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In this issue:

Update: ACER Week	2
Consolidation in the regional cement industry	3
Infrastructure sharing in telecommunications	6
Update: COMESA merger guidelines	8
Asymmetry in call termination rates	9
Competition case update	11

1st Annual Competition and Regulation Week, Southern Africa

Victoria Falls

16-21 March 2015

UNIVERSITY OF JOHANNESBURG

Editor's note

The past year has been an interesting one in terms of developments in the enforcement of competition law in various African countries. Through the Review, we have analysed several of these developments with a view to sharing information and building a knowledge base on key cases and market arrangements that have an effect not only in domestic markets, but regionally as well. This includes sharing the current knowledge and research on competition issues such as in the sugar and cement industries, telecommunications with a specific focus on mobile money, pending cases in the pay-tv market, cross-border arrangements in the beer industry, the competition effects of tax evasion, and regional competition in road freight.

Authorities across the region are making significant progress in terms of achieving their mandates. In Zimbabwe, the CTC recently has been able to foster interactions between the Reserve Bank of Zimbabwe and the sector regulator for telecommunications, POTRAZ, in addressing competition concerns regarding pricing and access in mobile money services. Similarly, the growth of mobile money in Kenya speaks to a regulatory environment which is geared to allow rivalry in this sector, with a number of firms recently receiving licences to enter the market. In our previous issue, we wrote about how the incumbent firm, Safaricom, had reduced their tariffs apparently in response to the imminent entry of rival firms.

In South Africa, the authority has recently issued draft guidelines for public commentary on the setting of administrative penalties following recent decisions of the Tribunal and Competition Appeal Court. This comes at a time when a number of other authorities are considering introducing leniency programmes. This is of course difficult as the authority needs to balance the objectives of deterrence (setting fines which are high enough to deter conduct), with the incentives for parties to come forward to reveal conduct and take advantage of settlement and leniency processes. If the penalties agreed in settlement are too high, the authority runs the risk of respondents deciding to contest cases at the Tribunal if they consider that the discounts available from settlement are not sufficient.

The authority has also issued guidelines on the evaluation of public interest factors in competition assessments. Both of these frameworks attempt to address concerns which are notoriously difficult to evaluate and in which firms increasingly require certainty and the authorities, rightfully, prefer to leave some room to exercise discretion. In this regard, CCRED at its inaugural Annual Competition and Regulation (ACER) Week in March will consider penalties and settlements, as well as the public interest guidelines in an upcoming event in our Public Platform series.

In this issue, we provide analysis of recent mergers in the South African telecommunications sector, the global merger in the cement industry between Holcim and Lafarge, the new COMESA merger guidelines, and the call termination rates debate in South Africa.

The Review is an important tool for disseminating the latest knowledge and thinking around key issues in competition policy in the region. In this year, we hope to grow the platform to one which not only showcases the developments in jurisprudence and the application of competition economics in the analysis of cases, but one which also provides insights and shares the latest research on broader topics related to industrial policy, inclusive growth and regional development. This is precisely in line with the complementary role that competition law and policy should play relative to broader development objectives in increasing participation and addressing anticompetitive conduct which inhibits growth.

We trust that you will find this Review interesting, and relevant to your work.

Thando Vilakazi

Annual Competition and Regulation Week, 16-21 March 2015

Elephants Hills Hotel, Victoria Falls, Zimbabwe

We are drawing closer to ACER Week and we have an exciting line-up of keynote speakers, presenters, panellists and discussants for the conference (20 & 21 March).

Keynote addresses include the role of economics in competition analysis by **Prof. Massimo Motta** (Chief Competition Economist, DG Comp, European Commission) and the interaction between economic regulation and competition policy in key regulated markets such as energy & telecommunications by **Dr Javier Tapia** (Judge at the Competition Tribunal of the Republic of Chile).

Amongst others topics, pertinent issues in cartel enforcement; the interface of regulation and competition and implications on the region in regulated industries such as energy, finance and telecoms; latest debates in excessive pricing; lessons in market enquiries and competition issues in specific sectors will be presented and discussed in **plenary and parallel sessions**.

Two **roundtables**, one on the development of young institutions and lessons from experience on institutional design and another on the role of universities in supporting regional institutions will be held, debating perspectives from competition authorities, economic regulators and professors from South African and Zimbabwean universities.

We are also pleased to announce that the Conference will serve as a platform to launch **two special issues of journals** - the Journal of Economic and Financial Sciences (JEFS) and the African Journal of Information and Communication (AJIC). Complementing the theme of ACER week, these special issues contain papers dealing with pertinent competition and regulatory matters.

Leading to the conference, participants have a choice of attending one of three **Short Learning Programmes** (17 – 19 March 2015). These include **Core Principles in Economic Regulation and Competition Economics, Advanced Competition Economics** and **Financial Analysis and Cost Accounting for Economic Regulation.** Each SLP will be taught by means of lectures covering the applicable theoretical framework, applications of the theory in actual case decisions, and practical case studies taught in workshop sessions based on real world examples.

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COMPETITION AND TARIFF COMMISSION

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Consolidation and entry: changing dynamics in the regional cement

Tatenda Zengeni and Pamela Mondliwa

This article considers the history of anticompetitive conduct and the growth in demand for cement products in Africa as a context for understanding the recent global merger between Lafarge and Holcim, two of the largest cement companies in the world, and the growth of Dangote Cement and others in the region. A merger of PPC and Afrisam has also been put on the table in South Africa.

Cement consumption in Africa is being driven by four factors namely, economic growth, a rising population, increasing urbanisation and rising infrastructure spend.[1] The price and supply of cement have wider effects on economies given the link with infrastructure and housing investments. Economic growth in Sub-Saharan Africa (SSA) has been projected by the IMF to be more than 5% per year over the next six years.[2] The growing population coupled with an increase in the size of the middle class has led to increasing demand for housing and associated infrastructure. There are also large construction projects linked to minerals extraction. In response to the surge in demand for cement, there has been increasing investment in the sector coupled with the expansion of companies across borders. The cement industry is also consolidating globally.[3]

Cement is expensive to transport due to its mass which has the effect of limiting competition especially when plants are some distance from one another, although some producers globally are able to export the product.[4] The considerations around transport costs tend to lead to concentrated local or country markets. In this context, the cement industry has been prone to anticompetitive conduct, particularly collusion through the allocation of markets.[5] For instance, a cartel based on the allocation of markets and price-fixing in the Southern African Customs Union (SACU) region had been in operation for several decades until around 2008 when the Competition Commission of South Africa initiated an investigation and 2009 when a leniency application was filed by PPC.[6] The cartel was facilitated through the industry association. More recently, the Competition Authority of Kenya is investigating price-fixing by Lafarge and similar investigations have been considered in other countries as well.[7]

The changing landscape

The cement industry in Africa is largely run by major multinational companies, namely, Lafarge, Heidelberg and Holcim (Table 1). These companies have operations across a number of countries, with Lafarge being the main player with a large presence in the east and southern parts of the continent. Heidelberg has operations concentrated in west and central Africa. This has been changing somewhat with the entry of Dangote Cement of Nigeria in 2000 and its growth into fourteen other countries in the continent to become the single largest continental producer. In addition, Holcim undertook a major restructuring, divesting substantial operations in southern and east Africa to a new company called Afrisam, in

Table 1: Sub-Saharan Africa's leading cement producers, by 2013 capacity[8]

Company	Production capacity (millions MT)	Countries of operation in SSA
Dangote Cement	20.7	Nigeria, Benin, Cameroon, Senegal, Côte d'Ivoire, Sierra Leone, Liberia, Ghana, Congo-Brazzaville, Ethiopia, Kenya, Tanzania, Zambia, South Africa
Lafarge	19.5	Nigeria, Cameroon, Benin, Kenya, Uganda, Tanzania, Malawi, Mozambique, Zambia, Zimbabwe, Botswana, South Africa
PPC	18.0	South Africa, Botswana, Zimbabwe
Heidelberg	6.7	Sierra Leone, Liberia, Ghana, Togo, Benin, Gabon, Tanzania
Afrisam	5.8	South Africa, Botswana, Lesotho, Swaziland, Tanzania
ARM Cement	5.5	Kenya, Tanzania, Rwanda, South Africa
Sococim	4.2	Senegal
Holcim	3.0	Côte d'Ivoire, Guinea, Morocco, Nigeria, Tanzania, South Africa
Derba Midroc Cement	2.5	Ethiopia
WACEM	2.0	Togo, Ghana

which it retained a very small stake. This is significant as the divested Afrisam operations overlapped with Lafarge, with whom Holcim is now merging.

There are also numerous small producers many of which are relatively recent entrants in different countries although the largest players are Dangote, Lafarge, Heidelberg and PPC, each with operations in more than three countries.

The expansion of Dangote and entry of new firms in various countries have led to increased production and competition as firms seek to gain market share. Ethiopia provides a good example of how new investments in the cement industry have led to decreases in prices.[9] The country has four cement manufacturing companies with the oldest company, National Cement, having been in operation since 1936 as the sole producer until 2001. Ethiopia has recently experienced greenfield investment in cement manufacturing by three companies; Messabo Cement, Mugher Cement and Derba Midroc Cement which entered the market in 2001, 2007 and 2012, respectively. The entry of Derba Midroc Cement in 2012 seemingly led to a drastic reduction in cement prices. The new plant sold cement at $9.36/bag which was down from about $28.00/bag at the start of 2011.[10]

In South Africa, the entry of Sephaku Cement which is 64% owned by Dangote has also resulted in vigorous competition and lower margins.[11] In Kenya there has also been entry into a country previously dominated by firms associated with Lafarge, as Mombasa Cement started operations in 2009, National Cement in 2011 and Savannah Cement in 2012. This has led to substantially lower prices being reported in 2013 and 2014.[12]

In Zambia, there has been entry of small producers although these appear to have had only a marginal impact on prices.[13]

Consolidation in the sector

In 2014, the proposed acquisition of Lafarge by Holcim significantly changed the global landscape. The transaction has been notified to competition authorities all over the world including in some African countries. The European Commission (EC) and South Africa's Competition Commission have already approved the merger subject to the condition that Holcim divests its interests in competing firms. The merger was also approved by the COMESA Competition Commission without conditions in November 2014. The merging parties are active in several COMESA member states including Djibouti, Egypt, Eritrea, Libya, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Zambia and Zimbabwe, which meant that the merger was required to be evaluated and approved by the regional authority.

Post-merger, Holcim-Lafarge will become the largest cement producer in Africa with a production capacity of 22.5 million MT per annum followed by Dangote Cement with a production capacity of 20.7 million MT. Although this means there are two large rivals, a history of collusive conduct in this sector in African countries and globally suggests coordination may undermine competition. The extent of competition from smaller companies which have significantly increased in number may be the key determinant of whether a country has competitive prices or not. There is a lot at stake as the differences in prices between countries with vigorous competition and those without have been substantial, as much as 40% to 50% if one compares prices in South Africa after the cartel to prices in a country such as Zambia, according to the study done by the African Competition Forum. A full assessment would, however, also need to take into account cost differences.

Both the Competition Commission of South Africa and the EC were concerned with the potential for coordination due to the cross-shareholding of the merging firms in competing firms. In South Africa, the Commission found that Holcim already had cross-shareholding in its competitor, Afrisam.[14] A very small shareholding had been retained after the divestiture by Holcim to Afrisam, which had substantially reduced the overlap of Holcim with Lafarge. Cross-shareholdings are likely to dampen competition through assisting firms in reaching a common strategic understanding (including through directors) on market conduct instead of making independent competitive decisions in the market.[15] The Commission was concerned that the merger would enhance the platform for sharing information and collusion in the industry and this was of particular concern given the history of collusion.[16] The Commission therefore approved the merger on condition that Holcim divests its shareholding in Afrisam within a period of three years after the merger is approved.[17]

Similarly, the EC approved the Holcim-Lafarge merger on condition that Lafarge divests its businesses in Germany, Romania and the UK and of Holcim operations in France, Hungary, Slovakia, Spain and the Czech Republic where the companies' businesses overlap.[18] Central to each of these decisions was the consideration of the likely effect on firm incentives of cross-shareholding and by divesting these interests through structural remedies it removes the direct link between firms and allows for alternative buyers to acquire the divested assets with a view to competing with the merged entity.

Interestingly, following the approval of the Lafarge Holcim merger, Afrisam and PPC are now planning to merge their operations, citing the need for scale in order to compete with new conglomerates.[19] A merged entity of PPC and Afrisam would leapfrog Lafarge-Holcim to become the largest in Africa with a production capacity of 23.8 million MT per annum. Afrisam made an offer to PPC and the board is considering the offer.[20]

Conclusion

There have been several investments in the continent largely led by Dangote Cement. The expectation is that the new investments and entry will lead to more rivalry between the main firms and there is already some evidence of this in some countries. However, there has also been consolidation. The Holcim-Lafarge merger will impact a number of countries and a further merger between Afrisam and PPC would introduce an additional consolidated player. The effects of these trends in particular are likely to be ambiguous although a history of collusive conduct between the major players provides a useful indicator of the likely dynamics of competition in the sector going forward. Certainly, there is need for domestic and regional competition authorities to consider these developments with significant caution, including in ensuring that the gains from the entry of several independents are not undermined through coordinated arrangements.

Notes

1. IMARA. (2014). SSA Cement Industry Report (January 2014).
2. AECOM. (2014). The Blue Book: Property and Construction International Handbook.
3. Sigh, S. P. (2013). 'Assessment of Competition in Cement Industry in India'. Research Project Report Submitted to Competition Commission of India.
4. See note 3.
5. Huschelrath, K., Muller, K. & Veith, T. 'Concrete shoes for competition: the effect of the German cement cartel on market price' in *Journal of Competition Law and Economics*, Vol. 9(1) (2013): 97-123.
6. Govinda, H., Khumalo, J. & Mkhwanazi, S. 'On measuring the economic impact: savings to the consumer post cement cartel burst'. Competition Law, Economics and Policy Conference, 4 & 5 September 2014.
7. Mutegi, M. 'Cartel firms get amnesty in new CAK regulation' (25 August 2014). *Business Daily*.
8. Ecobank. (2014). Middle Africa Insight Series: Commodities - Cement.
9. Edwards, P. 'Ethiopian Cement Focus' (24 January 2013). *Global Cement Magazine*.
10. See note 9.
11. Hedley, N. 'Imports, supply glut pressure cement sector' (14 April 2014). *Business Day*.
12. Kagai, D. 'Cement prices in Kenya drop to 12-year low, could fall further' (2 January 2014). *Construction Business Review.*
13. Mbongwe, T., Nyagol, O. B., Amunkete, T., Humavindu, M., Khumalo, J., Nguruse, G. & Chokwe, E. (2014). 'Understanding competition at the regional level: an assessment of competitive dynamics in the cement industry across Botswana, Kenya, Namibia, South Africa, Tanzania and Zambia'. African Competition Forum..
14. Competition Commission of South Africa. 'Commission approves Holcim / Lafarge merger with conditions' (8 October 2014).
15. Salop, S. C. & O'Brien, D. P. 'Competitive effects of partial ownership: Financial interest and corporate control' in *Antitrust Law Journal*, Vol. 67(2000), p. 559-614.
16. See note 14.
17. See note 14.
18. European Commission. 'Commission approves acquisition of Lafarge by Holcim, subject to conditions' (15 December 2014).
19. Hedley, N. 'Afrisam outlines PPC merger plan' (12 December 2014). *Business Day*.
20. See note 19.

Infrastructure sharing in telecoms: consolidation in South Africa

Lauralyn Kaziboni and Genna Robb

In South Africa there has been a spate of mergers in the telecommunications sector which have been investigated and approved by the Competition Commission ("Commission") between 2007 and 2014, with others still under consideration. Of particular interest are those involving the major players in sector, including an acquisition by Vodacom of Neotel and a joint venture between MTN and Telkom.[1] These transactions appear to follow a global trend towards consolidation in the telecoms industry resulting from the shift from voice telephony to data, which has decreased revenues for mobile network operators (MNOs).

Vodacom notified the Commission of the proposed 100% acquisition of Neotel for R7 billion in May 2014.[2] Vodacom is the biggest MNO in South Africa; while Neotel is the second national operator for fixed line telecommunication services, competing with the majority state-owned incumbent Telkom. Whilst Neotel is not currently present in the market for mobile network services, some concerns have been raised regarding the potential implications of the transaction for spectrum which is the frequency bands allocated to MNOs as the basis for wireless communications like Wi-Fi or mobile telephony. The acquisition of Neotel could give Vodacom access to the additional bandwidth in the 800MHz[3], 1800GHz and 3500GHz spectrum bands currently assigned to Neotel, which has raised concerns for Vodacom's competitors.[4] Spectrum is a finite resource and an essential input in mobile services provision such that spectrum consolidation which favours Vodacom could give Vodacom a stronger competitive position in the market. Cell C has argued that this would entrench Vodacom's dominant position in the market.[5] The acquisition would also give Vodacom access to Neotel's fibre assets and a potential advantage in the roll-out of 4G or Long Term Evolution (LTE) wireless network.[6]

MTN SA and Telkom have proposed a joint venture which would enable Telkom to outsource its towers and radio access network (RAN) to MTN SA, and allow for bilateral roaming.[7] Radio access network provides the connection between a device such as a mobile phone or computer, and its core network. This transaction would result in MTN SA taking over the financial and operational responsibility for the rollout and operation of Telkom Mobile's radio access network. Since the introduction of Telkom Mobile in 2010, it has not performed well and the joint venture with MTN SA would allow it to reduce operating expenses and increase its coverage.[8]

In South Africa, the four MNOs ranked from largest to smallest in terms of revenues are Vodacom, MTN, Cell C and Telkom Mobile.[9] The proposed acquisition of Neotel by Vodacom and the joint venture between MTN and Telkom Mobile would give these firms access to infrastructure that will allow them to offer advanced services sooner than Cell C is able to. These deals are likely to reduce Cell C's access to shared infrastructure and its ability to compete; which could have detrimental effects on customers.[10]

Mobile network sharing

Mobile networks require large up-front capital investments which results in massive sunk costs. MNOs recover these costs by charging mobile service users for services. The large sunk investments pose a barrier to entry for new MNOs as well as for existing networks looking to roll-out mobile networks in rural and less-populated areas. As such, there is a growing trend of sharing network and mobile infrastructure among MNOs in order to build more cost effective infrastructure. Network sharing may take many forms ranging from passive sharing of cell sites and masts to sharing of radio access networks and other active elements such as network roaming and the core network. Network sharing can enhance competitiveness in the telecommunication sector by reducing investment costs.[11]

While infrastructure sharing is the most cost-efficient design for any new roll-out in emerging markets and the best approach for technology migration and consolidation, the cost savings from infrastructure sharing are earned through sacrificing some of the control that the standalone operator has over its network. As such this can influence the level of competition and differentiation among mobile operators. It is thus important to consider operators' reasons for sharing, and their strategic interests. For instance, network and infrastructure sharing are usually recommended for increasing coverage in rural areas that have limited business potential, and where differentiation (which requires autonomy) is less important, although the in sharing arrangements may also dampen incentives to invest further in these areas.[12] In more contested markets where the revenue potential is higher, operators face some incentive not to share infrastructure because these arrangements usually imply losing sole strategic control over the infrastructure.

There have been a number of cases in Europe that exhibit how the competition authorities have taken into cognisance the advantages and disadvantages of infrastructure sharing from a competition perspective; and how they have remedied any competition concerns. We consider two cases below.

European case precedent

In 2010, T-Mobile UK and Orange UK notified a merger with the European Commission (EC). At that time there were five MNOs in the UK namely Orange, T-Mobile, O2, 3UK, and Vodafone and the transaction would decrease the number to four. 3UK was the smallest operator and had a RAN agreement with T-Mobile. The EC identified two likely anti-competitive effects that would stem from the merger. First, the merger was likely to affect the RAN sharing agreement between T-Mobile and 3UK since T-Mobile could terminate the contract or offer 3UK inferior services. This could reduce 3UK's ability to compete, decrease their performance levels, and probably result in their exit from the market or a reduction in their ability to remain as effective competitors. Second, the merged parties would potentially have a larger proportion of spectrum compared to its competitors which would only allow them to offer advanced mobile data services through LTE in the UK. In order to maintain the competitiveness of 3UK and other MNOs, the merged parties revised the agreement between 3UK and T-Mobile to safeguard 3UK's position as a competitor. The merged entity also offered to divest 15MHz of spectrum at the 1800MHz level. The divesture of the 1800MHz would assist the other MNOs to remain competitive post-merger as this spectrum band is suitable for the development of LTE services. The Commission was satisfied by these remedies as they would address the competition issues.[13] In 2015, five years after the merger, there are still four operators in the UK – EE (the company that runs EE, Orange & T-Mobile in the UK), O2, 3UK (Three), and Vodafone.[14]

In Denmark, the MNOs ranked from the largest to smallest are TDC, Telenor, Telia and Hi3G.[15] In February 2012, Telia Denmark and Telenor filed a horizontal production agreement which was cleared by the Danish Competition Council (DCC) subject to conditions. The two companies agreed to start a company called Newco that they would jointly own and control to develop the RAN infrastructure required by the two entities. The companies were, however, not permitted to share their core network as this would allow them to share information pertaining to their services and customers.

The DCC identified several potential anti-competitive impacts on the market for access to sites including that the agreement could increase collusive behavior in the wholesale market, reduce incentives to compete and attract new customers, allow the parties unfair access to frequency resources in the long term relative to competitors, and reduce common infrastructure investment to the detriment of rivals. As such the DCC attached conditions to address the potential anti-competitive effects. Telia and Telenor agreed to accept all requests for access to their infrastructure based on customary and market conditions, pay the joint venture for access to RAN according to a tariff structure that reflects costs; buy spectrum licenses through the joint venture (this would avoid a situation where the two companies pool spectrum); sell excess antenna sites to their competitors; and comply with rules and regulations preventing information exchange when setting up the joint venture.[16]

Conclusion

Where there is consolidation in telecommunications markets, there is need for effective regulation with a focus on preserving rivalry in the market.[17] The cases highlighted above illustrate that under effective regulation, consolidation and infrastructure sharing can be pro-competitive provided any competition concerns are addressed with sound remedies that sustain competition.

In South Africa the success of an MNO, and particularly the smaller operators, is directly linked to their access to key infrastructure and regulators are required to balance the objective of accommodating smaller rivals against the potential advantages of sharing arrangements and consolidation. To date, smaller rivals do not seem to have been profitable.[18]

Notes

1. Competition Commission website.
2. Tubbs, B. 'Neotel protects Vodacom deal' (2 October 2014). *ITWeb*.
3. Neotel is the only operator that has access to spectrum at 800MHz, which is still used by analogue broadcasters. See: 'MTN objects to Vodacom, Neotel deal' (14 November 2014). *Techcentral*.
4. Cell C has recently publicized their concern over Vodacom's access to the spectrum.
5. Gedye, L. 'Crossed lines on Neotel, Vodacom deal' (27 June 2014). *Mail & Guardian*.
6. See note 5.
7. Bilateral roaming is roaming implemented directly between two operators without using an intermediary. This ensures that a traveling wireless device (typically a mobile phone) is kept connected to a network without breaking the connection.
8. Odendaal, N. 'Vodacom assures competition will be stronger post Neotel buyout' (15 January 2015). *Engineering News*.
9. See note 8.
10. See note 5.
11. GSMA. (2012). Mobile infrastructure sharing.
12. Meddour, D. E., Rasheed, T., & Gourhant, Y. (2011). 'On the role of infrastructure sharing for mobile network operators in emerging markets', in *Computer Networks*, 55(7):1576-1591.
13. See European Commission. Case No. COMP/M.5650 - T-MOBILE/ ORANGE.
14. The United Kingdom Mobile Operators Association website.
15. Stoltze, L. 'Mobile broadband coverage in Denmark' (11 April 2014). *Bredbåndsmatch*.
16. Danish Competition and Consumer Authority. 'Radio Access Network sharing agreement between Telia Denmark A/S and Telenor A/S' (29 February 2012).
17. Frisanco, T., Tafertshofer, P., Lurin, P., & Ang, R. (2008). 'Infrastructure sharing for mobile network operators from a deployment and operations view'. Paper for the International Conference on Information Networking.
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Update: COMESA merger guidelines

Anthea Paelo

The COMESA Competition Commission (CCC) in October 2014 published merger guidelines to help clarify procedural issues regarding the notification of mergers. The CCC is relatively new having been established in January 2013. In the last year alone, the CCC has approved mergers worth over US$41 billion.[1] In an earlier issue[2], we discussed some of the concerns and opportunities that can arise with enforcing competition law across the 19 COMESA member states. Given a likely increase in merger activity in years to come[3], providing clearer guidelines for merger evaluation is an important step towards improving the functions of the authority. The revised provisions on notification in particular help to provide certainty for companies involved in cross-border transactions although we note that by their very nature, the guidelines and the legislative environment in terms of evaluating transactions will need to be tested on a case-by-case basis.

The main features of the new guidelines relate to what constitutes a notifiable merger and the two-phase merger review process. The COMESA competition regulations define a notifiable merger as one with a regional dimension and that has a value at or above the threshold of turnover or assets prescribed by the Commission's Board under Article 23(4).[4]

The current threshold of combined annual turnover or assets is zero, however the number of notifications is restricted by a clause that requires mergers to have "an appreciable effect on trade between Member States and which restrict competition".[5] The regional dimension refers to mergers taking place where at least one party has operations in two or more member states. The firm is considered to be operating in a member state if its annual turnover in the member state exceeds US$ 5 million. The CCC also has to be notified when the target undertaking is in a member state. However, a notification is not necessary where more than two thirds of the annual turnover in the common market of each of the merging parties is held in one member state. The notification fee is set at 0.5% (or US$ 500 000, whichever is lower) of the combined annual turnover or combined value of assets in the common market.

Another feature of the merger guidelines is the two-phase merger review process. The two phases allow for mergers that do not raise significant competitive concerns to be evaluated within 45 days. If at the end of the first phase the director determines that the merger is likely to cause a substantial prevention or lessening of competition, the companies would have to go through both phases, a process which can take up to 120 days.

The guidelines provide helpful reference for companies intending to merge in the region which is especially true when considering that a number of member states do not have national competition authorities. This is also in light of certain tensions over jurisdiction between the COMESA Competition Commission and national competition authorities as discussed in our previous article, as well as the need for cooperation between the authority and national authorities in terms of obtaining information and actually investigating cases, which has been required in practice.

Notes

1. Mutomweno, N. 'COMESA approves US$1bn mergers' (04 November 2014). *African Review of Business and Technology.*

2. Zengeni, T. 'Update on the COMESA Competition Commission' (April 2014). *CCRED Quarterly Review.*

3. Thomas, S. 'Mergers & Acquisitions: Africa's Resurgence' (10 July 2014). *Financial Mail.*

4. COMESA. (2014). 'The COMESA Merger Guidelines'. COMESA Competition Commission.

5. See note 4.

Leveling the playing field: asymmetry in call termination rates in SA

Anthea Paelo

In a public seminar hosted by CCRED in June 2014, panelists from different telecommunications companies debated the revised call termination rates announced by the Independent Communications Authority of South Africa (ICASA), with some arguing that the severe reductions in rates overall, although necessary, would significantly reduce revenue to operators.[1] In an effort to increase competition in the market given the strong position of South Africa's major operators Vodacom and MTN, ICASA had introduced lower, asymmetric call termination rates to facilitate the growth of smaller operators, as discussed below.

In September 2014, ICASA announced new draft call termination rates. Call termination rates are the rates a telecommunications operator charges for carrying another operator's calls.[2] The announcement followed an earlier dismissal by the High Court of ICASA's previous regulations on the matter as unlawful and invalid in March 2014.[3] The rationale for the dismissal was that the regulations and pricing had been made based on publicly available information and not detailed information from the telecommunication operators themselves which was not consistent with proper procedure. ICASA was given six months to review the recommendations. ICASA had previously decided to halve call termination rates using the long-run incremental cost plus (LRIC+) method.[4] The LRIC method, often applied in network industries where there are high fixed costs, is a forward-looking estimate of costs which treats all costs as variable in the long-run and assumes that incumbent firms would price at a level which covers their LRIC as an estimate of marginal costs.[5] It considers the incremental cost of producing a good or service, or alternatively the cost that could be avoided by stopping production of a good or service.

Consumers have benefited considerably in recent years from increased rivalry in the sector, due at least in part to the overall decline in call termination rates and the asymmetry of rates. Recent estimates suggest that retail prices for both Vodacom and MTN dropped by 34% and 27%, respectively, between 2008 and 2012.[6] Mobile network usage also grew in response to the lower rates, demonstrating the positive role that regulating *for* competition can play in improving market outcomes to the benefit of consumers and the development of markets even where there are powerful incumbent firms.

The tables below show the old and new call termination rates for both fixed and mobile lines, indicating the significant decline in prices charged. The asymmetric rates allow the smaller operators to charge their larger competitors a higher price for termination while the small operators pay a lesser fee for termination.[7] In order to qualify for asymmetry, the operator must have less than 20% share of terminated minutes in either the fixed or mobile market. Cell C and Telkom Mobile benefit from this arrangement in line with the objectives of increasing competition in the sector through supporting their growth.

While the new regulations resulted in a significant reduction in the call termination rates overall, they have also significantly reduced the rates that Cell C and Telkom Mobile can charge Vodacom and MTN as shown in table 2. For instance, the smaller operators can only charge the majors R0.31 down from the R0.44 suggested in April for mobile call termination, to which Cell C has objected.[10] Other operators have claimed that the reduction in call termination rates overall as an important source of revenue for mobile operators would affect investment, and reduce profitability, cover-

Table 1: Old and new fixed call termination rates[8]

Year	Old termination rates				New termination rates			
	Regulated rate		Asymmetry		Regulated rate		Asymmetry	
	W0N	B0N	W0N	B0N	W0N	B0N	W0N	B0N
2014	R 0.12	R 0.16	R 0.13 (8%)	R 0.21 (31%)	R 0.12	R 0.15	R 0.18 (50%)	R 0.21 (40%)
2015	R 0.12	R 0.12	R 0.13 (8%)	R 0.13 (8%)	R 0.11	R 0.12	R 0.15 (36%)	R 0.16 (33%)
2016	R 0.10	R 0.10	R 0.13 (30%)	R 0.13 (30%)	R 0.10	R 0.10	R 0.12 (20%)	R 0.12 (20%)

W0N: Within area code; B0N: Between area codes
Note: The figures in brackets show the percentage difference in the amount the smaller operators can charge the bigger operators for termination.

Table 2: Old and new mobile call termination rates[9]				
Year	**Old termination rates**		**New termination rates**	
	Regulated rate	**Asymmetry**	**Regulated rate**	**Asymmetry**
1 Oct 2014 - 30 Sept 2015	R 0.20	R 0.44 (120%)	R 0.20	R 0.31 (55%)
1 Oct 2015 - 30 Sept 2016	R 0.15	R 0.42 (180%)	R 0.16	R 0.24 (50%)
1 Oct 2016 - 30 Sept 2017	R 0.10	R 0.40 (300%)	R 0.13	R 0.19 (46%)
Note: The figures in brackets show the percentage difference in the amount the smaller operators can charge the bigger operators for termination.				

age, access to mobile networks and eventually employment.[11]

The LRIC model is widely applied, including by the European Commission, although some critics have claimed that it is likely to raise retail prices due to the "waterbed effect".[12] The waterbed effect arises when prices are pushed down on one side of the market, possibly due to regulation, causing prices in another part of the market to rise.[13] However, experience of call termination rates in other African countries such as Botswana, Kenya, Namibia and Nigeria has shown that retail prices have declined while operators' subscriber base and the profitability of incumbents has increased.[14] Kenya which makes use of the LRIC model has had the highest regulated decrease and also had the greatest decrease in retail prices. Retail prices dropped by as much as 68% while Safaricom, Kenya's biggest operator, had an increased subscriber base of 59%.[15]

Despite the mobile operators' concerns about ICASA's intervention in setting asymmetric call termination rates, the regulation appears to have had a less damaging effect on the market. Instead, consumers have benefitted from the lower rates, while subscriber numbers and operator profitability have also increased.

Notes

1. CCRED. Public Platform: Call Termination Debate (04 June 2014).
2. OECD. (2012). 'Developments in Mobile Termination'. *OECD Digital Economy Papers,* No. 193.
3. Mochiko, T. 'Icasa proposes new termination rates for mobile, fixed operators' (05 September 2014). *BDlive*.
4. See note 3.
5. Royal Mail. (2010). 'The Development of Long Run Incremental Cost Estimates in the Postal Sector by Royal Mail'. Discussion document by Royal Mail.
6. Hawthorne, R. (2014). 'Review of economic regulation of the telecommunications sector'. Centre for Competition Regulation and Economic Development Working Paper No. 2014/7.
7. Mochiko, T. 'Vodacom criticises call for asymmetric termination rates' (16 July 2013). *BizCommunity.com*.
8. Vermeulen, J. (2014). 'New Call Termination Rates Finalised' (29 September 2014). *MyBroadband.*
9. See note 8.
10. BusinessTech. 'Cell C to challenge termination rates' (30 September 2014). *BusinessTech*.
11. See note 7.
12. Genakos, C. and Valleti, T. (2011). 'Testing the waterbed effect in mobile telephony', in *Journal of the European Economic Association*, 9 (6):1114-1142.
13. Financial Times. (nd). 'Definition of waterbed effect'. *ft.com/lexicon*.
14. See note 12.
15. See note 12.

Quarterly competition case update - Mergers and acquisitions			
Country	**Target**	**Acquirer**	**Status**
Botswana	The corrugated packaging and tissue business divisions of NAMPAK	Ethos Fund VI	Approved
	Mulbridge Transport (Pty) Ltd	Transport Holdings Ltd	Approved with conditions
	Knyber Botswana Proprietary Ltd	Resen Holdings Proprietary Ltd	Approved
	Hotline Security Services (Pty) Ltd's Client Service Contracts with the required associated equipment	Security Services Botswana (Pty) Ltd.	Approved
Kenya	51% stake in Equatorial Commercial Bank (ECB)	Mwalimu Savings and Credit Co-operative Society (Sacco)	Approved
	23% of UAP Holdings in Kenya	Old Mutual	Approved
South Africa	Dimension Data	Three divisions of MWEB	Approved with conditions
	Pepkor	Steinhoff	Ongoing
	Shoprite	Weatherlys	Approved with conditions
	ADvTECH	Centurus	Approved
	50% of Samancor	Anglo American	Approved
	Majority stake in Liberty Star Consumer Holdings (Libstar)	Abraaj group	Approved
	BAE Systems Land Systems South Africa (LSSA)	Denel	Approved
	Businesses from Protea Coin Group	Fidelity Group	Approved with conditions
	Dial-a-bed	Coricraft	Approved with conditions
	Autozone	Ethos	Approved with conditions
	Lowveld Hospital (Pty) Ltd and Interstate Clearing (Pty) Ltd	Life Healthcare Group (Pty) Ltd	Prohibited
	Atterbell Investment (Pty) Ltd (Atterbell)	Hosken Consolidated Investment Ltd	Prohibited
	Stake in Rand Lease Securitisation (RF) (Pty) Ltd	Housing Impact Fund South Africa Trust	Approved
	Jika Properties (Pty) Ltd	Arrowhead Residential Ltd	Approved
	Van de Wetering Industriee (Pty) Ltd	DCD SPV	Approved
	Coca Cola Shanduka Beverages (Pty) Ltd	Atlantic Industries	Approved
	Taggart Global South Africa Investments Holdings (Pty) Ltd	DRA International Ltd	Approved
	Inter-Active Technologies (Pty) Ltd	Bytes People Solutions	Approved
	Total Coal South Africa (Pty) Ltd	Exxaro Resources Ltd	Approved
	Safe Farm Ventures (Pty) Ltd	Old Mutual Life Assurance Company	Approved
	Micawber 832 (Pty) Ltd	Attacq Waterfall Investment Company (Pty) Ltd	Approved
	Samancor Holdings Proprietary Ltd, Groote Eylandt Mining Company Proprietary Ltd and Samancor AG	Anglo American Plc	Approved
	Sibanye Gold Ltd was issued a notice of apparent breach for going against a condition of their merger to not retrench any employees for a period of two years following the implementation of the merger		
	Glenryk	Oceana	Approved subject to a change in conditions
Zimbabwe	40% stake in Telecel Zimbabwe	Brainworks Capital Management	Ongoing

Quarterly competition case update - Main enforcement cases	
Country	**Case summary**
Botswana	The Competition Authority withdrew its rejection of an application by Choppies Distribution Centre (Pty) Ltd, Payless Supermarket (Pty) Ltd and Woodblock (Pty) Ltd to form Choppies Buying Group
Namibia	The Namibia Association of Medical Aid Funds (Namaf) and its 9 medical aid funds were found to have contravened the Competition Act by fixing prices
South Africa	The Competition Commission is investigating allegations of price-fixing among Western Cape retailers of school uniform
	The Commission conducted a dawn raid at the premises of AECI (Akulu Marchon division) and Investchem (Pty) Ltd, both of which are involved in the manufacture surfactants (used in dishwashing liquids, soaps, car cleaning products). The raid was conducted in connection with an ongoing investigation into collusion in the sector on allegations of customer allocation and price fixing
	Crown Relocations admitted its role between 2007 and 2012 in the furniture removals cartel and has received an administrative penalty of R800 000
	The Competition Commission has referred cases against the following firms in relation to collusive tendering across various projects in the construction industry including the provision of engineering services: Afristruct Projects (Pty) Ltd & Stefanutti Stocks Ltd; Giuricich Coastal Projects (Pty) Ltd & Grinaker- LTA, Power Construction (West Cape) (Pty) Ltd; Power Construction (Pty) Ltd and Haw & Inglis (Pty) Ltd; Isipani Construction (Pty) Ltd
	The Commission has referred a case of price fixing against six manufacturers and distributors of aglime; Leo Constantin Pistorius No; Kalkor (Pty) Ltd; CML Taljaard & Son (Pty) Ltd; PBD Boeredienste (Pty) Ltd; Grasland Ondernemings (Pty) Ltd & the Fertilizer Society of South Africa
	The Commission will initiate a complaint against Parmalat SA (Pty) Ltd for alleged abuse of dominance for a bonus scheme which may amount to exclusionary conduct. This follows information obtained during the investigation of exemption applications filed by the Southern Africa Milk Co-operative Limited (Samilco) on behalf of its members
	The Commission is initiating a case of price fixing, market allocation, and bid rigging against Eberspaecher Exhaust Gmbh & Co KG; Faurecia Corporation; Tenneco Gmbh; Friedrich Boysen Gmbh & Co. KG; Cornaglia S.P.A Divisione Cor.Tubi and Calsonic Kansei in the supply of motor vehicle exhaust systems
	The Commission will refer a complaint against all the members of the Association of Electric Cable Manufacturers of South Africa for fixing prices of power cables, dividing of markets and collusive tendering
Tanzania	The Fair Competition Commission is investigating oil companies in Tanzania for allegations that they colluded to restrict oil supply in 2011
Zimbabwe	The Zimbabwe Competition and Tariff Commission has met with the Reserve Bank of Zimbabwe and the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) to discuss regulatory solutions to recent complaints brought against Econet concerning USSD services in the provision of mobile money services

Note: Based on competition authority websites and publicly available sources.

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