COMPETITION AND TRADE LAW DEVELOPMENTS IN 2024 AND 2025 OUTLOOK

In 2024, competition law continued to evolve across the continent, with new legislation coming into effect and new authorities being established. Enforcement increased at national, regional, and continental levels.

In South Africa, prominent matters, such as the Vodacom/Maziv merger, highlighted the ongoing need to balance the effect of public interest and competition law considerations on merger and acquisition (M&A) transactions. Several seminal prohibited practice matters are continuing in the digital space, while the long-running forex cartel case is anticipated to come to a head at the Constitutional Court in 2025.

In the trade law space, the implementation of the African Continental Free Trade Agreement (AfCFTA) gained momentum in 2024, with almost 90% of member states having now ratified the agreement. South Africa's participation in the Guided Trade Initiative (GTI) in early 2024, and Nigeria's later on, marked a progressive and important step, noting that the two countries have the largest economies by gross domestic product in Sub-Saharan Africa. Businesses in affected sectors should proactively prepare for the full implementation of the European Union's Cross-Border Adjustment Mechanism (CBAM) in 2026.

The Electric Vehicle (EV) White Paper, published in late 2023, identifies actions to support the transition towards a broader new energy vehicle production and consumption in South Africa. Since its publication, several tax incentives were proposed in 2024, including a 150% tax deduction for EV vehicle manufacturers starting in March 2026.

Government and private stakeholder interventions to address the current significant challenges in the South African steel industry are critical and will hopefully have a positive impact.

The African Growth and Opportunity Act (AGOA) is due for renewal not later than September 2025. President Trump's second term as President of the United States of America will likely make it harder for African countries to retain their status as beneficiaries of AGOA as Trump and the Republican controlled Congress determinedly use tariffs to advance the US foreign policy interests.

South Africa will host the meeting of the world's twenty largest countries by Gross Domestic Product (G20 countries) in November this year. This provides an opportunity to show-case South Africa and to leverage export and investment opportunities which such events typically bring.

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MERGER CONTROL AND PUBLIC INTEREST

IMPORTANT DEVELOPMENTS IN 2024

Revised Public Interest Guidelines Relating to Merger Control were published in March 2024. Although the Revised Guidelines do not have the status of enforceable legislation, they indicate how the South African Competition Commission (SACC) is likely to approach the public interest component of merger regulation in South Africa.

In relation to the contentious public interest requirement that a merger must "promote a greater spread of ownership by historically disadvantaged persons (HDPs) and workers", the SACC has reiterated that this section of the Competition Act creates a positive obligation to promote a greater spread of ownership in every merger. This has not played out in practice, though. While many mergers were approved subject to ownership conditions, most (almost 70%) in the last reported financial year were approved without conditions.

After the Burger King case was prohibited on public interest grounds in 2021, the SACC seemed to adopt a rigid view towards advancing public interest objectives, especially promoting a greater spread of ownership. However, the SACC has seemingly adopted a more pragmatic approach to ownership, with a number of mergers approved without ownership requirements. In late 2024, the Vodacom/Maziv transaction was prohibited due to competition concerns despite extensive public interest benefits from the merger.

WHAT TO EXPECT IN 2025

We observed a shift in 2024, which indicates that competition authorities will strive to balance public interest and competition law when assessing M&A transactions in 2025.

Two key observations from 2024 may influence how public interest considerations are assessed in 2025. These include:

- The SACC seems more open to exploring potential equally weighted alternatives where ownership remedies are not possible, which may result in more "alternative" conditions attached to merger approvals.
- The prohibitions of the Vodacom/Maziv and Peermont/Sun International transactions illustrate that the competition authorities do not rank public interest benefits above competition concerns when assessing mergers.

In both these mergers (although, at the time of writing, reasons have not yet been published), the competition authorities' view is that the mergers would substantially prevent or lessen competition, outweighing any potential public interest benefits. These prohibitions also highlight that the authorities are particularly concerned about the effects of increasing concentration in markets with a few dominant players.

AFRICA

IMPORTANT DEVELOPMENTS IN 2024

Several significant national, regional and continental competition law developments, including the below, occurred elsewhere in Africa in 2024.

- The AfCFTA Competition Protocol was published. The protocol aims to establish a continental regulator to assess merger transactions with a 'continental dimension'. The AfCFTA will apply to the whole continent, not just certain member states.
- Mergers involving parties that meet certain financial thresholds must be submitted to the ECOWAS Regional Competition Authority (ERCA), which became fully operational in October 2024.
- The COMESA Competition Commission (CCC) published draft regulations proposing that it enforces a suspensory merger control regime. This means that merger parties must now obtain approval from the CCC before implementing a merger.
- From a national perspective, the Uganda Competition Act 2024 became effective, and merger thresholds were expected to be published in 2024. The Malawi merger control regime changed its voluntary merger notification requirement to a mandatory requirement and published merger thresholds. Egypt also introduced a new merger control regime requiring that mergers be submitted to the national competition regulator for approval before implementation.

WHAT TO EXPECT IN 2025

Although these are positive developments, the impact on mergers and acquisitions, particularly those involving foreign investment in Africa, may be complex.

While the flurry of new competition regulators may bring more convenience and consistency to the merger filing process, there are concerns about political tensions, overlapping jurisdictions, and high merger filing fees. In Africa, several countries fall under more than one regional regulator, and most AfCFTA member states also belong to a regional competition regulator.

The various competition regulators will also need to align their approaches. For example, the ECOWAS competition regulator is encouraged to adopt a similar approach to the CCC regarding merger filing fees. While the merger filing fees in COMESA and ECOWAS are 0.1% of the merging parties' combined annual turnover or assets in the common market, COMESA has capped the fee at USD 200,000. In contrast, the ECOWAS filing fee is uncapped.

MARKET CONDUCT

IMPORTANT DEVELOPMENTS IN 2024

The SACC focused on market inquiries in 2024. The SACC published a provisional report in the Fresh Produce Market Inquiry, launched the Poultry Market Inquiry, and held public hearings in the Media and Digital Platforms Market Inquiry.

The SACC's interventions in the pharmaceutical market led to a 40% price decrease in tuberculosis medication, and the SACC's food price monitoring reports continued to reveal that prices remain high and are increasing at an unaffordable rate for low-income households.

WHAT TO EXPECT IN 2025

Market inquiries will continue to form a key component of 2025. The final report in the SACC's Fresh Produce Market Inquiry was published in January 2025 and includes recommendations relating to policy reforms, market restructuring and targeted support for small-scale and historically disadvantaged farmers.

The provisional report in the Media and Digital Platforms Market Inquiry was published in February 2025. The provisional report presents a series of provisional findings against tech giants including Google, Meta (Facebook), X and TikTok, along with provisional remedies across search, social media, generative AI, and digital advertising.

An appeal to the Constitutional Court against the Competition Appeal Court's decision to dismiss a complaint referral against all but four banks is expected to be heard in 2025. The complaint initially involved more than 20 South African and foreign banks.

A Tribunal hearing in relation to an abuse of dominance complaint against Meta Platforms Inc. (brought by a local chat platform used by citizens to engage with the government on WhatsApp) is scheduled to take place in the second half of 2025.

AfCFTA

IMPORTANT DEVELOPMENTS IN 2024

As of December 2024, 48 countries had ratified their adoption of the AfCFTA. While 92.3% of tariff lines have been finalised, most of the rules in the textiles, clothing, and automotive sectors have yet to be agreed upon.

In January 2024, South Africa joined the Guided Trade Initiative and exported goods to Kenya and Ghana under the AfCFTA. The GTI seeks to allow commercially meaningful trade and will assess the operational, institutional, legal and trade policy environment under the AfCFTA.

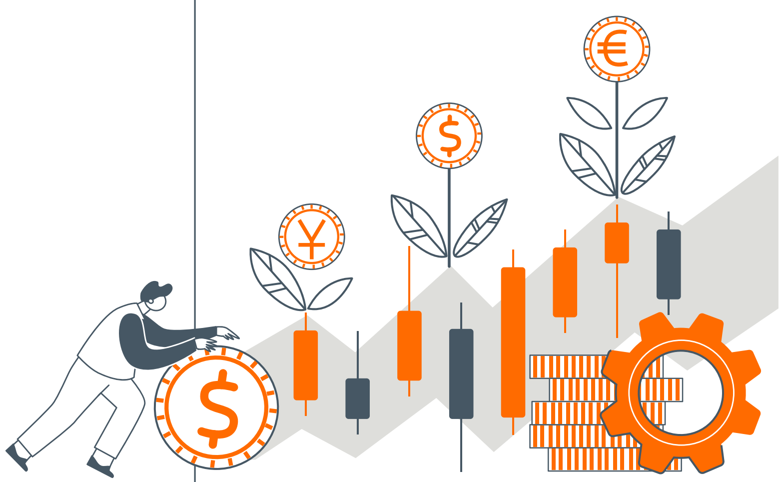
Ninety-six products whose rules of origin had been agreed upon can be traded under the GTI. These include ceramic tiles, batteries, horticulture products and flowers, avocados, palm oil, tea, rubber, and components for air conditioners.

WHAT TO EXPECT IN 2025

Under the GTI, South African businesses meeting specific requirements will be able to trade with businesses from Algeria, Cameroon, Egypt, Ghana, Kenya, Rwanda, and Tunisia.

An implementation plan for common rules of origin is expected to be finalised by February 2025, and the GTI is expected to be expanded to Trade-in Services.

While challenges such as trade logistics, infrastructure, border control inefficiencies and trade finance remain long-term issues, positive and practical steps have been adopted to boost the implementation of the AfCFTA.



CROSS-BORDER ADJUSTMENT MECHANISM

IMPORTANT DEVELOPMENTS IN 2024

CBAM aims to reduce carbon leakage by imposing a carbon border tax on goods imported into the European Union (EU), based on the carbon emissions generated during their production.

CBAM will initially apply to imports of certain goods such as cement, iron and steel, aluminium, fertilisers, electricity and hydrogen.

The initial phase of CBAM began on 1 October 2023 and will continue until December 2025. CBAM is expected to be fully in place by 2026.

WHAT TO EXPECT IN 2025

According to Trade Map 2022, the EU is one of South Africa's major export destinations, accounting for 19% of its total exports in 2019.

During the transitional period (October 2023 – December 2025), exporting firms must account for, report, and verify the embedded emissions in their products quarterly.

Once full implementation is enforced in 2026, exporters must purchase CBAM certificates and submit an annual CBAM declaration.

Exporters in the affected industries must fully understand the CBAM requirements and proactively prepare for its tax, trade and administrative implications.

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