

COMPETITION
AUTHORITY
OF KENYA

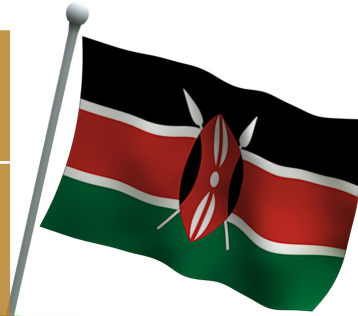
Creating efficient markets for consumers

Ushindani

Ushindani (Swahili for 'Competition') is a biannual Newsletter of the Competition Authority of Kenya | ISSUE 8 | July – December 2021

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CAK enhances
its international
stature with ICN
appointment



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Director-General's FOREWORD

When the Competition Authority of Kenya joined the International Competition Network in 2012, we had only been in existence for one year.

The ICN is a specialized but informal Forum comprised of over 140 competition agencies from across the World, some of whom have been in existence for decades.

The Authority's immediate motivation of joining the ICN as early as we did was to draw lessons from such agencies and support our institutionalization. At the time of joining, the Authority's core mandate was the statutory enforcement of mergers. Further, we were strategically focused on enhancing staff skills in terms of technical capacity as well as soft enforcement, specifically advocacy initiatives and awareness creation.

We heavily referenced the Network's resources during our formative years, specifically those relating to merger assessment as well as fining and settlement. Best practices from older agencies were readily available for young agencies like ourselves and proved critical in grounding the Authority in competition law enforcement.

Presently, we have developed tens of operational documents which were greatly enriched by the ICN library including the Leniency Program Guidelines, Competition (General) Rules, 2019, and the Market Definition Guidelines.

The Authority's relationship and interaction with the ICN has grown stronger over the years and, more importantly, it is now more

mutually beneficial. We have actively participated in ICN's conferences and workshops, including teleseminars, where we share our experiences, while also drawing learnings, especially regarding emerging issues in competition law enforcement.

Further, we have been actively involved in over 30 Working Groups, the project units of the ICN, where member agencies discuss various matters relating to competition law and policy and derive recommendations. We participate in the Agency Effectiveness, Unilateral Conduct, Advocacy, Mergers, and Cartels Working Groups.

It was therefore a moment of pride for the Authority to be appointed to the ICN's Steering Group in October 2021. We regard the appointment as a recognition of the Authority's commitment to supporting the Network's agenda over the years as well as recognition that Kenya is becoming a referenceable centre of competition law and policy enforcement in the continent.

While we celebrate the appointment, we also acknowledge it as a challenge to the Authority to continue supporting the ICN's work, and also judiciously enforce the Competition Act while taking into consideration emerging issues in the global marketplace and for the benefit of consumers.

I, therefore, welcome you to read the more about the ICN appointment as well as other aspects of our mandate execution.

Wang'ombe Kariuki, MBS

Editorial Note

The Editorial Committee welcomes you to the latest edition of *Ushindani*, the Authority's biannual Newsletter which appraises our stakeholders about the activities we have been undertaking towards execution of our mandate.

In Issue 8, we focus on and celebrate the Authority's installation into the International Competition Network's Steering Group, giving us a vantage seat in an acclaimed Forum tasked with formulating global agenda on competition law and policy enforcement.

The Authority's Director-General was in October 2021 appointed to the ICN's SG. This selection is in recognition of the Authority's commitment and contribution to the ICN matters, including active participation in workshops and conferences, over the past decade.

Kenya's inclusion in the Forum's SG is a unique opportunity to elevate conversations around competition issues which uniquely affect the African continent, while sharing our enforcement learnings to inform international best practice.

In this latest edition of *Ushindani*, we also highlight some of the activities we undertook in the six months to December 2021, including commemorating the World Competition Day and hosting our 8th Annual Competition Symposium and Workshop.

Additionally, in a bid to enhance our awareness levels through a multiplicity of channels, the Authority engaged stakeholders through Twitter Spaces, an exciting platform which facilitates two-way conversations with the Public.

Lastly, we have the second instalment of the Know the Competition Act segment which we introduced in Issue 7 and which focuses on explaining the various provisions of the Competition Act No. 12 of 2010. Our focus this time is Functions of the Authority.

The Editorial Committee values the feedback it receives from stakeholders regarding this publication. You can share your comments and view via the Email: editorial@cak.go.ke

Editorial Committee

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ISSUE 8 | July – December 2021

Editorial Committee

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CAK Enhances its International Stature with ICN Appointment



CAK's Director-General (second from right) participating at the ICN Annual Conference held in Cartagena, Columbia in May 2019. He was part of a plenary focusing on whether agencies need to revisit recommended best practices when regulating dominance & substantial market power following the proliferation of digital economies & platforms.

Kenya's spot in advancing and contributing to emerging competition matters on a global platform were cemented on 15th October, 2021 when the Authority's Director-General was appointed as a member of the International Competition Network's (ICN) Steering Group (SG)

The ICN comprises of over 140 competition agencies from across the World with a collective objective of deepening cooperation in competition enforcement through exchange of practical experiences and best practices, including removal of regulatory barriers by Government.

Through the appointment of Mr. Wang'ombe Kariuki, Kenya

is now part of an 18-member apex Committee which is tasked with setting the strategy and vision for the Forum. The ICN is informal in its constitution and members join and engage voluntarily.

The SG consists Heads of Competition Agencies from Germany, South Africa, Canada, France, Colombia, Brazil, United Kingdom, Japan, European Commission, Mexico, Turkey, Singapore, Portugal, Russia, Italy, the USA and Kenya.

"All elected ICN SG members shall meet the following criteria; (a) Significant resource commitment to the ICN, mindful of the relative size of the member agency and (b) Consistent and effective ICN participation," the ICN's Operational Framework states.

"When considering the overall composition of the incoming SG, members of the outgoing SG shall select new members with a view to reflecting the geographic and economic diversity of ICN members."

The SG is charged with various tasks, including the identification of projects and research on areas of competition enforcement and policy issues where, through consensus, members feel there is need for more informed perspectives. These projects result in implementable non-binding recommendations and guidelines.

The Committee also establishes Working Groups to undertake the projects and tracks their progress, facilitates financing of ICN activities by establishing institutional frameworks, and approves member agencies hosting events such as workshops and conferences.

The Authority joined the ICN in 2012 and has actively participated in its activities through, among others, speaking at international fora on various matters relating to, among others, cartel enforcement, merger control, unilateral conduct, agency effectiveness, and advocacy. The Authority has also contributed to the development of various key reference material relating to competition enforcement and policy-making.

During its formative year, the Authority significantly referenced the Network's resources, specifically those relating to

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merger assessment and the fining and settlement processes. The ICN's peer-reviewed resources are still utilized by during mandate execution to ensure its interventions and policies are aligned to international best practice, are responsive to emerging issues, but are tailored to address our unique circumstances locally.

"I believe the Authority's appointment is in recognition of our deliberate initiatives to build an effective, responsive and credible agency and our commitment to the ICN agenda and activities," said Mr. Kariuki. "Whereas we have 19 African states in the ICN, the only representative the continent's only representative in the SG was South Africa. Our inclusion will better inform ICN's future work with regard issues uniquely affecting our part of the World."

The World over, competition agencies are grappling with regulating digital markets and platforms. Europe, for instance, recently enacted the Digital Markets Act which aims to attend

to the competition and consumer welfare issues occasioned by these platforms.

Mr. Kariuki noted that there is need to expand this conversation to consider how these markets uniquely work in developing countries and advocating for tailored solutions, while maintaining a united front as African competition agencies. Specific focus areas are Big Data and Artificial Intelligence, and their role in impeding or facilitating competition.

"We also need robust knowledge sharing with regard to dealing with firms that are not necessarily dominant, but have a significant market position. The approach should be facilitating innovation, but also attending to consumer and competition concerns," he noted.

2012

Year the Authority joined the International Competition Network

The Competition Authority of Kenya Hosts 2020 International Competition Network (ICN) Merger Working Group Webinar

Theme:

Sound Decision Making for the Southern Africa Region

Objective:

To promote the adoption of best practices in the design and operation of merger review regimes thereby promoting their effectiveness in enhancing competitive markets.

Topics of Discussion:

- ✓ Evidence-based decision making
- ✓ Clarity in disclosure of procedures and evidence
- ✓ Regulatory independence
- ✓ Compliance with anti-bribery laws

Date: 2nd April 2020

Time: 3:00 PM (E.A.T)

For more inquiries, including joining instructions, contact the Authority via;

✉ info@cak.go.ke || [Lkipng'etich@cak.go.ke](https://www.linkedin.com/company/competition-authority-of-kenya)
+254706639440 (Linus Melly)



Another area that requires enhanced deliberation is enhancing the integrity of the public procurement process which occasions wastage of Public resources and ultimately impedes economic progress. Further, whereas some work has been done in this regard at the ICN level, and adopted by Members, there is more room for knowledge sharing, especially with regard to tender designing and data screening algorithms.

The Authority is also committed to encouraging more debate and research in the areas of environmental, social and economic sustainability as well as increasing collaboration between regulators in the wake of increased demand for our services, but with reduction in resources. <<



Since joining the ICN, the Authority has actively participated in ICN activities, including sharing our experiences at international fora, informing key reference material relating to competition law enforcement, & hosting ICN events.

The Authority's Participation in The ICN



2001

Year the ICN was formed by 14 competition agencies in New York



140

Competition enforcement agencies in **110** jurisdictions who are members of ICN



10

Years the Authority has participated in ICN workshops and teleseminars



>30

CAK's engagements with ICN working groups over the last **10** years



18

Members of the Steering Group (**15** members + **3** ex-officio) that guide ICN



2024

Kenya to host ICN Advocacy Working Group Workshop



Scan to Access the ICN's Website and read more about its mandate and activities.



2016 & 2018

Amendments of the Act informed by International Best Practice, including from ICN members



2020

Authority hosts ICN Merger Working Group Regional Webinar on Sound Decision-Making focusing on the Southern Africa Region



2021

CAK's Director-General appointment to ICN Steering Group



Sample CAK documents informed by the ICN:

- Leniency Program Guidelines
- Competition (General) Rules, 2019
- Market Definition Guidelines.



CAK's Focus Areas as a member of ICN Steering Group:

- Digital Markets and Platforms
- Public Procurement
- Significant Market Position.

Professional Associations Cautioned Against Setting of Minimum Prices

The Authority in October 2021 issued a cautionary statement to Professional Associations following their renewed momentum to set minimum chargeable prices/fees for their members, without observing the requisite provisions of the Competition Act No. 12 of 2010 (The Act).

Members of the said Professional Associations and Members of the Public were advised that: -

1. **Section 21(1)** of the Act prohibits **any undertaking**, or associations of undertakings, from entering into agreements or making decisions which "... have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya.... *unless they are exempt in accordance with the provisions of Section D of this Part*"; and
2. **Section 21(3)** outlaws **any undertaking**, or associations of undertakings, from making decisions or engaging in concerted practices which directly or indirectly fix purchase or selling prices or any other trading conditions in relation to provision of goods and services, as well as minimum resale price maintenance.

Any Person who infringes the Act exposes themselves to a penalty of up to 10% of their preceding year's gross annual turnover in Kenya. They may also face



criminal prosecutions, and be liable to a fine of Ksh10 Million and imprisonment for a maximum of five (5) years, or both.

Notwithstanding the aforementioned provisions of the Act, the Authority would like to remind professional service associations that Section 29 of the Act provides that *"a professional association whose rules contain a restriction that has the effect of preventing, distorting, or lessening competition in a market shall apply in writing or in the prescribed manner to the Authority for an exemption..."*

When considering exemption applications, through a **public participation process**, the Authority reviews whether the proposed practice will facilitate

maintenance of professional standards or the ordinary function of the profession.

It is important to note that "the envisaged arrangements of setting minimum rates/fees, highlighted in the Media recently, are only meant to extinguish competition among members of the professional associations to the detriment of clients/consumers," said Mr. Wang'ombe Kariuki, the Authority's Director-General.

Further, Article 227 of the Constitution of Kenya, 2010 provides that the Government should procure goods and services through a system which is, among others, cost effective. Floor pricing defeats this Constitutional requirement. ◀◀



CAK Sustains Excellent Financial Reporting Record

The Authority beat over 60 semi-autonomous government agencies in the 2021 Financial Report (FiRe) Awards to scoop the top prize for its outstanding application of the International Public Sector Accounting Standards (IPSAS) accrual basis of reporting.

Since the 2017 FiRe Awards, the Authority has emerged top in this category, underlining its emphasis on good governance, accountability, transparency and continual improvement while executing its mandate and meeting its statutory obligations.

IPSAS are accounting standards applied by public sector entities globally in the preparation of financial statements. The main benefits from its use is enhanced accountability, efficient use of resources and asset management, as well as aiding in decision-making, among others.

“We are very delighted with the participation by the Public institutions. This time we had a record number of entries and that as really brought in some very high level of governance even in public institutions,” said Geoffrey Odundo, the Chair of the FiRe Awards Expo Committee, said at the 2021 Awards Ceremony which took place on December 17th, 2021.

The theme of the awards was “Promoting Financial Reporting Excellence in Uncertain Global Economy”, in cognizance of the impact that the Covid-19 pandemic has had on economies and, therefore, organizations in the private and public sectors.

The FiRe Awards, which have been held annually since 2002, is a rigorous evaluation of how entities that prepare accounts and



Anthony Mutula and Hakima Mohammed, the Authority's Principal Accountant & Accountant respectively, receiving the trophy at the FiRe Awards Ceremony on Friday 17th Dec. 2021.

are subjected to auditing apply the financial reporting principles applicable to them such as IPSAS and the International Financial Reporting Standards.

289

Public Sector entities that participated in the Awards which also attracted entries from 56 Private Sector organizations

Applications are also judged on whether they adhere to best practices in corporate governance, and environmental and sustainability reporting, the clarity of the notes provided as well as the presentation of the Board and Management papers as well as performance data.

Additionally, the judges score the financial statements with regard to their design and layout.

A total of 62 SAGAS submitted their financial statements for consideration in the IPSAS Accrual Category in the 2021 awards, with the Authority emerging top. A total of 289 Public Sector entities participated in the Awards which also attracted entries from 56 Private Sector organizations.

“Our continued good performance in these Awards is testament of the Authority’s resolve to prudently utilize the available resources and be as open and transparent to the Public as is required of us,” said Mr. Ambrose Ageng’a, the Authority’s Finance Manager. <<



Main objectives of the FiRe Award are:

-  **Promotion of Financial Reporting Excellence**
-  **Fostering sound corporate governance practices**
-  **Enhancing corporate social investment and environmental reporting**



Twitter Spaces: Expanding Stakeholder Engagement

The Authority in December 2021 engaged stakeholders through a Twitter Spaces event as part of ongoing efforts to expand our awareness creation and publicity channels, including embracing mediums that are cost-effective and facilitate feedback with the Public.

Spaces is a live-streamed audio conversation feature available on Twitter allowing the host of an event to engage with audiences, including those who do not “follow” you on the platform, through presentations on certain topics and fielding of questions.

The Authority is increasingly focusing on leveraging social media platforms in its awareness creation activities and augment other mass media channels such as television, print and radio, which are costlier.

The Spaces was co-hosted by Mr. Eric Mokaya, the head of Mwango Capital, a financial markets advisory business as well as Mr. Kwame Owino, the Chief Executive Officer of the Institute of Economic Affairs. The Authority’s Director-General was the guest speaker.

“It is encouraging to see Government agencies such as the Competition Authority opening themselves up to Public scrutiny and appraisal, over and above better elucidating their mandate to enable us get better services,” said Mr. Mokaya. Mr. Owino noted that “it is not objectionable that competition law leads to more efficient markets with better prices for consumers,” while noting

that engagement between State agencies and the Public, such as through social media platforms, should be encouraged.

During the event, consumers were challenged to proactively seek restitution from businesses offering sub-optimal goods and services on the basis that consumer rights are salient features of the Constitution of Kenya, alongside political and social rights. Additionally, in the ongoing bid to create a competition and consumer welfare culture in Kenya, consumers are the first line of defence against corporates which fail to meet consumers’ expectations when they purchase a good or service.

A DEEP DIVE INTO THE COMPETITION AUTHORITY OF KENYA

Hosted by: **Kwame Owino**, CEO, IEA Kenya

A Conversation With: **Wang'ombe Kariuki, MBS**, Director-General, Competition Authority of Kenya

On Twitter Spaces
14th December 2021
8 PM EAT (GMT+3)

Mwango Capital logo and Twitter handle @MwangoCapital



Scan the QR Code to access a recording of the Twitter Spaces conversation



Consumer lobby groups are the second line of defence, it was noted. Currently, the Authority supports six (6) consumer lobby groups and facilitates them to play their role under the Competition Act, including forwarding consumer complaints and cooperating in investigations. Consumer lobby groups were challenged to enhance their governance structures to secure their sustainability, increase their advocacy work among consumers, while widening their geographical representation in the country.

“As an Authority, we are the third line of defence and we shall continue to actively play our role. However, to build a vibrant competition culture that is alive to the rights given to consumers under the Constitution, all players need to work together,” said Mr. Kariuki.

Policy makers were also challenged to keep abreast with ongoing changes in their dynamic markets and ensure that, where regulatory interventions are imposed, they facilitate innovation while protecting consumers. It was further noted that price fixing in markets is now being facilitated through data mining tools and artificial intelligence, making the conduct much harder to detect and enforce.

Other issues addressed during the event were emerging issues in regulating digital platforms, mobile-based loans and enhance consumer welfare, and the need to expunge anti-competitive regulations in the professional service sector. <<

Fostering Economic Resilience through Competition Policy



On December 5, the Authority joined the World in commemorating the World Competition Day in order to raise awareness about the importance of effective enforcement of competition law and its benefits to the general Public.

The theme of the event, *Competition Policy for an Inclusive and Resilient Economy*, was aligned with the guiding principles that the Authority espouses during the execution of its mandate of creating efficient markets for Kenyans.

As part of the commemoration, the Authority sensitized over 3,000 members of the Public at Huduma Center, City Square, Nairobi regarding, among others, the competition law enforcement in supporting economic growth, their rights as consumers and our complaints handling channels.

Further, the Authority had a one-day engagement with about 200 stakeholders from the retail sector, including the Association of Kenya Suppliers and the Kenya Association of Manufacturers. Discussions centered on our enforcement against abuse of buyer power as well as the objectives of the Retail Code of Conduct which was gazetted in June 2021.

To enhance awareness about our role in achieving economic inclusivity and resilience, the Authority produced information, education and communication material, including producing an informative video (*Access it via QR Code provided*) and e-flyers outlining our achievements.

“Over the years, the Authority has intervened in various sectors, including telecommunications, agriculture and manufacturing with aim of extinguishing anti-competitive practices,” said Dr. Adano Wario, Director - Planning, Research, Policy & Quality Assurance.

“Our commitment to the Public is that we shall continue enforcing against anti-competitive conduct while also lowering regulatory burdens for businesses in order to facilitate their expansion in an environment of enhanced competitiveness.”

The WCD commemorates the General Assembly’s adoption of the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices on 5th December 1980.

The day is set aside for enhanced discussion and disseminating of

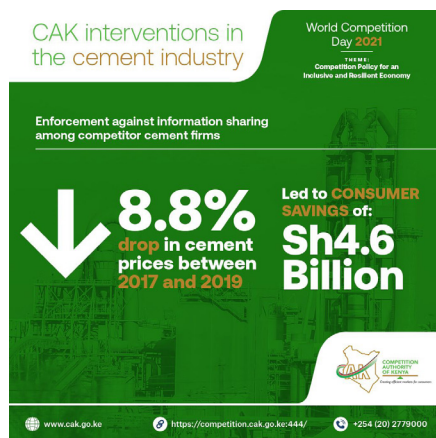


information to consumers regarding the benefits of effective competition, including cheaper pricing of goods and services, more choice and variety, and access to innovative products and services.

The International Network of Civil Society Organisations on Competition (INCSOC), a global organization which picks the WCD theme annually, noted that growing market power and concentration is perhaps the most significant challenge inhibiting economic inclusion.

“It has been observed that during the pandemic, big have become bigger while small businesses have suffered the most. The pandemic induced the necessity of digitalization of businesses. This includes e-commerce economic recovery and inclusivity,” INCSOC said in a statement.

“To achieve an inclusive digital economy, several competition concerns in the digital space would have to be dealt with. The growing market power and concentration have also brought forward the importance of dealing with ‘buyer power’ under competition law and policy.”



Balancing MSMEs' Growth and Competition Law Enforcement



By **Ninette Mwarania**
Manager – Policy and
Research

Whenever there is a discussion regarding reinvigorating the business environment in Kenya, they inevitably pivot to the fact that Micro, Small and Medium Enterprises (MSMEs) contribute about 34% of the country's Gross Domestic Product and employ approximately 15 million people. Unfortunately, a fifth of these small firms fail in their first year and just a third survive past their tenth birthday.

This low survival rate is attributed to the hurdles disproportionately facing MSMEs, such as unfair competition practices, including incidences where buyer firms with superior bargaining power delay payments, impose unfair contract terms, or transfer costs when dealing with suppliers.

Additionally, unfair exclusive agreements imposed by big players foreclose the distribution chain by creating barriers to entry and expansion, while price fixing contraventions render certain services inaccessible to and unaffordable for MSMEs.

Governments may also affect the operations of these firms through their regulatory regimes including unfavorable licensing policies which increase transactional costs and affect supply chains. For instance, investors require multiple licenses to open a small retail outlet in the country.

These costs add to the financing strain facing MSMEs purchasing equipment for expansion, thereby stalling their

The Competition Authority of Kenya (CAK) aims to, among others, extinguish these challenges facing MSMEs, including advising the National and the County Governments to promulgate regulatory regimes that are supportive of a conducive investment climate.



growth. This is mainly due to the lack of credit history and collateral to support the application process.

The Competition Authority of Kenya (CAK) aims to, among others, extinguish these challenges facing MSMEs, including advising the National and the County Governments to promulgate regulatory regimes that are supportive of a conducive investment climate.

In executing its mandate, the CAK has intervened in various sectors which support MSMEs, including agriculture and manufacturing.

Additionally, interventions against big businesses disenfranchising their smaller supplier partners has occasioned the release of over Ksh. 2.5 Billion to MSMEs operating in the retail and insurance space. Further to this, we have supported the bargaining position of MSMEs entering into agreements with buyers by developing template contracts to guide the process.

Further, we have developed a Regulatory Impact Assessment Framework to guide the National and County Governments when promulgating regulatory regimes. Such guidance occasioned the removal of barriers to entry in the growing and processing of specialty tea leading to establishment of five (5) factories directly and indirectly employing over 2,000 Kenyans. In addition, the intervention led to an increase in inclusivity since producer prices of specialty tea now stands at Ksh. 600 per kilo compared to traditional tea's going rate of about Ksh. 70 per kilo.

In the telecommunications sector, pursuant to our order extinguishing exclusive agreements in the mobile money agents' contracts with Mobile Network Operators, the agents' network has increased by over 150%. This is coupled with increased commissions for the agents.

We also approved a merger relating to a major beverage bottling firm on condition that they reserve at least 20% of their refrigerator space for competitor brands distributed by MSMEs. This was informed by the need to facilitate new entrants gain access to the market and exert positive competitive pressure on incumbents.

Such interventions resonate with the theme of this year's World

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As part of efforts to build a cohesive workforce that values teamwork, the Authority organizes an annual team building and sports day. Far Left: Staff members undertaking preparatory stretching exercises. Middle: Finnian Kathure dashes to the finish line during the relay race. Right: Martin Kimathi, the team leader of the winning team, poses with their hard-earned trophy.



COMESA Competition Commission officials being sensitized about various elements of the Authority's automated services (the Case Management System), including its technical and support functions. The benchmarking tour took place in December 2021.



Arthur Oudima, a Senior Analyst within the Authority, during an interview with Ramogi TV, a Dholuo-speaking station, in November 2021. The interview centered on the Authority's consumer protection mandate.



Members of staff from the COMESA Competition Commission and the Competition Authority of Kenya during a Workshop to review the existing bilateral co-operation framework between the two agencies in November 2021.

Stakeholders' Capacity Building on Competition Law and Policy

The Authority considers stakeholder capacity building and advocacy as critical building blocks towards creating a competition culture and enhancing compliance with the law. Towards this, the Authority held its 8th Annual Training and Competition Symposium on from 20th to 29th September 2021.

The capacity building Workshop and the Symposium were held jointly with the University of Johannesburg's Centre for Competition, Regulation and Economic Development (CCRED). CCRED undertakes economic research, teaching and advice on competition, regulation and industrial development in Africa.

The overarching aim of these two engagements was to provide a platform for the Authority to interact and share ideas with stakeholders on emerging issues in the competition law enforcement sphere. To enrich discussions, the Authority invited renowned competition, legal and economic practitioners as well as renowned scholars from across the Globe.



CAK's Director General Mr. Wang'ombe Kariuki delivers his key note address to the participants on "A Decade of Competition Regulation in Kenya: Milestones and Lessons" at the annual competition symposium held on 29th September 2021.

The Workshop covered three online Professional Training Programmes (PTPs) in Competition Economics and Policy relating to the core areas of competition economics in a practitioner-oriented approach with relevant case examples and exercises, Legal Principles in Competition and Consumer Protection and Advanced Masterclasses the current theory

and practice in contemporary advanced competition enforcement). The topics were informed by stakeholder feedback.

The Symposium was held under the theme, "Emerging areas in Competition Regulation" with discussions around regulation of the digital economy, a review of Kenya's experience in competition law enforcement over the past decade and regional competition enforcement. The discussions further elucidated the Intersection between the Competition, Consumer Protection Law and Data Protection and How Competition Policy can support the recovery and growth of MSMEs. Panelists comprised competition practitioners, consultants and academicians from agencies, universities and legal firms.

Key takeaways from the session were: the need to develop support programs for countries without national competition agencies under the auspices of the African



Prof. Eleanor Fox, Walter J. Derenberg Professor of Trade Regulation at New York University School of Law facilitating a session on "Competition policy, inequality and sustainability" for the Masterclass Programme at the annual capacity building workshop.

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Competition Forum (ACF) and the need for increased advocacy activities targeting MSMEs to deepen a competition culture and advising the Government on the importance of reducing regulatory barriers.

It was also noted that national competition agencies should be strengthened, by developing advocacy programs to support agencies with nascent competition law and policies. Another takeaway was the need to build trust and transparency with regards to use of digital tools and

enhancing transparent in the value chains through publishing SME databases, especially with regard to food systems.

There was convergence on the issue of data privacy and regulation of digital economy with experts pointing out that this is the next frontier for competition enforcement and therefore there is need for capacity building and enhanced cooperation among agencies. Advocacy initiatives and collaborations will remain a key focus area in promoting and safeguarding competition and consumer welfare in the economy.



Balancing MSMEs' Growth and Competition Law Enforcement

Continued from Pg. 10

Competition Day - *Competition Policy for an Inclusive and Resilient Economy*. The commemoration is marked annually on December 5 to enhance awareness about competition enforcement and the benefits to consumers.

In line with this, the Government supported businesses that have been negatively affected by the COVID-19 pandemic. These interventions include expedient payment of pending bills and VAT refunds, reduction of MSME turnover tax, and operationalization of the credit guarantee scheme.

These interventions can be buttressed further, with the aim of creating linkages and drive efficiencies. This may be attained through developing e-repositories linking MSMEs to new markets, suppliers, and funding opportunities. Such a platform should be developed through partnerships between the Government, private sector players and MSMEs.

To reduce regulatory obstacles at the County level, the National Treasury may create a competition yardstick by pegging disbursements to interventions deployed to support MSMEs. Further, development and operationalization of the leasing framework envisaged under the MTP III shall facilitate MSMEs acquire the requisite capital to penetrate markets.

Lastly and most importantly, cognizant of the fact that high mortality rate of MSMEs could be attributed to internal governance weaknesses and controls, there is need for capacity building in order to create a resilient sector. Institutions of higher learning may take this opportunity to develop curricula to attend to this need.

TRANSFORM POWER AND DOMINANT FIRM CONDUCT

Agent exclusivity

- Ban in Kenya from CAK followed by NPS Regulations that ban exclusivity
- In Uganda, exclusivity banned by Mobile Money Guidelines but there are signs that the behaviour persisted: MTN and EzezeMoney Case, of transactions by EzezeMoney, effectively closing off this portion of the market (Macmillan, et al, 2016).

Interconnection

- In Kenya, prior to April 2018, off-net transfer rates were effectively around two and half times those of transfer to another M-Pesa subscriber from around 2010 to 2013.
- The differential increased dramatically in 2014 for smaller value transfers when the on-net rates were reduced following the removal of agent exclusivity, followed by a downward adjustment in off-net rates in 2015
- In Uganda, off-net rates remained around two to three times on-net rates from 2013 to 2018, and more for higher value transfers.

Access to USSD

- Access is necessary to provide consumers with services from transfers, mobile banking to merchant payments but access to USSD is owned by M-Pesa
- CAK found Safaricom to be charging anywhere from KSh1 to KSh10 per USSD session. Negotiated to bring this down to uniform KSh 1
- A UCC study found that in 2017 MTN charged UGX35 per 20-second session (equivalent to UGX315 per 180-second session or around US\$0.09) & Airtel UGX110 for a 60-second session (or UGX330 for a 180-second session).

Ms. Anthea Paelo of FSD Uganda presenting a paper titled *Competition and Regulation of Mobile Money Platforms in Africa: A Comparative Analysis of Kenya and Uganda at the Symposium*. Ms. Paelo co-authored the paper with CCRED's Prof. Simon Roberts.

Webinar

COMPETITION AUTHORITY OF KENYA
Creating efficient markets for consumers

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Mr. Boniface Makongo, CAK's Director for Competition and Consumer Protection in a panel discussion on "Interrogating Competition Law, Consumer Welfare & the Data Protection Imperative" at the annual competition symposium.

Equipping Graduates for the Job Market

The Authority runs a one-year on-the-job training where postgraduate students learn about competition law and policy. This program proves an opportunity to graduates to work in a high profile agency and get exposed to Competition and Consumer Protection issues globally. We had an interview with Mr. Haron Ng'eno, one of the Young Professionals (YP's) for the year 2021 and this is what he had to say;

1. Give us a brief background about who you are, your interests and your journey to joining the YP Program in January 2021.

I am an economist by profession and experience, and a policy analyst, with experience in monitoring and evaluation frameworks, conducting research across different sectors of the economy, ranging from health, education and competition law.

I had always yearned to work for an institution where I would get an opportunity to share my experience, especially on matters relating to policy review and analysis, and a place where I can influence change to better address issues affecting society.

The YP Program fulfilled this for me.

I graduated from Kenyatta University, School of Economics in 2016. Thereafter, I enrolled for my Masters in Economics the same institution and graduated in 2018. When the YP advert was publicized in October 2020, I was engaged in a research

and policy analysis job in the private sector. Spurred by the aforementioned goals, and the need for a change in my career trajectory, I applied for the YP position and I got it.

2. How would you describe your experience in the past 12 months, especially the fact that you are required to rotate between different departments within the Authority?

Working in the Authority has been quite the exploratory journey for my mind, a test of my skills and, more importantly, a learning experience. I started out in the Policy, Planning and Research Department where I gained skills in developing advisory opinions, conceptualizing market inquiries as well as strategic planning. For instance, I was involved in informing an advisory opinion on the petroleum sector, specifically with regard to pricing of these essential products.

When I moved to the Mergers & Acquisitions Department, I connected my experience in data collection and research with the economic analysis required when reviewing merger notifications, especially with regard to market definition.

At the Risk & Quality Assurance Department, I learned about the key linkage between risk and business continuity planning to the organizational stability and sustainability. I was also heavily involved with implementation of the Authority's Quality Management System.

Continued on Pg. 15



Mr. Haron Ng'eno, an Economics graduate from Kenyatta University, was one of the five (5) Young Professionals engaged by the Authority between January and December 2021.

At every station, I picked up invaluable lessons that I will apply and reference in my career.

3. In terms of culture, what was that one element you appreciated while working in the Authority?

I appreciated the relations between YPs and supervisors, including the Management. They always gave me an opportunity to share my experience without considering that I was junior to them, including experience-wise. Giving YPs a listening ear allowed us to enhance the output of collective assignments. Some of the ideas we gave during discussions were adopted and this was a huge motivator.

4. As a Masters graduate, do you believe the one-year Program was a worthwhile undertaking, even though you are not assured of a permanent job thereafter?

The concepts I learnt while in the Authority were not well captured in school and getting the chance to get them in a live environment was critical. Further, within the year, I benefited from various capacity building sessions, including training from globally acclaimed experts in the economics, and competition law experts. I also benefited from a training conducted by the Authority in collaboration with the Centre for Competition, Regulation and Economic Development (CCRED). So, for me, the year has been worthwhile in many aspects.

I highly recommend the Program to my peers especially, young economists and lawyers because it will give you a good

2021

The year Mr. Haron Ng'eno joined the Authority's Young Professionals (YP) Program in January.

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understanding and foundation regarding matters that variously affect consumers and business players. You will also be able to connect the relationship between effective competition enforcement and economic growth. ◀



A career with the Authority gives you an opportunity to work on a wide variety of industry issues touching on competition law and policy, buyer power, and consumer protection. **Scan the code below** to access more details about working with the Authority.



Highlights of the Authority's YP Program

- ① **Masters' Degree in Law, Economics or Business related course from a recognized University**
- ② **Aged below thirty (30)**
- ③ **Training lasts one (1) calendar year (January – December)**
- ④ **Rotation between Technical Departments**
- ⑤ **YPs required to write a paper on Competition Policy and Law at the end of the programme**
- ⑥ **Successful professionals may be absorbed into the permanent workforce of the Authority based on availability of a vacancy.**



Know the Competition Act



Functions of the Authority

- (1) The functions of the Authority shall be to—
 - (a) promote and enforce compliance with the Act;
 - (b) receive and investigate complaints from legal or natural persons and consumer bodies;
 - (c) promote public knowledge, awareness and understanding of the obligations, rights and remedies under the Act and the duties, functions and activities of the Authority;
 - (d) promote the creation of consumer bodies and the establishment of good and proper standards and rules to be followed by such bodies in protecting competition and consumer welfare;
 - (e) recognize consumer bodies duly registered under the appropriate national laws as the proper bodies, in their areas of operation, to represent consumers before the Authority;
 - (f) make available to consumers information and guidelines relating to the obligations of persons under the Act and the rights and remedies available to consumers under the Act;
 - (g) carry out inquiries, studies and research into matters relating to competition and the protection of the interests of consumers;
 - (h) study government policies, procedures and programmes, legislation and proposals for legislation so as to assess their effects on competition and consumer welfare and publicise the results of such studies;
 - (i) investigate impediments to competition, including entry into and exit from markets, in the economy as a whole or in particular sectors and publicise the results of such investigations;
 - (j) investigate policies, procedures and programmes of regulatory authorities so as to assess their effects on competition and consumer welfare and publicize the results of such studies;
 - (k) participate in deliberations and proceedings of government, government commissions, regulatory authorities and other bodies in relation to competition and consumer welfare;
 - (l) make representations to government, government commissions, regulatory authorities and other bodies on matters relating to competition and consumer welfare;
 - (m) liaise with regulatory bodies and other public bodies in all matters relating to competition and consumer welfare;
 - (n) advise the government on matters relating to competition and consumer welfare.

SCAN TO ACCESS:



E-Filing Portal



CAK's Strategic Plan
FY 21/22 – 24/25



CAK's Citizens' Service
Delivery Charter



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