

# Oil & Gas

## Focus on Africa competition law requirements

This guide outlines the current status of competition law across Africa.

# Introduction

African economies are benefiting from unprecedented economic growth, helped by business-friendly reforms and an improving legal and regulatory framework.

Competition law is beginning to play a significant role in these developments. Whereas previously only a handful of African countries had implemented such rules, now only a handful have not yet done so.

The rapid implementation of competition law across the African continent can be explained by a number of interrelated factors:

- increased participation of private enterprises, as state enterprises begin to roll back their own economic activities, which creates a need for more market-based competition to ensure sustainable economic progress
- Greater regional integration with multilateral organisations such as the Common Market for Eastern and Southern Africa (COMESA) seeking to pool resources and enforce competition law across borders to encourage cross-border trade and generate efficiencies
- The grant of concessions to private developers to incentivise investment in infrastructure which give rise to monopoly concerns and issues as to the extent to which third parties should be given regulated access; and
- The influence of competition law enforcement agencies from outside of Africa that have trained up and shared “best practice” with local officials to enable those officials to assert their authority over businesses in their jurisdiction more confidently.

As an ever growing number of countries across Africa implement national and international competition law regimes, it is becoming essential for international ventures with business activities on the continent to ensure compliance with their competition law obligations. The consequences of not doing so are likely to become ever more significant over time.

As a graphic illustration of the changes described above, we have set out in this booklet the current status of competition law enforcement (as at November 2014) by the multilateral organizations mentioned above. We hope you find the information useful and would welcome the opportunity to discuss it further with you.

**“Thanks to a strong network of associations...this experienced firm has the ability to provide seamless, high-quality advice throughout the continent.”**

*Legal 500 (independent legal guide)*

**“This group’s strong international capabilities give it significant presence in the oil and gas...markets; interviewees agree that its lawyers have ‘a long-standing reputation in the field developed over many years’.”**

*Chambers UK 2012*

“One to watch”  
in The Lawyer  
Africa Elite 2014



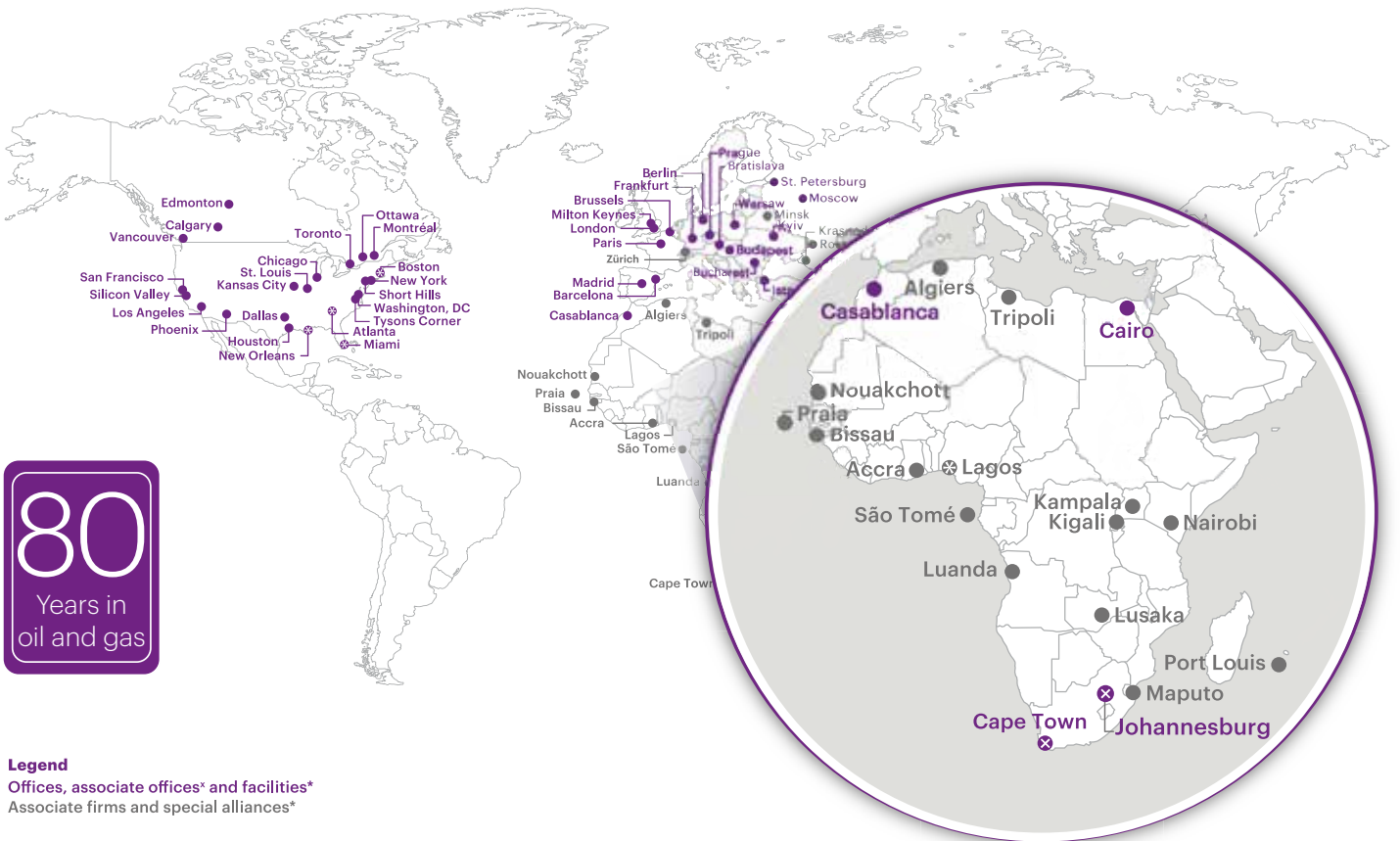
Chambers Global  
The firm stands out for its long-standing, high-profile Africa-wide practice.



Chambers UK  
2014  
(and over the last 15 years)  
Tier 1 Energy & Natural Resources



“What drives Dentons is a strategic commitment to Africa.”



**Legend**  
 Offices, associate offices\* and facilities\*  
 Associate firms and special alliances\*

# Dentons in Africa

With dedicated Africa teams in Europe (France, UK), the Middle East and the US, 18 affiliate locations and other correspondent law firms in Africa, Dentons is a leading international law firm on the continent. We have an unrivalled track record, dedicated resources and consistently provide a high quality of service across a range of transactions and advisory work.

This is a time of growth, change and new opportunity in Africa, with increasing international business and investment flows. Recently voted the "Single Deal Adviser of the Year 2014" by *Private Equity Africa* and the "leading law firm in Africa" for the third consecutive year, Dentons is ideally positioned to advance the objectives of our clients engaged in the continent's continued development.

## Key facts and figures

- Dentons is one of the top 10 largest law firms in the world
- Clients benefit from more than 2,500 lawyers and professionals
- Presence in 75+ locations in 50+ countries across the globe; 18 of those countries are in Africa, where in addition to our Egypt, Morocco and South Africa offices we operate through a network of associate firms and correspondent law firms
- First major international law firm in Africa (Cairo office was established in 1964)
- Over 60 years of Africa deals experience
- Acted on deals spanning every country on the African continent.

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## Awards

### TMT Law Firm of the Year 2013

*TMT Finance Middle-East & North Africa*

### Deal of the Year 2012

*Global Trade Review*

### Best Law Firm in Trade Finance 2012

*Trade & Forfaiting Review*

### Best Trade Finance Law Firm EMEA 2012

*Trade Finance*

### Development Finance Award 2012

*Mines and Money*

### Deal of the Year 2012

*Global Trade Review*

### Best Law Firm in Africa 2011, 2010, 2009

*emeafinance magazine*

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## Award-winning deals Dentons has advised on

### Deal Advisor of the Year 2014

*Private Equity Africa*

### African Oil & Gas Midstream Deal of the Year 2013

*Project Finance European and African Deals of the Year*

### European Mining & Metals Deal of the Year 2013

*Project Finance European and African Deals of the Year*

### African Large Cap Deal of the Year 2013

*Private Equity Africa*

### African Large Cap Exit of the Year 2013

*Private Equity Africa*

### Portfolio Award for Innovation 2013

*Private Equity Africa*



















### Telecoms Deal of the Year Award

*2012 - CommsMEA*

## Our locations of offices and associate firms include

Dentons' distinctive approach is to integrate international expertise with outstanding local lawyers. Our extensive network of associated law firms in Africa – **the largest network of any international law firm** – provides our

clients with first class local legal advice as well as practical advice on doing business in Africa. We operate an Africa Desk in global financial and government centres, including Beijing, Dubai, London, Montreal, New York, Paris and Washington DC, from which our international clients have ready access to our Africa experience.

	Algeria	Algiers	Cabinet Hadj-Hamou & Djouadi
	Angola	Luanda	MC&A in association with Mota Veiga Advogados
	Cape Verde	Praia	MC&A in association with Arnaldo Silva & Associados
	Egypt	Cairo	Dentons
	Ghana	Accra	JLD & MB Legal Consultancy
	Guinea Bissau	Bissau	MC&A in association with Armando Mango & Associados
	Kenya	Nairobi	Hamilton Harrison & Mathews
	Libya	Tripoli	Tumi Law Firm
	Mauritania	Nouakchott	Cabinet Bouhoubeyni
	Mauritius	Port Louis	Benoit Chambers
	Morocco	Casablanca	Dentons
	Mozambique	Maputo	MC&A Sociedade de Avogados
	Nigeria	Lagos	Udo Udoma & Belo-Osagie
	Rwanda	Kigali	Trust Law Chambers
	São Tomé e Príncipe	São Tomé	MC&A in association with Posser da Costa & Associados
	South Africa	Cape Town	Dentons
	Uganda	Kampala	Kampala Associated Advocates
	Zambia	Lusaka	Corpus Legal Practitioners



# Current status of competition law in Africa

# Common Market for Eastern and Southern Africa (COMESA)



(Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe)

## Merger Control Regime

The Regulations provide for the mandatory notification of mergers where:

- a. at least one merging party operates in two or more Member States (an undertaking "operates" in a Member State if it has annual turnover of in that Member State exceeding US\$5 million);
- b. the combined annual turnover or assets of the merging parties in the COMESA region equals or exceeds US\$50 million;
- c. the annual turnover or assets of at least two of the merging parties exceeds US\$10 million in the COMESA region; and
- d. it is not the case that more than 2/3 of the annual turnover in the Common Market of each of the merging parties is achieved or held within one and the same Member State. If this 2/3 test is met, the merger will not be notifiable.

The Regulations prohibit the following practices:

- i. price-fixing arrangements;
- ii. collusive tendering and bid-rigging;
- iii. market or customer allocation agreements;
- iv. allocation by quota to sales and production;
- v. collective action to enforce agreements;
- vi. concerted refusals to supply goods or services to a potential purchaser, or to purchase goods or services from a potential supplier; or
- vii. collective denials of access to an arrangement or association which is crucial to competition.

## Anti-competitive/ Behavioural Agreements

The maximum monetary penalty for a contravention by a corporation:

- i. for each contravention of provisions against prohibited practices between competitors is 750,000 units;
- ii. for each contravention of provisions against abuse of a dominant position is 500,000 units;
- iii. for each contravention of provisions against restrictive business practices is 300,000 units; and
- iv. for each contravention of consumer protection provisions is 300,000 units.

A unit is equivalent to COM\$1 or US\$1.

# West African Economic and Monetary Union (WAEMU)



(Benin, Burkina Faso, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal, and Togo)

## Merger Control Regime

Legislation applicable to mergers is set by:

- i. the Rule n°02/2002 of WAEMU, dated 23 May 2002, relating to anti-competition practices in WAEMU (the Rule n°02/2002); and the Rule n°03/2002 of WAEMU, dated 23 May 2002, relating to procedures applicable to concerted practices and abuse of dominant position inside WAEMU (the Rule n°03/2002).

Merger control applies more widely to concentrations that may lead to the creation or the strengthening of a dominant position in a market within the WAEMU zone.

For the purposes of the WAEMU competition regulations, a merger is defined as:

- i. a merger of two or more previously independent legal entities;
- ii. the operation upon which a person or a group of persons holding the control of a company acquires, directly or indirectly, the control of all or part of another company; and
- iii. the setting up of a full function joint venture.

The concept of control was defined in a decision relating to a negative

clearance issued by the WAEMU Commission. According to this decision, the control results from rights, contracts or any other means that confer, severally or jointly, the possibility to have a conclusive influence on a company.

The conclusive influence showed itself by the blocking power held by two or more founding companies which enabled them to reject a strategic decision taken in the joint venture company.

Notification by merging companies is not compulsory. The merging companies are free to apply for a negative clearance. There is no deadline for the application.

Control proceedings can be launched by the WAEMU Commission automatically (without consultation), at the request of the merging companies or at the request of any individual or entity.

The Commission can decide to launch control proceedings if the merger or concentration could lead to abuse of a dominant position on the relevant market within the WAEMU zone.

### Anti-competitive/ Behavioural Agreements

Article 88 of the WAEMU Treaty prohibits:

- i. agreements, associations and concerted practices among companies having the aim or effect of restricting or distorting free competition within the Union;
- ii. any practice by one or more companies amounting to an abuse of dominant position in the common market or in a significant part thereof;
- iii. public subsidies liable to distort competition by favouring specific companies or products.

## Central African Economic and Monetary Community (CEMAC)



(Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Equatorial Guinea, Gabon)

### Merger Control Regime

CEMAC Regulation No.1/99/UEAC-CM-639 of 25 June 1999 provides that concentrations of a community dimension must be subject to a prior notification and merger control review carried out by the CEMAC Organe de Surveillance de la Concurrence (OSC). Only concentrations meeting one of the following alternative thresholds are considered as being of a community dimension:

- i. at least two of the undertakings involved each have a turnover above CFA Francs 1 billion in the Common Market; or
- ii. both undertakings have an aggregate 30% market share in the Common Market.

The Regulation details applicable review procedure and states in particular that the CEMAC Regional Council is to issue a provisional decision within two months from the notification date and a final decision within five months. As in the European Union for instance, the Regulation provides that a concentration of a community dimension must exclusively be reviewed at CEMAC level, thereby clearly indicating that Member States do not have the authority to review concentrations meeting the regional thresholds.

Penalties for absence of notification are up to 5% of the turnover achieved in the common market or 75% of the profit resulting from the operation.

### Anti-competitive/ Behavioural Agreements

CEMAC regulations prohibit the abuse of a dominant position. The threshold for dominance is acquiring a market share of greater than or equal to 30%.

The adoption of any of the following measures is considered an abuse of a dominant position:

- i. preventing a competitor from establishing themselves in the market or evicting a competitor from the market;
- ii. exerting pressure on distributors with the effect of preventing the flow of products from its competitors; or
- iii. engaging in actions that have the effect of increasing production costs of competitors.





# Economic Community of West African States (ECOWAS)



(Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo)

## Merger Control Regime

- i. 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 are prohibited where the resultant market share in the 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.
- ii. Any merger prohibited by the treaty shall be automatically void and of no effect in any Member State of ECOWAS.
- iii. Mergers, acquisitions or concentrations of enterprises prohibited by virtue of the treaty may be authorised or exempted if the transaction concerned is in the public interest.

## Anti-competitive/ Behavioural Agreements

The following shall be prohibited as incompatible with the ECOWAS Common Market:

- i. 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 is 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;
  - b. limit or control production, markets, technical development or investment;
  - c. share markets, customers or sources of supply;
  - d. apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage; or
  - e. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;
- ii. any agreement or decision prohibited under the treaty shall be automatically void and of no legal effect in any Member State of the ECOWAS Community.

For the purposes of ECOWAS, one or more enterprises hold a dominant position in a relevant market if, singularly or collectively, it/they possess a substantial share of the market that enables it/them to control prices or to exclude competition.

Any abuse, or acquisition and abuse of a dominant position by one or more enterprises within the ECOWAS Common Market or in a substantial part thereof, shall be prohibited as incompatible with the Common Market in so far as it may affect trade between Member States.



# East African Community (EAC)



(Burundi, Kenya, Rwanda, Tanzania and Uganda)

## Merger Control Regime

The EAC Competition Regulations 2010 are yet to come into force.

A person intending to execute a merger or an acquisition shall notify the East African Community Competition Authority of such merger or acquisition.

A merger or acquisition shall not come into effect before its notification to the Authority and the Authority has given its approval.

If the Authority does not notify the person within 45 days, the parties may proceed with the merger.

The Council of Ministers may override the Authority's objection to

a merger or acquisition if the Council is satisfied that the merger is to fulfil an overriding public interest.

Any transaction carried out without notification is void. In addition, any person responsible for the notification shall be liable for a fine of not more than 10,000 dollars or imprisonment for a term of not more than two years or both.

## Anti-competitive/ Behavioural Agreements

Prohibited practices include agreements, including cartels, which:

- i. fix (determine) prices;
- ii. limit or control production, supply, technical development, etc.;
- iii. produce allocations of customers;
- iv. prevent competitors from accessing to the market;
- v. create bid-rigging or collusive bidding;
- vi. promote tie-in practices (i.e. making the purchase of a particular

product conditional on the purchase of a different product);

- vii. encourage exclusive supply/distribution;
- viii. amount to a refusal to deal; and
- ix. contain resale price maintenance agreements.

Penalties include the following:

- i. cease and desist order;
- ii. penalty of not more than US\$10,000 or imprisonment for a period of not more than two years, or both;
- iii. compensation (damages);
- iv. nullification of agreement;
- v. order to modify agreement; and
- vi. in case of mergers and acquisitions, can be approved, approved with modification, or refused approval.





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