

COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

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ELIG Gürkaynak Attorneys-at-Law

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Van Bael & Bellis



Competition Enforcement Agencies Handbook 2019

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Competition Enforcement Agencies Handbook 2019

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Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

The information listed is correct as of April 2019.

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Competition Commission

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Questions and answers

How long is the head of agency's term of office?
Three years.

When is he or she due for reappointment?
She is due for reappointment in 2019.

Which posts within the organisation are political appointments?
The chief executive officer, the chief financial and corporate services officer, and the Board of Commissioners.

What is the agency's annual budget?
The agency's annual budget is 15 million emalangeni.

How many staff are employed by the agency?
Currently, 29 staff are employed at the agency.

To whom does the head of the agency report?
To chairman of the Board.

Do any industry-specific regulators have competition powers?
Yes. The Eswatini Energy Regulatory Authority, the Eswatini Communications Commission, the Financial Services Regulatory Authority and the Eswatini Public Procurement Regulatory Agency.

If so, how do these relate to your role?
These regulators are sector-specific and exercise general competition law powers in their respective sectors.

The enabling legislation for some of these regulators allow for consultation with the various competent authorities responsible for competition issues, fair trading and consumer affairs, and other areas that may impact the sectors regulated. The jurisdiction of the Commission is all-encompassing as it extends to all economic activity within the country or having an effect in the country. These sector-specific regulators do not have exclusive competition powers, hence there is nothing preventing the Commission from looking into competition issues arising from the regulated sectors. The Commission and the sector-specific regulators have concurrent jurisdiction in matters affecting competition. We are currently in the process of signing memorandums of understanding with the regulators to avoid inconsistencies and duplication.

May politicians overrule or disregard authority's decisions? If they have ever exercised this right, describe the most recent example.
The Minister of Commerce Industry and Trade under section 14 of the Competition Act is allowed to make representations on a matter of interest that is before the Commission. There is nothing in the law that allows politicians to overrule or disregard the authority's decision.

Does the law allow non-competition aims to be considered when your agency takes decisions?

Yes. In merger analysis, the law allows the Commission to look at, among other things, the ability of small enterprises to become competitive and the ability of national industries to compete in international markets. The Commission, where applicable, will further consider issues of potential export and the overall investment that will result from a particular transaction.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this? Has any competition decision by the agency been overturned?

The High Court of the Kingdom of Eswatini hears appeals against decisions of the Commission. Decisions of the High Court can be appealed at the Supreme Court of Eswatini. None of the decisions of the Commission have been overturned by the courts as yet.

Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.

No. All proposed mergers have been cleared with or without conditions.

Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.

Yes.

- The acquisition by Premier Swazi Bakeries (Pty) Limited of the assets and business activities of Ngwane Mills (Pty) Limited (case MA/04/2013), concerned with the production, sale and distribution of maize and wheat milled products, as well as the import, sale and distribution of staple and value-added products such as rice, pasta, sugar beans, sorghum flour, popcorn, peanuts and biscuits.
- The acquisition of the entire shareholding of Usutu Forest Products Company Limited by Montigny Investment Limited (case MA/10/2013).
- The acquisition of the assets and trading liabilities from Unitrans Swaziland (Pty) Ltd, Unitrans Agricultural Services (Pty) Ltd and South Star Investment (Pty) Ltd by Southern Star Logistics (Pty) Ltd. This was concerned with the transportation of whole stick sugar and general sugar in the Lubombo Region in Eswatini, the distribution of liquefied petroleum gas and ethanol in Eswatini,

the provision of general freight services in Eswatini and the distribution and bridging of fuel in Eswatini (Case MA/03/2017).

Has the authority conducted a Phase II investigation in any of its merger filings?

Yes. The acquisition by Bidvest Group Limited of the entire shareholding in the Brandcorp Holding Proprietary limited (case MA/10/2016).

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence?

Not yet. This is, however, possible given the fact that Eswatini is a Common Market for Eastern and Southern Africa (COMESA) member state and the COMESA Competition Commission can and will look into cross boarder cartel conduct which may have an effect in Eswatini.

Do you operate a leniency programme? Whom should potential applicants contact? What discounts are available to companies that cooperate with cartel investigations?

Yes, there is an immunity and leniency programme. Potential applicants should contact the office of the chief investigations officer. Discounts can range from partial immunity to full immunity considering the context in which the leniency application is made.

Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

Yes, there is a criminal enforcement track in the competition act; however, the Commission does not conduct investigations and prosecutions for cartel activity. The Office of the Director of Public Prosecutions in Eswatini is responsible for the criminal enforcement.

Are there any plans to reform the competition law?

Yes, the competition law is currently being reformed.

When did the last review of the law occur?

This is the first review.

Do you have a separate economics team? If so please give details.

Yes, we have the Policy and Research Division, which provides support to the other departments of the Commission.

Has the authority conducted a dawn raid?

Not yet.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.

No we have not.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

There are no pre-merger notification thresholds. All mergers are notifiable. Thresholds are however, proposed in the proposed Competition Bill.

Are there any restrictions on minority investments that involve less than a majority stake in the business?

There are no specific restrictions on minority investment in the Act. The Commission will, however, analyse minority investments if the holder thereof is in a position to influence the strategic direction of the company.

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