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**BUILDING CREDIBLE INSTITUTIONS FOR MARKET GOVERNANCE: A
COMPARATIVE ANALYSIS OF COMPETITION TRIBUNAL
EFFECTIVENESS IN AFRICA**

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ABSTRACT

This study examines the role and effectiveness of competition adjudication systems in Africa through a comparative analysis of Kenya, South Africa, and the COMESA regional framework. It argues that competition tribunals are central to ensuring legal accountability, procedural fairness, and the development of coherent competition jurisprudence. By evaluating institutional credibility and adjudicative efficiency, the paper demonstrates how these factors shape enforcement outcomes and ultimately influence market performance and consumer welfare.

South Africa emerges as a mature and highly credible system, characterized by strong institutional independence, technical expertise, and a well-developed body of case law. Kenya represents an evolving system, making notable progress in strengthening procedural fairness, transparency, and enforcement capacity, though still facing institutional constraints. In contrast, COMESA highlights both the promise and challenges of supranational competition governance, particularly due to its reliance on Member State cooperation and limited enforcement autonomy.

The study finds that credible and efficient adjudication enhances legal certainty, deters anti-competitive conduct, and fosters investor confidence. However, disparities in institutional capacity, political interference, and jurisdictional overlap continue to limit effectiveness, especially at the regional level. The paper concludes that strengthening institutional independence, harmonizing regional and national systems, improving enforcement mechanisms, and building technical expertise are essential for advancing competition law objectives in Africa. Ultimately, effective adjudication is critical to promoting fair markets, regional integration, and consumer welfare across the continent.

Keywords: Competition tribunals; Institutional credibility; Adjudicative efficiency; Consumer welfare; Competition law; Africa; COMESA; Kenya; South Africa; Market regulation

INTRODUCTION

Role of Competition Tribunals in Africa

Competition tribunals in Africa constitute essential quasi-judicial institutions within the broader architecture of competition law enforcement, tasked with ensuring that administrative determinations by competition authorities conform to the requirements of legality, due process, and procedural fairness. Rooted in both national statutes and regional legal instruments, these bodies operate as independent adjudicative mechanisms that review, affirm, vary, or set aside enforcement decisions, thereby reinforcing the rule of law in market governance (OECD, 2014; World Bank, 2017).

At the national level, bodies such as the Competition Tribunal of South Africa (Competition Act 89 of 1998) and the Competition Tribunal of Kenya (Competition Act No. 12 of 2010 (Cap 504)) adjudicate disputes on restrictive practices, buyer power, abuse of dominance, and mergers. South Africa's Tribunal operates as a specialized quasi-judicial body with powers to impose penalties and decide complex cases, as illustrated in Massmart/Walmart (Competition Tribunal of South Africa, 2011), while Kenya's Tribunal provides appellate oversight over the Competition Authority, strengthening procedural accountability (UNCTAD, 2019).

Regionally, the COMESA Competition Commission offers a supranational enforcement model regulating cross-border conduct and mergers. Though not a separate tribunal, its binding decisions perform adjudicative functions within regional legal frameworks, reflecting evolving supranational governance but with enforcement limits tied to Member States (UNCTAD, 2019). Across jurisdictions, competition tribunals serve four key

functions: ensuring administrative accountability; developing competition jurisprudence on dominance, collusion, and mergers; enhancing regulatory predictability and efficiency; and promoting market fairness and consumer welfare by curbing anti-competitive conduct (Roberts, 2016; OECD, 2014).

Importance of Credible Adjudication for Markets

Credible adjudication is a foundational precondition for effective competition enforcement and efficient market functioning. In institutional terms, credibility denotes the perceived and actual independence, impartiality, consistency, and technical competence of adjudicative bodies, coupled with the enforceability of their decisions. As institutional theory underscores, the effectiveness of regulatory frameworks is contingent upon the legitimacy and trustworthiness of enforcement institutions (North, 1990; World Bank, 2017).

From a market perspective, credible adjudication enhances legal certainty and predictability, enabling firms to make informed investment, pricing, and expansion decisions. Consistent application of competition standards reduces transaction costs and fosters a stable regulatory environment conducive to both domestic and foreign investment. Conversely, inconsistent or opaque adjudication increases uncertainty and undermines market efficiency (OECD, 2012).

Credibility is also central to deterrence in competition enforcement. The effectiveness of sanctions depends less on their severity than on the certainty and impartiality of their application. Where tribunals are perceived as independent and technically competent, firms are more likely to internalize compliance norms and avoid anti-competitive conduct such

as cartelisation or abuse of dominance. In contrast, weak adjudicative credibility erodes deterrence and incentivises regulatory arbitrage (OECD, 2014; UNCTAD, 2019).

Furthermore, credible adjudication performs a critical constitutional function in balancing public regulatory authority and private economic rights. Independent tribunals ensure that enforcement actions are evidence-based, proportionate, and procedurally fair, thereby safeguarding firms against administrative overreach while simultaneously legitimising regulatory intervention. This dual function strengthens the overall integrity of competition regimes and enhances voluntary compliance (World Bank, 2017).

In addition, credible adjudication contributes directly to investor confidence and regional market integration. This is particularly salient in supranational frameworks such as COMESA, where cross-border transactions require assurance of consistent and predictable enforcement across jurisdictions. Finally, credible adjudicative systems are instrumental in achieving consumer welfare objectives by ensuring accurate identification and sanctioning of anti-competitive conduct, thereby promoting lower prices, improved quality, and innovation-driven markets (Roberts, 2016; OECD, 2014).

Competition Adjudication in Kenya, South Africa, and COMESA

The selection of Kenya, South Africa, and COMESA is analytically justified on the basis of institutional diversity, jurisprudential maturity, and their representativeness of Africa's multi-level competition governance architecture.

Kenya represents an emerging competition regime characterised by ongoing institutional consolidation. The Competition Tribunal of Kenya provides appellate oversight over decisions of the Competition Authority of Kenya and reflects a system in transition, where

procedural reforms, digitalisation, and increasing jurisprudential output are progressively strengthening adjudicative credibility. However, capacity constraints and institutional maturation remain key challenges in fully consolidating its effectiveness (UNCTAD, 2019).

South Africa, by contrast, represents a mature and highly developed competition law system. The Competition Tribunal of South Africa is widely regarded as a continental benchmark due to its institutional independence, technical sophistication, and well-developed jurisprudence. Its decision in *Massmart/Walmart* illustrates the Tribunal's nuanced approach to merger control, including the integration of public interest considerations into competition analysis without compromising economic efficiency (Competition Tribunal of South Africa, 2011; Roberts, 2016). This positions South Africa as a reference jurisdiction for best practice in competition adjudication within emerging economies.

COMESA introduces a distinct supranational dimension to competition enforcement. The COMESA Competition Commission regulates cross-border mergers and restrictive practices across Member States, thereby addressing competition issues that transcend national boundaries. However, its effectiveness is moderated by structural constraints, particularly its reliance on Member State cooperation for enforcement and compliance. This creates variability in implementation and raises questions regarding supranational legitimacy and institutional authority (UNCTAD, 2019; Dawar & Lipimile, 2022).

Collectively, these three jurisdictions provide a comprehensive comparative framework for analysing competition adjudication across emerging, mature, and regional systems. They

illuminate how institutional design, legal capacity, and governance structures shape the effectiveness of competition tribunals in promoting credible enforcement, fair markets, and consumer welfare across Africa's evolving regulatory landscape.

CONCEPTUAL FRAMEWORK

The conceptual framework provides a structured analytical model for examining how competition tribunal effectiveness is shaped and how it influences market outcomes in emerging economies. It conceptualizes institutional credibility as the primary independent variable, encompassing elements such as independence, transparency, and technical expertise, which collectively determine the legitimacy and authority of adjudicative bodies. This credibility influences adjudicative efficiency, the mediating variable, reflected in the timeliness, consistency, and procedural quality of decision-making. In turn, efficient adjudication enhances enforcement effectiveness, ultimately leading to improved consumer welfare, measured through outcomes such as lower prices, better quality, and increased innovation. The framework also acknowledges the role of control variables, including political environment and institutional capacity, which may condition or constrain these relationships. Overall, the framework illustrates the causal pathways through which institutional design and performance translate into tangible economic and social benefits.

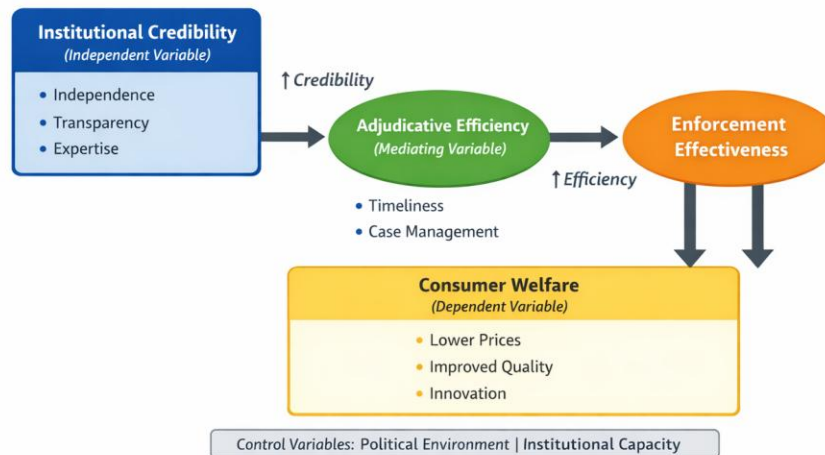


Figure 1: Conceptual Framework

Institutional credibility

Institutional credibility which is defined by independence, impartiality, competence, transparency, and consistency is central to effective competition adjudication, shaping compliance, deterrence, and legitimacy. Credible institutions reduce uncertainty, transaction costs, and investment risk by ensuring predictable rule application (North, 1990; World Bank, 2017).

A key pillar is independence, both structural (legal safeguards, tenure, financial autonomy) and operational (freedom from external pressure). Stronger independence enhances trust and enforcement effectiveness. South Africa’s Tribunal demonstrates robust safeguards under the Competition Act 89 of 1998 (Fox & Trebilcock, 2013; Roberts, 2016), while Kenya’s Tribunal continues to strengthen institutional separation under the Competition Act (Cap 504).

Procedural fairness and transparency further sustain legitimacy through due process, reasoned decisions, and publication of rulings, promoting consistency and stakeholder confidence (OECD, 2014). Technical competence is equally critical, as tribunals must integrate legal and economic analysis; South Africa’s specialization supports strong jurisprudence, whereas capacity constraints in some systems, including COMESA, may affect analytical depth and reliability (Roberts, 2016; UNCTAD, 2019).

Consistency in decisions reinforces predictability and compliance, while enforceability ensures that rulings translate into market outcomes. Weak enforcement—particularly in supranational systems like COMESA—can undermine authority due to reliance on Member State cooperation (UNCTAD, 2019). Comparatively, South Africa reflects a high-credibility model, Kenya an evolving system, and COMESA the challenges of building credibility in a supranational framework (UNCTAD, 2019).

Adjudicative efficiency

Adjudicative efficiency refers to tribunals’ ability to resolve competition cases timely, consistently, and with high-quality reasoning, ensuring effective market correction and limiting consumer harm. It involves not just speed but optimal resource use and legally and economically sound decisions. Delays weaken deterrence and enforcement credibility (OECD, 2012).

Timeliness is key, as prolonged cases allow anti-competitive conduct to persist. Efficient tribunals balance thorough analysis with procedural speed. Case management tools; clear procedures, structured timelines, and specialized panels enhance efficiency; South Africa’s Tribunal illustrates this with its structured processes and economic expertise, while Kenya continues improving capacity and reducing backlogs (Roberts, 2016).

Technical expertise further supports efficiency, given the complexity of competition analysis. Strong capacity enables faster, coherent decisions, whereas constraints especially in regional systems like COMESA can delay outcomes due to cross-border coordination challenges (UNCTAD, 2019). Enforcement is also integral: timely decisions must be effectively implemented to influence market outcomes. Weak enforcement undermines impact, particularly in supranational contexts like COMESA (UNCTAD, 2019).

Consumer welfare in competition law

Consumer welfare occupies a central position in competition law, serving as both a normative objective and an evaluative benchmark for assessing the effectiveness of competition policy and enforcement. Broadly defined, consumer welfare refers to the benefits that consumers derive from competitive markets, including lower prices, improved product quality, greater choice, and innovation. While different jurisdictions may adopt varying interpretations of the concept, there is broad consensus that competition law seeks to protect the competitive process in order to enhance these outcomes.

The theoretical foundations of consumer welfare are rooted in microeconomic theory, particularly the relationship between competition, efficiency, and market outcomes. In competitive markets, firms are incentivized to minimize costs, innovate, and respond to consumer preferences, leading to allocative and productive efficiency. Anti-competitive practices such as cartels, abuse of dominance, and anti-competitive mergers disrupt these dynamics by restricting output, raising prices, and limiting innovation. As articulated by Organisation for Economic Co-operation and Development and United Nations Conference on Trade and Development, effective competition enforcement is essential for

ensuring that markets deliver tangible benefits to consumers (OECD, 2014; UNCTAD, 2019).

Competition tribunals play a pivotal role in advancing consumer welfare by adjudicating cases that directly affect market structure and conduct. Through the prohibition of cartel behaviour, tribunals help to prevent price-fixing and output restrictions that harm consumers. Similarly, by scrutinizing mergers and acquisitions, they ensure that market concentration does not lead to reduced competition or exploitative pricing. In cases of abuse of dominance, tribunals address exclusionary or exploitative practices that may limit consumer choice or stifle innovation. The decisions of bodies such as the Competition Tribunal of South Africa have often incorporated detailed economic analysis to assess the likely impact of conduct on consumer welfare, reflecting a relatively sophisticated application of competition principles (Roberts, 2016).

However, the application of consumer welfare in competition law is not without debate. Some scholars argue for a narrow interpretation, focusing primarily on price effects and short-term consumer benefits, while others advocate for a broader approach that includes dynamic efficiency, innovation, and broader socio-economic considerations (Fox & Trebilcock, 2013). In the African context, this debate is particularly salient, as competition policy is often linked to developmental objectives such as market access, industrialization, and economic inclusion. As a result, some jurisdictions, including South Africa, have incorporated public interest considerations such as employment and the participation of historically disadvantaged groups into competition analysis, thereby expanding the traditional consumer welfare framework.

At the regional level, the COMESA Competition Commission seeks to promote consumer welfare across Member States by addressing cross-border anti-competitive practices and ensuring consistent application of competition rules. However, achieving this objective is complicated by differences in national legal systems, levels of economic development, and enforcement capacity. These challenges highlight the importance of credible and efficient adjudication in translating competition law principles into meaningful consumer outcomes.

Ultimately, consumer welfare serves as a unifying objective that links competition law enforcement to broader economic and social goals. The extent to which tribunals are able to protect and enhance consumer welfare depends on their ability to accurately assess market dynamics, apply legal standards consistently, and enforce their decisions effectively. In this regard, the relationship between adjudicative efficiency, institutional credibility, and consumer welfare is both direct and mutually reinforcing.

LEGAL AND INSTITUTIONAL OVERVIEW

Competition adjudication in Africa is characterized by a multi-tier institutional architecture, typically comprising competition authorities responsible for investigation and enforcement, and specialized tribunals or appellate bodies tasked with adjudication and review. Across Kenya, South Africa, and COMESA, these institutions reflect differing levels of institutional maturity, independence, and adjudicative specialization, thereby providing a useful comparative lens for assessing credibility and efficiency in competition enforcement.

Kenya: Competition Tribunal of Kenya

Kenya's competition adjudicative framework is established under the Competition Act No. 12 of 2010 (Cap 504), which creates both the enforcement authority and the Competition Tribunal. Under Section 71, the Tribunal is a specialized quasi-judicial body mandated to hear appeals and review decisions of the Competition Authority of Kenya (Competition Act, 2010, s.71).

The Tribunal functions primarily as an appellate and review body, handling matters on restrictive practices, mergers, abuse of dominance, exemptions, and consumer welfare. This reflects a dual enforcement model separating investigation from adjudication to enhance fairness and accountability. It consists of a Chairperson (an advocate of at least seven years) and two to four members appointed by the Cabinet Secretary, combining legal expertise with administrative oversight.

Procedurally, it emphasizes efficiency through strict timelines (e.g., 14-day appeal period) and structured case management. However, the Tribunal remains in a developing phase, with ongoing efforts to strengthen independence, jurisprudence, and enforcement, closely

linked to the capacity of the Competition Authority of Kenya (Competition Act, 2010, s.71).

South Africa: Competition Tribunal of South Africa

The Competition Tribunal of South Africa, established under the Competition Act 89 of 1998, is a central adjudicative authority with jurisdiction over mergers, prohibited practices, and remedies. Unlike appellate-only systems, it functions as both a primary decision-maker and, in some cases, an appellate body within the competition framework.

Its mandate includes adjudicating cartels and abuse of dominance, approving or prohibiting mergers, imposing penalties, and granting interim relief. A key feature is its statutory independence, requiring impartiality and adherence only to the Constitution and the law, which strengthens institutional credibility. Supported by a professional secretariat and multidisciplinary legal and economic expertise, the Tribunal effectively handles complex cases. South Africa's system is among the most developed in Africa, with a strong jurisprudential record and influential integration of public interest considerations (Roberts, 2016; Fox & Trebilcock, 2013).

COMESA: COMESA Competition Commission

At the regional level, COMESA operates a supranational competition regime through the COMESA Competition Commission under the COMESA Competition Regulations (2004). Unlike Kenya and South Africa, it lacks a distinct tribunal, combining investigative, decision-making, and enforcement functions within a single authority with limited separation of roles.

The Commission addresses cross-border mergers, restrictive practices, and consumer protection, complementing national authorities where conduct has a regional dimension.

Its merger review power promotes regulatory coherence in an integrating market, though its adjudicative structure is less formalised and lacks a fully independent appellate system.

While COMESA reduces jurisdictional fragmentation and enhances unified oversight, concerns remain procedural independence, due process, and enforcement legitimacy compared to national tribunals. Regional regimes also face challenges of capacity, legal harmonisation, and member state compliance (UNCTAD, 2019). Nonetheless, COMESA remains a key model of supranational competition governance. Taken together, the institutional frameworks in Kenya, South Africa, and COMESA illustrate a continuum of competition adjudication models in Africa. Kenya represents an emerging appellate tribunal system focused on consolidating credibility and efficiency. South Africa reflects a mature, institutionally robust adjudicative model with strong jurisprudential development and independence. COMESA, by contrast, demonstrates the complexities of regional competition governance, where adjudicative authority is embedded within a broader regulatory commission rather than a fully distinct tribunal structure.

COMPARATIVE ANALYSIS

Competition adjudication systems in Africa reflect uneven institutional maturity, shaped by differences in legal design, independence, technical capacity, and enforcement infrastructure. A comparative assessment of Kenya, South Africa, and COMESA reveals significant variation in institutional credibility, adjudicative efficiency, and market impact, which in turn influences the effectiveness of competition law in delivering fair markets and consumer welfare.

Institutional Credibility

Institutional credibility in competition adjudication is fundamentally grounded in the extent to which adjudicative bodies are perceived to be independent, legitimate, transparent, and technically competent in their decision-making processes. From a governance perspective, credible institutions are those that are insulated from political interference, apply predictable legal standards, and adhere to procedural fairness in resolving disputes. The OECD underscores that effective competition enforcement depends on institutional arrangements that guarantee “insulation from political interference, predictable decision-making, and procedural fairness” (OECD, 2014). In a similar vein, the World Bank emphasizes that institutional trust is a critical determinant of regulatory effectiveness, investor confidence, and overall market performance, particularly in developing economies where formal institutions play a central role in structuring economic behaviour (World Bank, 2017).

Within this conceptual framework, South Africa represents the most institutionally credible competition adjudication system among the jurisdictions under consideration. The Competition Tribunal of South Africa operates under the Competition Act 89 of 1998 as

an independent quasi-judicial body with clearly defined statutory safeguards designed to ensure functional autonomy and decisional independence. A key feature reinforcing its credibility is the institutional separation between investigative and adjudicative functions, whereby the Competition Commission undertakes investigations while the Tribunal serves as the primary adjudicator of contested matters. This structural separation reduces conflicts of interest and strengthens procedural fairness in enforcement outcomes.

South Africa's credibility is further reinforced by its strong jurisprudential tradition and its reliance on detailed, reasoned decisions that are publicly accessible and subject to judicial scrutiny. The Tribunal has developed a well-established body of case law addressing complex competition issues, including cartel conduct, abuse of dominance, and merger control. A notable example is *Sasol Chemical Industries Ltd v Competition Commission*, where the Tribunal examined complex pricing and dominance issues in the chemicals sector, illustrating its capacity to engage with sophisticated economic evidence in a legally coherent manner. Similarly, in *Massmart Holdings v Competition Commission*, the Tribunal addressed merger control within a framework that balanced competition analysis with public interest considerations, particularly employment effects, thereby demonstrating an integrated approach to competition enforcement.

Scholars consistently position South Africa as a benchmark jurisdiction in the Global South due to its robust enforcement culture and its willingness to engage deeply with economic reasoning in adjudication (Roberts, 2016; Fox & Trebilcock, 2013). Importantly, its jurisprudence reflects a distinctive feature of incorporating public interest considerations such as employment protection and small business development into merger

analysis, without undermining core competition principles. This dual focus has enhanced both the legitimacy and developmental relevance of its competition regime.

In contrast, Kenya presents an evolving but progressively strengthening model of institutional credibility. The Competition Tribunal of Kenya is established under the Competition Act 2010 as part of a dual institutional structure in which the Competition Authority of Kenya undertakes investigation and enforcement functions, while the Tribunal provides appellate and review oversight. This design reflects an effort to embed checks and balances within the competition enforcement system and enhance procedural accountability.

Kenya's institutional credibility has gradually improved through increased publication of reasoned decisions, strengthening of procedural timelines, and the progressive development of competition jurisprudence. For example, in *Competition Authority of Kenya v Telkom Kenya Ltd*, issues relating to merger notification and market concentration were subjected to detailed review, illustrating the Tribunal's role in refining merger control standards. and reinforcing procedural fairness.

However, comparative scholarship highlights that emerging competition regimes often face challenges related to perceived independence, institutional capacity, and the integration of technical economic analysis into legal adjudication (UNCTAD, 2019). While Kenya has made notable institutional progress, particularly in enhancing transparency and procedural structure, its credibility remains in a consolidation phase when compared to more mature systems such as South Africa. This reflects broader institutional development

dynamics typical of emerging regulatory regimes, where capacity-building and jurisprudential maturity evolve over time.

At the regional level, the COMESA Competition Commission presents a distinct model of supranational competition governance operating across multiple sovereign jurisdictions. Its institutional credibility is shaped by both integrative ambition and structural constraint. On one hand, COMESA provides a uniform regional competition framework that reduces regulatory fragmentation, particularly in cross-border mergers and regional trade practices. This harmonisation function enhances market integration across Member States and supports the development of a more predictable regional investment environment.

On the other hand, the credibility of COMESA's competition regime is constrained by its reliance on Member State cooperation for enforcement, as well as the absence of a fully independent adjudicative tribunal comparable to national competition tribunals. Enforcement decisions and merger approvals, while binding in principle, often depend on domestic implementation mechanisms, which introduces variability in compliance and execution across jurisdictions. UNCTAD (2019) observes that regional competition regimes in Africa frequently encounter challenges related to enforcement legitimacy and institutional authority, particularly where supranational decisions must be operationalised through national legal systems.

This reliance on decentralized enforcement mechanisms weakens perceived institutional credibility when compared to national tribunals that possess direct adjudicative and enforcement authority. Variations in Member State compliance further exacerbate inconsistencies in application, limiting the predictability and uniformity that are essential

to credible competition governance. Consequently, while COMESA represents an important step toward regional competition integration, its institutional credibility remains structurally constrained by the inherent complexities of supranational enforcement design.

In comparative terms, therefore, institutional credibility across the three jurisdictions reflects varying stages of institutional development: South Africa demonstrates a mature and highly credible adjudicative system, Kenya reflects a developing but strengthening institutional framework, and COMESA illustrates the challenges of constructing credible supranational competition governance in a multi-sovereign environment.

Efficiency of Adjudication

Adjudicative efficiency in competition law refers to the extent to which competition disputes are resolved in a timely, consistent, and effective manner, while ensuring procedural fairness and enforceability of outcomes. It encompasses not only the speed of adjudication, but also institutional capacity in case management, consistency of jurisprudence, and the practical execution of remedies and sanctions. The OECD underscores that delays in competition proceedings can significantly undermine deterrence effects, weaken compliance incentives, and ultimately reduce the overall effectiveness of competition law enforcement (OECD, 2012). In this sense, efficiency is not merely administrative convenience but a substantive component of regulatory effectiveness.

In South Africa, adjudicative efficiency is comparatively strong and is anchored in a well-structured institutional framework. The Competition Tribunal of South Africa benefits from formalised hearing procedures, active case management practices, and the use of specialised adjudicative panels that combine legal and economic expertise. This institutional design allows the Tribunal to handle complex matters such as mergers and

cartel prosecutions with a high degree of procedural discipline. Although certain cases—particularly large-scale mergers or intricate cartel investigations—may take considerable time due to evidentiary complexity and the need for detailed economic analysis, the system is generally regarded as predictable and procedurally robust. For instance, in *Sasol Oil (Pty) Ltd and Others v Competition Commission*, the adjudication process reflected the Tribunal’s capacity to manage complex market structure evidence while maintaining procedural clarity, reinforcing perceptions of institutional reliability. Scholarly assessments similarly characterise South Africa’s competition adjudication framework as one of the most procedurally mature in the Global South (Roberts, 2016).

Kenya, by contrast, reflects a system in transition, where adjudicative efficiency is gradually improving but still constrained by capacity limitations. The Competition Tribunal of Kenya operates within a broader institutional environment shaped by increasing enforcement activity and expanding caseloads following reforms under the Competition Act 2010. The introduction of statutory timelines, enhanced case management systems, and digitalization initiatives has contributed to improved procedural responsiveness. However, growing case inflows and resource constraints occasionally result in delays in determining appeals and review applications. For example, in *Competition Authority of Kenya v Telkom Kenya Ltd*, merger-related proceedings highlighted the challenges of balancing procedural rigor with timely adjudication in a rapidly evolving telecommunications market. UNCTAD (2019) notes that many emerging competition authorities in Africa face similar resource-driven constraints, where increasing enforcement activity outpaces institutional capacity, thereby affecting overall adjudicative speed and consistency.

At the regional level, COMESA presents the most structurally complex adjudicative environment due to the nature of supranational competition governance. The COMESA Competition Commission is responsible for reviewing cross-border mergers and competition issues affecting multiple Member States, which introduces inherent procedural complexity. Efficiency challenges arise primarily from cross-jurisdictional notification requirements, coordination among national authorities, and reliance on Member State cooperation for implementation of decisions. While the COMESA merger control regime provides a valuable “one-stop” mechanism intended to streamline regional transactions, in practice the multiplicity of jurisdictions involved often leads to extended review periods and administrative complexity, particularly in large cross-border mergers involving multinational firms. These structural constraints make COMESA’s adjudicative process comparatively slower and less predictable than national systems.

Enforcement effectiveness is closely linked to adjudicative efficiency because the value of any decision ultimately depends on its implementation. In South Africa, enforcement is relatively strong, supported by a culture of compliance, effective penalty structures, and institutional monitoring mechanisms that reinforce adjudicative outcomes. Kenya demonstrates improving enforcement consistency, particularly in merger control and restrictive practices, although follow-through mechanisms continue to evolve as institutional capacity strengthens. In contrast, COMESA’s enforcement effectiveness is highly dependent on Member State cooperation, resulting in variability in compliance and occasional implementation gaps. The World Bank highlights that enforcement capacity is a critical determinant of institutional performance, particularly in developing regulatory

systems where institutional coordination challenges can undermine the effectiveness of formal decisions (World Bank, 2017).

These differences in efficiency are further explained by variations in institutional capacity. South Africa benefits from a well-established pool of specialised legal and economic expertise, which enables high-quality and relatively efficient adjudication. Kenya is actively developing similar capacity through institutional reforms, training, and increased exposure to complex competition matters, although the process of consolidation is ongoing. COMESA, however, faces structural limitations inherent in supranational governance arrangements, where coordination across multiple sovereign jurisdictions constrains both speed and consistency of adjudication. Fox and Trebilcock (2013) emphasise that the quality and efficiency of competition adjudication are strongly dependent on institutional design coherence and sustained investment in technical expertise, both of which vary significantly across the three systems examined.

Impact on Markets and Consumers

The impact of competition tribunals on markets and consumers is most directly observed through their ability to deter anti-competitive conduct, restructure market incentives, and ensure that mergers and dominant firm behaviour do not undermine consumer welfare. In competition law theory, consumer welfare is typically reflected in outcomes such as lower prices, improved product quality, innovation, and expanded consumer choice, all of which are shaped by the effectiveness of enforcement institutions. The OECD and UNCTAD both emphasise that competition enforcement is only meaningful to the extent that it produces tangible market corrections and credible deterrence effects that influence firm behaviour beyond individual cases (OECD, 2014; UNCTAD, 2019).

In South Africa, the competition adjudication system has had a particularly visible impact on market structure and consumer outcomes through landmark enforcement in cartel, merger, and abuse of dominance cases. One of the most prominent merger decisions is the Massmart Holdings / Walmart merger, where the Competition Tribunal of South Africa approved Walmart's acquisition of Massmart but imposed significant public interest conditions aimed at protecting employment and supporting local supplier development. This case is widely cited in the literature as a defining example of how competition adjudication in South Africa integrates traditional efficiency concerns with broader developmental objectives without abandoning core competition principles (Roberts, 2016).

In cartel enforcement, South Africa has also demonstrated strong market-shaping effects through high-profile prosecutions in industries such as construction, cement, and food processing. In the Sasol Chemical Industries matter, the Tribunal addressed allegations of excessive pricing and abuse of dominance in chemical inputs markets, reinforcing constraints on dominant firm behaviour in upstream industrial markets. Similarly, in the bread cartel cases involving major milling firms, enforcement actions led to significant penalties and behavioural changes that contributed to improved pricing discipline in essential consumer goods markets. These interventions illustrate how adjudicative outcomes can directly influence price formation and enhance consumer welfare through deterrence effects.

Kenya's experience reflects a progressively strengthening but still consolidating impact on markets and consumers through competition adjudication. The Competition Tribunal of Kenya has played an important role in reviewing merger and restrictive trade practice decisions that affect key sectors such as telecommunications, banking, and retail

distribution. A particularly significant sectoral example is the Airtel/Telkom Kenya merger, where competition scrutiny focused on market concentration in the telecommunications sector, a critical infrastructure industry for digital access and consumer connectivity. The merger raised important considerations regarding market dominance, network effects, and long-term consumer pricing structures in mobile services, illustrating the Tribunal's role in shaping outcomes in essential service markets.

Another important area of impact in Kenya has been merger regulation in the banking sector, where consolidation trends have required competition oversight to ensure that efficiency gains do not come at the expense of reduced consumer choice or increased pricing power. While Kenya's enforcement outcomes have not yet produced the same depth of cartel jurisprudence as South Africa, the increasing frequency of merger reviews and appeals indicates a growing institutional role in shaping market structure. UNCTAD (2019) observes that emerging competition regimes often exert their strongest consumer welfare effects through merger control rather than cartel enforcement in their early stages of institutional development, as merger regulation is more administratively feasible and institutionally scalable.

At the regional level, the COMESA competition regime has had a significant but structurally constrained impact on markets, particularly through its merger control system administered by the COMESA Competition Commission. The COMESA regime is particularly relevant in cross-border mergers affecting multiple Member States, where it provides a "one-stop shop" regulatory mechanism intended to reduce duplication and improve regulatory coherence across the Common Market.

A frequently cited example is the Shoprite Holdings merger-related approvals within the COMESA region, where cross-border retail expansion raised concerns about market concentration in food retail distribution across multiple African jurisdictions. The COMESA framework enabled coordinated review of the transaction across Member States, thereby reducing regulatory fragmentation and ensuring a more harmonised competition assessment across the region. However, while the system enhances procedural coordination, its impact on consumer welfare is mediated through national implementation mechanisms, which can vary significantly in effectiveness and timeliness.

Another illustrative example is COMESA's review of telecommunications and financial sector mergers involving multinational firms operating across Eastern and Southern Africa. In such cases, COMESA merger control has contributed to reducing transaction costs for firms operating regionally while ensuring that competition concerns are assessed at a supranational level. Nevertheless, as UNCTAD (2019) notes, the effectiveness of such decisions depends heavily on Member State compliance and domestic enforcement capacity, which can weaken the uniformity of consumer welfare outcomes across jurisdictions.

Overall, the comparative evidence suggests that South Africa exerts the strongest and most direct impact on markets and consumers due to its mature jurisprudence, strong enforcement capacity, and ability to impose and monitor remedies effectively. Kenya demonstrates a growing but still evolving impact, particularly in merger control and sector-specific interventions, where institutional strengthening is progressively enhancing consumer protection outcomes. COMESA, while highly significant in promoting regional regulatory harmonisation, faces structural limitations in translating adjudicative decisions

into uniform consumer welfare outcomes due to its reliance on Member State enforcement systems.

From a theoretical perspective, these differences confirm the OECD's observation that the effectiveness of competition law is not determined solely by substantive legal rules but by the strength of institutions responsible for enforcing them, particularly their credibility, capacity, and enforcement autonomy (OECD, 2014). In this regard, the comparative experience of South Africa, Kenya, and COMESA demonstrates that consumer welfare outcomes are ultimately a function of institutional design as much as legal doctrine.

KEY CHALLENGES ACROSS JURISDICTIONS

Cross-jurisdictional competition enforcement in regional economic communities particularly in Africa's COMESA region faces persistent structural and institutional challenges that significantly shape outcomes in merger control and antitrust enforcement. These challenges are not isolated; they interact in ways that often weaken the effectiveness of regional competition frameworks compared to well-resourced national regimes.

Political interference is one of the most frequently cited risks within national competition systems, where enforcement agencies may face pressure from ministries or executive authorities, particularly in politically sensitive mergers or sectors such as telecommunications, banking, and energy. For example, competition authorities in several jurisdictions have had to balance technical merger assessments with broader industrial policy goals, sometimes resulting in delayed or conditional approvals that reflect political considerations as much as economic analysis. While South Africa's Competition Commission is often regarded as relatively independent, even it operates within a policy environment where large mergers such as those involving strategic infrastructure or employment-sensitive firms attract significant political attention through ministerial appeal processes under the Competition Act 1998. In smaller economies, such as those within parts of Eastern and Southern Africa, political influence can be even more direct due to limited institutional insulation and higher executive control over regulatory agencies (UNCTAD, 2016; World Bank, 2020).

Capacity constraints represent another major limitation, particularly among national competition authorities in developing jurisdictions. Many agencies face shortages of skilled economists, lawyers, and data analysts capable of conducting sophisticated market

definition and merger simulation analysis. This is especially problematic in digital markets and multi-sided platforms, where technical expertise is essential. For instance, several COMESA Member States rely heavily on a small pool of case handlers, which can delay merger review timelines or lead to over-reliance on notifying parties' submissions. Even the COMESA Competition Commission (CCC), despite being a supranational body, has historically operated with limited staffing relative to its growing caseload of cross-border mergers in sectors such as telecommunications and FMCG. Capacity gaps can also result in uneven enforcement quality across jurisdictions, with larger authorities such as the South African Competition Commission or Kenya's Competition Authority often setting de facto regional standards (OECD, 2021).

Weak enforcement mechanisms are particularly pronounced at the regional level, where institutions often lack direct investigative or sanctioning powers and must depend on national authorities for implementation. The COMESA Competition Regulations establish a centralized merger notification system, but the CCC does not always have the same coercive enforcement tools as national regulators. Instead, enforcement frequently depends on coordination and voluntary compliance by firms and member states. This can create practical difficulties in remedies enforcement, especially when a remedy must be implemented across multiple jurisdictions with varying legal standards. Similar challenges have been observed in other regional regimes, such as ECOWAS, where competition frameworks remain largely aspirational due to limited enforcement infrastructure. The OECD has noted that regional competition bodies often struggle with "second-order enforcement," where decisions are technically binding but operationally dependent on domestic execution (OECD, 2020).

Jurisdictional overlap is perhaps the most complex challenge in COMESA's competition architecture. Firms operating across multiple member states may be required to notify both the COMESA Competition Commission and national competition authorities, leading to duplication, increased transaction costs, and sometimes inconsistent outcomes. While COMESA merger control is designed to have supra-national effect for transactions with a regional dimension, national regimes often retain concurrent jurisdiction, especially where local subsidiaries or market effects are significant. This duality has been evident in large cross-border transactions in telecommunications and banking, where merging parties have had to engage multiple regulators simultaneously, sometimes receiving differing conditions or timelines. The situation reflects broader tensions in African regional integration, where supranational legal instruments coexist with strong national sovereignty over economic regulation (World Bank, 2021; UNCTAD, 2018).

SYNTHESIS: WHAT WORKS BEST IN AFRICA?

A synthesis of competition law effectiveness in Africa reveals a clear pattern: stronger national institutions with legal independence and technical capacity tend to outperform regional frameworks, while emerging systems benefit most when they combine institutional learning with pragmatic enforcement tools. South Africa, Kenya, and COMESA illustrate three distinct stages of maturity and regulatory design, each offering lessons on what works and what does not in African competition enforcement.

South Africa's Competition Commission is widely regarded as one of the most effective competition authorities in Africa due to its strong institutional design, enforcement credibility, and integration of competition policy with broader public interest considerations. Its effectiveness is rooted in a well-developed legal framework under the Competition Act 1998, a relatively independent institutional structure, and a sophisticated merger review system that allows for both economic efficiency and public interest evaluation. A defining strength is its ability to conduct complex merger investigations with economic depth, particularly in highly concentrated sectors such as telecommunications, banking, and retail. For instance, in Massmart/Walmart (2011), the Commission approved the merger but imposed extensive public interest conditions related to employment protection and local procurement, demonstrating both analytical capacity and policy flexibility (Competition Tribunal South Africa, 2011). Similarly, in AB InBev/SABMiller (2016), the authority coordinated with global regulators while securing significant behavioural remedies addressing market concentration and supplier impacts, reflecting its ability to operate in high-value, multinational transactions (OECD, 2020). These cases show that South Africa's strength lies not only in enforcement, but in its credibility as a

regulator that can balance competition law with socio-economic policy objectives without undermining legal predictability.

Kenya represents an emerging but rapidly strengthening competition regime that illustrates how institutional reform, legal modernization, and regional integration can enhance enforcement effectiveness over time. The Competition Authority of Kenya (CAK) has progressively developed its merger control and cartel enforcement capabilities, particularly following the enactment of the Competition Act 2010 and subsequent reforms that strengthened its independence and analytical capacity. A notable feature of Kenya's system is its increasing sophistication in merger review, especially in sectors such as telecommunications, banking, and agriculture. For example, in Bharti Airtel/Telkom Kenya (2019), CAK approved the merger subject to structural and behavioural remedies designed to preserve competition in the telecommunications market, reflecting a more interventionist but analytically grounded approach to market structure concerns (Competition Authority of Kenya, 2019). Kenya is also notable for integrating public interest considerations into merger evaluation, similar to South Africa, though with a more developmental policy orientation. Scholarly analysis highlights that Kenya's system is increasingly aligned with regional standards, particularly COMESA, while still relying on institutional learning and capacity building to handle complex cross-border cases (Kigwiru, 2026; Dawar & Lipimile, 2022). The key lesson from Kenya is that effectiveness in emerging systems depends less on perfection and more on incremental strengthening of institutions, legal clarity, and regional cooperation.

By contrast, COMESA illustrates both the promise and structural limitations of regional competition enforcement in Africa. The COMESA Competition Commission (CCC) was

established to address jurisdictional fragmentation in cross-border mergers and to create a centralized notification system for transactions with regional impact. In principle, this reduces duplication and promotes regulatory harmonisation across member states. In practice, however, COMESA faces significant enforcement constraints due to its reliance on national authorities for implementation and limited coercive power. While the CCC can review mergers such as multinational transactions spanning multiple member states, it often lacks the institutional capacity to enforce remedies independently at the national level. For example, cross-border telecommunications and FMCG mergers frequently require parallel review by both COMESA and national authorities such as CAK or South Africa's Competition Commission, leading to procedural duplication and potential inconsistency in remedies (Ndlovu, 2022). Scholars have also noted that overlapping jurisdiction between COMESA, SADC, and EAC creates legal uncertainty for firms operating regionally, increasing transaction costs and delaying approvals (Van der Walt, 2016; Mashaba, 2020). Nevertheless, COMESA adds value by providing a harmonised notification framework for large cross-border mergers and reducing the risk of regulatory arbitrage, even if its enforcement depth remains limited.

POLICY RECOMMENDATIONS

The comparative analysis of Kenya, South Africa, and COMESA reveals that the effectiveness of competition adjudication is not solely dependent on substantive legal provisions, but critically shaped by institutional design, enforcement architecture, and technical capacity. Strengthening these dimensions is essential if competition tribunals in Africa are to more effectively promote fair markets and consumer welfare. The following policy recommendations emerge from the assessment of institutional credibility, adjudicative efficiency, and market impact.

A foundational reform priority is the strengthening of institutional independence, as credible competition enforcement requires adjudicative bodies that are insulated from political, administrative, and commercial interference. The OECD emphasizes that competition authorities and tribunals must operate within frameworks that guarantee decisional autonomy, predictable procedures, and protection from external influence in order to sustain market confidence and enforcement legitimacy (OECD, 2014). In practice, this requires not only statutory guarantees of independence but also operational safeguards such as secure tenure for tribunal members, transparent appointment processes, and financial autonomy.

The South African experience demonstrates how institutional separation between investigative and adjudicative functions can reinforce independence and credibility. The structure of the Competition Tribunal of South Africa under the Competition Act 89 of 1998, particularly its clear functional separation from the Competition Commission, has contributed to its reputation as a relatively independent and authoritative adjudicative body. This institutional design has enabled the Tribunal to adjudicate complex matters such as

the Massmart/Walmart merger with a strong emphasis on reasoned decision-making and public interest balancing, without undermining its perceived autonomy (Roberts, 2016). By contrast, Kenya's Competition Tribunal of Kenya, while increasingly structured and professionalized, continues to consolidate perceptions of independence as it evolves within a developing institutional environment. Strengthening safeguards around appointment processes and resource autonomy would further enhance its credibility. At the regional level, COMESA's institutional framework illustrates the additional complexity of ensuring independence in supranational governance, where enforcement authority is dispersed across Member States, thereby limiting perceived decisional autonomy (UNCTAD, 2019).

A second critical policy priority is the harmonization of regional and national competition systems, particularly in light of increasing economic integration and cross-border trade in Africa. Fragmentation between national competition regimes and regional frameworks creates risks of inconsistent enforcement, regulatory duplication, and forum shopping by multinational firms. UNCTAD (2019) notes that overlapping jurisdictions in African regional economic communities can weaken legal certainty and reduce the effectiveness of competition law enforcement.

The COMESA regional framework, administered by the COMESA Competition Commission, represents an important attempt to address such fragmentation by providing a unified merger control regime for cross-border transactions. However, its effectiveness is constrained by the need for alignment with national competition authorities and domestic implementation mechanisms. A relevant example is the regional review of large-scale telecommunications and retail mergers operating across multiple COMESA Member States, where harmonised assessment reduces procedural duplication but still depends on

national-level enforcement for full effect. Strengthening formal cooperation mechanisms, including mutual recognition of decisions, shared investigative protocols, and coordinated enforcement guidelines, would significantly improve coherence and predictability across jurisdictions.

A further recommendation relates to improving enforcement mechanisms, as the deterrent effect of competition law is ultimately dependent on the certainty and effectiveness of implementation. The World Bank highlights that enforcement capacity is a key determinant of regulatory effectiveness, particularly in developing economies where institutional weaknesses can undermine formal legal frameworks (World Bank, 2017). Weak enforcement reduces compliance incentives and weakens the credibility of adjudicative institutions, even where legal rules are well designed.

South Africa provides a relatively strong model in this regard, as demonstrated by its ability to enforce remedies and penalties in cartel and abuse of dominance cases, including the well-known construction cartel proceedings where significant administrative penalties reinforced deterrence in infrastructure markets. Kenya, by contrast, is still strengthening enforcement follow-through, particularly in ensuring consistent implementation of Tribunal decisions across sectors such as telecommunications and financial services. At the COMESA level, enforcement is structurally dependent on Member State cooperation, which introduces variability and reduces uniformity in compliance outcomes. Enhancing enforcement mechanisms would therefore require not only stronger penalty frameworks but also improved monitoring systems, cross-border enforcement cooperation, and institutional escalation mechanisms for non-compliance.

Finally, building technical capacity remains a central policy imperative for improving adjudicative quality and efficiency. Competition law is inherently technical, requiring integration of legal reasoning with economic analysis, particularly in cases involving market definition, dominance assessment, and merger effects. Fox and Trebilcock (2013) emphasise that the quality of competition adjudication is strongly influenced by institutional investment in expertise and the coherence of institutional design.

South Africa's relatively advanced jurisprudence reflects sustained investment in economic expertise and specialised adjudicative capacity, which has enabled it to handle complex matters such as the Sasol Chemical Industries dominance and pricing cases with analytical depth. Kenya is progressively building similar capacity through training, institutional reforms, and increased exposure to complex merger and restrictive practice cases, though further investment in specialised economic and legal expertise is still required to fully consolidate institutional maturity. At the COMESA level, technical capacity constraints are more pronounced due to the multinational nature of its operations and reliance on coordination among Member States with varying institutional strengths. Strengthening regional capacity-building initiatives, shared training programmes, and technical cooperation frameworks would significantly enhance the quality and consistency of decision-making across the region.

CONCLUSION

This paper has undertaken a comparative examination of competition adjudication systems in South Africa, Kenya, and COMESA, focusing on institutional credibility, adjudicative efficiency, and their ultimate impact on market outcomes and consumer welfare. The analysis demonstrates that while the three jurisdictions share a common objective of promoting fair competition, their effectiveness is significantly shaped by differences in institutional design, enforcement capacity, and levels of economic and legal institutional maturity.

A key comparative insight is the clear variation in institutional credibility across the three systems. South Africa, anchored by the Competition Tribunal of South Africa, emerges as the most institutionally mature and credible system, supported by strong independence, well-developed jurisprudence, and consistent engagement with complex economic evidence. Kenya, through the Competition Tribunal of Kenya, reflects a system in transition, characterised by meaningful institutional reforms and gradual strengthening of adjudicative authority, though still consolidating its independence and technical depth. COMESA, represented by the COMESA Competition Commission, illustrates both the promise and structural limitations of supranational competition governance, particularly in relation to enforcement authority and perceived legitimacy across diverse Member States.

In terms of adjudicative efficiency, the comparative evidence shows that institutional capacity and procedural design play a decisive role in determining the speed and consistency of competition enforcement. South Africa demonstrates relatively strong procedural discipline and developed case management systems, enabling it to handle complex merger and cartel cases with a high degree of predictability. Kenya shows

improving efficiency, driven by institutional reforms and increasing case management capacity, although resource constraints continue to affect timeliness. COMESA, while providing an important regional coordination platform, faces inherent efficiency constraints due to cross-border procedural complexity and dependence on Member State cooperation, which affects both speed and consistency of adjudication.

The study further finds that the impact of competition tribunals on markets and consumers is most pronounced where institutional credibility and enforcement capacity are strongest. South Africa's jurisprudence in landmark cases such as Massmart/Walmart and major cartel enforcement actions demonstrates a tangible ability to shape market structures, deter anti-competitive conduct, and integrate public interest considerations into competition analysis. Kenya's impact is increasingly visible in merger control and sector-specific regulation, particularly in telecommunications and banking, where oversight is gradually contributing to more disciplined market behaviour. COMESA, while playing a critical role in harmonising regional merger control and reducing regulatory fragmentation, continues to face challenges in translating supranational decisions into uniform consumer welfare outcomes due to variations in national implementation capacity.

The findings underscore that the effectiveness of competition adjudication in Africa is not determined solely by the existence of legal frameworks, but by the strength of institutions responsible for enforcing them. Institutional credibility, adjudicative efficiency, and enforcement capacity operate as mutually reinforcing pillars that collectively determine whether competition law can meaningfully deliver fair markets and consumer welfare.

From a broader policy perspective, the comparative evidence highlights important implications for African competition governance. Strengthening institutional independence, enhancing technical capacity, improving enforcement coordination, and deepening regional harmonization are essential for building more effective competition regimes. As African economies continue to integrate under frameworks such as the AfCFTA, the development of credible and efficient competition adjudication systems will be central to ensuring that market integration translates into inclusive growth, enhanced competition, and improved consumer welfare across the continent.

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