning of the European Union

WAEMU - West African Economic and Monetary Union

WOB – Women Owned Business

Executive Summary

The Position Paper identifies key policy positions for promoting ECOWAS Micro, Small and Medium Enterprises (MSMEs) under the Economic Community of West African States (ECOWAS) and African Continental Free Trade Area (AfCFTA) competition frameworks.

As cross-border trade in Africa becomes more liberalised under the AfCFTA and the Regional Economic Communities (RECs) such as ECOWAS, it is important to ensure that liberalisation is accompanied by a complementary competition framework to prevent big businesses from abusing their dominance in new markets or forming cartels and rigging bids to avoid fair competition. Healthy competition promotes lower prices, more choice, innovation and economic democracy, to the benefit of all.

This Position Paper demonstrates how an effective competition law and policy benefits MSMEs by protecting them from unfair trading practices and abusive restraints on market access. It identifies how competition laws can also take further steps to explicitly promote MSMEs under their rules. MSMEs form the backbone of the economy in ECOWAS countries, creating employment, increasing income and reducing poverty. The importance of MSMEs in Africa is reflected in the AfCFTA's objective of expanding access to regional and continental-wide export markets for small businesses. The ECOWAS MSME Charter is being implemented to further ensure small businesses in ECOWAS countries can take advantage of the opportunities created by the AfCFTA.

MSME's need an enabling environment because they have a low survival rate. They face disproportionate challenges, including the anti-competitive and unfair practices of larger firms. Buyer firms with superior bargaining power often delay payments or impose unfair contract terms when dealing with small suppliers. Big companies can also create barriers to entry and expansion along the distribution chain and unaffordable fixed prices can force MSMEs out of the market.

To support the development of competition policies that recognise the importance of MSMEs and the challenges they face when seeking to compete in markets with large incumbent firms, this Position Paper is based on stakeholder policy consultations, following training webinars and workshops with representatives from ECOWAS Member's MSME associations. The policy positions identified in this paper are focused on four areas of key relevance to ECOWAS MSMEs:

1. Promoting MSMEs through competition law provisions
2. Promoting MSMEs in procurement markets: bid-splitting
3. Promoting MSMEs in procurement markets: bid-rigging v joint tendering
4. MSMEs and redress

The first policy position concerns the scope of application of ECOWAS competition law to MSMEs. An examination of the different options identified and examined in this Position Paper concluded that the ECOWAS Regional Competition Authority (ERCA) should encourage its members to expedite the harmonisation of a national level public interest waiver from competition rules for MSMEs under the

framework of ECOWAS Supplementary Act A/SA.1/12/08 Article 11[1] and Article 4(3)(ii).[2] This waiver should be made available to MSMEs through an on-line application system with a tracking facility accompanied by an FAQ page for MSMEs. Applications should be responded to within a reasonable period of time. Establish transparent reasonable periods of time for responding to applications.

The second policy position seeks to promote MSMEs in public procurement markets through encouraging contracting authorities to tender smaller contracts through splitting large bids into smaller lots that MSMEs are more likely to be able to provide. ECOWAS contacting authorities should be incentivized to split large bids into smaller lots through an "explain or divide" principle. This principle requires contracting authorities to provide an explanation in writing the main reasons for their decision not to subdivide large contracts into lots. To prevent abuse, the rules should include aggregation rules or an express prohibition that prohibits deliberate "contract splitting" to avoid the procurement rules applicable to larger 'above threshold' contracts. The tender requirements for MSMEs should be based on the principle of proportionality

The third policy position also seeks to promote MSMEs in public procurement markets through providing explicit permission for MSMEs to form a consortium or joint tenders to have the capacity to bid for larger more complex contract. This is in accordance with the ECOWAS MSME Charter Article 19 encouraging regional consortia.[3] To support this, ECOWAS competition law needs to make a formal distinction between bid-rigging and joint-tendering because these are assessed differently. ECOWAS competition authorities should be encouraged to communicate with public procurement contracting authorities on competition issues of mutual interest. The tender requirements for MSMEs should be based on the principle of proportionality and there should also be a public interest provision providing for due consideration of the vulnerable position MSMEs in the decision-making process.

The fourth policy position supports competition law enforcement through expediting the harmonisation of compensation and sanctions in ECOWAS members under the ECOWAS regional competition Supplementary Act A/SA.1/12/08. The ECOWAS Competition Consultative Committee (CCC) should ensure opportunities for ECOWAS private sector representation in deliberations, with due regard to confidentiality clauses, non-disclosure rules and avoiding conflicts of interest. Alternative Dispute Resolution (ADR) platforms for competition cases should be developed and harmonised in line with the ECOWAS Supplementary Act and MSME Charter at both the regional level and MS level. A fast track for competition cases should be established at the national level to avoid prolonged injury to MSMEs from anticompetitive practices.

The Position Paper concludes with an Annex containing tables providing an overview of competition regimes in ECOWAS and ECOWAS Member Countries along with relevant competition cases, and an overview of MSME policies in ECOWAS Member Countries

[1] ECOWAS Supplementary Act A/SA.1/12/08 *Article 11 Modalities For Enforcement Of Decisions Taken By The Authority And The Community Court Of Justice*
[2] ECOWAS Supplementary Act A/SA.1/12/08 Article 4 Powers
[3] ECOWAS MSME Charter 2021-2030 Article 19. Regional Consortium

Chapter 1: Introduction

Micro, Small and Medium Enterprises (MSMEs) account for over 90 per cent of all business on the African continent and are crucial in contributing to Africa's inclusive socio-economic development and growth. MSMEs generate work opportunities, income, and wealth creation, and thereby contribute to poverty reduction. The African Union (AU) acknowledges that economic growth and long-term sustainability for emerging markets are dependent on the potential of the effective development of the MSME business model.[4] The African Continental Free Trade Area (AfCFTA) aims to expand access to regional and continental-wide export markets for small businesses.[5]

Competition law is relevant for MSMEs because market access related challenges affect the majority of MSMEs and remain one of the main growth constraints. The economic impact of the damages of anti-competitive practices on developing economies is significant. A World Bank study indicated that developing countries imported US$81.1 billion worth of goods from industries where companies were involved in price-fixing arrangements in the 1990s. These goods represented 6.7 per cent of imports and 1.2 per cent of GDP in developing countries. Exports can be an important route to business success for developing and transition economy-based firms, including small businesses. MSMEs account for some 30% of global exports.[6]

However, export-oriented businesses in developing and transition economies can also be harmed by private barriers to trade, in the form of anti-competitive practices and market structures. Anti-competitive practices can occur locally, nationally and regionally/internationally. These practices undermine consumer and business welfare. Certain kinds of practices – infrastructure monopolies, undue buyer power in distribution chains and international cartels particularly affect firms seeking business abroad. For example, in 2023, Nigeria's competition commission the Federal Competition & Consumer Protection Commission (FCCPC) ordered British American Tobacco (BAT) to pay a $110 million fine following allegations of market dominance abuse, including penalising retailers for providing equal platforms for its competitors' products along with infringement of public health regulations.[7]

Powerful international cartels have operated to raise the price of developing country imports in sectors such as: graphite electrodes (an essential input to steel mini-mill production); bromine (a flame retardant and fumigant); citric acid (an industrial food additive); lysine (an agricultural feed additive); seamless steel pipes (an input to oil production), and vitamins. One study found that international cartels overcharged their customers, on average, by about 31% and were about 65% more effective in raising prices than domestic cartels.[8] In many such cases, these cartels are known to have operated

[4] https://au.int/en/newsevents/20220627/african-union-annual-small-and-medium-enterprises-forum.
[5] https://au.int/en/videos/20200201/positioning-smes-africa-tap-and-benefit-afcfta.
[6] International Trade Centre (ITC) Combating Anti-Competitive Practices: A Guide for Developing Economy Exporters Geneva: ITC, 2012.
[7] https://www.reuters.com/business/retail-consumer/nigerian-competition-watchdog-fines-british-american-tobacco-110-mln-2023-12-27/
[8] Connor, John M. (2010). 'Price Fixing Overcharges: Revised 2nd Edition,' SSRN Working Paper. Available at: http:// ssrn.com/abstract=1610262.

extensively throughout the developing world.[9] Such anti-competitive practices operate as a hidden tax on developing country exporters. Rather than being used to support public infrastructure investment or other legitimate government activities, the revenues from the 'tax' flow back to the shareholders of multinational enterprises.[10]

Big companies have the power to abuse their position and can inadvertently limit or prevent the proliferation of MSMEs when they adjust prices, output and other trading conditions without any form of constraints from other competitors. For example, Dangote Cement occupies a dominant position in the cement industry in Africa. In Nigeria, Dangote has a 65% market share which has guaranteed the company the gross margins on profits as high as 50% in 2016.[11] This dominance has led to competition concerns regarding its ability to determine the price for cement.[12] Cement is one of the most important construction materials in the world. It is primarily used in the manufacture of concrete. Consumption and production of cement are directly connected to the building sector and thus to the general economic activity. Certain features of MSMEs, such as less available capital and smaller buyer power, make them particularly vulnerable to anti-competitive and unfair practices in this and other markets. In 2023, the Competition Authority of Kenya (CAK) fined nine steel manufacturers approximately USD 2.3 million for engaging in prohibited anti-competitive practices, including price fixing and output restriction. The impact of the companies' cartel conduct increased the cost of house construction and infrastructure by artificially inflating the prices of steel products that account for over 20% of the total cost of constructing a house.[13]

Anti-competitive practices therefore have negative socio-economic repercussions, particularly for groups traditionally considered vulnerable or discriminated against. Historically, women have faced additional barriers when participating in markets and they have experienced inferior outcomes. Formal and informal barriers and the unequal division of household labour across genders, place significant impediments to women's economic participation. From the business perspective, there are barriers to enter certain markets that are based on gendered, discriminatory laws, which make markets less efficient. Gender biases may lead to the exclusion of efficient women-led businesses from entering the market. This poses a threat not only to a fair distribution of resources but also to economic development and inclusive growth. Gender inequality leads to smaller, less efficient and less competitive markets where talent is misallocated and where competition works less efficiently to guarantee high consumer welfare.

[9] Evenett, Simon J.; Margaret C. Levenstein and Valerie Y. Suslow (2001) 'International Cartel Enforcement: Lessons from the 1990s,' The World Economy, volume 24, issue 9, pp. 1221-1245. Available at: http://www.evenett.com/ research/articles/elss.pdf.

[10] Anderson, Robert D. and Frédéric Jenny (2005). 'Competition Policy, Economic Development and the Possible Role of a Multilateral Framework on Competition Policy: Insights from the WTO Working Group on Trade and Competition Policy'. In Erlinda Medalla (ed.), Competition Policy in East Asia (Routledge) chapter 4.

[11] Fawehinmi F. Africa's Richest Man has a built- in advantage with Nigeria's government. 2017. https://qz.com/africa/1098137/africas-richest-man-has-a-built-in-advantage-with-nigerias-government

[12] Tralac blog: https://africanantitrust.com/2016/09/19/drastic-price-increase-could-be-sign-of-collusion-or-dominance-dangote-in-nigeria/

[13] https://www.cak.go.ke/sites/default/files/2023-08/PRESS%20RELEASE%20-%20CAK%20SANCTIONS%20STEEL%20SECTOR%20CARTEL.pdf

Promoting competition can contribute to reducing gender inequality, and even a gender-blind application of competitive principles can help to promote women's economic empowerment in their business activities. Women-owned/led businesses are typically micro or smaller businesses (WSMEs). Smaller businesses benefit from a rigorously enforced competition law because it will help address cartels and big companies that are able to abuse their dominance to exclude smaller markets from entering the market.

Competition law and policy helps alleviating these challenges by providing a level playing field across all enterprises, but especially MSMEs and women-owned businesses. It facilitates their market access and in turn promoting economic growth and development. Competition law and policy can play an essential role in supporting MSMEs' resilience and performance in the market. MSMEs thrive in economies with competition law because they are the most at risk of being victims of anti-competitive conduct where there is no law in place to prevent such practices.

To support the development of competition policies that recognise the importance of MSMEs and the challenges they face when seeking to compete in markets with large incumbent firms, this position paper focuses on four issues of relevance to ECOWAS MSMEs:

5. Promoting MSMEs through competition law waivers
6. Promoting MSMEs in procurement markets: bid-splitting
7. Promoting MSMEs in procurement markets: bid-rigging v joint tendering
8. MSMEs and redress

After setting out the definitions, context and relevant competition frameworks, the paper sets out the rationale for focusing on these four policy areas and identifies relevant options based on best practice for ECOWAS MSMEs to advocate to promote their interests in competition law and policy at the regional and national levels.

Chapter 2: Defining MSMEs Interests in the Context of ECOWAS and the AfCFTA

1. Definitions of MSMEs

While some of the characteristics of small businesses are universal, there is no single international classification of MSMEs. Domestic legislations set out their own appropriate definitions depending on the size of their economy. However, some of their characteristics are universal. MSMEs are independent commercial activities that do not form part of a larger business and ownership is usually concentrated in a small number of people, often only one individual. Most of the risk and financing of the business venture is undertaken by the founding owners, and the enterprise is usually frequently managed on a day-to-day basis by those same founders. Their product/service range and offering are limited, they have only a few employees, and they operate in limited markets.[14]

The ECOWAS region has developed its own definition of an MSME, along with an MSME Strategy and Charter to support the development of MSMEs in the region. The ECOWAS MSME Charter defines MSMEs under Article 2: Definitions The term Micro, Small and Medium-sized Enterprise shall include any natural person or legal entity that produces goods and / or commercial services, and fully registered with the company, trade or business registry in compliance with prevailing regulations in the various countries. The entity should be totally autonomous and with: a workforce that does not exceed Two Hundred (200) permanent employees, an annual turnover excluding tax of not more than five million US Dollars (USD 5,000,000), or a level of investment less than or equal to two million US Dollars (USD 2,000,000).[15]

The Strategy and Charter indicate that MSMEs are a core element of ECOWAS Members' economies and are seen as a pivotal instrument to achieve higher levels of growth and development. For example, MSME's contribution to GDP is 48.47% in Nigeria, making up 96% of businesses and 84% of employment.[16] In Ghana, 70% of all industrial establishments in the country are MSMEs, providing over 85% of manufacturing jobs and contributing to 70% of GDP.[17] The growth of MSMEs mirrors the growth of the middle class, who account for the growth in consumption and investment in emerging economies, and are critical to sustainable wealth creation, diversification of the economy, employment generation and poverty reduction.[18] MSMEs' potential to contribute to growth and employment remains underutilized. Fostering their development can translate into higher employment and growth levels.

[14] Schaper, Volery, Weber & Gibson. Entrepreneurship and Small Business, 4th Asia-Pacific Edition. 2014.
[15] The ECOWAS MSME Charter defines MSMEs under Article 2: Definitions The term Micro, Small and Medium-sized Enterprise shall include any natural person or legal entity that produces goods and / or commercial services, and fully registered with the company, trade or business registry in compliance with prevailing regulations in the various countries. The entity should be totally autonomous and with: a workforce that does not exceed Two Hundred (200) permanent employees, an annual turnover excluding tax of not more than five million US Dollars (USD 5,000,000), or a level of investment less than or equal to two million US Dollars (USD 2,000,000). Further definitions are provided for the different categories of MSME.
[16] ECOWAS MSME Strategy (2015 – 2020) p7.
[17] https://thebftonline.com/2022/09/26/govt-committed-to-making-msmes-major-players-in-afcfta/
[18] ECOWAS MSME Strategy (2015 – 2020) p7.

2. Challenges Encountered by MSMEs in ECOWAS

Historically, MSMEs generally have a low survival rate, and this is also the case in Africa, where 80% of MSME businesses fail within the first five years of their existence despite having the highest entrepreneurship rate in the world.[19] Among ECOWAS members, in Nigeria one report suggests that at least 1.9 million MSMEs have been lost since 2017.[20]

MSME's low survival rate is attributed to the hurdles disproportionately facing MSMEs, including unfair competition practices. These include incidences where buyer firms with superior bargaining power delay payments, impose unfair contract terms, or transfer costs when dealing with suppliers. Additionally, unfair exclusive agreements imposed by big players foreclose the distribution chain by creating barriers to entry and expansion, while price-fixing contraventions render certain services inaccessible to and unaffordable for MSMEs.

Smaller firms generally tend to operate at a comparative disadvantage relative to their larger competitors. They typically sell a more limited range of products or services; have historically tended to operate in geographically limited market areas; usually only account for a very small proportion of a given market; and have greater difficulty in obtaining access to established suppliers, value chains and production processes. In addition to this, the operators of these businesses (who are oftentimes also the founding owner-managers) usually have less access to relevant legal advice, knowledge of the market, and understanding of compliance processes.[21]

Figure 1 Competition Related Differences between Small and Large Firms[22]

	SMEs	*Large Firms*
Number of business establishments	Single	Multiple
Geographical distribution	Limited	Limited or wide
Product/service range	Limited	Limited or wide
Market share	Limited	Significant
Customer base	Small	Numerous
Likelihood of business failure/exit	High	Low
Compliance cost burden	Proportionately high	Proportionately low
Knowledge of, and to access to, regulatory information	Limited; ad-hoc	Sophisticated; extensive
Knowledge of, and to access to, marketplace information	Limited; ad-hoc	Sophisticated; extensive
Ability to access established supply sources	Difficult	Easy
Level of financial resources	Small and limited	Substantial
Use of external legal and economic advisers	Limited; ad-hoc	Systematic; structured

[19] https://businessday.ng/uncategorized/article/80-of-businesses-in-africa-fail-within-five-years-of-establishment-report/
[20] https://punchng.com/why-smes-fail-in-nigeria/
[21] Schaper & Lee 2016 cited in: The Role of Competition Policy in Strengthening the Business Environment for MSMEs in the ASEAN Region
[22] Shaper 2010 cited in: The Role of Competition Policy in Strengthening the Business Environment for MSMEs in the ASEAN Region. p16

3. How Can Competition Law and Policy assist MSMEs in ECOWAS?

Competition policy and law supports the development and survival of MSMEs because it aims to make markets fairer for businesses to operate in. If entrepreneurial, dynamic economies are to flourish in the ECOWAS region, then new and small business start-ups need an environment that allows them to start and compete on their own merits. MSMEs need to be able to operate alongside existing entrenched and larger competitors without the latter trying to forestall the innovations, new products and services that MSMEs often bring to the market, which in turn bring about quality and decrease in pricing. When genuine open market competition flourishes, both businesses and consumers benefit.

It is becoming more common for regional trade agreements to mention MSMEs in their chapter on competition. Some of these provisions are general and provide for information and commissions to support MSME competitiveness, including provision of advice and recommendations to the Joint Commission aimed at enhancing the participation of SMEs.[23] Others are more specific, for example permitting subsidies for MSMEs subject to eligibility criteria.[24]

In ECOWAS, competition law and policy are also seen as essential instruments to help achieve a level playing field between all enterprises. Competition law normally prohibits firms with larger market shares and power from performing abusive or dominating schemes that aim to eliminate smaller potential rivals. Such abusive acts include imposing exclusive requirements on suppliers or pricing goods or services so low as to drive smaller rivals and start-ups out of the market. The law must prevent anti-competitive agreements, such as bid rigging and price fixing. Control of mergers is also one of the pillars of competition law, to prevent players from becoming so large that they can dominate the market. Competition law is typically enforced by competition agencies, oftentimes there may also be sectoral regulators responsible for ensuring competition.

The ECOWAS regional competition law and competition policy can provide a supportive framework for MSMEs. Trade liberalization allows new entry from large foreign firms. This may provide opportunities such as greater access to foreign markets, access to necessary inputs, and an increased range of potential business partners. In the event of anti-competitive behaviour, competition law can provide an avenue for redress for MSMEs that may not have otherwise existed, for example, the ability to lodge a complaint about the conduct of a large player. Jurisdictions with merger control or market review regimes can also provide additional oversight of the competitive conditions that impact MSMEs in the market through merger analysis or market assessments.[25]

4. Competition Policy Frameworks within the ECOWAS Countries

The development of formal competition policies and laws is relatively new to the West Africa, and many countries have nascent institutions, policies and operating procedures. Annex 1 Table 1 provides an overview of the competition laws and policies applicable in the Member States of ECOWAS, along

[23] Peru – Australia, Chapter 21 art. 2.
[24] EU - Korea, Republic of, Chapter 11, art. 11.
[25] The Role of Competition Policy in Strengthening the Business Environment for MSMEs in the ASEAN Region. p22.

with the government agencies that are responsible for implementing the competition framework. It also identifies the main anti-competitive practices that have been investigated, where available.

A summary overview of Table 1 indicates that all of the 15 ECOWAS Members have established a competition law except for Guinea, Guinea Bissau and Ghana, while Sierra Leone is in the process of enacting a law. Table 1 further indicates that those ECOWAS Member States that are also members of the West African Economic and Monetary Union (WAEMU) have agreed to the primacy of Community Law and the direct effect of the WAEMU competition regime. Table 2 sets out the different policies to support MSMEs that have been adopted in the ECOWAS Member States.

a. The ECOWAS Regional Competition Policy Framework

ECOWAS is a regional grouping of 15 Member States[26] founded in 1975 via the treaty of Lagos. Based in Abuja, Nigeria, ECOWAS transformed its Secretariat to a Commission in January 2007, and is headed by a President with a Vice President and Fifteen Commissioners. Its mission is to promote economic integration in all fields of activity of the constituting countries.[27] The ECOWAS Regional Competition Policy Framework of 2007 recognizes the role of a regional competition policy in the development of the domestic economies, affirming that "the member states of ECOWAS, which all strive for the development of durable economies and for the stabilization of their market conditions, have the common interest to adopt a framework which controls the competition on the regional level."

ECOWAS introduced competition legislation in 2008 through the ECOWAS Supplementary Act on the 'Adoption of Community Competition Rules and the modalities of their application within ECOWAS'.[28] The purposes of this Supplementary Act are to:

(a) promote, maintain and encourage competition and enhance economic efficiency in production, trade and commerce at the regional level;
(b) prohibit any anti-competitive business conduct that prevents, restricts or distorts competition at regional level;
(c) ensure the consumers' welfare and the protection of their interests;
(d) expand opportunities for domestic enterprises in Member States to participate in world markets.

The Community Competition Rules apply to agreements, practices, mergers and distortions caused within Member States that are likely to have an effect on trade within ECOWAS. The Rules shall concern notably acts, which directly affect regional trade and investment flows and/or conduct that may not be eliminated other than within the framework of regional cooperation.[29]

[26] Member countries making up ECOWAS are Benin, Burkina Faso, Cabo Verde, Cote d' Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.
[27] http://www.ecowas.int
[28] ECOWAS Supplementary Act A/SA.1/06/08 of 19 Dec 2008
[29] ECOWAS Community Competition Rules. Article 4 Scope.

On July 2018, the ECOWAS Regional Competition Authority (ERCA) was established in Bijilo, Gambia.[30] While national cases are to be investigated by National Competition Authorities (NCAs), the investigation of a regional case shall be performed by the ERCA. Where necessary, the ERCA can request the support or input from NCAs. Decisions of the ERCA that entail pecuniary obligations on individuals and or corporate bodies, are binding and enforcement of ERCA decisions shall be applied by the national authority appointed by the Government of each Member State. The regional provisions apply to provisions on anti-competitive agreements, abuse of dominance, mergers and state-aid/competitive neutrality.

b. The WAEMU Competition Framework

ECOWAS includes the eight members of the sub-regional bloc West African Economic and Monetary Union (WAEMU), which has a regional competition law and a supranational competition authority. WAEMU was established in 1994,[31] and adopted competition legislation in May 2002, which became operative from January 1, 2003. One of the two fundamental principles of WAEMU is the primacy of community law over national law. In case of conflict between the two, the community law prevails over the other.[32] The second principle is the direct and immediate applicability of community law. WAEMU has a supranational character where member states partially give up their sovereignty in favour of the regional body.

WAEMU has a common regional competition policy. In 2002 WAEMU adopted directives and regulations on anti-competitive practices; on procedures governing cartels and abuse of dominant position; and on State aid.[33] These specify the substantive rules and procedures, the transparency of relations between public undertakings and States, and the division of powers between the WAEMU Commission and national competition structures. The adoption of these regulations and directives has provided the Union with exclusive competence for the implementation of competition rules concerning agreements, abuse of dominance and state aids.[34] For example, WAEMU Member States such as Guinea and Guinea Bissau who do not have national competition laws but have approved the WAEMU Treaty[35] can address anti-competitive practices by reporting these cases to WAEMU Commission.

[30] The ECOWAS Supplementary Act A/SA.2/06/08 of 19 Dec 2008 further provides for the establishment of the ECOWAS Competition Authority as the agent responsible for the implementation of the Community Standards Competition rules and regulations within the ECOWAS Community.

[31] Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.

[32] Article 6 of UEMOA Treaty.

[33] Regulation No. 2/2002/CM/UEMOA on anticompetitive practices within WAEMU; Regulation No. 3/2002/CM/UEMOA on the procedures for addressing cartels and abuse of dominant position within WAEMU; Regulation No. 4/2002/CM/UEMUA on State aid within WAEMU and on the procedures for applying article 88(c) of the Treaty; Directive No. 1/2002/CM/UEMOA on transparency in financial dealings between member States and agencies of the member States in applying articles 88 to 90 of the WAEMU Treaty.

[34] UNCTAD, *Voluntary Peer Review of Competition Policy: West African Economic and Monetary Union, Benin and Senegal Overview*, UNCTAD/DITC/CLP/2007/1(Overview), (New York and Geneva, 2007), p.11.

[35] In 2015, Niger validated a new Competition and Consumer Protection Law that replaces a 1992 law that was never fully operational. Togo's own competition law was replaced by the WAEMU community law on competition, which took effect on 1 January 2003. A National Competition and Consumption Commission became operational in Togo in 2006.

The WAEMU Commission is the executive body of the bloc, and is responsible for the application of the regional competition provisions.[36] The Directorate of Competition, which is part of the Department of the Regional Market Trade, Competition and Cooperation in the WAEMU Commission, is the competent body, also known as the WAEMU Competition Commission.[37] The WAEMU Competition Commission has exclusive jurisdiction over competition provisions in the union. The NCAs have to fulfil certain co-operative functions. Firstly, the WAEMU Competition Commission has to inform the NCAs about ongoing or envisaged investigations in the Member States. The NCA then has to assist the Commission during these investigations and inquiries in the Member States. Furthermore, the NCAs are involved in the decision-making process through the advisory Committee on Competition, which comprises two officials per Member State and has the competence to give an opinion on pending cases. The Committee's opinion does not bind the Commission.

5. The AfCFTA Competition Protocol Framework

Deeper integration under the African Union (AU), by reducing both tariff and non-tariff barriers across Africa, will allow firms to transcend national borders and can serve as the foundation for developing regional value chains. In adopting the Agreement Establishing the African Continental Free Trade Area (AfCFTA), the AU is hoping to boost intra-African trade by 52.3 percent through eliminating import duties - and if non-tariff barriers are also reduced, it could double the projected amount.[38]

However, cross-border trade also provides an opportunity for cross-border anti-competitive business practices in Africa to emerge. In light of this, AfCFTA Article 4 (c) specifically calls for cooperation by the Member States on competition matters. The AfCFTA Protocol on Competition Policy, which was adopted by the AU Assembly of Heads of State and Government in February 2023,[39] is a pillar of the AfCFTA harmonisation strategy. The Competition Protocol[40] recognises that anti-competitive and other restrictive business practices constitute an obstacle to the achievement of a single African market underpinned by progressive trade liberalization, market efficiency and inclusive growth.[41] It affirms the willingness of States to engage in closer cooperation at national, regional and continental levels in the implementation of their respective competition laws to address the harmful effects of anti-competitive and other restrictive business practices.[42]

[36] The Treaty of the West African Monetary and Economic Union (WAEMU) (1994) - Articles 88-90, Regulation No 2/2002/CM/UEMOA of 23.05.2002 (anti-competitive practices), Regulation No 3/2002/CM/UEMOA of 23.05.2002 (procedures applicable to restrictive agreements and abuse of dominant position), Regulation No 4/2002/CM/UEMOA of 23.05.2002 (state aid) and Regulation No 02/2002/CM/WAEMU of 23.05.2002 (cooperation between the Commission and the national authorities of the Member States).

[37] Opinion 03/2000/CJ/UEMOA states that articles 88, 89 and 90 of the WAEMU Treaty enshrine an exclusive competence of the Union. Member States are only entitled to take decisions pertaining to criminal law aimed at sanctioning anticompetitive practices, breaches of the laws on market transparency and competition regulation.

[38] The 2019 African Union Handbook. A Guide for Those Working With and Within the African Union, The African Union Commission and the New Zealand Ministry of Foreign Affairs and Trade.

[39] https://au.int/sites/default/files/decisions/42725-Assembly_AU_Dec_839_-_865_XXXVI_E.pdf

[40] AfCFTA final draft Protocol on Competition. Version from the 7th Meeting of the Committee on Competition Policy, January 2023

[41] AfCFTA Protocol on Competition. Preamble Recital 4.

[42] AfCFTA Protocol on Competition. Preamble Recital 5.

The AfCFTA Competition Protocol aims to enhance competition within the AfCFTA and ensure that gains from AfCFTA trade liberalization are not negated or undermined by anti-competitive practices. It seeks to develop and strengthen the capacity of State parties to deal with anti-competitive business practices; provide a continental platform for research, information exchange, capacity building, cooperating, and coordinating on competition policy and law in Africa; while managing the interrelationships of competition regimes and sectoral regulatory laws at the national, regional, and continental levels.[43]

The AfCFTA Protocol on Competition is not applicable to matters falling within the respective jurisdiction of the national competition authorities.[44] It only applies to all economic activities by persons or undertakings within or having significant effect on competition in the continental market; and conduct with continental dimension and having significant effect on competition in the Market.[45]

[43] AfCFTA 2022 Protocol on Competition. Article 2.
[44] AfCFTA 2022 Protocol on Competition. Article 3.2.
[45] AfCFTA 2022 Protocol on Competition. Article 4.

Chapter 3: Competition Law and Policy: Options to Promote MSMEs

1. Promoting MSMEs through legal provisions: exemptions and exceptions

a. Rationale

While competition law enforcement benefits all small businesses, it is especially so in those markets which are particularly important for MSMEs as producers or consumers, such as telecommunications, cement and transportation. Competition policies around the world take various approaches to the question of whether or not these competition laws should apply to MSMEs. National competition laws can expressly contemplate a more lenient policy towards MSMEs when compared with general competition rules. This leniency can also be focused specifically on women-owned businesses (WOBs) or women led MSMEs.

There are different rationales offered for exempting MSMEs from the application of competition law. It is often thought it unlikely that given the size of MSMEs, they would be able to exercise market power to negatively affect competition on a given market. There is an additional case for exempting women-owned or led MSMEs from some prohibitions on concerted practices. Evidence indicates that there is a correlation between the prevalence, in many economic sectors, of informal networks based on typical masculine values, and the permanence of cartel practices. The same mechanism that favours trust among men, and the emergence of illicit cartel behaviour, also leads to the exclusion of women from dominant professional networks, limiting their opportunities for career development and promotion.[46] Gender inequality leads to smaller, less efficient and less competitive markets where talent is misallocated and where competition works less efficiently to guarantee high consumer welfare.

In recognition of these rationales, some jurisdictions explicitly exempt MSMEs from the scope of application of domestic competition rules through different approaches.

b. Identifying Options: Relevant National Developments

In **South Africa,** MSMEs are afforded special treatment under the exemption provisions. If an MSME perceives that it has engaged in a prohibited practice, it can apply for exemption from being investigated based on the grounds that the objective of the practice is to promote the ability of small businesses or firms controlled by previously disadvantaged persons, which can include women-owned or led businesses, to become competitive.

South Africa's 2022 Draft Block Exemption Regulations for Small, Micro and Medium-Sized Businesses exempts certain categories of agreements or practices of small, medium and micro enterprises (SMME) from the application of the Sections 4(1) and 5(1) of the Competition Act. Sections 4(1) sets out prohibited restrictive horizontal practices and 5(1) sets out prohibited restrictive vertical practices. The categories of agreements or practices are exempted in order to enable collaboration between SMMEs that otherwise would contravene the act.

[46] Carolina Abate and Alexis Brunelle. Cartel behaviour and boys' club dynamics: French cartel practice through a gender lens. OECD Gender Inclusive Competition Policy Project 3. 2021.

Categories of agreements or practices of SMMEs to be exempted from the application of sections 4(1) and 5(1) of the Act are for the sole purpose of stimulating the growth and participation of SMMEs in the economy. They include research and development agreements; production agreements for production of a good or the provision of a service, or toll manufacturing by one firm for another; joint purchasing agreements; commercialisation agreements; and standardisation agreements. The Draft Regulations however exclude from the SMME exemption the fixing of the selling prices of goods or services to end consumers. Firms applying the Regulations must notify the Competition Commission and the department of the agreement or practice within 30 business days of implementation.

In **Zambia**, the Competition Act 89 of 1998 recognises that although some practices may be anticompetitive, there may be other benefits to the economy and consumers if such practices were allowed. The Act thus makes provision for the Commission to allow such practices if they contribute to the promotion of the ability of SMEs and historically disadvantaged persons (HDIs) firms to effectively enter into, participate in or expand within a market.

The scope of the Competition Law in **Indonesia** also explicitly excludes MSMEs from the application of the rules. The Anti-Monopoly Law has a unique regulatory system in addressing business competition and small business relations. Competition policies and laws in Indonesia favour MSMEs. All actions of MSME actors are exempted.[47] This Law also prohibits large business actors from using their market power to discourage other business actors (including MSMEs) or from engaging in other harmful practices.

It is also possible for competition law to make use of secondary legislation or guidelines to provide de minimis or 'safe harbour' thresholds for agreements that are unlikely to affect competition in the market. Generally, these thresholds do not apply to hardcore (cartel) restrictions. This is a useful tool because it provides smaller businesses with legal certainty, the means to conduct self-assessment and to devise internal voluntary compliance practices.

Many jurisdictions, including the **European Commission,** have de minimis notice which applies 10% market share thresholds. For agreements between companies that operate at different levels of the supply chain, like with most distribution agreements, the market share for benefitting from the safe harbour is 15 %. These market share thresholds are set on the basis that agreements between these players will not have a significant impact on competition and that they do not have an anticompetitive objective.[48]

Competition authorities can also grant individual exemptions that exclude agreements or conduct between MSMEs which result in economic benefits that outweigh any anti-competitive harm. The borderline between admissible co-operation and objectionable co-ordination of conduct can only be established on a case-by-case basis. Each case of co-operation is assessed to ensure that it is not primarily directed to the elimination of competition but rather to the promotion of efficiency. A straight forward price-fixing agreement, for example, does not come under the exemption.

[47] Chapter IX, Article 50 (h) Law Number 5, 1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states: Excluded from the provisions of this law shall be the following: (h) business actors of the small-scale group; or (i). activities of cooperatives aimed specifically at serving their members.

[48] https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_440

The disadvantage of the authorisation of conduct approach is that MSMEs may need to apply for a waiver to be excluded from some of the provisions which places a disproportionate burden on smaller players by shifting the burden of proof on them.

Under the **German** competition law, contracts or agreements between MSMEs are admissible if their object is the rationalisation of economic activities and if competition on the market is not thereby substantially impaired.[49] The agreement must also serve to promote the efficiency of MSMEs, based on the idea of "structural equalisation."[50] This means the exemption intends to make up, in favour of MSME, for competitive advantages that large firms have owing to their mere size and thereby to improve the structural conditions of competition.

The exception has been widely used in Germany since its introduction. They have mainly been used in the non-metallic minerals as well as the asbestos products and abrasives industries and, at regional level, craft enterprises.[51] The main form of inter-company co-operation used is the common sales agency. This is the easiest way of achieving economies of scale independently of firm size. Additionally, under this exemption large companies may also participate in a co-operation agreement with MSMEs, if it is decisive that the increase in the efficiency of the MSME is only made possible by the participation of the larger companies.

Legalised small-business cartels are subject to abuse supervision in Germany. Admissible co-operation can only be established on a case-by-case basis. The effects on competition are mainly assessed in view of the market position as well as the type of inter-company co-operation and the quality of the restraint of competition.[52]

c. AfCFTA & ECOWAS frameworks

In practice, by virtue of their small-scale activities, most MSMEs activity is excluded from the scope of the application of the **AfCFTA Protocol on Competition**. Under Article 3, the Protocol only applies to economic activities by persons or undertakings within or having significant effect on competition in the AfCFTA market; and conduct with continental dimension and having significant effect on competition in the AfCFTA market.[53]

[49] Section 3 of the German Competition Act exempts “Cartels of Small or Medium-Sized Enterprises” dependent on four conditions that read as follows: Agreements between competing undertakings and decisions by associations of undertakings whose subject matter is the rationalisation of economic activities through inter-firm cooperation fulfil the conditions of § 2(1) if: 1. competition on the market is not significantly affected thereby, and 2. the agreement or the decision serves to improve the competitiveness of small or medium-sized enterprises.

[50] OECD Policy Roundtable. (1996) General Cartel Bans: Criteria For Exemption For Small And Medium-Sized Enterprises OCDE/GD(97)53:11

[51] OECD Policy Roundtable. (1996) General Cartel Bans: Criteria For Exemption For Small And Medium-Sized Enterprises OCDE/GD(97)53:

[52] J OECD Policy Roundtable. (1996) General Cartel Bans: Criteria For Exemption For Small And Medium-Sized Enterprises OCDE/GD(97)53:

[53] AfCFTA Market means the African Continental Free Trade Area (AfCFTA) market or a substantial part thereof, where exchange or substitution of goods or services takes place between suppliers and buyers of those goods, services and technologies. Article 1(l).

Notwithstanding this high threshold for the application of the AfCFTA Protocol on Competition, the Protocol also includes exemptions that can be authorised upon application to the Authority under Article 8, which apply to specified conducts or anti-competitive practices. For MSMEs, the relevant exempted agreements or conduct may include, but are not limited to:

> c) measures to promote sustainable development, growth, transformation or stability of any industry;
>
> d) measures fostering competitiveness and efficiency gains that promote employment or industrial expansion.

There is also a high threshold for the application of the **ECOWAS Supplementary Act**, which will typically exclude the small-scale activities of MSMEs. Under Article 4 setting out the scope of application of the Supplementary Act A/SA.1/06/08,[54] the rules only apply to agreements, practices, mergers and distortions caused by Member States which are likely to have an effect on trade within ECOWAS. The rules concern notably acts which directly affect regional trade and investment flows and/or conduct that may not be eliminated other than within the framework of regional cooperation.

d. Policy Recommendation:

Harmonising National Level Public Interest Waiver of ECOWAS Competition Law for MSMEs.

ERCA and national competition authorities should expedite the harmonisation of ECOWAS members' national level public interest waiver from competition rules for MSMEs under the framework of the ECOWAS Supplementary Act A/SA.1/12/08 Article 11[55] and Article 4(3)(ii).[56] This waiver should be made available to MSMEs through an on-line application system with a tracking facility accompanied by an FAQ page for MSMEs. Applications should be responded to within a reasonable period of time. Establish transparent reasonable periods of time for responding to applications.

This authorisation of conduct approach should be promoted at the national and regional level through:

- An on-line application with a tracking facility.
- Transparent reasonable periods of time for responding to applications
- An FAQ page for MSMEs seeking to apply for a waiver and track applications

[54] Supplementary Act A/SA.1/06/08 on the establishment and function of the regional competition authority for ECOWAS ("Supplementary Act")

[55] *Supplementary Act A/Sa.2/12/08 On The Establishment, Functions And Operation Of The Regional Competition Authority For ECOWAS Article 11 Modalities For Enforcement Of Decisions Taken By The Authority And The Community Court Of Justice*

[56] ECOWAS Supplementary Act A/SA.1/12/08 Article 4 Powers

The disadvantaged market positions many small businesses face may justify ad hoc exemptions or a waiver from competition rules. Nevertheless, while MSMEs individually do not have the power to abuse markets, even MSMEs, particularly in sensitive sectors such as pharmacies, should be prevented from significantly distorting the playing field through forming cartels or agreements to fix prices. It is important that MSMEs are also exposed to competition principles to encourage innovations, efficiencies and responsiveness to consumers welfare.

2. Promoting MSMEs through Greater Competition in Procurement Markets: bid-splitting

a. Rationale

Despite being efficient, some MSMEs or specialist firms may be unable to provide the full bundle of goods or services that the contracting agencies are purchasing. MSMEs can sometimes find it difficult to tender for larger scale or aggregated contracts because on its own an individual MSME has insufficient scale, geographic reach or financial capacity to tender for the contract. This can exclude efficient or specialist MSMEs from public procurement markets, and potentially have a detrimental impact on competition. For example, it may have the effect of excluding smaller firms or new entrants with innovative solutions, thereby reducing the value for money that the State can achieve. It may also reduce the overall number of firms that can take part in a tender competition. This may potentially decrease competition and increase the cost of goods and services purchased by the State.

In the longer term, it may limit the number of firms left in the market and deter new firms from entering the market, meaning that the field of potential bidders may be considerably reduced for the next round of tendering.This means that large or bundled contracts risk reducing MSME competition in the market, either by preventing efficient small or specialist firms from bidding, or by creating an overwhelming advantage for the winning bidder in future tenders.

Some governments, such as **the EU**, encourage splitting contracts into lots to reduce this risk. By promoting tender participation through multiple and smaller lots, competition is encouraged and procuring authorities spread risk by avoiding overdependence on a single supplier.

A contract can be divided in different ways to increase their relevance to small businesses, including:

- Geographical: This would involve dividing the contract into sub-regions, with each sub-regional lot covering all of the services required in the sub-region.
- By Service type: This would involve dividing the contract by type of service, with each service being provided across the whole region, for example: Lot 1: repairs and maintenance; Lot 2: window replacement and repairs; Lot 3: gas appliance installation and maintenance; Lot 4: electrical installation and maintenance; Lot 5: roof repairs and maintenance; Lot 6: internal decorating.
- By Value: This approach entails creating ‘low-value’ lots, with the use of a multi-supplier framework agreement to award contracts below a low threshold. These lots can also be divided by service type.

Division of contracts into lots does not have to be made mandatory for all contracts, although it can be mandatory to consider this option. Splitting into lots is appropriate when a contract for a single purchase is made up of a variety of products or services offered by companies operating in different sectors of the economy. For example, information and communication activities involve website management, audio, visual and published written material. A small firm that is highly efficient within its own single sector would be unfairly prevented from competing because it is not able to provide all the products or services under the whole contract.

The risk is that contracting agencies facilitate collusion or prevent bidders from exploiting economies of scale or scope to improve the value of their bid. Therefore, when splitting contracts into lots, procurers should take care to do so in ways that do not reduce competition and the value achieved by at the pre-tendering stage of the procurement. When contract or bid splitting is encouraged, it is necessary to include aggregation rules stipulating that those contracts must not be artificially split with the aim of avoiding the application of the public procurement rules. This is also an important reason to both consider and clearly record the reasons for a decision to split a contract into lots.

The decision to split a contract into smaller lots therefore has both advantages and disadvantages. For on the one hand, diversity of firms bidding as a result of multiple smaller lots can enhance competition and increase efficiency, yet there may be savings resulting from economies of scale through a single contract. Before splitting the tender into lots it is important to conduct a market analysis to help consider whether, given the type of product or service that they are procuring, tendering smaller lots is the best solution.

Rather than splitting lots, another solution is for procuring agencies to encourage joint tendering or consortium bidding, which typically involves smaller firms that are actual or potential competitors coming together to submit joint bids for public contracts. This offers an opportunity for MSMEs to pool their knowledge and expertise and submit joint bids that offer higher quality products and more innovative solutions to the purchasing body. Joint or consortium bids involving larger firms and MSMEs may allow significant efficiencies to be realised if the MSME can reduce the consortium's costs in particular geographic areas or in specific product lines.

However, procuring agencies should be mindful that firm collaboration on a joint bid does not spill over into their activities in the market more generally and become a means for them to engage in anti-competitive behaviour outside the scope of the individual joint bid. (Section 3 discusses the different ways to treat bid rigging and joint agreements.)

b. Identifying Options: Relevant National Developments

In **Togo**, the public procurement law[57] states that when defining the technical and financial capacities requirement for firms to participate in public procurement tenders, contracting officials are obliged to take measure to promote free access to public contracts reserved for certain categories of economic operator.[58] This includes dividing lots into smaller tenders that are more relevant for MSMEs. The law also provides reserved access to some public contracts for: people with disabilities, young people, Togolese women, small, small and medium-sized enterprises, agripreneurs, artisans and cooperatives.[59] This rule further requires that contracting authorities shall ensure that the formalities for participation and the lodging of guarantees are simplified to facilitate the access of, for example, very small, small and medium-sized enterprises to the invitation to tender. They may also provide for evidence of financial capacity appropriate to the target. This provides for the principle of proportionality to be used when tendering to support access by MSMEs.

[57] LOI N° 2021-033 DU 31 Decembre 2021 Relative Aux Marches Publics
[58] Id. Art. 16: Conditions de participation
[59] Id. Art. 17: Accès aux marchés publics réservés

Togo's public procurement law is applicable to all public contracts regardless of their value. subject to the specific provisions relating to the thresholds for the award of public contracts defined by decree.[60] This means that when facilitating MSME access to bidding for public contracts, the estimates made by the contracting authorities of the value of their contracts and the budget lines allocated to them will not have the effect of exempting them from the rules which are normally applicable to them under this law.

Bid splitting is strongly encouraged under **the EU** 2014 Public Sector Directive as one of the measures intended to facilitate MSME participation in public procurement.[61] The Directive supports contracting authorities to divide contracts into lots to encourage MSME participation. It also provides some examples of how contracts may be divided into lots: i) on a quantitative basis, with the lots structured to appeal to MSMEs, ii) on a qualitative basis, so that the content of the lot corresponds to the capacity or skills of MSMEs. The Directive also includes some examples of when it may be inappropriate to divide a contract into lots, such as if it i) results in excessive technical difficulties or ii) expenses or risks undermining the proper execution of the contract, as a result of the need to co-ordinate the different contractors for the lots.

The Directive obliges contracting authorities to consider at the planning stage whether or not to divide a contract into lots.[62] Contracting authorities are free to decide whether to divide a contract into lots. Where a contracting authority decides to divide a contract into lots, it is free to determine the size of the lots and the object of the contracts. However, where a contracting authority decides not to divide a contract into lots, it must provide the reasons for its decision. This is known as the "Divide or Explain" principle, for contracting authorities must provide in writing the main reasons for their decision not to subdivide into lots. This explanation must be included in the procurement documents or in the final report on the contract award. For example, contracting authorities tend not to divide a contract into lots because having just one contract is easier to organise and can lead to economies of scale. Indeed, more contracts and more stakeholders to deal with is more difficult to manage. The Directive also provides a special "small-lot" exemption, which permits in limited circumstances a contracting authority to award a lot, or lots, directly to an economic operator without a competitive process.

The EU 2014 Directive also includes aggregation rules to make it difficult for authorities to evade the regulations by splitting their purchases into separate contracts, each of which fall below the contact value threshold for the Directives to apply. There is also an express prohibition that probably prohibits deliberate "contract splitting" to avoid the directives.

c. The AfCFTA and ECOWAS Frameworks

The **AfCFTA Protocol on Competition** does not include specific provisions on public procurement. It is recommended that these are developed to complement and support the harmonisation of

[60] Id. Art. 4: Seuils d'application des procédures
[61] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024
[62] Article 46 and Recitals 78 and 79

procurement policies across the continent and harness the benefits of competitive, transparent and predictable procurement markets.

The **ECOWAS** does not yet possess regional procurement regulation. This is unlike the **WAEMU** which has produced regional procurement Guidelines to promote the harmonisation of procurement laws among its Member States.[63] One of the explicit aims of this Guideline is to promote small and medium-sized enterprises. However, this does not include provisions promoting bid-splitting

d. Policy Recommendations

Promoting ECOWAS MSMEs in public procurement markets through splitting bids

Many MSMEs may be unable to provide the full bundle of goods or services that the contracting agencies are purchasing. This can exclude efficient or specialist MSMEs from public procurement markets, thereby reducing competition and its benefits.

Contracting agencies should be encouraged to split large bids into smaller lots through a “explain or divide” principle. This principle requires contracting authorities to provide in writing the main reasons for their decision not to subdivide large contracts into lots. For example, contracting authorities may not want to divide a contract into lots because having just one contract is easier to organise and can lead to economies of scale.

The tender requirements for MSMEs should be based on the principle of proportionality. The formalities for participation and the lodging of guarantees should be simplified to facilitate the access of very small, small and medium-sized enterprises to the invitation to tender. The required evidence of financial capacity should be appropriate to the contract.

Aggregation rules should be included to make it difficult for authorities to evade the regulations by splitting their purchases into separate contracts, each of which fall below the contact value threshold for the rules to apply. There should also be an express prohibition that proscribes deliberate "contract splitting" to avoid the procurement rules.

3. MSMEs and fair competition in public tendering: bid-rigging vs joint bids

a. Rationale

MSMEs participation in public procurement is limited compared to their role in national economies. Supporting MSMEs to better access public procurement markets can help MSMEs find new opportunities and grow. In line with the development goals of the ECOWAS, competition policy is a tool for promoting fair play in public procurement. More interest from MSMEs is seen as a way to

[63] Guideline N° 04/2005/CM/UEMOA of 09 December 2005 on procedures for the award, execution and settlement of public contracts and public service delegations in WAEMU

maximise value for money. This is achieved not only through splitting bids or allowing consortia or joint tendering for larger bids, as provided for under Article 19 of the ECOWAS MSME Charter. It is also secured by preventing collusion or bid rigging during public tendering. Genuine competition for contracts is in the interest of both the public and MSMEs.

Joint bidding for public contracts is an opportunity to award contracts to MSMEs that, acting alone, are unable to reach sufficient levels of capacity and competitiveness. This distinction from bid-rigging is important because of the relevance of joint tendering to MSMEs, who due to the disadvantages of economic scale and industry status, are often unable to meet the full requirements of the bid. Where small businesses consider tendering with other businesses, through a consortium for example, it is important to clarify in the law whether such joint tendering may be assessed as a form of bid-rigging. Bid-rigging generally occurs when various businesses come together to agree that they will not compete with each other for tendered projects. It can take many forms. Certain parties could, for example, agree not to submit a bid or withdraw a previously submitted bid. Alternatively, parties could agree amongst themselves to take turns at winning tenders, or to submit unattractive cover bids at high prices to allow another party to win the tender. In essence, any conduct that reduces the competitive tension in the bidding process could constitute bid-rigging.

Some competition laws carve out a subset of bid-rigging conduct by providing a definition of bid-rigging that amounts to serious anti-competitive conduct (Serious Bid-rigging). This is distinct from bid-rigging that does not amount to a serious anti-competitive conduct (Non-serious Bid-rigging), a key difference between the two being that Serious Bid-rigging can only arise when the person calling the tender does not know of the coordination between the bidding parties; there being no such statutory requirement to establish a case of Non-serious Bid-rigging.

Where small businesses consider tendering with other businesses, it is important to clarify in the rules and regulations whether such joint tendering may be assessed as a form of bid-rigging. There are differences in how the conduct would be assessed, depending on whether it is to be seen as serious bid-rigging, non-serious bid-rigging or joint tendering. For example, if the conduct is seen as bid-rigging, the competition authority will assess it as an 'object restriction'. This means that it does not have to demonstrate that the conduct had anti-competitive effects to find an infringement. If it were only assessed as joint tendering conduct, the competition authority would adopt an effects analysis and examine the actual or likely effects of the conduct on competition, which would be more difficult to prove.

b. Identifying Options: Relevant National Developments

The Gambia's Competition Law, explicitly prohibits bid rigging agreements.[64] Under Article 26, bid rigging is defined as a horizontal agreement between enterprises whereby (a) one of the parties to the agreement agrees not to submit a bid or tender in response to a call or request for bids or tenders; or (b) the parties to the agreement agree on the price, terms or conditions of a bid or tender to be submitted in response to a call or request for bids or tenders. Article 28 sets out the consequences of participation in restrictive agreements subject to prohibition: a party to such an agreement is liable to

[64] Competition Act Chapter 96:01, Act no 4 of 2007. https://osall.org.za/docs/Gambia%20-%20Competition%20Act%204%20of%202007.pdf.

(a) a penalty or other remedy imposed by the Commission; and (b) a civil action by any person who has suffered or may suffer loss or damage by virtue of the agreement.

Botswana's Competition Law, which was enacted in 2009 and amended in 2018, includes provisions for bid rigging and public interest factors may be taken into consideration, such as the effect on the welfare of MSMEs and employment. The Botswana Competition Authority has been active in enforcing these provisions. Some of the alleged cases of bid rigging cases which the Competition Authority has investigated relate to public tenders for school rations, sugar beans, infant formula milk and, of particular interest to MSMEs, building materials and waste management.[65]

The **Hong Kong** Competition Law differentiates between Serious Bid-rigging and Non-serious Bid-rigging.[66] MSMEs are only prohibited from engaging in Serious Bid-rigging and other serious anti-competitive conduct. Other than that, MSMEs are exempted where the combined turnover of the parties engaged in the relevant conduct or agreement for the turnover period does not exceed a specified amount. Other parties that do not fall within the MSME Exemption would be prohibited from all types of bid-rigging – both serious and non-serious.

The Hong Kong Competition Law also differentiates bid-rigging from joint tendering. This distinction is important because of the relevance of joint tendering to MSMEs, who due to the disadvantages of economic scale and industry status, are often unable to meet the full requirements of the bid. Joint bidding for public contracts is an opportunity to award contracts to enterprises that, acting alone, are unable to reach sufficient levels of capacity and competitiveness. To enable this, Hong Kong's competition law Guidelines state that "[j]oint tendering generally involves undertakings cooperating openly with a view to making a joint bid. Such conduct can be contrasted with bid-rigging which more often involves collusion by competing bidders which nonetheless submit separate bids.[67]

In the EU, a consortium bid even between actual or potential competitors will not of itself breach competition law if all of the following conditions are met:

(i) none of the consortium members could fulfil the requirements of the tender competition or the contract on its own;

(ii) no subset of the consortium members could together fulfil the requirements of the tender competition or the contract;

(iii) only the minimum amount of information strictly necessary for the formulation of the joint bid and the performance of the contract (if awarded) is shared between the consortium members and is restricted to relevant staff on a 'need to know' basis; and

(iv) the consortium members ensure that they compete vigorously as normal in all other contexts.

[65] African competition law enforcement – 18 months in perspective. Norton Rose Fulbright (2016) www.nortonrosefulbright.com/en/knowledge/publications/7e8a7dca/african-competition-law-enforcement---18-months-in-perspective; Africa Guide to Competition. Baker Mckenzie. https://resourcehub.bakermckenzie.com/en/resources/africa-competition-guide/africa/botswana/topics/general

[66] See Hong Kong Competition Ordinance. The MSME exemption applies to companies with a turnover less than HK$200 million.

[67] The HKCC's First Conduct Rule Guidelines (Guidelines), 6.101

c. AfCFTA and ECOWAS Frameworks

Under Article 6 of the **AfCFTA Protocol on Competition**, collusive tendering or bid-rigging is prohibited per se, as a restrictive horizontal business practice. However, it does not make any distinction between collusive agreements and joint-tendering, which is of interest to MSMEs.

The **ECOWAS Supplementary Act** does not explicitly prohibit bid rigging. Article 5 on Agreements and Concerted Practices in restraint of Trade, prohibits all agreements between enterprises, decisions by associations of enterprises and concerted practices which may affect trade between ECOWAS Member States and the object or effect of which are or may be the prevention, restriction, distortion or elimination of competition within the Common Market, and in Particular those which: (a) directly or indirectly fix purchase or selling prices, terms of sale, or any other, trading conditions. While Article 5 is applicable to bid-rigging, it does not make any distinction between collusive agreements and joint-tendering, which would be of relevance to ECOWAS MSMES.

d. Policy Recommendations:

Promoting MSMEs in procurement markets: bid-rigging and joint-tendering

Where small businesses consider tendering with other businesses, as encouraged under the ECOWAS MSME Charter, it is important that the law clarifies whether joint tendering would be assessed as a form of bid-rigging to provide transparency over how the conduct will be assessed. Bid-rigging for public contracts occurs when various businesses come together to agree that they will not compete with each other for tendered projects.

To provide certainty, ECOWAS competition law should make a formal distinction between bid-rigging and joint tendering. ECOWAS competition authorities should be encouraged to communicate with public procurement contracting authorities on market competition related issues that may potentially affect both open markets and public procurement markets.

Tender requirements for MSMEs should be based on proportionality. ECOWAS members public procurement laws should include a public interest provision allowing for consideration of the vulnerable position MSMEs to be taken into account in decision making

4. Rights of Redress for MSMEs

a. Rationale

Rights of redress and enforcement are vital parts of effective competition law and policy. This is more important in the context of MSMEs because of their limited bargaining position compared to larger corporations. The challenge to MSMEs is likely to be exacerbated with the implementation of the AfCFTA, as it will open the ECOWAS market to penetration from larger corporations from other parts of the continent especially large economies such as South Africa. This is likely to increase the risk of unfair practices. It is therefore imperative to put in place within ECOWAS accessible, rigorous and

effective redress mechanisms for MSMEs. International best practice shows that multiple tools are employed for the enforcement of competition law. In an ideal situation the various tools should be complementary and work together to provide the most efficient and effective deterrence.

Enforcement mechanisms generally consist of public and private tools. An important point to note is that while public and private enforcement tools have the same goal of deterring anticompetitive behaviour, the incentive or objective for taking action are different. Public enforcement is targeted at improving general welfare. However, private enforcement is targeted at protecting the interests of claimants especially MSMEs who are impacted by anticompetitive practices usually through compensation. Usually, public enforcement is initiated by public authorities such as competition authorities, while the private mechanisms allow private entities such as MSMEs to initiate proceedings or have proceedings initiated on their behalf.

Where such private enforcement mechanisms are available and effective, they provide additional opportunities to widen the scope of deterrence and complement public enforcement. In most jurisdictions, however, the competition law is currently developed primarily as an administrative enforcement tool. It is a means for the state to intervene in the market to protect the interests of consumers against cartel practices as well as against abuses of market power by large companies. In jurisdictions with predominant administrative enforcement system, the competition authority plays a central role in enforcing competition law and effective competition enforcement relies almost exclusively on the capacity and abilities of competition authorities to detect, investigate, sanction and ultimately deter anti-competitive behaviours. In competition law systems based on strong public enforcement, private enforcement has to date played a minor role. This approach is prevalent both at the regional and domestic level across the African continent.

There are advantages that would benefit MSMEs and the wider market by facilitating private enforcement within the ECOWAS region. However, several areas need to be developed in order to facilitate redress through private enforcement. Primarily, there is a need to ensure private actions complement the public enforcement regime and this would necessarily include training and institution building within the national court systems. It would also entail maintaining and expanding on the protection afforded by the leniency programme. Leniency programmes allow individuals and corporations including MSMEs to report anti-competitive activities and avoid penalties if they meet the criteria set out in the programme.

The facilitation of availability of relevant evidence is also an important consideration in private enforcement. This would involve the use of the legal system to make evidence accessible. For instance, parties will have easier access to the evidence they need if provisions are made to enable them to ask the court to order other parties or third parties to produce evidence. The courts would have to ensure that disclosure orders are proportionate, and that confidential information is duly protected. In practice, there are two exceptions to the disclosure rules: leniency statements and settlement submissions in the competition authority's file are not allowed to be disclosed. Certain information produced within public enforcement proceedings can only be disclosed after the investigation is closed to preserve the integrity of the administrative investigation. It is also important to have clear limitation periods.

The promotion and facilitation of Alternative Dispute Resolution (ADR) mechanisms by the industries and other stakeholders is also an important strategy. This strategy is becoming common place internationally and it is usually emphasised in pre-action protocols and case management procedures.

b. Identifying Options: Relevant National Developments

In **South Africa,** a private enforcement procedure exists although aspects of the procedure need further clarification and development. Parties that have suffered loss due to anticompetitive practices may bring a claim for damages at the civil courts but only after the competition authorities have made a decision relating to the substantive allegation. Therefore, there is a link between the public enforcement process and the private enforcement procedure.

Sections 62 and 65(2) of the South Africa's Competition Act gives the competition authorities exclusive jurisdiction to determine whether a prohibited practice under the Act has occurred. However, the civil courts have exclusive jurisdiction to determine whether a claimant is entitled to damages, and the quantum of the damages. In addition, action for a civil claim for damages must be made within three years from the date on which the cause of action arose.

Variations of approaches to civil claim for damages exist in other national jurisdictions. For instance, in **Korea**, Article 56 of the Monopoly Regulation and Fair Trade Act (MRFTA), Liability for Damages states that "Any company or companies' organization violating the provisions of this Act and consequently causing damage to a person shall be liable for compensating such person for damage." However, if the company or entity is able to prove that there was neither intention nor fault, the provision is not applicable under the law.

There are also important insights from **the EU Directive 2014/104/EU**[68] that could be instructive in developing a regional strategy for ECOWAS. The EU Directive established the right of victims to obtain full compensation for the harm caused by an anti-competitive conduct. Full compensation includes actual losses and losses of profit, plus interest from the time the harm occurred until compensation is paid. In order to ensure that the right to full compensation is effectively guaranteed, the Directive allows indirect purchasers to establish a claim under the EU Directive. If price increases caused by an infringement have been passed on along the distribution chain, those who ultimately suffered the harm will be the ones entitled to claim compensation. By establishing a rebuttable presumption that victims suffered a part of the price increase, the Directive makes it easier for indirect purchasers to prove that a passing-on occurred.

The Directive also establishes a rebuttable presumption that cartels cause harm and allows national courts to estimate such harm. This will help victims in the often-difficult task of proving and quantifying the harm they have suffered. In addition, any participant in an infringement should be responsible towards the victims for the whole harm caused by the infringement, with the possibility of obtaining a contribution from other participants in the infringement for their share of responsibility.

[68] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance
OJ L 349, 5.12.2014

The effect of national decisions within the EU framework is also notable. Within the EU, the decisions of national competition authorities automatically constitute full proof of the infringement before the courts of the same Member State. Decisions of competition authorities of other Member States will also constitute a prima facie evidence of the infringement. A damage claim can be filed within 5 years from the moment when the harm from an infringement is discovered; the limitation period is suspended during the investigation of the competition authority, and actions can be brought until after 1 year after the agency's final decision.

The facilitation Consensual Dispute Resolution is an important aspect of the EU framework. To achieve compensation faster and at lesser cost, it is possible to settle damages claims out of court. The Directive provides for the suspension of limitation periods/pending court proceedings to allow parties sufficient time to try and reach a consensual settlement, without the risk of losing procedural rights in the meantime.

c. AFCFTA & ECOWAS frameworks

The **AfCFTA Protocol on Competition** has taken the public/administrative enforcement route. This is shown with the establishment of the AfCFTA Competition Authority in Article 13 and the establishment of the AfCFTA Competition Tribunal/Court in Article 25. This approach reflects the predominant approach taken at the domestic and regional levels across the continent. However, in the long term, engaging with private enforcement would be greatly beneficial to MSMEs across the continent as it would provide an additional avenue for seeking redress against anti-competitive practices.

The public/administrative enforcement approach has also been taken under the current **ECOWAS** Competition framework. The ECOWAS Competition Authority was established for the purposes of enforcement by the Supplementary Act A/A.2/12/08 On the Establishment, Functions and Operation of the ECOWAS Regional Competition Authority (ERCA). The ECOWAS Community Court of Justice exercises appellate jurisdiction under the supplementary Act.

Alternative Dispute Resolution (ADR) mechanisms are absent from both the AfCFTA and ECOWAS frameworks.

d. Policy Recommendations:

MSMEs and Redress

With the support of ERCA and ECOWAS regional bodies, ECOWAS Members should expedite the harmonisation of compensation and sanctions under the framework of the ECOWAS regional competition Supplementary Act.

The ECOWAS Competition Consultative Committee (CCC) should ensure an opportunity for ECOWAS private sector representation in deliberations, subject to confidentiality clauses, non-disclosure rules and avoiding conflicts of interest.

A fast track for competition cases should be established at the national level to avoid prolonged injury to MSMEs from anticompetitive practices.

Alternative Dispute Resolution platforms should be developed and harmonised in line with the ECOWAS Supplementary Act and MSME Charter at the ECOWAS and MS level.

Annex

Table 1. Overview of Competition Regimes in ECOWAS and ECOWAS Member Countries

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	Cartel Control **Abuse of Dominance** **Merger Control** **State aid**	**Independent body** **Regulators**	**Resolved cases** **Investigations**
Benin	At the national level, Competition Law No 2016-25 dated 4 November 2016 ("the Act") governs the competition law regime in Benin Republic. [69] The main aim of the act is to provide consumers with competitive prices, freedom in the choice of products, stimulate the national economy and the community economy, contribute to improving the competitiveness of national and community products on regional and international markets and ensure that all businesses have an equal opportunity to participate in the development of the national economy and the community economy.[70] The act expressly prohibits anti-competitive practices including the abuse of a dominant position, anti-competitive agreements and the provision of state aid to suppress competition within a given sector of the Benin Republic economy. [71]	The statutory authority that is conferred with the responsibility of enforcing competition law in Benin Republic is the Ministry of Trade, Industry, and Employment Promotion. [73] As Benin is a member of the West African Economic and Monetary Union (WAEMU), Benin's national authority and the WAEMU are responsible for monitoring different aspects of the competition law regime in Benin Republic. For instance, the WAEMU has the exclusive prerogative of overseeing all matters relating to merger control and obtains the exclusive responsibility to impose sanctions on firms engaging in anti-competitive practices in Benin, whilst the competition commission is empowered to	• There are no resolved cases or ongoing investigations involving competition law in Benin.

[69]The act can be accessed via this link (the provisions are provided for in French)- https://www.africa-laws.org/Benin/Competition%20law/Loi%20N%C2%B0%202016-25%20portant%20organisation%20de%20la%20concurrence%20en%20R%C3%A9publique%20du%20B%C3%A9nin.pdf .

[70] Law on the Organisation of Competition Law in Benin Republic dated 4 November 2016, article 2

[71] Ibid, article 6

[73] See Federal Trade Commission Website- https://www.ftc.gov/policy/international/competition-consumer-protection-agencies-worldwide.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	There are no provisions relating to merger control in the act. Nonetheless, Benin Republic is a member of the West African and Economic Monetary Union (WAEMU). Accordingly, Benin Republic's competition regime is subject to the regulations of the WAEMU. Merger control in Benin is governed by the WAEMU at the regional level. Merger notification is voluntary. [72] Accordingly, the merging parties may consolidate without the approval of the WAEMU. As there is no requirement for prior notification, the merging parties will not be subject to a fine unless the merger amounts to an abuse of a dominant market position. If liable for such an offence, the WAEMU may issue a fine ranging from five hundred thousand CFA Francs to one hundred million CFA francs and the commission can order the non-implementation of the transaction, modify the transaction or take the requisite steps to ensure sufficient competition. If the merging parties wish to do so, they may seek the consultation of the commission before the finalisation of the transaction.	monitor its internal market and report any anti-competitive conduct.[74]	
Burkina Faso	On April 27th, 2017, the National Assembly of Burkina Faso passed the Competition Act 2017 ("the act"). [75] The act was a successor to the previous Competition	Established in 2017, the statutory authority responsible for reviewing competition matters in Burkina Faso is the National	There are no decided cases or ongoing investigations involving competition law in Burkina

[72] Directive No 02/2002/CM/UEMOA.
[74] Directive No. 02/2002/CM/UEMOA.

[75]A copy of Burkina Faso's Competition Act 2017 can be viewed via this link- https://www.assembleenationale.bf/IMG/pdf/loi_016-2017_organisation_concurrence_au_bf.pdf. N.B its previsions are ascribed in French.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	Act enacted in 1994 and last amended in 2001. The act aims to harmonize national and regional competition rules as well as clarify the relationship between national and regional competition authorities such as the West African and Economic Monetary Union (WAEMU). Developments of the act were the significant increase in fines payable for transgressors of competition law, an increase in investigations into anti-competitive practices and the increase of statutory protection offered to consumers. Pursuant to Directive No 02/2002/CM/UEMOA, the WAEMU exercises exclusive competence in certain areas including merger control. As provided by section 11 of the act, the National Commission for Competition and Consumption (NCC) of Burkina Faso, shall act in accordance with the regulations of the WAEMU. Moreover, section 18 of the act prescribes that concentrations (i.e., mergers, acquisitions or any other business combination) filed to the NCC shall be subject to an examination and approval of the WAEMU. According to the regulations of the WAEMU, Merger notification is voluntary. [76] Accordingly, the merging parties may consolidate without the approval of the WAEMU. As there is no requirement for prior	Commission for Competition and Consumption (Commission Nationale pour la Concurrence et la Consommation).[79] The NCC in tandem with the WAEMU, are responsible for overseeing the implementation of competition law in Burkina Faso. The NCC and the WAEMU are responsible for regulating distinct areas of competition law. For instance, the NCC prevents anti-competitive activities which may affect consumers, whilst the WAEMU oversees the regulation of merger transactions with the opinion of the NCC. The current president of the commission is Mrs Bibata Nebie.	Faso. Nonetheless, the commission has launched investigations into the markets for edible oils, hydrocarbons and sugary drinks. [80]

[76] Directive No 02/2002/CM/UEMOA.
[79] See the commission's website for more information - https://cncc.bf/.
[80] See the report written by Baker McKenzie on the competition law regime in various African countries on pg 14- https://www.bakermckenzie.com/-/media/files/insight/publications/2019/10/baker-mckenzie_competition-in-africa-report.pdf.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	notification, the merging parties may not be subject to a fine unless the merger amounts to an abuse of a dominant market position. If liable for such an offence, the WAEMU may issue a fine ranging from five hundred thousand CFA Francs to one hundred million CFA francs and the commission may nullify or modify the transaction or take the requisite steps to ensure sufficient competition within the breaching party's operating market. If the merging parties wish to do so, they may seek the consultation of the commission before the finalisation of the transaction. Anti-competitive agreements or abuses of dominant position are expressly prohibited by the WAEMU[77] If an enterprise is found liable for such an offence, they shall face financial sanctions amounting to CFA 500,000 and CFA 100,000,000. [78]		
Cabo Verde	The competition law regime in Cabo Verde is codified in the Competition Act ("the act") which is approved by Decree-Law No 53/2003 of 24 November 2003.[81] The act applies to all economic activities whether temporary or permanent in nature or in the private, public or cooperative sectors. [82] The act expressly prohibits an enterprise's abuse of its dominant market	The body responsible for overseeing the implementation of competition law in Cabo Verde is the Ministry of Industry, Trade and Energy (MITE) in tandem with the National Directorate for Industry, Trade and Energy which is responsible for carrying out research and checks.[88] The competition	There are no resolved cases or ongoing investigations involving competition law in Cabo Verde.

[77] Law No. 016-2017/AN of 27 April 2017 on organizing competition in Burkina Faso, section 91.
[78] Directive No 02/2002/CM/UEMOA.
[81] Can be accessed via < https://www.wto.org/english/thewto_e/acc_e/cpv_e/wtacccpv20a2_leg_4.pdf >.
[82] Decree-Law no 53/2003 of 24 November 2003, section 1, article 1 Ambit.
[88] Ibid, article 12.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	position.[83] Pursuant to the act, an enterprise is presumed to be in a dominant position if they maintain a market share equal to or greater than 30% of the supply of a particular good or service.[84] The act requires prior notification of any grouping (merger or acquisition) which amounts or is likely to amount to 30% or over the market share of the concerned good or service and requires notification of any grouping greater than one billion CVE.[85] Groupings that require prior notification can be prohibited if they strengthen an enterprise's dominant position or are likely to stifle competition in a particular market. [86] However, such groupings can be permitted if they are likely to strengthen the international competitiveness of the participating enterprises.[87]	council is conferred with the responsibility of providing a supportive role to the MITE on matters of competition law. [89] In fulfilment of this role, the council is to *inter alia,* decide on matters restricting competition law, formulate opinions on grouping operations prior to notification and apply fines when necessary. Although the Government has announced the creation of the Council, it has not been formally established. Several regulatory authorities have been established to deal with certain sectors operating in Cabo Verde. For instance, the Agência Reguladora Multissectorial da Economia (ARME)- a multi-sectoral agency created Decree-Law No 50/2018 is tasked with regulation over sectors including communications, energy, water, postal services and passenger transport. Until the establishment of the Competition council, the ARME shall take up an advisory role in merger control in the aforementioned sectors.[90]	

[83] Ibid, article 3.
[84] Ibid, article 3(3).
[85] Ibid, article 7(1).
[86] Ibid, article 10.
[87] Ibid.
[89] Ibid, article 13.
[90] Competition Guide provided by Baker McKenzie- https://resourcehub.bakermckenzie.com/en/resources/africa-competition-guide/africa/cape-verde/topics/general .

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
Cote d'Ivoire	The competition law regime in Cote D'Ivoire is codified in ordinance no 2013-662 of 20 September 2013. [91] The order prohibits any anti-competitive practice or acts amounting to the abuse of a corporation's dominant market position.[92] Article 3 of the order states that the Government shall regulate the prices of goods and services of primary necessity or mass consumption after consultation with the competition commission. Moreover, the article stipulates that the Government may after obtaining the opinion of the competition authority, implement measures aimed at preventing excessive price increases. Failure to comply with these measures may result in the offending party obtaining a fine ranging from five hundred thousand to one hundred million CFA Francs. [93] Cote' D'Ivoire is a member of the West African Economic and Monetary Union (WAEMU) which was established by the Treaty of Dakar in 1994. Therefore, Cote D'Ivoire is subject to the competition rules and regulations of the WAEMU. Merger control in Cote D'Ivoire is governed by the WAEMU at the regional level. Merger notification is voluntary. [94] Accordingly,	The Competition Commission is the regulatory body that enforces both domestic competition law and the provisions of the WAEMU in Cote D'Ivoire. The Competition Commission was established in 2014. In 2017, the Government set up the National Council to monitor the prices of everyday commodities for consumption.[95] The National Council is allowed to fix the prices of goods and services following adequate consultation from the Competition Commission. Such could be achieved by the Government stabilising the prices of consumer goods in cases of significant market disruption or guarding against market speculation to maintain customer purchasing power.	There have been no decided or ongoing cases involving the enforcement of competition law in Cote d'Ivoire.

[91] Ordinance no 2013-662 of September 20 relating to competition. See the original version transcribed in French < http://extwprlegs1.fao.org/docs/pdf/IVC178167.pdf >.
[92] Ibid, article 11-12.
[93] Ibid, article 4.
[94] Directive No 02/2002/CM/UEMOA.
[95] Bertelsmann Stiftung, BTI 2022 - Country Report- Cote d'Ivoire < https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_CIV.pdf > Accessed 3 July 2022. Pg 17.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	the merging parties can consolidate without the approval of the WAEMU. As there is no requirement for prior notification, the merging parties will not be subject to a fine unless the merger amounts to an abuse of a dominant market position. If liable for such an offence, the WAEMU may issue a fine ranging from five hundred thousand CFA Francs to one hundred million CFA francs and the commission can order the non-implementation of the transaction, modify the transaction or take the requisite steps to ensure sufficient competition. If the merging parties wish to do so, they may seek the consultation of the commission before the finalisation of the transaction.		
The Gambia	The competition law regime in the Gambia is codified in the Competition Act ("the Act") which was enacted in 2007.[96] The main objective of the act is to "promote competition in the supply of goods and services by establishing a Commission, by prohibiting collusive agreements and bid-rigging, by providing for investigation and control of other types of restrictive agreements and monopoly and merger situations, by promoting understanding of the benefits of competition and to provide for other connected	The independent body charged with the responsibility of enforcing competition law is the Gambia Competition and Consumer Protection Commission (GCCPC). Established in 2007, the institution obtained its authority through the enactment of the Competition Act 2007 and operates under the purview of the Ministry of Trade and Industry. The GCCPC is primarily responsible	• On the 18th of January 2010, the GCCPC released a press statement to various commercial banks expressing its concern with the interbank fund transfer system. [102] The institution released the following statement:

[96] Competition Act Chapter 96:01, Act no 4 of 2007. The act can be viewed via this link- https://osall.org.za/docs/Gambia%20-%20Competition%20Act%204%20of%202007.pdf.
[102] The press release can be viewed via - https://gcc.gm/wp-content/uploads/2018/06/Press-release-interbank.pdf.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	matters".[97] The act expressly prohibits the emergence of monopolies. According to the act, a monopoly exists where 30% or more of a particular good or service is supplied by one enterprise or seventy per cent or more of a particular good or service is provided by three or fewer enterprises.[98] Where a monopoly exists, the commission shall carry out an investigation into the offending party.[99] Currently, the Commission has decided not to deal with matters relating to merger control as provided under the act as its provisions are yet to be finalised and become effective. Thus, merger control is currently governed by the Companies Act. [100] Acts including the Consumer Protection Act 2014, the Essential Commodities Act 2015 and the Information Communication Act 2009 are other relevant provisions to ensure free and fair prices for consumers.	for enforcing three acts, namely, The Competition Act 2007, the Essential Commodities Act 2015, and the Consumer Protection Act 2014. Furthermore, institutions such as the Public Utilities Authority (PURA) and the Central Bank have the mandate to regulate competition in the telecommunications and banking sectors respectively.[101] The institution is headed by Amadou Ceesay who occupies the position of the Executive Secretary of the organisation.	"When payment is made to the employer's bank, it can take up to 72 hours before the money gets to the account of employees who do not have an account with the bank of the employer. This has forced many people to leave the banks of their choice for the employer's bank to receive timely payment. This conduct constitutes a flagrant violation of section 31 of the Competition Act 2007. Any commercial bank involved in this anti-competitive conduct should desist from it with immediate effect." • As it pertains to cases involving merger control, no cases have been decided by the GCCPC as the regulations that are required to be adhered to

[97] Ibid, preamble.
[98] Ibid, section 31.
[99] Ibid, section 32.
[100] See the report provided by the British Transformation Index- < https://bti-project.org/en/reports/country-report/GMB >.
[101] Dela Tsikata- A *Time for Action: Analysis of Competition Law Regimes of Select West African Countries Volume I: Gambia, Ghana and Nigeria* (2010) CUTS International.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
			under section 33 of the act are yet to be enacted.
Ghana	There is no overarching legislation governing the competition law regime in Ghana. In 2004, the Ghanaian parliament drafted the Competition and Fair-Trade Practices Bill (the Competition Bill) which was intended to fulfil such purposes. Nonetheless, the bill is yet to be ratified into law since its proposal and there is no indication as to when such shall be done.[103] Currently, the legislation which is similar in nature and makes reference to the expression "competition" in Ghana, is the Protection Against Unfair Competition Act 2000.[104] However, the bill does not apply to usual anti-trust or competition law matters such as mergers or acquisitions. Generally, its scope of application is prescribed to govern the protection of business goodwill or reputation[105], proprietary information[106] and the prohibition of identifiers which would confuse or would likely confuse a business with another business.[107]	As there is no overarching legislation that governs competition law in Ghana, the institutions which regulate competition law and in certain sectors merger control, are industry specific. The following are some notable sectors along with their relevant provisions and regulators in Ghana: [109] **Sector-** Banking **Law-** Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) **Regulator-** Bank of Ghana **Sector**- Mining **Law**- Minerals and Mining Act, 2006 (Act 703) (Mining Act) **Regulator**- Minerals Commission **Sector**- Energy **Law**- Energy Commission Act 1997 (Act 541)	• For numerous years, prior to its acquisition by Vodafone, the state-owned Ghana Telecom (GT) was accused of abusing its market position as the predominant telecommunications provider in Ghana.[110] GT was purported to have charged unfair and arbitrary prices for its fixed telecommunications services to its customers. • In 2020, the National Communications Authority (NCA) declared the multinational telecommunications

[103] Kimathi Kuenyehia in an article provided by Baker McKenzie- < https://www.bakermckenzie.com/-/media/files/insight/publications/2021/05/competitioninafricareport16apr21_003_12211.pdf >. Accessed 29 June 2022.
[104] Protection Against Unfair Competition Act, 2000 (Act 589).
[105] Ibid, s2.
[106] Ibid, s5.
[107] Ibid, s4.
[109] Table provided by Bowmans Law, < https://www.bowmanslaw.com/wp-content/uploads/2016/12/Competition-Africa-Guide-2018.pdf > pg 29. Accessed 29 June 2022.
[110] Dela Tsikata A *Time for Action: Analysis of Competition Law Regimes of Select West African Countries Volume I: Gambia, Ghana and Nigeria* (2010) CUTS International 94.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	Merger control provisions of public companies are contained in the Securities Industry Act.[108] The Securities and Exchange Commission (SEC) is mandated to review and approve all takeovers, mergers and acquisitions consisting of 30% or more of the shares of a company listed on the Ghana Stock Exchange or its holding company.	**Regulator**- Energy Commission **Sector** – Aviation **Law** - Ghana Civil Aviation Act 2004 (Act 678) **Regulator**- Ghana Civil Aviation Authority **Sector**- Telecommunication **Law**- Electronic Communications Act, 2008 (Act 775) (ECA) **Regulator**- National Communication Authority **Sector**- Pensions **Law**- National Pensions Act, 2008 (Act 766) **Regulator**- National Pensions Regulatory Authority **Sector**- Insurance **Law**- Insurance Act 2006, (Act 724) (Insurance Act) **Regulator**- National Insurance Commission **Sector-** Public utilities: electricity and water **Law** – Public Utilities Regulatory Commission Act, 1997 (Act 538)	company, MTN a Significant Market Power (SMP) in the Ghanaian telecommunications industry.[111] A company is determined to be a Significant Market Power if they occupy at least 40% of the market share in which they operate. According to the NCA, industry statistics revealed that MTN held almost 75% of the telecommunications market share in Ghana as of 2020. As a result of these findings, the regulators implemented a series of remedies including the implementation of a favourable connection rate for disadvantaged operators, the establishment of floor and price ceilings on all services and ensuring that other

[108] Securities Industry Act 2016 (Act 929), s3.

[111] Samuel Dowuona, "Correcting the telecom market imbalance- the co-location tower cost factor" (BFT, 2022) < https://thebftonline.com/2022/03/10/correcting-the-telecom-market-imbalance-the-co-location-tower-cost-factor/#:~:text=Government%2C%20in%20June%202020%2C%20declared,one%20to%20be%20declared%20SMP> Accessed 30 June 2022.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
		Regulator- Public Utilities and Regulatory Commission **Sector-** Petroleum, Oil & Gas **Law- Petroleum** (Exploration and Production) Act, 2016 (Act 919) **Regulator-** Petroleum Commission	vendors are not subject to exclusionary pricing. • Accusations of unfair pricing have also been made in Ghana's cement industry.[112] The Ministry of Trade and Industry has cautioned Ghana's major supplier of cement- Ghacem to adhere to fair trade practices intended to promote healthy competition in the cement industry. These accusations were made following the company's alleged use of bribery to consolidate its dominance in the cement industry.
Guinea	There appears to be no public information available as to whether Guinea operates under a competition law regime. Nonetheless, as Guinea is a member of the West African Economic and Monetary Union (WAEMU), Directive 02/2002/CM/UEMOA,) prescribes that the WAEMU obtains the exclusive prerogative of investigating and clearing merger transactions. Prior	There are no national authorities that are responsible for regulating competition law in Guinea. The West African and Economic Monetary Union (WAEMU) is responsible for regulating merger transactions in Guinea. Furthermore, it ought to be noted that Guinea is a member of other regulatory	There have been no decided cases or ongoing investigations pertaining to the enforcement of competition law in Guinea.

[112] Dela Tsikata A *Time for Action: Analysis of Competition Law Regimes of Select West African Countries Volume I: Gambia, Ghana and Nigeria* (2010) CUTS International 102.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	Merger notification is voluntary. [113] Accordingly, the merging parties can consolidate without the approval of the WAEMU. As there is no requirement for prior notification, the merging parties will not be subject to a fine unless the merger amounts to the abuse of a dominant market position. If liable for such an offence, the WAEMU may issue a fine ranging from five hundred thousand CFA Francs to one hundred million CFA francs. Furthermore, the commission has the power to nullify the transaction, modify the transaction or take the requisite steps to ensure sufficient competition in the party's operating market. If the merging parties wish to do so, they may seek the consultation of the commission before the finalisation of the merger.	bodies such as the Organization for the Harmonization of Business Law in Africa (OHADA). However, OHADA does not have a competition law regime in place and there appears to be no indication of when such shall be done.[114]	
Guinea-Bissau	There are no domestic law provisions governing competition law in Guinea Bissau. Nonetheless, as Guinea- Bissau is a member of the West African Economic and Monetary Union (WAEMU), Directive 02/2002/CM/UEMOA,) prescribes that the WAEMU obtains the exclusive prerogative of investigating and clearing merger transactions. Prior Merger notification is voluntary. [115] Accordingly, the merging parties can consolidate without the approval of the WAEMU. As there is no requirement for prior notification, the merging parties will not be subject to a fine unless the	There are no national authorities that are responsible for regulating competition law in Guinea- Bissau. Nonetheless, The West African and Economic Monetary Union (WAEMU) is responsible for regulating merger transactions in Guinea. Furthermore, it ought to be noted that Guinea-Bissau is a member of other	There have been no decided cases or ongoing investigations pertaining to the enforcement of competition law in Guinea.

[113] Directive No 02/2002/CM/UEMOA.
[114] See OHADA's website- https://www.ohada.org/en/.
[115] Directive No 02/2002/CM/UEMOA.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	merger amounts to the abuse of a dominant market position. If liable for such an offence, the WAEMU may issue a fine ranging from five hundred thousand CFA Francs to one hundred million CFA francs. Furthermore, the commission has the power to nullify the transaction, modify the transaction or take the requisite steps to ensure sufficient competition in the party's operating market. If the merging parties wish to do so, they may seek the consultation of the commission before the finalisation of the merger. The WAEMU regulations also preclude anti-competitive practices including the abuse of a dominant position.	regulatory bodies such as the Organization for the Harmonization of Business Law in Africa (OHADA). However, OHADA does not have a competition law regime in place and there appears to be no indication of when such shall be done.[116]	
Liberia	In 2016, the Liberian Government passed a competition act titled "An Act to Enact The Competition Law of Liberia to Provide For an Efficient Free Market System" ("the act").[117] The act was created in 2016 to bolster economic development and curtail the abuse of market power. The Competition Act regulates both matters concerning merger control and other anti-competitive practices having an effect on the Liberian economy. According to the act, a merger is a direct or indirect acquisition or establishment of a controlling share of a business competitor, supplier, customer or other	The main institutions responsible for overseeing the implementation of competition law in Liberia are the Ministry of Commerce and Industry and the courts. The primary responsibility of the Ministry is to foster healthy competition amongst individuals and corporations, whilst the court has the jurisdiction to impose fines for transgressions of competition law. The head of the Ministry of Commerce and Industry is Hon. Mawine G. Diggs. [122]	There have been no decided cases or ongoing investigations pertaining to the enforcement of competition law in Liberia.

[116] See OHADA's website- https://www.ohada.org/en/.
[117] A PDF version of the act can be viewed here- https://www.moci.gov.lr/doc/Competition%20Law.compressed.pdf.
[122] See Liberia's Ministry of Commerce and Industry's website- https://www.moci.gov.lr/2staff.php?staff=82&related=1&third=107&pg=st.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	person. [118] Moreover, the act enables the court to take the requisite steps to nullify a proposed merger if it may substantially lessen competition in a given trade, industry or profession. [119] In determining whether a merger may lessen competition in a given market, the court shall consider a variety of factors including the extent to which other companies may provide effective competition to the merging parties, the extent to which other substitute products may be available or whether the business of a party to the merger has failed or is likely to fail.[120] The act expressly prohibits anti-competitive practices. For instance, the act prohibits the act of price-fixing. Such an offence results in a penalty fine not exceeding $100,000. [121] The abuse of a dominant position is also prohibited by the act. According to the act, a party abuses its dominant position if they control a market share greater than 35% of the supply of a particular product or service and engages in anti-competitive acts which has or are likely to have the effect of preventing or substantially reducing competition in the party's operating market.		
Mali	In 2016, the National Assembly of Mali adopted a new act which was intended to clarify and broaden the	The national authority responsible for overseeing the implementation of competition law in Mali is the National	• In the case of Sotlema-Malitel v Orange Mali, Sotlema- Malitel felt

[118] The Competition Act, section 10.
[119] Ibid, section 10.2.
[120] Ibid, section 10.3.
[121] Ibid, section 5.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	scope of application of competition law in Mali. [123] Amongst the new developments of the act was the clear definition of various anti-competitive practices, a broad definition of concentrations (mergers), the increase of fines payable for the transgression of competition law and the establishment of a national competition commission. As it pertains to merger control, there is legal uncertainty as to whether such matters should be regulated at the national level or the regional level (WAEMU) as Mali does not acknowledge the exclusive jurisdiction of the WAEMU to regulate transactions in this area. Nonetheless, the act expressly prohibits mergers that may result in an effective reduction of competition within an industry.[124] Contrary to the provisions of the WAEMU, merger notification is mandatory as the act stipulates that any acquisition, merger or any other business combination must be approved by the authority in charge of regulating competition in Mali.[125] Mergers which will or are likely to reduce competition amongst enterprises in Mali, are to be declared null, void and without legal effect.[126] Mergers which may result in a reduction of	Directorate for Trade, Consumption and Competition are otherwise known as *Direction Générale du Commerce, de la Consumption et de la Concurrence.*[132] The directorate is responsible for enforcing and promoting healthy trade practices to facilitate economic and social development in Mali. Moreover, the National Competition Council performs an advisory role to the directorate in this area. The directorate is headed by the by the Director General who is appointed by a decree issued by the Council of Ministers.	precluded from a cost-free reciprocal roaming service between Senegal and Mali that certain telecommunications networks had offered. Sotlema claimed that such exclusion was due to the company not being a member of the network. This case is still ongoing and is yet to be decided by the WAEMU.[133]

[123] Loi No 2016-006/ DU Fevrier 2016 Portant Organisation De La Concurrence. The electronic version of the act can be viewed- https://www.droit-afrique.com/uploads/Mali-Loi-2016-06-concurrence.
[124] Loi No 2016-006/ DU Fevrier 2016 Portant Organisation De La Concurrence, section 3 Article 6.
[125] Ibid.
[126] Ibid, Section 3 Article 7.
[132] See the commission's website- https://sgg-mali.ml/fr/accueil.html.
[133] Josef Drexel, *Competition Policy and Regional Integration in Developing Countries* (Edward Elgar, 2012) 102.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	competition may be approved if they are deemed to be in the best interest of the public. [127] Moreover, the act prohibits anti-competitive practices including abuses of economic dependence[128] and abuses of a dominant position.[129] If liable for any of the aforementioned offences, the offending party shall pay a fine ranging from 50,000,000 CFA Francs to 100,000,000 CFA Francs.[130] This Fine can be increased up to 10% of the infringing party's annual turnover. Mali is also subject to the WAEMU provisions. The WAEMU may also issue a fine ranging from 50,000,000 CFA Francs to 100,000,000 CFA Francs and may increase to 10% of the infringing party's annual turnover. [131]		
Niger	At the national level, the Niger Competition Act (Law No 2019-56 dated 22 November 2019), governs competition law in Niger.[134] The purpose of the act is to enshrine the principles of free pricing, free competition, and consumer protection. The act was enshrined to not only address the shortcomings of the law on Prices and Competition adopted in 1992 but to integrate into domestic law, the requirements of the	There are no national authorities that oversee the implementation of competition law in Niger. Nonetheless, the West African and Economic Monetary Union (WAEMU) is responsible for regulating merger transactions in Niger.	There have been no decided cases or ongoing investigations pertaining to the enforcement of competition law in Niger.

[127] Ibid, Section 3 Article 8.
[128] Ibid, Article 16.
[129] Ibid, Article 5.
[130] Ibid, Article 22.
[131] Directive No 02/2002/CM/UEMOA.
[134] A PDF version of the act can be accessed here- file:///Users/emmanuelakintoye/Downloads/Loi_n_2019_56_portant_organisation_de_la_concurrence_au_Niger.pdf.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	West African Economic and Monetary Union (WAEMU) on competition.[135] Niger is subject to the provision of the WAEMU on competition law. As Niger is a member of the West African Economic and Monetary Union (WAEMU), Directive 02/2002/CM/UEMOA,) prescribes that the WAEMU obtains the exclusive prerogative of investigating and clearing merger transactions. Prior Merger notification is voluntary. [136] Accordingly, the merging parties can consolidate without the approval of the WAEMU. As there is no requirement for prior notification, the merging parties will not be subject to a fine unless the merger amounts to the abuse of a dominant market position. If liable for such an offence, the WAEMU may issue a fine ranging from five hundred thousand CFA Francs to one hundred million CFA francs. Furthermore, the commission has the power to nullify the transaction, modify the transaction or take the requisite steps to ensure sufficient competition in the party's operating market. If the merging parties wish to do so, they may seek the consultation of the commission before the finalisation of the merger.		
Nigeria	The competition law regime in Nigeria is codified in the Federal Competition and Consumer Protection Act	The Federal Competition and Consumer Protection Commission (FCCPC) is the	Since the FCCPC's inception in 2018, the institution appears to

[135] Agence Nigerienne De Presse, "MPs adopt the Law Regulating Competition in Niger" (2019) < http://www.anp.ne/index.php/article/les-deputes-adoptent-la-loi-regulant-la-concurrence-au-niger> Accessed 13 July 2022.
[136] Directive No 02/2002/CM/UEMOA.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	(FCCPA) ("the Act") which was enacted by the Nigerian National Assembly in December 2018. The act repealed the preceding Consumer Protection Council Act. Consequently, dissolving its former regulatory body, the Consumer Protection Council. The act seeks to provide an all-encompassing set of rules for governing the application of competition law in Nigeria. The act aims to *inter alia*, strengthen and promote healthy business practices amongst individuals and corporations partaking in commercial activities by "eliminating monopolies, prohibiting abuse of a dominant market position and penalising other restrictive trade and business practices".[137] The scope of the act governs all commercial activities which are undertaken within or having an effect in Nigeria.[138] Such includes corporate bodies or agencies acting on behalf of the Government of the Federal Republic of Nigeria.[139]	regulatory body conferred with the prerogative of promoting healthy competition practices amongst individuals and corporations engaging in commercial activities within Nigeria.[151] The commission was established via the powers vested in the Federal Competition and Consumers Protection Act (FCCPA) in 2018.[152] The FCCPC's scope of authority regulates every industry operating within Nigeria. The commission is chaired by Barrister Emeka Nwankpa with Babatunde Irukera occupying the position of Chief Executive Officer (CEO). Moreover, The Competition and Consumer Protection Tribunal (CCPT) is saddled with the duty of adjudicating decisions arrived by the FCCPC if contested by the accused party or parties. [153]	deploy a vigorous approach to tackling anti-competitive practices carried out by large corporations in Nigeria. The following are a few cases amongst many: • In June 2020, the FCCPC successfully arraigned four major pharmaceutical companies and supermarkets for the alleged price-fixing of hygiene products including hand sanitisers and anti-bacterial wipes during the covid-19 outbreak.[154] • Nigeria's major telecommunications companies are currently under investigation by the FCCPC for the arbitrary

[137] The Federal Competition and Consumer Protection Act 2018, explanatory memorandum.
[138] Ibid, s2.
[139] Ibid, s2(2)(a).
[151] The Federal Competition and Consumer Protection Act, s3. See also Dickson Tonye "Federal Competition and Consumer Protection Commission" *Federal Competition and Consumer Protection Commission.* Accessed 26 June 2022.
[152] Ibid.
[153] The Federal Competition and Consumer Protection Act, s39.
[154] FCCPC, 'Covid-19 Response: FCCPC Receives FG Award' (FCCPC, 2020) < https://www.fccpc.gov.ng/news-events/releases/2020/08/19/covid-19-response-fccpc-receives-fg-award/> Accessed 26 June 2022. See also James Emejo, 'FCCPC Reads Riot Act to Supermarket Operators' (This Day, 2020) < https://www.thisdaylive.com/index.php/2021/06/04/fccpc-reads-riot-act-to-supermarket-operators/ > Accessed 26 June 2022.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	The act establishes The Federal Competition and Consumer Protection Commission (FCCPC) to govern all matters pertaining to the merger or any other combination of a business entity.[140] The power to approve mergers is currently the sole responsibility of the FCCPC in lieu of the Securities and Exchange Commission as was provided under the previous act. The act provides a distinction between a "large merger" and a "small merger".[141] The latter does not require any regulatory approval by the FCCPC unless informed to do so within six months of closing the deal,[142] whilst the latter does. Nonetheless, a definitive threshold of what shall trigger the emergence of a large merger is not clearly stipulated by the act as such threshold is to be determined on an ad-hoc basis by the commission.[143] The act prohibits the abuse of a dominant position in any industry by any business undertaking.[144] According to the act, a party abuses their dominant position if they use their position of economic strength to prevent		increase in the price of voice calls and SMS text messages [155] and; • Multichoice which controls a market share comprising over 70% of Nigeria's television broadcasting industry is currently being engaged by the FCCPC for an alleged unjustified increase in the price of its TV subscription packages.[156]

[140] Ibid, s92.
[141] Ibid, s92(4).
[142] Ibid, s95(1)(a).
[143] Ibid, s92(4).
[144] Ibid, s70(1).
[155] Mayowa Oladeji, 'Telcos Under Investigation for Unfair Pricing, as FCCPC Pledges Fairness, Sanity' (Ripples Nigeria, 2022) < https://www.ripplesnigeria.com/telcos-under-investigation-for-unfair-pricing-as-fccpc-pledges-fairness-sanity/ > Accessed 26 June 2022.
[156] Nsikak Nseyen, 'FCCPC Takes Action as Multichoice increases DSTV/GOTV Subscription' (Daily Post, 2022) < https://dailypost.ng/2022/03/23/fccpc-takes-action-as-multichoice-increases-dstv-gotv-subscription/ > Accessed 26 June 2022.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	effective competition within its operating market. [145] If found liable for the aforementioned offence, the party shall pay a fine amounting to not less than 10% of the turnover in its previous year.[146] The act also confers on the commission, the duty to investigate monopolies.[147] Where the existence of a monopoly has been established, The Competition and Consumer Protection Tribunal (CCPT) shall prohibit an acquisition transaction[148], order a divestiture of the business[149] or require the corporation to publish its pricing list.[150]		
Senegal	In 1994, under the guidance of the World Bank, Senegal embarked on a number of reforms to boost its economic performance. Amongst these reforms was the amendment of its pre-existing competition policies which led to the enactment of the Prices, Competition and Economic Disputes Act ("the act"). [157] The main development of the act was the establishment of an independent authority responsible for regulating anti-competitive practices in Senegal.	In Senegal, the two main bodies responsible for regulating competition law are the National Competition Commission and the West African Economic and Monetary Union (WAEMU). These two bodies oversee different areas of competition law. The National Competition Commission monitors general anti-competitive practices including regulating the prices and settling disputes concerning the administered prices. The	• In the case of Syndicat des Assureurs Conseils Africains (SACA) and Central Insurance Broker Agency (CIBA) v. Fédération Sénégalaise des Sociétés d'Assurances (FSSA), the CIBA had failed to pay premiums to two insurance companies.[161] The two

[145] Ibid, s70(2).
[146] Ibid, s 74(2).
[147] Ibid, s76.
[148] Ibid, s 86(3)(d),
[149] Ibid, s86(3)(e).
[150] Ibid, s86(3)(c).
[157] Prices, Competition and Economic Disputes Act (No 94-63).
[161] Syndicat des Assureurs Conseils Africains (SACA) and Central Insurance Broker Agency (CIBA) v. Fédération Sénégalaise des Sociétés d'Assurances (FSSA).

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	The act grants jurisdiction to the competition authority to regulate the prices of certain products. There are no provisions referring to merger control. As Senegal is a member of the West African Economic and Monetary Union (WAEMU), Directive 02/2002/CM/UEMOA,) prescribes that the WAEMU obtains the exclusive prerogative of investigating and clearing merger transactions. Prior Merger notification is voluntary. [158] Accordingly, the merging parties can consolidate without the approval of the WAEMU. As there is no requirement for prior notification, the merging parties will not be subject to a fine unless the merger amounts to the abuse of a dominant market position. If liable for such an offence, the WAEMU may issue a fine ranging from five hundred thousand CFA Francs to one hundred million CFA francs. Furthermore, the commission has the power to nullify the transaction, modify the transaction or take the requisite steps to ensure sufficient competition in the party's operating market. If the merging parties wish to do so, they may seek the consultation of the commission before the finalisation of the merger.	commission is to govern the prices of charcoal, water and electricity, goods transport intermediaries' tariffs and telephone and hydrocarbons.[159] The prices of products other than those mentioned, are to be determined by the market. Moreover, in Senegal, certain industries have assigned national institutions that enforce competition law. For instance, the Central Bank of West African States commonly known as the Banque Central des Etats de l'Afrique de l'Ouest (BCEAO) is in charge of regulating anti-competitive practices in the banking sector, the Regulatory Agency for Telecommunications regulates the telecommunications sector and the Association for the Protection of Water, Electricity, Telecommunication and Service Users in tandem with the Senegalese Association for the Protection of the Environment and Consumers are responsible for protecting consumers against the expensive costs of goods and services. [160] The WAEMU has the exclusive responsibility of dealing with matters of merger control.	insurance companies referred the matter to the Fédération Sénégalaise des Sociétés d'Assurances (FSSA), which is the Senegalese insurance industry federation. Thereafter, the Federation counselled all its members to sever ties with the CIBA. The members followed the advice of the FSSA and discontinued their business relations with the CIBA. Subsequently, the CIBA filed a complaint to the Senegalese Competition Commission on the grounds that such action by the members of the FCCA, was intended to exclude the CIBA from the insurance market, thereby reducing competition. At first instance, the commission held that such action was illegal. Nonetheless, this

[158] Directive No 02/2002/CM/UEMOA.
[159] CUTS International, "Competition Regimes in the World- A Civil Society Report ' < https://competitionregimes.com/pdf/Africa/52-Senegal.pdf > Accessed 4 July 2022.
[160] Ibid.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
		The National regulators are authorised to monitor anti-competitive practices and report their findings to the WAEMU.	decision was reversed on appeal with the commission holding that such exclusion did not restrict competition as it was not intended to affect the prices of insurance services. • The case of Syndicat des Agences de Voyages et de Tourisme du Senegal (SAVTS) v Compagnie Air France[162] involved a Senegalese petition case against Senegal's dominant airline- Air France. According to Article 27 of the Prices, Competition and Economic Disputes Act which prohibits the abuse of a dominant position and economic dependence, the Union of Senegalese Travel and Tourism Agencies (SAVTS) alleged that Air France had abused its dominant position by reducing agents' commission rate from 9% to

[162] In the case of Syndicat des Agences de Voyages et de Tourisme du Senegal (SAVTS) v Compagnie Air France.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
			7%. The union based its claims on the abuse of economic dependence: that Air France dominated the airline market, therefore the agents had no other alternative but to accept the commission rate fixed by Air France. The commission ruled in favour of the agents stating that air France had abused its position of economic dependence by "imposing on the agencies a rate to which they were obliged to assent to survive and which they would not have accepted if they had enjoyed independence".
Sierra Leone	Presently, there is no legislation governing the competition law regime in Sierra Leone.[163] Thus, provisions which prohibit uncompetitive practices and promote a free and fair marketplace for companies to operate within are non-existent.	Sierra Leone does not have a statutory competition authority. Nonetheless, the Ministry of Trade and Industry is mandated to reregulate anti-competitive business practices.[168] Moreover, the Corporate Affairs Commission (CAC) regulates all matters concerning the	As of current, there are no cases involving competition law in Sierra Leone.

[163] Dawar Kamala and Lipimile George *Africa: Harmonising Competition Policy Under the AFCTA* (2020) Concurrences Competition Law Review 245.
[168] Ibid.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	Matters pertaining to mergers and acquisitions are governed by the Companies Regulations 2015.[164] These provisions apply to both private and public companies as well as any matter concerning the merger, acquisition or combination between or among companies involving the acquisition of assets or shares ceding control of another company.[165] A merger notification ought to be sent to the Corporate Affairs Commission (CAC) upon any acquisition, merger or other business combination. The commission is permitted to preclude any acquisition, merger or business combination if it is "likely to cause substantial restraint of competition or tend to create a monopoly in any line of business enterprise".[166] A consumer and competition policy has been approved by the cabinet, but the Sierra Leonean Parliament is yet to adopt the legislation.[167]	acquisition, merger or any other business combination of businesses.[169] The board of directors is chaired by Robert Kawa and Prince B. Williams occupies the position of the Chief Executive Officer.	
Togo	Law No 99-011 of 28 December 1999 governs the competition law regime in Togo.[170] The act prohibits anti-competitive practices such as price fixing[171], abuse	In Togo, the National Commission for Competition and Consumption acts as an advisory body to the courts on matters of	• In 2020, the Regulatory Authority for Electronic Communications and Post

[164] The Companies Regulation 2015, s41
[165] Ibid, s51.
[166] Ibid, s47(2).
[167] US Department of State, ' 2021 Investment Climate Statements: Sierra Leone' (2021) < https://www.state.gov/reports/2021-investment-climate-statements/sierra-leone/ > Accessed 1 July 2022.
[169] The Companies Regulation 2015, s41.
[170] A PDF version of the act can be accessed here (the provisions are transcribed in French)- https://www.uaipit.com/uploads/legislacion/files/1349344932_12._Law_No._99-011_of_December_28,_1999_on_the_Organization_of_Competition_in_Togo_FR.pdf.
[171] Ibid, article 16

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	of dominant position and excessive exploitation of economic dependence.[172] Moreover, the act prohibits anti-competitive practices including resale price maintenance and resale below cost.[173] A party that abuses its dominant position or excessively exploits its position of economic dependence is subject to a fine ranging from two million CFA Francs to ten million CFA Francs and may be imprisoned for a period of two months to two years.[174] Whilst anti-competitive practices including resale price maintenance and resale below cost results in the imposition of a fine ranging from fifty thousand CFA Francs to five million CFA Francs.[175] The act does not cover merger control. Albeit Togo is a member of the West African Economic and Monetary Union (WAEMU) and is subject to its provisions on this matter. Directive 02/2002/CM/UEMOA,) prescribes that the WAEMU obtains the exclusive prerogative of investigating and clearing merger transactions. Prior Merger notification is voluntary. [176] Accordingly, the	competition law.[177] Its composition is to be determined by the Council of Ministers. Furthermore, the Regulatory Authority for Electronic Communications and Post office regulates the telecommunications sector in Togo. [178] Furthermore, the West African and Economic Monetary Union (WAEMU) is responsible for regulating merger transactions in Togo.	office fined two major telephone operators namely, Togo Cellulaire (Tococom) and Atlantique Télécom Togo (Moov) for price differentiation practices which the authority claimed, "seriously harms fair and healthy competition in the sector".[179] • In the case of ASKY, ASKY, an airline company made an agreement with the Togolese Government to place its headquarters and central hub in Togo, in exchange for tax exemptions and

[172] Ibid, article 18-20.
[173] Ibid.
[174] Ibid, article 53.
[175] Ibid, article 55.
[176] Directive No 02/2002/CM/UEMOA.
[177] Article 9-11.
[178] See Baker McKenzie's report on Competition law in Togo- https://resourcehub.bakermckenzie.com/en/resources/africa-competition-guide/africa/togo/topics/general. See also the website of the commission- https://arcep.tg/.
[179] Ayi Renaud Dossavi, " Moov and Togocel Are Slapped On The Fingers By ARCEP, For Obstructing Competition" (TogoFirst, 2020) < https://www.togofirst.com/fr/telecoms/1611-6814-moov-et-togocel-se-font-taper-sur-les-doigts-par-larcep-pour-entrave-a-la-concurrence > Accessed 15 July 2022.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	merging parties can consolidate without the approval of the WAEMU. As there is no requirement for prior notification, the merging parties shall not be subject to a fine unless the merger amounts to the abuse of a dominant market position. If liable for such an offence, the WAEMU may issue a fine ranging from five hundred thousand CFA Francs to one hundred million CFA francs. Furthermore, the commission has the power to nullify the transaction, modify the transaction or take the requisite steps to ensure sufficient competition in the party's operating market. If the merging parties wish to do so, they may seek the consultation of the commission prior to the finalisation of the merger.		immunities.[180] As part of the agreement, the Togolese Government agreed that ASKY's assets would not be searched or seized in the event of any investigation by any national or regional authority. Its competitor, Air Senegal filed a complaint to the WAEMU on grounds that such action violated WAEMU's regulation on State Aid. The WAEMU held that such action amounted to a breach of the competition rules established by the WAEMU. Accordingly, the Togolese Government was directed to repeal its agreement with ASKY.
ECOWAS	The Regional Competition Policy Framework governs the competition law regime of any matter having a regional effect on ECOWAS and its member states.[181] The policy was adopted in 2008 and approved by the	On the 31st of May 2019, ECOWAS created the ECOWAS Regional Competition Authority (ERCA). The authority is charged with	ERCA has not reached any decsion yet.

[180] Decision no 002/2011/COM UEMOA declarant dispositions de l'accord de siege entre la compagnie aerienne Communautaire denommee Asky et le government de la republique togolaise incompatibles avec les regles communitaires de concurrence. A summary of the case can be accessed here- https://kalieu-elongo.com/un-accord-de-siege-peut-porter-atteinte-aux-regles-communautaires-de-concurrence/.

[181] A PDF version of the competition framework can be accessed here-

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	summit and Heads of State and Government. The policy was designed to promote, maintain and encourage competition and enhance economic efficiency, in production, trade and commerce at the regional level. The ECOWAS competition policy framework was developed alongside two supplementary acts namely; the Act Adopting Community Rules and Modalities of their Application within ECOWAS[182] and the Act on the Establishment, Functions and Operation of the ECOWAS Regional Competition Authority (ERCA). [183] The framework covers four broad categories of competition law at the regional level namely, Agreements and Concerted Practices in Restraint of Trade, Monopolization Practices, Mergers and Acquisitions and State-Induced Competition Distortions.[184] As it pertains to matters of merger control, the act prohibits "every merger, takeover, joint venture, or other acquisition or business combination including interconnected directorships whether of a horizontal, vertical, or conglomerate nature between or among enterprises…where the resultant market share in the	enforcing the ECOWAS Regional Competition rules.[188]	

[182] Supplementary Act A/SA.1/12/08. – An electronic version of the act can be viewed here- http://ecowas.akomantoso.com/_lang/en-US/doc/_iri/akn/ecowas/statement/supplementaryAct/2008-12-19/A_SA.1_12_08/eng@/!main.
[183] Supplementary Act A/A.2/12/08. A copy of the act can be viewed via this link-.
[184] ECOWAS Competition Policy Framework part IV.
[188] See ERCA'swebsite for more information- https://www.arcc-erca.org/.

Country	Competition laws, policies regulations, including full citations, date of entry into force, links,	Competition authorities, including date of entry into establishment, links	Competition cases, include links
	ECOWAS Common Market, or any significant part thereof, attributable to any good, service, line of commerce, or activity affecting commerce shall result in abuse of dominant market position resulting in a substantial reduction of competition".[185] Such mergers shall be declared null and void by the regional authority. [186] There are no provisions which expressly state that merger notification is mandatory. Nonetheless, article 4(2) does provide ERCA with the authority to consider "applications for authorizations, mergers, acquisitions or business combinations". Furthermore, section 7(2) of the act stipulates that ERCA is authorized to exempt mergers, acquisitions or business combinations that are in the interests of the public. It ought to be noted that the act has not prescribed the exact threshold which ought to be met before merger approval is necessary. Nonetheless, when determining the threshold, ERCA may consider a plethora of factors including the turnover of the merging parties, the size of the transaction and the market share of the merging parties. [187]		

[185] Supplementary Act A/SA.1/12/08, article 7(1).
[186] Ibid, article 7(2)
[187] Price Ifeanyi Nwankwo, "Mergers and Acquisitions Under Ecowas Competition Law" (Africa Policy Journal, 2019) < https://apj.hkspublications.org/mergers-and-acquisitions-under-ecowas-competition-law/#_ftnref15> Accessed 12 November 2019.

Table 2: Overview of WAEMU Competition Cases (UNCTAD 2020)

	Type of dispute	Background	Decision
1	Concentration	Concentration of enterprises to allow them to manufacture soap (for Unilever) and produce and exploit crude and refined oil (for SIFCA and NAUVU).	Decision No. 009/2008/COM/UEMOA granting negative clearance for the proposed concentration.
2	State aid and distortion of competition in favour of third-party products ***RUFSAC v. Senegal***	RUFSAC, a Senegalese enterprise, filed a complaint in which it alleged that Senegal was granting exemptions to imports of kraft paper bags for use in the cement sector, to the detriment of its own products certified as of community origin.	Decision No. 008/2010/COM/UEMOA of 11 August 2010 requesting Senegal to withdraw the exemptions granted to imports of kraft paper packaging.
3	State anticompetitive practices ***West Africa Commodities v. Senegal***	The Commission received a complaint from the enterprise West Africa Commodities and a letter of protest from the Minister of African Integration of Côte d'Ivoire concerning new Senegalese standards on palm oil, which created a barrier to exports from Côte d'Ivoire to Senegal.	Decision No. 007/2010/COM/UEMOA of 4 June 2010 requesting Senegal to withdraw the amended standard NS 03-072 and the measures taken in implementation of its provisions.
4	*Senegal v. Togo* **The ASKY case**	By letter No. 001905/MEF/CT/IMO of 2 March 2010, the Minister of Economic Affairs and Finance of Senegal requested the Commission to rule against the headquarters agreement signed between Togo and the air transport company ASKY, which he considered contrary to community competition rules.	Decision No. 002/2011/COM/UEMOA of 29 August 2011 declaring certain provisions of the headquarters agreement between the community airline ASKY and the Government of Togo incompatible with community competition rules.
5	Abuse of dominant position arising from an administrative monopoly awarded by Burkina Faso ***STAF v. SONAPOST and Burkina Faso***	Under a monopoly awarded in 1988, the enterprise SONAPOST carried out seizures and fined STAF, a competing enterprise, which it accused of unlawfully transporting and distributing mail.	Decision No. 003/2013/COM/UEMOA of 13 February 2013 requesting Burkina Faso to bring the monopoly awarded to SONAPOST in the mail and parcel transportation sector into conformity with community competition legislation.
6	Orange-Airtel Burkina Faso concentration	Orange and Airtel submitted an application for negative clearance and/or exemption for the concentration of the two enterprises	Decision No. 006/2016/COM/UEMOA of 25 October 2016 granting negative clearance for the agreement on the acquisition by the enterprise Orange Middle East and Africa SA of exclusive control over the enterprises Airtel Burkina Faso SA and Airtel Mobile Commerce Burkina Faso SA.
7	Unlawful and anticompetitive practices ***Africa Steel v. SOTACI and Côte d'Ivoire***	Africa Steel, an enterprise that manufactured and distributed reinforcing steel, filed a complaint against the Société de Transformation des Tubes et Acier (SOTACI) for abuses of dominant position.	Decision No. 007/2016 on a procedure for the application of article 88 of the amended Treaty and its supplementary texts to anticompetitive practices in the reinforcing steel production and distribution market in Côte d'Ivoire.

Source: Competition Directorate of the WAEMU Commission.

Table 3. Overview of MSME policies in the ECOWAS Members

Country	Policy to promote Micro, Small and Medium Sized Enterprises	References
Benin	There are no current policies promoting MSMEs in Benin or facilitating their healthy competition between large corporations.	
Burkina Faso	In Burkina Faso, 96% of companies are Micro, Small and Medium Sized Enterprises (MSMEs).[189] Currently, there are no provisions promoting favourable competitive practices amongst MSMEs and large corporations. Nonetheless, the Government of Burkina Faso created an agency tasked with the responsibility of providing solutions to the difficulties of financing and supporting MSMEs in Burkina Faso by virtue of decree n ° 2008-856 / PRES / PM / MEF.[190] The agency is intended to be a development tool which helps to stimulate MSMEs in an environment where they lack equity and guarantees to meet loan conditions.	• International Trade Centre, *Promoting MSME Competitiveness In Burkina Faso- Resilient Foundations for Post Covid-19 Recovery,* < https://intracen.org/media/file/12501 > (Accessed 4 March 2023).
Cabo Verde	There are no current policies promoting MSMEs in Cabo Verde or facilitating their healthy competition between large corporations.	
Cote d 'Ivoire	In Cote d' Ivoire 98% of companies are MSME's.[191] In Cote d'Ivoire, the agency tasked with the responsibility of promoting the interest of MSMEs is the Cote d'Ivoire MSME Agency. The agency was created by law no 2014-140 of March 24 on the orientation of the national MSME Policy in its article 11. The agency is responsible for promoting the creation of MSMEs, Improving MSMEs' access to finance and markets, improving the business climate for MSMEs and developing the entrepreneurial culture and innovation. However, there are no provisions in the policy that facilitates healthy competition between MSMEs and larger corporations.	• Oxford Business Group, " Cote d'Ivoire Empowers Entrepreneurs to Boost Small Business" < https://oxfordbusinessgroup.com/reports/cote-divoire/2019-report/economy/empowering-entrepreneurs-national-plans-facilitate-the-growth-of-small-businesses > (Accessed 5 March 2023).
The Gambia	Micro, Small and Medium Sized Enterprises play a significant role in shaping Gambia's economy with the sector employing over 60% of the country's	• The Gambia National Policy for MSMEs- https://en.unesco.org/creativity/sites/

[189] International Trade Centre, *Promoting MSME Competitiveness in Burkina Faso- Resilient Foundations for Post Covid-19 Recovery,* < https://intracen.org/media/file/12501> (Accessed 4 March 2023).

[190] The agency's website can be found via this link- https://www.devex.com/organizations/agency-for-financing-and-promotion-of-small-and-medium-sized-enterprises-afp-pme-burkina-faso-160355.

[191] Oxford Business Group, " Cote d'Ivoire Empowers Entrepreneurs to Boost Small Business" < https://oxfordbusinessgroup.com/reports/cote-divoire/2019-report/economy/empowering-entrepreneurs-national-plans-facilitate-the-growth-of-small-businesses > (Accessed 5 March 2023).

	workforce.[192] In The Gambia, there are no bespoke laws or government agencies charged with the responsibility of promoting and aiding MSEMs in the country. Albeit the absence of these laws, the Gambian Government has proposed several policy frameworks aimed at supporting MSME. For instance, the National Micro, Small and Medium Size Policy and Strategy 2019 to 2024 has a vision of "Achieving widespread access to appropriate finance for all MSMEs and providing a legal and regulatory environment that is business-friendly". [193] One of the proposals of this policy paper is ensuring that regulations should be designed to ensure that competition occurs freely between MSMEs and larger corporations. Other policy frameworks which seek to aid MSMEs include the National Entrepreneurship Policy and Strategy 2017-2021 and The Gambia National Development Plan 2018-2021.	creativity/files/qpr/the_gambia_national_policy_for_msmes.pdf. • International Trade Centre, *Promoting MSME Competitiveness In Burkina Faso- Resilient Foundations for Post Covid-19 Recovery,* < https://intracen.org/media/file/12501 > (Accessed 4 March 2023).
Ghana	Micro, Small and Medium Sized Enterprises (MSMEs) dominate the business environment in Ghana with the sector comprising over 80% of the workforce and generating over 70% of the national output.[194] In 2019, the Ministry of Trade and Industry produced a policy paper aimed at anchoring a new age of entrepreneurship within the MSME sector.[195] The policy aims to help in producing world-class products and services capable of driving exponential growth across the MSME sector in Ghana. The policy is being implemented by the Ghana Enterprise Agency (GEA) which will provide a regulatory and legal framework for the growth and development of the sector. Albeit these policies contain numerous strategies aimed at accelerating growth within the MSME sector, there is no reference to its competitive relationship with larger corporations.	• The Fintech and Innovation Office of the Bank of Ghana, *Bank of Ghana: Enabling MSME Growth Through Fintech,* (June 22 2022) < https://cbpn.currencyresearch.com/blog/2022/06/22/bank-of-ghana-enabling-msme-growth-through-fintechs > (Accessed 4 March 2022) • National Micro, Small, and Medium Enterprises (MSME) Policy Ghana. (Final Draft) < https://www.bcp.gov.gh/acc/consultation/docs/DRAFT%20MSME%20-%20FINAL%2026.02.2019%20(1).pdf> (Accessed 4 March 2023)

[192] United Nations, "High-Level Policy on MSMEs" (January 7 2021) < https://www.undp.org/gambia/news/high-level-policy-forum-msmes > (Accessed 5 March 2022).
[193] The Gambia National Policy for MSMEs- https://en.unesco.org/creativity/sites/creativity/files/qpr/the_gambia_national_policy_for_msmes.pdf.
[194]. The Fintech and Innovation Office of the Bank of Ghana, *Bank of Ghana: Enabling MSME Growth Through Fintech,* (June 22 2022) < https://cbpn.currencyresearch.com/blog/2022/06/22/bank-of-ghana-enabling-msme-growth-through-fintechs > (Accessed 4 March 2022),
[195] National Micro, Small, and Medium Enterprises (MSME) Policy Ghana. (Final Draft) < https://www.bcp.gov.gh/acc/consultation/docs/DRAFT%20MSME%20-%20FINAL%2026.02.2019%20(1).pdf> (Accessed 4 March 2023)

	In 2003, the Ghanaian Government enacted the Public Procurement Act. [196] The objective of the act is to harmonize the process of procurement in the public service to secure a judicious, economic, and efficient use of public funds to ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner while promoting a competitive local industry. Nonetheless, this act is not clear in MSME'S participation in the process. These inadequacies may therefore position MSEMs at a disadvantage in the public procurement process.	
Guinea	There are no current policies promoting MSMEs in Guinea or facilitating its healthy competition between large corporations.	
Guinea-Bissau	There are no current policies promoting MSMEs in Guinea- Bissau or facilitating its healthy competition between large corporations.	
Liberia	In Liberia, approximately 96% of businesses are MSMEs.[197] This phenomenon has been exacerbated by a very large informal sector, a highly fragmented and informal economy and the absence of readily available business information. Accordingly, the Ministry of Commerce and Industry formulated a policy paper titled "Rationale, Policy and Implementation Framework for MSME Development in Liberia: 2011-2016".[198] The policy aims to bring coherence and coordination to the many ongoing and new programs for MSMEs. However, this policy does not mention any support provided to MSMEs that foster free and fair competition.	• Ahmed Denton, *Why Do Most Businesses in Liberia Fail?* Open Journal of Business and Management (July 29, 2020). • Rationale, Policy and Implementation Framework for MSME Development in Liberia: 2011-2016- A link to the policy paper can be found via this link- https://www.moci.gov.lr/doc/Final%20MSME%20Policy%20Liberia%202011-2016.pdf.
Mali	There are no current policies promoting MSMEs in Mali or facilitating its healthy competition between large corporations.	
Niger	There are no current policies promoting MSMEs in Niger or facilitating its healthy competition between large corporations.	
Nigeria	Micro, Small and Medium-Sized Enterprises (MSMEs) play an important role in shaping Nigeria's economy with the sector representing 96% of businesses and	• Oluwafunmilayo Adesina-Babalogbon, " The Relevance of Competition Law to MSMES' Growth in Nigeria's Economy" (The Federal Polytechnic, Ilaro) <

[196] The electronic version of the act can be found here: https://ppa.gov.gh/wp-content/uploads/2019/01/Public-Procurement-Act-2003-Act-663.pdf.
[197] Ana Dammert, "Improving Entrepreneurs' Interpersonal Skills to Increase MSME Revenues in Liberia" (31 October 2019) < https://www.africaportal.org/publications/improving-entrepreneurs-interpersonal-skills-increase-sme-revenues-liberia/> (Accessed 6 March 2023).
[198] The policy paper can be found via this link- https://www.moci.gov.lr/doc/Final%20MSME%20Policy%20Liberia%202011-2016.pdf.

	75% of national employment.[199] To reflect this importance, the Federal Government through its agency, MSMEDAN (Small and Medium Enterprises Development Agency of Nigeria) published various policies to promote "the necessary conditions for the growth and development of MSMEs" in Nigeria.[200] Albeit this laudable initiative, the policies make no explicit provisions on the competitive relationship between MSMEs and larger corporations. Section 70-75 of the Federal Competition and Consumer Protection Act,[201] does provide for instances where there may be a potential abuse of a dominant market position by larger corporations. Nonetheless, there is no indication of the provisions' intention to benefit MSMEs exclusively. SMEDAN along with other government agencies and private sector corporations are working to ensure that MSME products become competitive in The African Continental Free Trade Area Market (ACFTA). To achieve this objective, the agency is bringing 740 Nigerian MSME's together for a nationwide capacity-building programme on product branding and packaging.[202]	https://www.researchgate.net/publication/339933477_THE_RELEVANCE_OF_COMPETITION_LAW_TO_MSMES'_GROWTH_IN_NIGERIA'S_ECONOMY > (Accessed 4 March 2023) • The Federal Competition and Consumer Protection Act 2018. • Pressreader, "SMEDAN Targets Competitive 'Made-in-Nigeria' Products for AFCFTA", (2022) <https://www.pressreader.com/nigeria/business-a-m/20221003/281788517945050> (Accessed 4 March 2023).
Senegal	In Senegal, 90% of companies comprise of MSMEs but only account for 42% of total employment.[203] In Senegal, the agency responsible for promoting the interests of MSMEs is the Development Agency and Supervision of Small and Medium Enterprises (ADEPME). The agency aims to promote the generation of MSMEs to strengthen and develop their productive capacities and strengthen the competitiveness of enterprises to promote economic growth.[204] The	• German Federal Ministry for Economic Cooperation, "Promoting the Competitiveness and Growth of Small and Medium-Sized Enterprises and Capacity Development in the Microfinance Sector

[199] Small & Medium Enterprises Development Agency of Nigeria, "National Enterprise Development Programme (NEDEP) In Summary"< https://smedan.gov.ng/programmes/> (Accessed 3 March 2023).
[200] Oluwafunmilayo Adesina-Babalogbon, " The Relevance of Competition Law to MSMES' Growth in Nigeria's Economy" (The Federal Polytechnic, Ilaro) < https://www.researchgate.net/publication/339933477_THE_RELEVANCE_OF_COMPETITION_LAW_TO_MSMES'_GROWTH_IN_NIGERIA'S_ECONOMY > (Accessed 4 March 2023).
[201] The Federal Competition and Consumer Protection Act 2018.
[202] Pressreader, "SMEDAN Targets Competitive 'Made-in-Nigeria' Products for AFCFTA", (2022) <https://www.pressreader.com/nigeria/business-a-m/20221003/281788517945050> (Accessed 4 March 2023).
[203] German Federal Ministry for Economic Cooperation, " Promoting the Competitiveness and Growth of Small and Medium-Sized Enterprises and Capacity Development in the Microfinance Sector
[204] Decree No. 2013-998 July 16, 2013.

	agency derives its powers by virtue of Decree No. 2013-996 July 16, 2013. The decree contains numerous provisions promoting MSMEs but none addresses the issue of the promotion of free and fair competition between MSMEs and larger corporations.	• Decree No. 2013-998 July 16, 2013
Sierra-Leone	In Sierra Leone, MSMEs contribute about 95% to its GDP and account for 87% of jobs created in the country.[205] In 2016, the Sierra Leonean Government established the Small and Medium Enterprises Development Agency (SMEDA) to coordinate the activities of MSMEs across Sierra Leone.[206] This agency was established under the MSMEDA Act.[207] According to the act, the Agency has the mandate to formulate and coordinate policies that will facilitate the integration and harmonization of various public and private sector initiatives, for the promotion, development and regulation of MSMEs. According to section 12(2)(b) of the MSMEDA Act, the agency is empowered to "facilitate, assist and provide market access and business linkage opportunities to Small and Medium Enterprises to enable them to compete successfully in national and international markets". Thus, it can be ascertained from this provision that MSMEs have sufficient recourse to demand a competitive relationship between themselves and large corporations. Albeit the existence of this provision, there seems to be no instance where such has occurred.	• Small and Medium Enterprise Development Agency, "MUNAFA Is A Reality And Not A Political Statement", < https://smeda.gov.sl/2021/> (Accessed 4 March 2023). • The Sierra Leone Small and Medium Enterprises Development Agency Act, 2016. An electronic copy of the act can be found via this link- https://smeda.gov.sl/wp-content/uploads/2021/04/THE-SIERRA-LEONE-SMALL-AND-MEDIUM-ENTERPRISES.pdf.
Togo	In 2022, the Togolese Government implemented a national agency for the development of Micro, Small and Medium Enterprises. However, no policies have been implemented.	

[205] Small and Medium Enterprise Development Agency, "MUNAFA Is a Reality and Not a Political Statement", < https://smeda.gov.sl/2021/> (Accessed 4 March 2023).
[206] The government agency's website can be found here- https://smeda.gov.sl/about-us/.
[207] The Sierra Leone Small and Medium Enterprises Development Agency Act, 2016. An electronic copy of the act can be found via this link- https://smeda.gov.sl/wp-content/uploads/2021/04/THE-SIERRA-LEONE-SMALL-AND-MEDIUM-ENTERPRISES.pdf.

International Trade Centre

Street address
International Trade Centre
54-56 Rue de Montbrillant
1202 Geneva, Switzerland

P: +41 22 730 0111
F: +41 22 733 4439
E: itcreg@intracen.org
www.intracen.org

Postal address
International Trade Centre
Palais des Nations
1211 Geneva 10, Switzerland