ISSN: 3049-7159

Review Article

Journal of Business and Econometrics Studies

Economic Implications of the AfCFTA Competition Protocol

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Received: March 09, 2025; **Accepted:** March 18, 2025; **Published:** March 24, 2025

Introduction

The African Continental Free Trade Area (AfCFTA) was signed in 2018 and came into force in 2019 and 48 countries have deposited their instruments of ratification representing over 89% of signatories to the agreement [1]. The AfCFTA aims to reduce tariff and non-tariff barriers to trade and enable the free movement of goods, services capital and people. World Bank research shows that the AfCFTA could lift 50 million people out of extreme poverty by 2035 and expand incomes by US$ 571 billion.

The AfCFTA negotiations is taking place in phases. Phase 1 of negotiations will cover trade in goods and services as well as dispute resolution. Phase II deals with investment, competition policy and intellectual property rights while E-commerce will be adopted in phase III. In order to support the negotiation process, the agreement establishes eight protocols to provide a framework for countries to trade on.

The AfCFTA Protocols in Brief

- **Trade in goods:** A key protocol governing trade in goods
- **Trade in services:** A key protocol governing trade in services
- **Investment:** A protocol focusing on socioeconomic transformation for the public interest.
- **Intellectual property rights:** A protocol governing intellectual property rights
- **Competition:** A protocol governing socioeconomic transformation for the public interest
- **Dispute settlement:** A protocol that requires state parties to implement the recommendations and rulings of the DSB
- **Digital trade:** A protocol covering areas such as market access, data governance, and digital trade inclusion
- **Women and youth in trade:** A protocol that aims to achieve inclusion of women and youths

This policy brief provides an overview of the competition protocol, national competition laws in Cameroon and the economic implications of the AfCFTA protocol for Cameroonian companies. It concludes with brief policy recommendations to accelerate the implementation of the protocol.

Section 1: Brief Overview of the Competition Protocol

Objective of the Competition Protocol: To create an integrated competition regime for Africa, enhance competition while protecting the gains from market liberalization [2]. It also aims to give states the capacity to deal with anti-competitive practices and promotes a platform for exchanges, capacity building and economic integration. Countries still have control over competition laws and mergers, but in the event that a case falls outside their jurisdiction, the AfCFTA will take precedence (Art. 3:2). The protocol excludes labor-elated agreements such as collective bargaining (Art 4) and provides against anti-competitive practices (Art 5).

Some practices that are prohibited under the protocol include;

- 'horizontal' business practices such as price-fixing agreements, restraints on trade, refusal to purchase or supply among others (Article 6).
- 'vertical' practices such as minimum resale price maintenance, or any agreement that has the effect of distorting, preventing or restricting competition in the Market (Article 7).
- abuse of a dominant market position (Article 9).
- abuse of economic dependence and other anti-competitive practices.

Merges and Acquisitions – an essential part of the protocol - are covered in Art. 10, that gives member states the right to accept o eject any such merger if they substantially lessen, prevent, restrict, or distort competition within the market especially with regards to issues like employment or the competitiveness of small and medium-sized enterprises [3]. Under the protocols, a threshold will be set for deals to be scrutinized by national authorities.

Citation: Sonia Kouam. Economic Implications of the AfCFTA Competition Protocol. J Bus Econo Stud. 2025. 2(2): 1-4. DOI: doi.org/10.61440/JBES.2025.v2.56

How will Competition be Managed at the African Level

A Competition Authority will be established comprised of a Board of 15 members, headed by a Chairperson and an Investigative Body, headed by an Executive Director. The Board defines the Authority's policy and adjudicates any conduct that is prohibited by the protocol and/or approve and deny applications of exemptions and mergers and acquisition (Art 14).

The Investigative Body is equally tasked with conducting market studies, examine exemption applications, advise on ways to improve the protocol and support local competition authorities by promoting their regimes and cooperating with relevant regulators (Art 15). Fines of up to 10% of an entity's turnover may be issued as financial penalties for breaking laws and norms (Art 17). The competition committee established by the Council of Ministers will recommend regulations to ensure the protocol is effectively implemented at all levels [4]. The committee will equally be responsible for monitoring and evaluating the protocol's working (Art. 18).

What happens if Parties Cannot come to an Agreement?

According to Article 24 of the competition protocol, there is an independent tribunal that will be responsible for hearing appeals where businesses disagree with the decision of the authority elated to a specific application. Disputes between state parties will be resolved in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes.

Implementation

Article 12 of the protocol states that all members of the AfCFTA must notify other state parties of their laws, regulations and commitments under international agreements. State who does not have laws or competition authorities must set them up once the protocol enters into force. Over 32 African countries have competition laws and authorities, so countries like Cameroon have the infrastructure to ensue effective competition between businesses under the AfCFTA.

Does any part of the protocol contradict Local laws?

There are still some concerns with regards to the overlapping roles and responsibilities of national versus regional regulators. Issues such as capacity and poor infrastructure could weigh on seamless implementation of the protocol. As trading activity grows, we can expect to see higher rates of activity in terms of notifications and appeals.

In Cameroon, the regulatory regime is well developed and competition authority is present but ceremonial, even as we expect this to change going forward [5]. We expect the regional competition authorities and committees to reinforce not contradict local competition authorities. However, we must signal to regional and committees that while the competition authority may dictate merges and acquisitions, all price-related matters are determined by the Ministry of Commerce. As such, while a merger could incentivize monopolies, the Ministry of Commerce may be inclined to agree where prices fall for consumers even where the competition authority may be wary of such deals.

While there remain concerns about the working of the Protocol, in particular, with regard to the overlapping relationships among national and regional competition authorities, along with other possible challenges such as capacity and poor infrastructure, the Protocol on Competition is a welcome move in attaining the promise of the AfCFTA [6]. It is surmised that as the continental trading regime grows and develops, the Protocol will likely see enhanced activity in terms of notifications and appeals to the Tribunal.

In accordance with Article 22 of the Competition Law, the NCC has the following powers:

- to examine and issue an opinion on competition policy in Cameroon in particular, including legislative and regulatory texts likely to influence the exercise of competition in the internal market;
- to research, control, prosecute and sanction the anti-competitive practices defined in this law; and
- to provide the expertise and assistance necessary for taking competition court decisions.

Section 2: Cameroon Competition law

Regional laws

- Regulation No. 06/19-UEAC-639-CM-33 of 7 April 2019 regulating competition in CEMAC. It regulates against anti-competitive practices which could have a substantial impact on competition in the Economic and Monetary Community of Central African States (commonly known by its French acronym as CEMAC. The CEMAC sub-region is made up of six countries; Cameroon, Central Africa Republic, Congo, Gabon, Equatorial Guinea, Chad) ("CEMAC Regulation").
- Regulation No. 000350 outlines the rules regarding competition in the CEMAC region and sets out the modalities for Regional Supervisory Bodies as well as the procedure for applying the Regulation No 06/19-UEAC-639-CM-33 regulating competition in CEMAC.
- Directive No. 01/19-UEAC-639-CM-33 relates to the institutional organisation in member states for the application of competition laws in CEMAC member states. This directive ensure that all actors apply the CEMAC competition la win a uniform manner.

National laws

- Law No. 98/013 of 14 July 1998 on Competition. Defines anti-competitive practices and provides sanctions against them while setting out the modalities for entities to declare their intent for mergers and acquisitions that may likely to affect fair competition in Cameroon. It equally established the National Competition Commission which oversees and investigates anticompetitive practices across the national territory ("Competition Law").
- Decision No 03/MINCOMMERCE of 16 February 2010 lays out the thresholds, conditions and modalities for declaration of mergers and acquisitions at the National Competition Commission ("NCC"). This Law sets out the conditions for mandatory declaration of thresholds for mandatory declarations for mergers and acquisitions in Cameroon.

Section 3: Mergers and Acquisitions in Cameroon

A prominent example of a merger and acquisition in Cameroon is the acquisition of Guinness Cameroon (owned by Diageo) by the Castel Group at an estimated €460 million and another deal is the Cameroon government's decision to acquire the electricity provider ENEO Cameroon from UK firm ACTIS.

Banking and Finance

- The Cameroonian subsidiary of Standard Chartered Bank is being acquired by Nigerian banking group Access Bank Plc for an undisclosed price, as part of a global acquisition deal between both banks in five African countries, including Angola, the Gambia, Sierra Leone and Tanzania.
- Authorities of the Economic Community of Central African States(Communauté Économique des États de l'Afrique Centrale – CEEAC) announced a sale of an 81% stake of Commercial Bank Cameroun (CBC) by the State of Cameroon, with 51% of the share capital sold to qualified investors and another 30% listed on the Economic and Monetary Community of Central Africa (CEMAC) Stock Market, the Bourse des Valeurs Mobilières d'Afrique Centrale (BVMAC). The State will retain 17% of the share capital.

Food and Beverage

- In 2022, British beverage company Diageo announced its intention to sell its Guinness Cameroon subsidiary to France's Castel Group for an estimated EUR460 million price tag and would give CASTEL Group 80% of the beverage market.
- The deal is approved by the National Competition Commission (Commission National de la Concurrence) and was greenlit on 28 March 2023 by the CEMAC competition authorities – namely the CEMAC Commission and its Community Competition Council (Conseil Communautaire de la Concurrence).
- However, it should be noted that the Union Camerounaise des Brasseries Group (UCB), a fellow competitor in the beverages sector is set to challenge the deal in the Community Court of Justice in N'Djamena (Chad) due to a lack of transparency in the deal. UCB equally alleges that when it learned of Diageo's intention to sell its Cameroonian subsidiary, it expressed an interest to acquire Guinness but did not receive any feedback – which is a violation of CEMAC competition rules.

Energy

- The Cameroonian electricity sector is experiencing a major change as ENEO Cameroon, the sole provider of electricity in the country, is being sold by the British Actis Group to the State of Cameroon.

Insurance

In the African insurance sector, the merger between Sanlam and Allianz also has implications for Cameroon. The two insurance groups' subsidiaries operate in the life and non-life insurance, leaving them to control **32% and 14.32% of the life insurance and non-life insurance market**. The merger has already gotten approval from the Inter-African Conference of Insurance Markets (CIMA), the regulator in Central and West Africa. They will have 42.32% of Cameroon's insurance market.

However, the deal does not include reinsurer **Continental-Ré**, which is also present in Cameroon and will still be controlled by Sanlam. Allianz will own 40% of the stake in the new entity with the possibility of increasing the stake to 49% while the rest will be controlled by Sanlam.

How can the AfCFTA Impact such agreements

The only notable change concerns approvals to carry out commercial activity in Cameroon. Indeed, companies in which more than 50% of the share capital is acquired by foreign individuals or corporations are deemed foreign companies under Cameroon commercial law and must apply for an authorisation to carry out a commercial activity, granted by order of the Minister of Commerce.

Such application was previously free, but the 2024 Finance Law has introduced application fees of XAF1 million (USD1,592) for public limited companies and simplified joint stock companies, and XAF500,000 (USD796) for limited companies.

Section 4: Impact of the Competition Protocol on Cameroonian Firms

The AfCFTA competition protocol provides a guide and a framework for countries to ensure effective competition that encourages innovation by ensuring that new firms can enter and compete effectively in any market. Cameroon and the CEMAC region have a well-developed competition authority and relevant legislation to accompany the process of mergers and acquisitions. As such, the AfCFTA competition protocol will complement, rather than unsettle domestic and regional regulation and institutions [7]. However, in a situation where a firm seeks exemption at the African level, this could render domestic and regional regulators null. However, the protocol equally states that states will have the authority over agreements that occur or impact their economies – preventing any faceoff between national and regional competition authorities and AfCFTA competition committee.

- **As it stands, the competition protocol will improve coordination of relevant competition issues between national authorities,** enabling Cameroonian competition authorities to better scrutinize deals and ensure they serve the interest of citizens. By communicating laws and collaborating across the continent with their peers, Cameroon and the CEMAC sub-region will benefit from a well-regulated market and mergers and acquisitions that serve the interest of the broader population.
- **This protocol provides clarity for the millions of businesses across the continent who may be considering mergers** and ensures that Africa can develop giants while maintaining a sane and inclusive competitive environment for new entrants.
- **It provides a legislative framework to ensure clarity and reduces the cost of doing business for businesses looking to merge.** This clarity reduces the cost of transactions as investors and businesses are clear on the steps to apply for mergers and acquisitions and a basis for decisions made by the relevant authorities.

Conclusion

The African Continental Free Trade Area (AfCFTA) will create a single market for goods, services, people and capital. Among its eight protocols, the protocol on competition provides a clear, logical and transparent framework for both regulators and governments across the Africa to develop and implement effective competition regimes, reduce price fixing and abuse of dominant positions in local economies.

Recommendations

- Cameron should share its competition laws and regulations with AfCFTA partners and officially accede to the protocol on competition.
- The National competition authority and relevant committees should be briefed on the AfCFTA competition protocol.
- Effective communications channels between regulators, competition authorities and civil society. All decisions made by the authority should be vulgarized to ensure civil society is engaged on issues that will impact their standards of living.

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