

COMPETITION
AUTHORITY
OF KENYA

Creating efficient markets for consumers

Ushindani

Ushindani (Swahili for 'Competition') is a biannual Newsletter of the Competition Authority of Kenya | **ISSUE 5** | April – June 2020

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**SUPPORTING
SMEs THROUGH
ENFORCEMENT OF
ABUSE OF BUYER
POWER PROVISIONS**

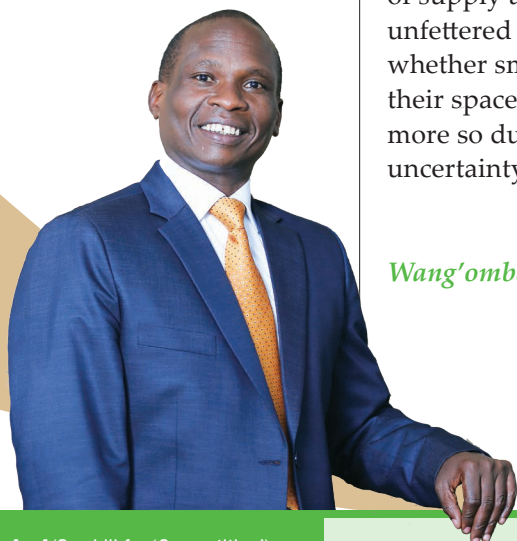
Director-General's FOREWORD

Following amendments of the Competition Act in 2017 to address emerging concerns in the economy, the Government created a Buyer Power Department within the Competition Authority of Kenya (CAK).

The Department advises on enforcing provisions of the Act which outlaw businesses from abusing their commercial upper hand to the detriment of suppliers in the downstream market.

While abuse of buyer power (ABP) is not sector-centric, the Authority made the conscious decision to initially prioritize its investigations in the retail sub-sector where market intelligence pointed to the presence of the illegal conduct.

This prioritization was informed by the fact that the retail sector value chain had recently come under strain and the fact that this sector is critical



to the economy because it supports tens of thousands of livelihoods, including families and SMEs. In addition, it is critical that the supply value chain remain unfettered, more so for FMCGs and essential products and services, as the country battles the Covid-19 pandemic.

Since formation of the Buyer Power Department in November 2018, the Authority has investigated over 40 ABP cases, with the bulk of these matters arising from the insurance and the retail sectors.

Indeed, one of the ongoing major inquiries commenced in late April 2020 and involves interrogation of retail chains that have delayed payments to suppliers for goods supplied for over 90 days.

The Authority remains committed to its mandate of ensuring that the forces of supply and demand are unfettered and that all players, whether small or large, have their space in the market, more so during this period of uncertainty <<

Wang'ombe Kariuki, MBS

Editorial Note

The Editorial Committee is pleased to welcome you to read the latest edition of the *Ushindani Issue 5*.

This Newsletter is dedicated to enlightening our stakeholders about the provisions of Abuse of Buyer Power in the Competition Act, with a keen focus on the recent amendments to the law and their implications.

When businesses abuse their buyer power positions, it occasions a significant negative multiplier effect across the value chain, including on the livelihoods of hundreds of thousands of Kenyans.

Enforcement against abuse of buyer power in certain sectors of the economy such as retail is especially critical at this time when the country, and the World, is battling Covid-19. The Newsletter also highlights the Authority's various stakeholder engagements, including with consumers, manufacturers, business journalists, lawyers, among others.

The *Committee Corner* is a new section of the Newsletter which will, over subsequent publications, spotlight the roles and activities of the Authority's various committees.

For the readers who attempted to decode the crossword puzzle in *Ushindani Issue 4*, you now can score yourself using the answers provided. We have also developed a new puzzle to jog your minds.

Enjoy the read.

Editorial Committee

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Editorial team

Mugambi Mutegi
Rosebella Oiro
Evans Nyangena
Bernard Ayieko

Alexia Waweru
Sylvester Mwazama
Prisca Mwanjale
Linus Melly
Mercelline Anduro.

Contributors

Ambrose Ageng'a
Faith Marete
Edith Masereti

DEMYSTIFYING ABUSE OF BUYER POWER IN THE KENYAN ECONOMY

Priscilla Njako, Manager, Buyer Power Department, discusses the Abuse of Buyer Power provisions in the Competition Act, including the amendments donated by Parliament in January 2020, as well as ongoing enforcement initiatives by the Authority.

» What exactly is Abuse of Buyer Power (ABP)?

Buyer power is a vertical relationship between a seller/supplier on one end and a powerful buyer on the other. It is concerned with how downstream firms affect terms of trade with their upstream suppliers. A buyer may enjoy a superior bargaining position where it can easily switch to alternative suppliers or where it is a critical gateway to the downstream consumer market, making suppliers wholly dependent on them. Also, a firm with buyer power may influence the bargaining process to impose terms of supply that are more onerous than is usual in the normal business practice or the supplier's ordinary contractual terms to the detriment of the supplier. For instance, a supplier accepting reduced price profitability below a supplier's normal selling price.

» How do ABP infringements typically manifest?

The Competition Act provides a list of practices that typically constitute ABP. They include delayed payment by a buyer without justifiable reasons in breach of contractual terms.

Other conduct includes demand for preferential terms by a buyer which are unfavourable to the supplier, unilateral termination of a commercial relationship without notice, or use of threats of termination to obtain undue advantage and suppress suppliers from raising genuine complaints against the buyers. Businesses can also abuse their buyer power position by transferring commercial risks and operational costs to suppliers.

» Often times, stakeholder confuse ABP with Abuse of Dominance. Explain the difference.

A party is deemed to be dominant if they control at least one half of the relevant market for either goods supplied or services rendered. An undertaking could also be dominant if they control

less than 50%, but possesses market power. Going by the earlier definition of buyer power, it is not necessary for a buyer to be dominant in a market for them to abuse their buyer power. Often times, however, dominant firms also possess buyer power.

» What are the sanctions prescribed in the Competition Act for abusing Buyer Power?

Any person found liable for ABP faces imprisonment for a term not exceeding five years, a fine not exceeding ten million shillings, or both, for criminal prosecutions. In addition, the Authority may pursue administrative remedies, including issuing cease and desist orders and imposing a financial penalty of up to ten percent (10%) of the undertaking's preceding year's gross annual turnover.

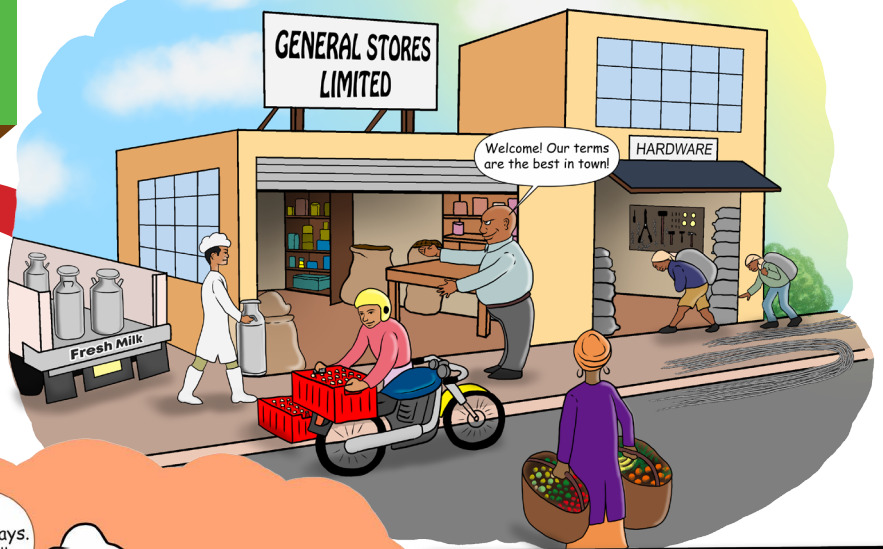
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Priscilla Njako, Manager, Buyer Power Department, CAK.



ABUSE OF BUYER POWER AT A GLANCE



ABUSE OF BUYER POWER

- Delays in payment.
- Refusal to receive or return goods.
- Transfer of costs/commercial risk to suppliers.
- Unilateral termination or threat of termination of a commercial agreement.
- Unjustifiable demands for preferential terms.

PENALTIES

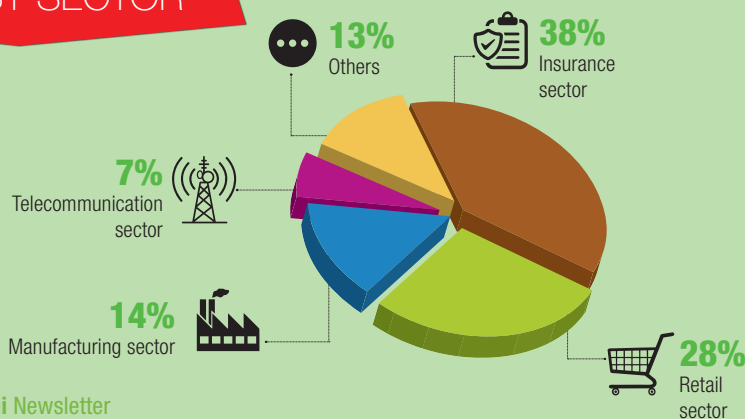


- ⊙ **Imprisonment**
Term not exceeding 5 years.
- ⊙ **Fine**
Maximum KSh. 10 Million.
- ⊙ **Criminal prosecutions**
Maximum fine of KSh. 10 Million, jail term of up to 5 years, or both.



- ⊙ **Administrative penalty**
of up to 10% of the preceding year's turnover.

CASES BY SECTOR



Over **40**

The number of ABP cases investigated by the Authority since formation of the Buyer Power Department in November 2018, with the bulk of these matters arising from the insurance and the retail sectors.

» **The Competition Act has been amended two times in the past four years, to provide clarity about enforcement of ABP. The latest amendment took effect in January 2020. Describe this regulatory process.**

Due to emerging issues especially in the retail which had not been envisaged under any existing law, Parliament legislated for control of ABP. It is important to note that these amendments were limited to the extent that they were set in the section of the Act that deals with abuse of dominance and were not contingent to handle all issues, including that the Authority could not undertake ABP investigations on its own motion. The latest amendments, which came into effect in January 2020, endeavoured to address these limitations.

» **Kindly elucidate on the latest amendment you have mentioned.**

The amendments expanded section 31 of the Act to enable the Authority monitor the activities of sectors and undertakings where there is ongoing or likelihood of ABP and, where necessary, impose reporting and prudential requirements to ensure compliance. Related to that, the Authority may require industries and sectors, where instances of ABP are likely to occur, to develop and publish a binding code of practice. The Act now also makes it mandatory for contracts between buyer and supplier undertakings to contain certain minimum requirements, including terms of payment, conditions for termination and variation of contracts, and mechanisms for dispute resolution.

The ABP focus, at least in the Press, has been on the retail sector. However, the Authority has investigated cases in varied sectors in the economy including insurance, manufacturing, telecommunications, energy and agriculture. It is important to note that a majority of the cases prosecuted by the Authority are in the insurance industry.

» **The Authority has been investigating retailers regarding delayed payments. Briefly expound on this investigation and explain if ABP is peculiar to the retail industry.**

Toward the end of April 2020, the Authority required 25 major retailers from across the country to submit their debt portfolios outstanding for over 90 days. Analysis of the information and documents presented to the Authority indicated that the vast majority of retail supermarkets pay suppliers on time. Three of the four retailers found to have delayed payments presented payment plans and have continuously reduced their debt portfolio. Subsequently, the Authority issued Prudential and Reporting Orders to one retailer and continues to monitor compliance. Indeed, the ABP focus, at least in the Press, has been on the retail sector. However, the Authority has investigated cases in varied sectors in the economy including insurance, manufacturing, telecommunications, energy and agriculture. It is important to note that a majority of the cases prosecuted by the Authority are in the insurance industry.

» **Some critics argue that matters to do with delayed payments can be adequately dispensed with under contract law and that the Authority does not have the locus standi to prosecute such matters. What's your take on this point of view?**

Freedom of contract is not a sacred doctrine, it has exceptions, some of which are in legislation such as the Competition Act. The Act has, as its object, the promotion and protection of effective competition in markets in order to enhance the welfare of the people of Kenya. ABP, if left unabated, harms markets by reducing sustainability and suppliers' ability to compete.

» **What will the Authority focus on in terms of ABP in the FY 2020/21?**

The Authority's buyer power mandate is still relatively unfamiliar among many stakeholders. In addition to investigation of complaints, the Authority will enhance stakeholder sensitizations. We shall also focus on reviewing the buyer power guidelines to be in tandem with the 2019 amendments to the Act. The Authority shall also continue working with various sector players to develop codes of practice and offering advisory opinions on the recently introduced minimum contractual requirements <<

CAK HOLDS CONSULTATIVE TALKS WITH KAM BOARD ON DELAYED SUPPLIER PAYMENTS

The Authority on June 9, 2020 held discussions with the Board of the Kenya Association of Manufacturers (KAM) on areas of the Authority's enforcement that are pertinent to the manufacturing sector.

The Association conveyed to the Authority challenges its members were facing in regard to delayed payments by a few retail supermarkets, and agreed on the way forward to manage these challenges.

Phyllis Wakiaga, the Association's Chief Executive, noted that their supplier members often come under strain when payments are delayed by supermarkets mainly because the business model of these businesses is majority credit/cash based in nature and usually not backed by agreements.

Ms. Wakiaga also noted that suppliers are disenfranchised because they are considered as unsecured lenders, if a retail supermarket chain collapses, despite having financing the business model.

"Late payments continues to be evidenced in the retail sector specifically in the supermarket subsector. The effects are dire, affecting cash flows for business operations with SMEs being the most affected," she noted in a KAM memorandum to the Authority.

"We acknowledge the initiative by the Authority to recognize late payments as a conduct that can amount to abuse of buyer power in the Kenyan market."

The Authority's engagement with the KAM Board members is part of ongoing initiatives to ensure



From far left: Mr. Mucai Kunyihya (KAM Board Vice Chair), Wang'ombe Kariuki (CAK Director-General), Ms. Phyllis Wakiaga (KAM CEO), and Ms. Flora Mutahi (KAM Board member).

that the supply chain of essential Fast Moving Consumer Goods (FMCGs) is not distorted, more so during the Covid-19 pandemic.

Wang'ombe Kariuki, the Authority's Director-General, informed the KAM Board members that the Competition Act had been recently amended, clearly elucidating the practices that account to delayed payments.

The Act now also provides that all buyers and suppliers must develop and adhere to an industry code of practice. In instances where the code is breached by either party, the matter can be escalated to the Authority.

Further, contracts between suppliers and buyers must now contain minimum requirements, including terms of payment,

payment date, interest payable, mechanism of dispute resolution, and conditions of contract termination or variation.

"The Authority is looking into the concerns on delayed payments in the retail sector. There is a lot of progress into this investigation which has seen the Authority engage productively with both suppliers and retailers," Mr. Kariuki noted.

"In addition to the Authority's continuous sector-specific sensitization sessions on Abuse of Buyer Power, our Team is open to offering advisory opinions to KAM members to enhance their compliance with the law. The Authority offers such opinions at no cost."

Continued on Pg. 7

We acknowledge the initiative by the Authority to recognize late payments as a conduct that can amount to abuse of buyer power in the Kenyan market."

Phyllis Wakiaga | CEO, Kenya Association of Manufacturers (KAM).

CAK holds consultative talks with KAM Board on delayed supplier payments

The meeting also discussed the consumer protection mandate of the Authority in relation to product labelling, nutritional information, and standards and the Authority's cooperation with other sector regulators.

The discussions also centred on the need to increase collaborative compliance and awareness forums between the Authority and manufactures regarding abuse of buyer power, the merger assessment and exclusions, as well as restrictive trade practices and attendant exemptions.

In furtherance of these discussions, the Authority on June 18, 2020 held a sensitization Webinar with the KAM Secretariat, Kenya Bureau of Standards (KEBS), and Food & Beverages Manufacturers.

The Authority outlined its consumer protection mandate and investigative powers as prescribed in the Competition Act, the remedies available to consumers whose rights are infringed upon and the remedies against businesses found to have infringed the law.

More detailed deliberations were held on the obligations of the food and beverage manufactures regarding product labelling requirements and product safety in terms of unsafe and defective goods «

SUPPLIERS WELCOME REGULATORY INTERVENTION IN RETAIL SECTOR

By **Ishmael Bett** – Chief Executive Officer, AKS.

The Association of Kenya Suppliers (AKS), was founded in 2006 as a national trade association that was focused on representing the interests of suppliers and traders who supply goods and services to private and public organizations.

The Membership of the Association is diverse and includes distributors, manufacturers, importers; farm producers and grocery chain owners, among other service providers. It is notable that most of the AKS members are drawn from suppliers doing business with retail shops.

Indeed, the Association was conceptualized around the time that traders were experiencing delays in receiving payments from what was at the time the country's leading supermarket retailer, Uchumi Supermarkets.

Whereas suppliers do not own any shares in retail outlets, they remain a key stakeholders pertinent to the survival of retail trade, both when the business is looking up or is in financial distress. Such support has been evident in the past five years as suppliers stepped in with various proposals to secure the survival of supermarkets that were facing headwinds.

Historically, the retail sub-sector has been self-regulating. However, over time, and with evolving market complexities, we have witnessed an upsurge in unfair trade practices in the supply chain that has necessitated external regulatory intervention.

One of the main issues that suppliers have continually struggled with is late payments for goods and services delivered and consumed.

If a retail business collapses, suppliers are left financially exposed since they are treated as unsecured creditors and are therefore at the very back of the compensation line, behind commercial banks and other secured parties.

Others unfair trade practices includes de-listing or threats of de-listing of suppliers for spurious reasons, unjust return of goods and transfer of commercial risk, among others.

Given the skewed balance of bargaining power in the retailer-supplier relationship, there has been need for a more formidable approach to regulating the sub-sector which remains critical to the economy. The sector employs thousands of Kenyans and is also the source of livelihood for thousands of suppliers, most of whom are small and mid-sized enterprises (SMEs).

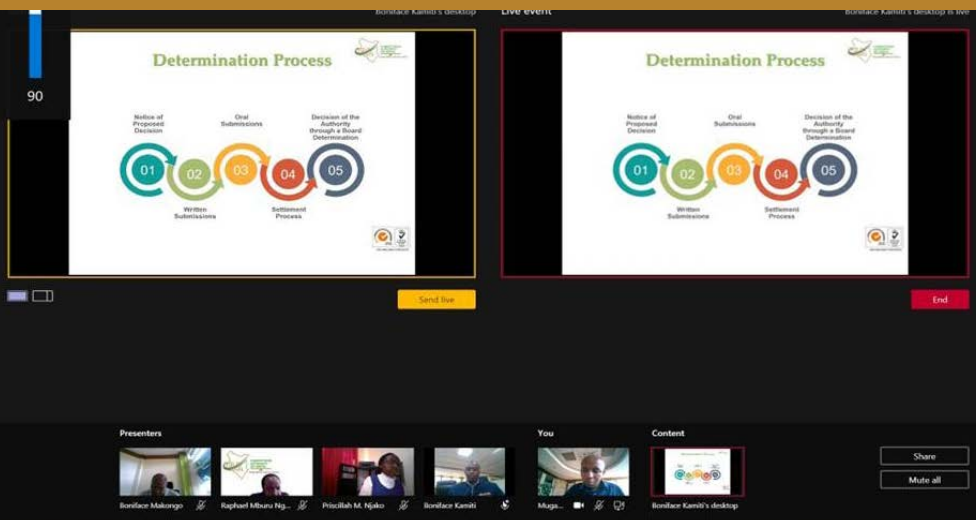
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"Suppliers are optimistic that with the ongoing interventions in the sector, all the parties in the retail sector will benefit from an improved business environment that will enable us continue contributing to the economy and supplying Kenyans with much needed essential products."

Ishmael Bett, Chief Executive Officer, AKS.

CAK HOSTS CAPACITY BUILDING WORKSHOP FOR BUSINESS JOURNALISTS



“About 38% of the ABP cases that the Authority is investigating are in the insurance industry. The retail sector matters account for 28% of all cases. The prevalent infractions are delayed payments, unilateral contract termination and delisting,” she said.

The second presentation was on the Authority’s investigation process and determination of appropriate remedies for consumer welfare violations.

The highlight of the presentation by Mr. Boniface Kamiti, Manager, Consumer Protection Department, was the clarification that penalties applicable to parties found culpable of infringing on a consumer’s rights is 10% of the value gained from rendering service or selling a product.

This formula, he explained, is set out in law and sometimes results in penalty amounts that some consumers consider as not being punitive and deterrent enough.

Other remedies include ordering the infringing party to effect a refund, repair, or replacement to the affected consumer, as applicable. The Authority also issues warnings that repeat infractions will attract more punitive action.

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Over 30 reporters participated in the Business Journalists’ Sensitization Workshop which was conducted virtually.

The Authority recognizes the critical role that the Media plays in facilitating execution of its mandate of regulating markets in the Kenyan economy and ensuring consumers are protected from misleading market conduct.

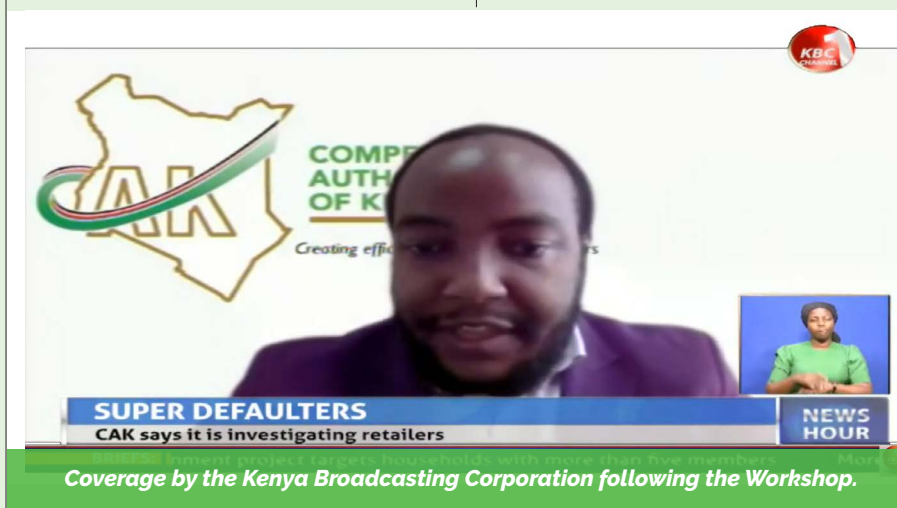
In furtherance of the Authority’s efforts to furnish journalists with relevant, topical and timely information regarding its activities and interventions, the Authority on June 25, 2020 hosted a Sensitization Workshop to discuss various topics.

Over 30 financial journalists, including prominent business bloggers, participated in the Workshop, which was held virtually, in which one of the key topics discussed was enforcement against Abuse of Buyer Power (ABP).

Ms. Priscillah Njako, the Buyer Power Department Manager, took journalists through the salient ABP provisions in the Competition Act and its relevance in addressing emerging issues in the economy.

The journalists were sensitized about the amendments to major amendments to the Competition Act to address emerging issues in economy, practices amounting amount to ABP, and the various sanctions and interventions applicable for such conduct.

Ms. Njako also informed the journalists that, despite the widely publicized ABP matters being in the retail sector, these infractions are also present in other sectors of the economy, including insurance, manufacturing, and telecommunication.



Coverage by the Kenya Broadcasting Corporation following the Workshop.

Continued from Pg. 8

CAK hosts capacity building workshop for business journalists

The final presentation was delivered by Mr. Raphael Mburu, Manager, Mergers & Acquisitions Department who expounded on the Authority's key considerations when analyzing merger and acquisition applications.

The journalists were informed that the first consideration is substantial lessening of competition which entails the impact that a proposed transaction will have on the competition landscape, with both product and geographical characteristics.

Secondly, the Authority considers whether a proposed merger is likely to elicit negative public interest concerns. One public interest consideration is the extent to which a proposed merger would impact employment opportunities and its impact on competitiveness of small and medium enterprises (SMEs).

Other public interest concerns are the impact of a transaction on particular industries/sectors as well as the ability of national industries to compete in international markets. Based on the findings of the comprehensive analysis, the Board issues a determination that either approves a transaction unconditionally, with conditions, or rejects it ◀◀

Continued from Pg. 7

Suppliers welcome regulatory intervention in retail sector

Over the past four years, there have been several welcome developments in the retail sector including the formulation of a Retail Code of Practice which has been executed by retailers, suppliers and manufacturers in 2019. This voluntary Code is meant to address some of the challenges bedeviling the industry.

In addition, the Competition Authority of Kenya (CAK) has come out to enforce the law of Abuse of Buyer Power (ABP) in the industry. The Association has held several joint sensitization forums with the Authority's Buyer Power Department in order for members to familiarize themselves with the ABP provisions of the Competition Act as well as the Authority's complaint handling process.

Some of the immediate gains of ABP enforcement is the ongoing investigation into delayed payments in the sector. The investigation is indeed timely since the economy has slowed down due to the Covid-19 pandemic and therefore businesses are in much more need of constant cash flows.

Suppliers are optimistic that with the ongoing interventions in the sector, all the parties in the retail sector will benefit from an improved business environment that will enable us continue contributing to the economy and supplying Kenyans with much needed essential products ◀◀



Coverage in the Daily Nation newspaper following Workshop.

QMS - THE ENABLER OF CAK'S SERVICE DELIVERY

Since its inception in August, 2011, the Authority has focused on efficiently delivering services to its customers even as it endeavours to facilitate competitiveness in the Kenyan economy and enhanced consumer welfare.

Premised on this, in the Authority in Financial Year 2015/2016 made a strategic decision to adopt the Quality Management System (QMS) based on ISO 9001 to facilitate the effective planning, execution and evaluation of its activities.

The internationally-recognized Standard enables organizations become customer-focused, operate efficiently, purpose to continually improve and inculcate an evidence- and risk-based approach in decision-making.

The Authority's adoption and implementation of the ISO 9001:2015 standard involved the identifying essential business activities and documenting each of them as part of an identifiable and executable process.

The Authority then cultivated a quality-driven culture and an understanding of the QMS process by members of staff with a focus on progressive

improvement in order to improve service delivery to Kenyans.

This was achieved through appointing and training some members of staff as QMS champions and auditors tasked with facilitating a better understanding of the Authority's process across the organization.

The Management Representative Office, a team which reports to the Management, was appointed to oversee the implementation of the QMS and recommendation of improvement identified during periodical audits.

"Evidence-based decision-making has also improved the predictability and consistency of the Authority's decisions as well as led to a growth in the Authority's Appropriation-In-Aid revenue from fines and penalties reflecting improved acceptance of decisions.

There has also been an increase in the number of consumer complaints forwarded to the Authority for processing, indicative of improved brand visibility and awareness as well as increased public confidence in the CAK's role"

Ambrose Ageng'a, Management Representative & Finance Manager, CAK.

One major improvement is that the documented key processes have been embedded in the Authority's Information & Communication Technology (ICT) Strategy to ensure ICT related risks are managed within the QMS framework.

With this foundation in place, the Authority was ISO Certified on 16th October, 2016 by SGS Kenya. Following the implementation of continuous improvement initiatives, the Authority was recertified on 10th February, 2019.

The Authority has automated its core mandate processes and the implementation of QMS has enabled the organization enhance its service delivery through deploying ICT tools as well as better identify and mitigate against ICT-related risks.

Implementation of the QMS has enabled the Authority harness efficiencies in its operations including in the resolution of customer complaints and using customer feedback in helping improve service delivery.

Further, the implementation of the QMS coupled with automation of its key processes has led to improved and efficient utilization of resources.

Evidence-based decision-making has also improved the predictability and consistency of the Authority's decisions as well as led to a growth in the Authority's Appropriation-In-Aid revenue from fines and penalties reflecting improved acceptance of decisions.

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CAK ENGAGES KEY STAKEHOLDERS THROUGH SENSITIZATION WORKSHOPS



In order to apprise its stakeholders about its mandate and activities, thereby increasing compliance with the law, the Authority conducted two Workshops sessions in June 2020.

The first sensitization was on the Competition (General) Rules, 2019 which were gazetted on December 6, 2019 and which are presently in force as per section 23 of the Statutory Instruments Act.

These Rules make the Competition Act a dynamic and progressive legislation that catalyses innovation and enhance transparency, predictability and accountability among the business community regarding the competition law enforcement process.

The Webinar attendees, who included lawyers, trade associations, businesspeople and consumer bodies, were informed about the salient provisions of the Rules and how their enforcement will affect businesses going forward.

The key discussions involved the procedure of abandonment of mergers where parties will now have to fully agree on filing of the mergers and be proactive in submitting additional information.

The attendees were informed that failure to abide by the Authority's specific timelines and honor requests for information will automatically render the transaction abandoned, thereby saving all parties time.

Further, the participants were taken through conduct which is regarded as restrictive trade practices under the Act and

informed them of the process of seeking exemption from the Authority.

The Webinar also elucidated on the actions that the Authority can take in respect to unsafe goods, including temporary and permanent bans of such products in the Kenyan economy as well as international recall of goods.

"Sensitization sessions are critical since they apprise our stakeholders about any developments in the enforcement of the Act with the product of such engagements being improved compliance with the law," said Ms. Alexia Waweru, a Senior Legal Officer at the Authority.

The second Sensitization saw the Authority host a Workshop with Youth, Women and Persons with Disabilities (YWPD) in order to engage them on how their businesses can participate in procurement opportunities at the Authority.

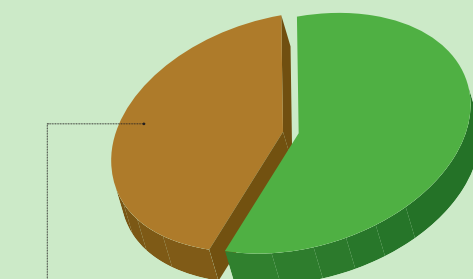
In the FY 2019/20, the procurement opportunities taken up by YWPDs represented 43% of the Authority's approved Procurement Budget of Ksh 87,963,293.32 Million. This represented an improvement from FY 2018/19 when 36.74% of the procurement opportunities within the Authority were taken to this category of persons. This is way above the 30% requirement by the Government in terms of public procurement spend that should be set aside for YWPDs.

The AGPO sensitization highlighted the existing procurement opportunities within the Authority, the payment

process and timelines, the prequalification process and other procedures laid out in the Public Procurement and Disposal Act, 2015.

"When vendors present all the supporting documentation for payment for goods, works and services rendered, the Authority typically pays them within twenty (20) days," said Walter Masinde, Manager - Supply Chain Management Department.

"The Authority has consistently met and surpassed the 30% statutory requirement in terms of AGPO. We shall endeavour to maintain this performance in order to continue empowering YWPDs." <<



43%

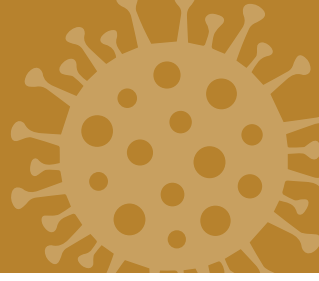
Share of the Authority's Procurement Budget taken up by YWPDs in the FY 2019/20.



20

Average number of days the Authority takes to pay vendors upon presentation of all supporting documents.

TRANSFORMATION OF THE PUBLIC SERVICE WORKPLACE IN THE WAKE OF COVID-19



The Covid-19 pandemic has disrupted how the workplace functions by digitizing the interaction between organizations and their stakeholders, both internal and external.

With employees largely working remotely, in order to curtail the transmission of the virus, institutions that had not established systems to operate remotely have been forced to build them speedily.

Amidst this workplace turmoil, Human Resource (HR) practitioners need to critically evaluate their business' agility and offer insights on how the changeover can be achieved while taking care of the interests of an organization's main stakeholder – employees.

The most critical aspect of the Human Resource function in the current dispensation is staff wellness in terms of general health and psychosocial support. The severe and unprecedented impact of the Covid-19 pandemic on employees and their families has affected their mental wellbeing. Organizations should support their employees by providing counselling sessions and establishing other mechanisms to support affected employees.

The Government's agility in managing transmission of the novel virus at the workplace was commendable, including issuance of guidelines on home-based deployment. Organizations in the Public Service should take advantage of the resultant permanent physical and social changes to transform their operations.

Government offices are set up around creating teams through physical interaction. In order to comply with the Ministry of Health's social distancing protocols, seating plans will have to be reviewed with a plausible scenario being a rotational programme where some employees work remotely while their colleagues report to work.

Remote working will translate in cost savings for the Government, in terms accommodation and utilities costs, and these funds can be deployed to critical development and technical activities which are key to reviving the economy.

Agencies that were planning to recruit more employees to boost productivity can now do so at a much lower cost. However, restricted physical interaction at the workplace will require

With employees largely working remotely, in order to curtail the transmission of the virus, institutions that had not established systems to operate remotely have been forced to build them speedily.

organizations to enhance their communication channels with staff through frequent virtual meetings and townhall forums.

Further, the changes occasioned by the pandemic present an opportunity for the Government to enhance service delivery through digital platforms.

Policies on recruitment, placement and induction, performance management, and training and development should be reviewed in order to clearly provide guidelines that accommodate the present needs of the workforce.

It is commendable to note that the Public Service Commission has been advertising and filling positions by leveraging on technology. Online receipts of applications and virtual interviews is indeed going to be the new norm in Government.

Home-based deployment also calls for enhanced performance management. Virtual and consistent discussions between employees and their supervisors regarding specific assignments will ensure every party remains responsible and accountable.

Continued on Pg. 13



“At the Competition Authority of Kenya, we have a well-established remote working mechanism supported by a robust ICT infrastructure, productivity monitoring and measurement tools, and organized communication channels.”

Faith Marete, Human Resource & Administration Manager, CAK.

Transformation of the Public Service Workplace in the wake of Covid-19

Training and development in the Public Service accounts for a significant chunk of the Exchequer budget. Organizations should now shift to e-courses to build the capacity of their workforce. One downside of this is that officers will not be as exposed. However, the strain on financial resources, which are in any case dwindling, will dramatically reduce.

Further, organizations should, within their capacity, empower staff with the tools needed to work productively from home including access to laptops, Internet connectivity, and ICT system support to ensure minimal downtime.

At the Competition Authority of Kenya, we have a well-established remote working mechanism supported by a robust ICT infrastructure, productivity monitoring and measurement tools, and organized communication channels.

The ICT function, especially, can no longer be placed at the 'back' in an organization. It is a key business driver and as such requires increased budgetary allocations and enhanced capacity in terms of numbers and skills development.

In a few years to come, we shall look back at the Covid-19 pandemic as a disruptor that catalyzed a better way of living, one that propelled the employers and employees to embrace remote working and digital interactions <<

FOSTERING COMPETITION THROUGH COOPERATION FRAMEWORKS



The CAK Director-General Wang'ombe Kariuki (middle) and the PPRA Director-General Maurice Juma (far left) during the signing of a MoU between the two agencies.

World over, competition agencies have adopted close working relations with sector-specific regulators to create synergies aimed at promoting and safeguarding competition and consumer protection in the economy.

This cooperation between agencies with cross-cutting jurisdiction is contemplated in section 9(m) of the Competition Act which gives the Authority the power to "liaise with regulatory bodies and other public bodies in all matters relating to competition and consumer welfare."

In fulfilment of this function, the Authority has in place Memoranda of Understanding with regulatory agencies including the Communications Authority of Kenya, the Kenya Civil Aviation

Authority (KCAA), the Insurance Regulatory Authority and the Central Bank of Kenya.

The Authority has also entered into cooperation framework agreements with the Agriculture and Food Authority, the Kenya Bureau of Standards, Public Procurement Regulatory Authority (PPRA), Department of Weights and Measures and the Energy and Petroleum Regulatory Authority (EPR).

While each Sector regulator operates within their specific jurisdiction, especially in matter regarding technical and economic regulation, some statues of their law provide for competition regulation and, consequently, concurrent jurisdictions.

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Fostering competition through cooperation frameworks

These MoUs do not compromise the independence of the sector regulators in undertaking their respective statutory mandates, but instead ensures that public resources are used effectively and efficiently to arrive at the most optimal decisions for the good of the public.

Sharing of confidential information, especially when conducting investigations, not only saves on time during such inquires, but also ensures that decisions made are backed by verifiable data.

Over and above eliminating duplicity of interventions especially when conducting inquiries and investigations, these MoUs also spell out the framework for collaborating agencies to conduct joint capacity building exercises of their technical staff and the Public.

Collaboration also gives sector-specific regulators and opportunity to apply themselves in joint research aimed at policy development, more so now that the Covid-19 pandemic will result in reduced resources.

For instance, under the auspices of the MoU that the Authority has with the PPRA, the two agencies are developing standard tender documents which when approved will guide bidders doing business with the Government.

These MoUs do not compromise the independence of the sector regulators in undertaking their respective statutory mandates, but instead ensures that public resources are used effectively and efficiently to arrive at the most optimal decisions for the good of the public.

The ongoing review will ensure that all competition concerns in public procurement are addressed. Public procurement of goods and services accounts for approximately 40% of the government’s budget and, therefore, efficiency in this sector is key to converting fiscal plans into results.

The Authority and PPRA earlier this year held joint sensitization workshops for 16 county government executives. County procurement officers were sensitized on the code of ethics and the procurement law, as captured under the Competition Act and the Public Procurement and Asset Disposal Act, 2015.

Additionally, the two agencies participated in a bid rigging capacity building workshop facilitated by the World Bank to deepen the Authority’s investigations capacity in handling competition concerns in the public procurement sector.

The MoU with EPRA, the latest to be signed by the Authority in February 2020, is meant to create synergies in addressing competition and consumer protection concerns in the energy sector.

The two regulators have established a joint working committee to develop procedures and processes for managing and facilitating cooperation and consultations aimed at fast-tracking the turnaround period for resolving competition and consumer complaints in the energy sector.

In June 2020, the Authority and the KCAA organized a stakeholder Sensitization session whereby representatives of the two agencies engaged consumers regarding consumer protection issues in the aviation sector and sensitize consumers about their rights <<



CAK’s Consumer Protection Manager, Mr. Boniface Kamiti, engages consumers during the joint sensitization workshop with the KCAA.

CAK'S CORPORATE SOCIAL RESPONSIBILITY ACTIVITIES



As part of this year's Corporate Social Responsibility (CSR) activities, the Authority visited and shared foodstuff and other essential commodities to adult and children care centers within Nairobi and also participated in the ongoing reforestation initiative of Ngong Road Forest.

Each year, the Authority undertakes CSR activities with the aim of enhancing its relationship with stakeholders and the community, and furthering social good beyond executing its core mandate of promoting competitive markets for the Kenyan consumers.

In cognizance of the negative impact that the ongoing Covid-19 pandemic has had on the economy and, consequently, on individual and corporate

resources, the Authority earmarked two (2) children's homes and two (2) adult homes based for in-kind support.

The beneficiary children institutions were Happy Life Children's Home (Roysambu) and Little Rock ECD Centre (Kibera) which take care of a total of 87 live-in children and over 900 more from their communities.

The Little Sisters Centre (Kasarani) and Kariobangi Cheshire Homes (Kariobangi) take care of over 100 live-in senior citizens between themselves. Kariobangi Cheshire Homes also supports about 200 locals by supplying them with essentials every week.

Such institutions care for the most vulnerable members of society and majorly rely on well-wishers for support. The pandemic has exacerbated their sustenance need since many corporates have cut back on expenditure, including on CSR programs.

"We get foodstuff from the local community and we have a sponsorship where we request a person to sponsor a child for Ksh.3,000 (USD 30) per child per



month" said Ms. Sara Kinyanjui, Administrator at Happy Life Children's Home.

"From the onset of Covid-19, we have seen a reduction in the support that we get from the people who bring food, understandably we know there are a lot of issues going on, people losing their jobs. We thank you for what you have done to us today."

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 **1,287**

Number of Children & Senior Citizens who received foodstuff and other essential commodities from the Authority.

CAK's Corporate Social Responsibility activities

The Authority supported the four centers with essentials such as maize flour, wheat flour, cooking oil, sugar, rice, tissue papers, diapers, disinfectants, facemasks, bleach, and bar soap and shared a word of hope that the pandemic will soon be brought under control.

The Authority's second CSR activity of the Financial Year involved planting of 1,100 mixed indigenous tree seedlings in Ngong Road forest with the aim of preserving and conserving the environment and boosting ongoing efforts to attain 10% forest cover nationally by 2022.

The Authority collaborated with Kenya Forest Service (KFS), Nairobi County to rehabilitate and enrich one (1) hectare of land into forest land. The space had been overrun by invasive bush plants which negatively impact the forest's productivity and biodiversity.

The Ngong' Road Forest, which covers 1,124 hectares, is one of five (5) forest stations in Nairobi County managed by the KFS. The other stations are; Arboretum, Karura Forest, Michuki Park, and City Park.

Mr. Anthony Kinyanjui, the KFS Ecosystem Conservator for Nairobi County noted that partnerships geared towards forest rehabilitation will enable the country preserve its green spaces for present and future generations and minimize the adverse effects of climate change.

"Forests are effective carbon sinks by absorbing carbon dioxide from the atmosphere. When forests are destroyed, and there are more dead trees than alive, they end up being carbon sources. It is therefore critical that we preserve our forests effectively," said Mr. Kinyanjui.

The Authority has in the past five years, under the leadership of the Environmental Conservation & Sustenance Committee, planted over 3,000 trees in 4 counties - Nakuru, Nairobi, Tharaka-Nithi, and Kilifi <<



PROMOTING INCLUSION OF PWDs IN THE WORKPLACE



Ms. Catherine Syokau, a former intern attached to the Communication & External Relations Department, sensitizes stakeholders on the Authority's mandate during the Nairobi Innovation Week, 2019.

Article 27 of the Constitution of Kenya, 2010 prescribes that Kenyans enjoy several rights that guarantee them equality and freedom from discrimination. Key among these rights is that the State shall not discriminate against any Kenyan, directly or indirectly, on account of disability of any kind.

Within the Authority, the Disability Mainstreaming Committee spearheads activities aimed at promoting inclusion of Persons with Disability (PWDs), for both members of staff and external stakeholders.

Over the past three years, the Authority has increased the number of permanent employees who are PWDs to 3% of its staff establishment, with the aim of raising this quotient to attain and surpass the 5% minimum

requirement set by the National Council for Persons with Disability (NCPWD).

The Authority in the past financial year engaged a PWD on internship basis for three months in the Communication & External Relations Department, after which they secured employment in the private sector firm.

The Committee has also championed for the provision of integrated services for PWDs, including the provision of an access ramp to access the Authority's offices, two (2) designated parking slots, accessible washrooms, and business cards with braille.

The Authority's Service Charter has also been recently translated into braille and placed in the reception areas to ensure that



3% of the Authority's staff establishment are PWDs.

The Committee has also championed for the provision of integrated services for PWDs, including the provision of an access ramp to access the Authority's offices, two (2) designated parking slots, accessible washrooms, and business cards with braille.

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stakeholders who have eyesight impairments are able to familiarize themselves with the Authority’s service delivery commitments.

In June 2020, NCPWD conducted an accessibility and usability audit of the Authority’s offices with a view of improving the working environment for PWDs. In the FY 2020/21, the Authority will implement the recommendations highlighted during the review.

The Gender Agenda: Acknowledging and Promoting Diversity in the Workplace

The Authority recognizes the fact that its policies and programmes have different implications on, and interpretations by, persons of different genders, thereby directly impacting execution of its mandate.

In furtherance of this, the Authority has in place a Gender Mainstreaming Policy which ensures that this innate divergence is considered when designing, implementing and evaluating policies and projects, thereby enhancing gender equality.

In Kenya, this vision is driven by the National Gender and Equality Commission (NGEC), which seeks to “promote gender equality and freedom from all forms of discrimination in Kenya, especially for special interest groups by ensuring compliance with policies, laws and practice.”

In order to actively highlight issues of balanced gender representation in all phases of the policy-making process within the Authority, there is in place a Gender Mainstreaming Committee comprised of 12 staff members, six of each gender.

The Committee reports to the Commission on a quarterly basis regarding the Authority’s level of compliance with constitutional and statutory requirements on the implementation of the principles of equality and freedom from discrimination.

The Authority’s current staff establishment consist of 36% and 64% female and male employees respectively, thereby meeting the gender equity rule.

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36%

Percentage of female employees at CAK



64%

Percentage of male employees at CAK



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10:15 – 11:00 AM	Responsible Manufacturing and adaptive Consumer Complaint Mechanisms	Ms. Phyllis Wakiaga CEO, Kenya Association of Manufacturers
11:00 -11:45 AM	Competition Law Enforcement in the Next Decade	Ms. Teresa Moreira, Head of Competition and Consumer Policies Branch - UNCTAD

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At Management level, the gender representation has also improved over the past three years, with four women joining the leadership team.

The Committee is continuously engaging the Management on modalities of enhancing gender mainstreaming in the workplace and the benefits that potentially accrue from a more inclusive organization.

The Committee has also championed for infrastructural adjustments to ensure that all genders are accommodated in the workplace. The Authority has established a lactation room and flexi-hours policies for nursing mothers.

Building a Cohesive and Values-Driven Authority

The Authority continually endeavours to adhere to all statutory requirements and the promotion of national cohesion, national values and principles of governance in order to create a transformed, cohesive, united and values-driven organization.

Article 10 of the Constitution of Kenya, 2010 spells out 17 national values including patriotism, national unity, sharing and devolution of power, rule of law, democracy and participation of the people, human dignity, equity, social justice, among others.

Additionally, the Bill of Rights provides that all citizens enjoy equality and freedom from discrimination, basic economic and social rights of all, respect for diversity and fostering of a sense of belonging.

The Authority's National Cohesion and Values Committee has a responsibility of championing these values and

principles among staff members and all stakeholders in order to foster a cohesive workforce and population.

The Committee advances this agenda through various ways including awareness creation and advising members of staff, including top management, on how the Authority can align its activities towards achievement of the national values and principles of governance.

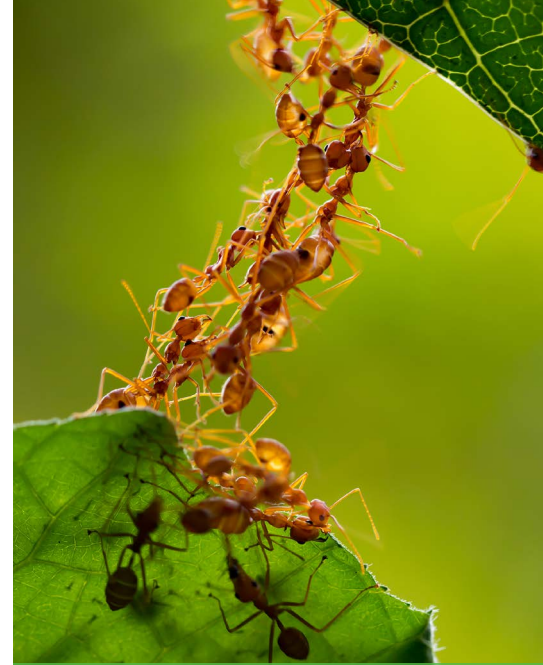
Further, Article 132(1)(c) of the Constitution provides that the President shall make an annual address to the Nation regarding the measures taken and the progress achieved in the realization of the national values referred to in Article 10.

In the 2019 Annual President's Report on National Values and Principles of Governance for Ministries, Departments and Agencies (MDAs), the Authority was cited sixteen (16) times for exemplarily mainstreaming tenets of good governance in its policies and programmes.

These references, which marked an improvement from 2018's thirteen (13), placed the Authority as the fourth-highest mentioned MDA out of the 354 institutions that submitted their reports through the Directorate of National Cohesion and Values. The Committee is committed to ensuring this good performance is progressed ◀◀

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CAK citations in 2019 Annual President's Report on National Values and Principles of Governance for MDAs.



The Authority endeavours to inculcate the 17 national values and principles of governance among its members of staff and all stakeholders in order to foster a cohesive and values-driven workforce and population.

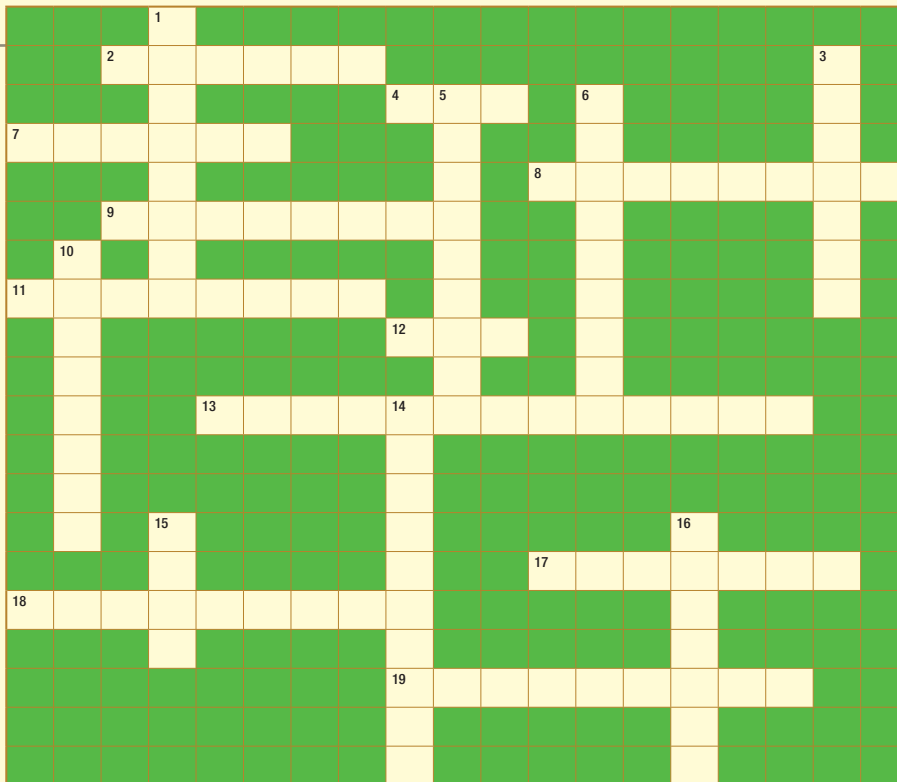
National Values & Principles of Governance:

- Sustainable Development
- Transparency & Accountability
- Integrity
- Good Governance
- Protection of the Marginalized
- Non-discrimination
- Human Rights
- Equality
- Inclusiveness
- Social Justice
- Equity
- Human Dignity
- Democracy and Participation of the People
- Rule of Law
- Sharing & Devolution of Power
- National Unity
- Patriotism.

COMPETITION CROSSWORD

Across

2. Money paid back to a consumer who is not satisfied with goods or services bought.
4. To officially or legally prohibit sale of (harmful) goods.
7. Inform someone of something in a formal manner.
8. A person who purchases goods and services for personal use.
9. Make an infringement better or less serious.
11. In trade, the amount of money taken by a business in a particular period.
12. A payment made in exchange for service(s).
13. A small alteration made to achieve a desired result.
17. Amount of money imposed for violating law.
18. Make an infringement worse or more serious.
19. Being free from an obligation or liability imposed on others.



Down

1. A conclusion or resolution reached after investigations
3. A _____ notice published after full determination of a matter by the Authority
5. A contract, arrangement or understanding whether legally or illegally
6. A breach or contravention of a law
10. One that provides something needed such as a product or service
14. An undertaking can invoke Section 38 of the Act to enter into _____ negotiations
15. This printed document with blank spaces for information to be inserted
16. A cautionary notice of something.



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Answers to Ushindani ISSUE 4 Crossword Puzzle

Across

1. Substantial
4. Evidence
10. Trade
11. Unwarranted
13. Compete
15. Tribunal
18. Goods
19. Restrict
21. Revoke
22. Remedy

Down

2. Undertaking
3. Asset
4. Enterprise
5. Concerted
6. Constrain
7. Exemption
8. Merger
9. Dominate
12. Person
13. Customer
14. Market
16. Bargain
17. License
20. Supply

CONTACTS:

Kenya Railways Staff Retirement Benefit Scheme
Block 'D', 1st Floor, Haile Selassie Avenue,
P.O. Box 36265-00200 Nairobi, Kenya

+254 20 262 8233 | +254 20 277 9000
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