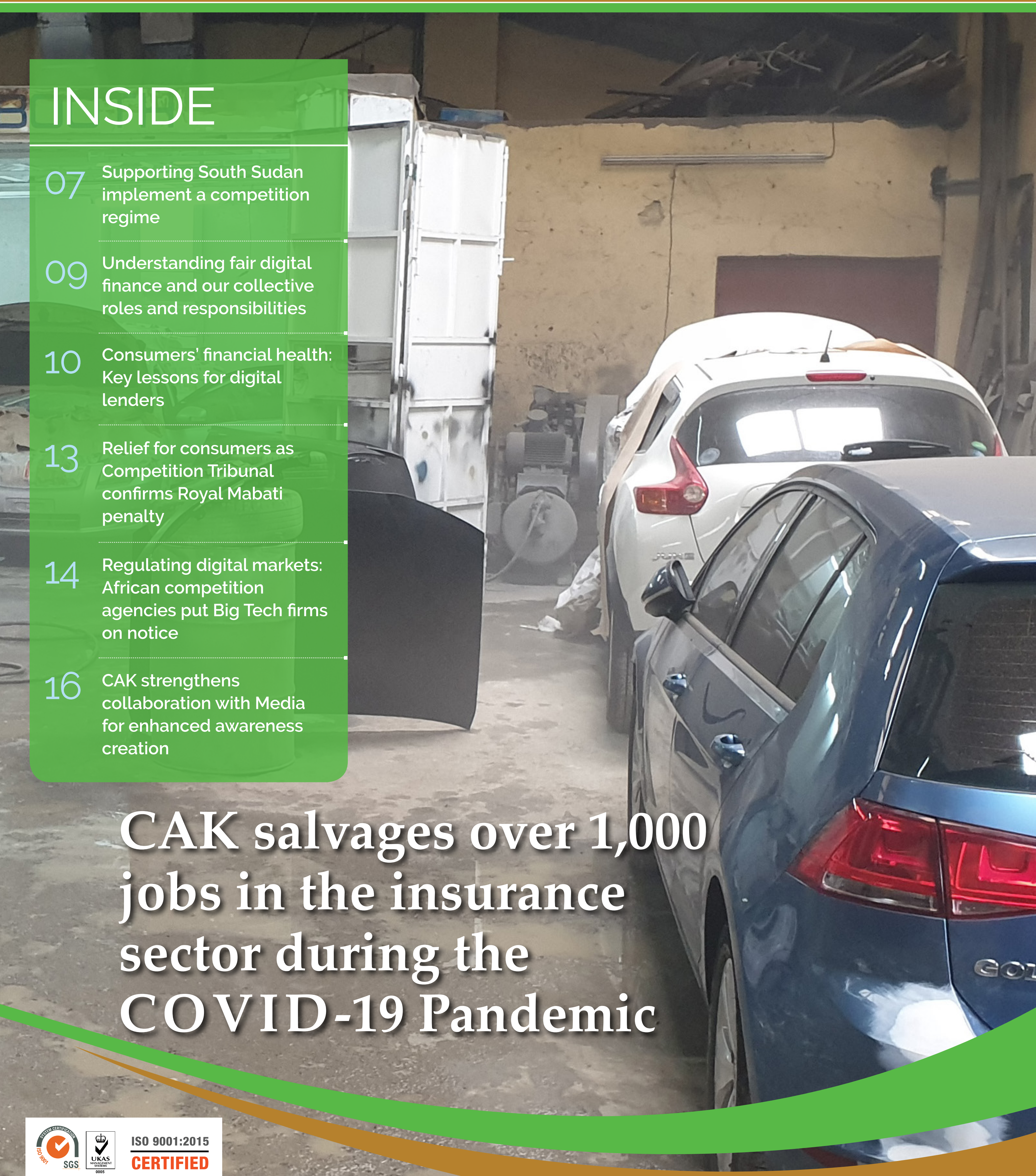
COMPETITION AUTHORITY OF KENYA

Creating efficient markets for consumers

Ushindani

Ushindani (Swahili for 'Competition') is a biannual Newsletter of the Competition Authority of Kenya | **ISSUE 9** | January – June 2022



INSIDE

CAK salvages over 1,000 jobs in the insurance sector during the COVID-19 Pandemic

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Director-General's FOREWORD

Small and medium-sized (SMEs) undertakings face many challenges when doing business including, inaccessibility of financing, poor management skills, underdeveloped sales channels, lack of databases, and inadequate research and development budgets.

But as SMEs work hard to surmount these drawbacks, which threaten their very existence, there are players in the market making these efforts tougher by not honouring invoices for goods and services delivered.

Given that purchasers of goods or services from the SME have a higher negotiating power, they may arbitrary cancel contracts, decline to accept goods despite ordering them, force SME businesses to shoulder unnecessary marketing costs, among other practices.

Under the Buyer Power provisions of the Competition Act, it is illegal for an undertaking in such a position to misuse this status to oppress businesses with the aim of extracting more value for themselves than would ordinarily pertain.

It is based on these provisions that, over the past two years, the Authority has ordered large businesses to honor Ksh. 43 Million in delayed payments to SMEs in the insurance, telecommunication and agro-processing sectors.

Indicatively, the larger quotient of this amount, Ksh. 38 Million, was money owed by eighteen (18) major insurance firms to twenty-five (25) motor vehicle assessors and garages, in some instances for work completed five years ago.

These overdue invoices forced the SMEs to take up expensive loans, downsize, or increase the cost of their services in order meet their business overheads, including paying salaries. Others shut down.

The Authority's intervention salvaged the livelihoods of approximately 1,000 Kenyans and enabled this key sub-sector remain competitive during the COVID-19 pandemic period and ensured their sustainability.

Sanctioning of abuse of buyer power is our focus in this edition of the *Ushindani* Newsletter, the Authority's biannual magazine. It is therefore my pleasure to welcome to read more about this key mandate area of the Authority.

Wang'ombe Kariuki, MBS

Editorial Note

Every financial year, the Authority disseminates two Newsletters with the objective of apprising our stakeholders about key interventions in various sectors of the economy and about our activities aimed at achieving our mandate of creating efficient markets for consumers.

In Issue 9 of *Ushindani*, we shine a spotlight on large businesses that are abusing their superior bargaining positions and extracting unfavourable demands from small businesses that supply goods and services to them.

This practice, referred to as Abuse of Buyer Power (ABP), is outlined in the lead article, and accompanying graphics, with the aim of sensitizing contracting parties to conduct business in a cordial and legal manner.

We share the personal stories of two SME proprietors (a motor vehicle assessor & garage owner) who, even after delivering on their tasks as directed by insurance companies, had accumulated millions of shillings in delayed payments, putting their businesses at risk of closure.

Away from ABP matters, we highlight a Competition Tribunal ruling that upheld the Authority's determination against Royal Mabati for consumer welfare violations while also detailing a mobile application which we have launched to facilitate on-the-go lodging of complaints

Further, we have also elaborated about new Buyer Power Guidelines that came into force in May 2022, while also shedding light on the Authority's corporate social responsibility initiatives undertaken in the six months to June 2022.

For Sudoku fans, your favourite puzzle is back after a brief hiatus and now augments the Know Your Competition Act segment that serves as an explainer regarding various provisions of the Competition Act.

As always, you may share your feedback, through the Editorial Committee, by emailing us on *editorial@cak.go.ke* While at it, remember to forward this Newsletter to individuals who you think will benefit from its content.

Editorial Committee

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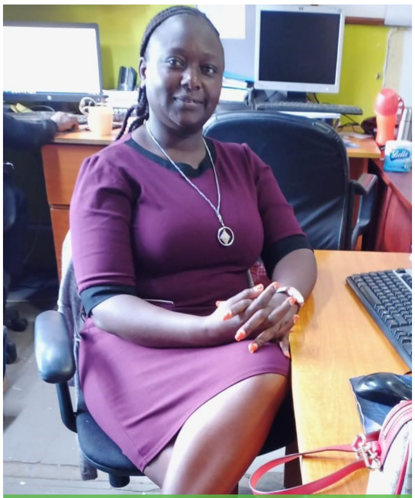
CAK salvages 1,000 jobs, recovers Ksh. 38 Million owed to motor vehicle garages & assessors



Ms. Maureen Oduor, the proprietor of Express Auto Assessors Limited.

For Ms. Maureen Oduor, there is nothing more deflating for an entrepreneur than seeing your business slowly edge towards bankruptcy and collapse despite you being owed millions of shillings for services already rendered.

Delayed employee salaries. Staff exits. Overdue rent payments. Lost business. Frozen bank accounts.

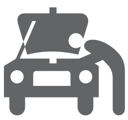
This was the painful impact that delayed payments from insurance companies amounting to over Ksh. 8 Million was having on her business, Express Auto Assessors Limited, which provides motor vehicle assessment and valuation services in Nairobi, Eldoret, Kisumu, Mombasa, and Nakuru.

"Arrears dating back several years still remain overdue. We had to apply for a Ksh. 5 million loan from a commercial bank in order to stay afloat," Maureen told *Ushindani* in an interview.

"Usually, we send insurance companies invoices and financial statements every month. It reached a point where these companies were not responding to our emails and we felt that we had reached a dead end since we had bills to pay."

Maureen's experience is not isolated.

At Silver Rano Motors Limited, a motor vehicle assessor located in Industrial Area, Nairobi, Mr. Satwinder Matharu gives a similar testimony of despair occasioned by unhonored invoices that had accumulated to over Ksh. 1.2 Million over the past three years.



1,000

Jobs salvaged in the motor vehicle assessment and repair industry

> **The issue of delayed payments really stresses me. We have had to borrow a lot of money to pay bills.**
>
> *Mr. Satwinder Matharu, Silver Rano Motors Limited*

The 17-year-old business had to rely on "expensive bank loans" to ensure its financial commitments are honored as they fall due, a dire situation which was exacerbated by the Covid-19 pandemic.

"The issue of delayed payments really stresses me. We have had to borrow a lot of money to pay bills. Also, attending numerous meetings at banks and negotiating really wasted our time," Satwinder noted.

Satwinder's and Maureen's fortunes took a turn for the better when they lodged complaints with the Competition Authority of Kenya, having unsuccessfully tried to close the matter with their debtors.

Theirs is a tale of Abuse of Buyer Power (ABP) where a business undertaking in a powerful position seeks and receives services or goods from a less powerful supplier, but fails to honor the terms of their agreement. They do this under the misguided belief that the suppliers, who are usually SMEs, has no recourse for justice.

The Competition Act provides a non-exhaustive list through which abuse of buyer power manifests in the market place. These include delayed payment by a buyer, unilateral termination (or threat of termination) of a commercial agreement and, a buyer's refusal to receive or return goods without

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justifiable reasons in breach of contractual terms.

The contravention also manifests when buyers transfer costs (such as marketing expenses) or risks to suppliers or by demanding preferential terms that are unfavorable to suppliers or demanding suppliers limit products sold to competitors.

The Authority investigated Satwinder's and Maureen's complaints as mandated under the Competition Act and established that the accused parties had exercised their superior influence over the suppliers to their financial detriment.

Consequently, Satwinder has been paid Ksh. 1.2 Million and the mather has been closed. Maureen has so far received Ksh. 5.3 Million from the insurance firms that had not honored the payments until the Authority's intervention.

The two payouts to Satwinder and Maureen are part of the Ksh. 38 Million the Authority has facilitated SMEs in the insurance industry recover in the past two (2) years through processing of complaints and conducting investigations on its own motion.

About half of this payout was to sixteen (16) motor vehicle repair businesses who lodged abuse of buyer power complaints with the Authority against insurance firms through the Kenya Motor Repairers Association (KEMRA).

Harrison Ikunda, the Chief Executive Officer of KEMRA, explains that the Association, which has been in existence since 2002, seeks to promote and protect the interests of players in the formal motor body repairers market.

Just like Maureen and Satwinder, Harrison noted that KEMRA members were unable to meet their daily running costs, leading to closure of some businesses. Others hiked their prices for services, including vehicle assessments and towing, in order to stay afloat.

"We approached the Authority when our members complained, between the years 2018 and 2019, about payment delays by different insurance companies," Harrison told Ushindani in an interview.

Scan to Access a Press Release on the Authority's ABP intervention.

"The Authority asked us to submit documents such as contract samples, invoices and financial statements. Through this intervention, we recovered over Ksh. 17 Million on behalf of KEMRA-registered garages."

Ms. Priscilla Njako, the Authority's Manager - Buyer Power Department, noted that over the past one year, the majority of ABP complaints have involved the insurance sector. Complaints arising from the sector made up 72% of the matters investigated. The retail sector ranks second at 18% of the total complaints received.

Harrison Ikunda, the Chief Executive Officer of Kenya Motor Repairers Association (KEMRA).

In all these matters, one thing stands out – a majority of the parties do not have written contracts. In cases where the contract was prepared, at least with regard to the insurance sector, it was typically issued by the insurance firm to their suppliers without room for negotiation. In some cases, the insurance firm did not furnish the assessor or garage owner with a copy of the contract in order for them to verify what they had accented to.

"Whereas the law permits verbal contracts, written contracts explicitly spell out the rights and obligations of the parties and can easily be referenced whenever a dispute arises, including during investigation by the Authority," Ms. Njako noted.

Written contracts minimize conflicts between contracting parties. The converse is true; their absence creates a conducive environment for a business with buyer power to abuse their position, she added.

To facilitate this, the Authority has developed model contracts for use by contracting parties in the insurance and retail sectors. Under the model contracts, which were developed by the Authority pursuant to the Competition Act, it is now mandatory for contracts between buyer and supplier undertakings to contain, as a minimum, provisions including terms of payment, conditions for termination and variation, and dispute resolution mechanisms.

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Express Auto Assessors Limited

Provides motor vehicle assessment and valuation services.

31 Years of operation

18 Number of employees

Ksh.8,108,736 Amount owed

Ksh.5,271,111 Amount recovered as of 30th June 2022

IMPACT

1. Employee salaries not disbursed on time and we were unable to pay rent.
2. Losses because we could not run daily operations.
3. Bank accounts frozen for failure to meet obligations.

> **Due to unpaid debts by the insurance firms, our employee salaries were not disbursed on time and we were unable to pay rent.**

Silver Rano Motors Ltd.

Assesses accident damages and repairs vehicles.

17 Years of operation

22 Number of employees

Ksh.1,200,000 Amount owed

Amount fully recovered as of 30th June 2022

IMPACT

1. Debts of upto to 3 years.
2. Constrained cash flows.
3. Borrowed bank loans at high interest rates.

Kenya Motor Repairers Association

Protects the interests of stakeholders in the automotive repair business.

20 Years of operation

Over 30,000 Number of employees across KEMRA membership

Ksh.17 Million Amount paid out to KEMRA members as of 30th June 2022

IMPACT

1. Several garages closed down for failure to meet their obligations.
2. High expenses yet revenue is low.
3. Constrained cash flow.
4. Damaged relations with stakeholders which poses a great risk to the business.
5. Hiked prices for service.

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CAK facilitates recovery of Ksh. 38 Million for motor vehicle garages & assessors

"If a supplier asks the buyer to pay within, for instances, 30 days as they had promised to do verbally, they will simply retort and ask, show me where I agreed to that. It would be much simpler if you had a written contract, said Ms. Njako"

Further, the Authority noted that even in the presence of contracts, and where the aggrieved assessors or garages could prove they had delivered their end of the deal, some insurance firms still delayed their payments. Some argued that the delays were not intentional but occasioned by reconciliation issues. In such cases, the Authority grants the parties leave to attempt to settle the dispute amicably and monitors compliance with the settlement agreement.

In other instances, evidence was adduced to the Authority indicating that the insurance firms were non-responsive to the complainant even after they had met all their conditions. Others denied ever giving instructions, even as the complainant insist they were issued via telephone.

Ms. Njako noted that suppliers, including those in sectors other than insurance, should cultivate a culture of record-keeping as well as signing contracts before engaging in business, noting that these become evidentiary information during dispute resolution.

Further, she noted that it is prudent that when a buyer issues verbal instructions or approvals, the supplier should seek written confirmation of the same.

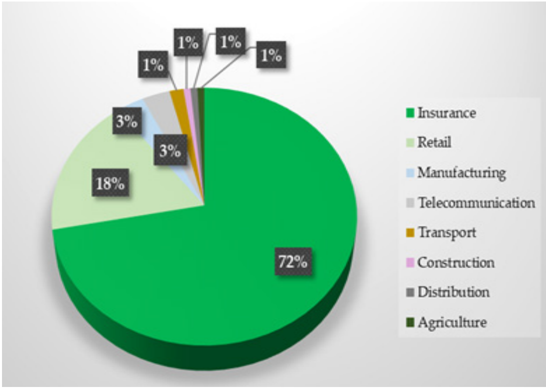
As for Maureen and Satwinder, their businesses have picked up and so have their relationships with their creditors, employees and clients. Their advice to suppliers facing similar challenges, is that they should first attempt to resolve the issue with the buyer of their goods or services and, where that fails to yield a resolution, they may forward the complaint to the Authority through their portal https://competition.cak.go.ke:444/ or send an email to complain@cak.go.ke

"I was very satisfied with the professionalism displayed by CAK officials during the review and investigation of my case," Maureen said as a parting shot. ■

Minimum Contract Requirements between Buyers & Suppliers

- Terms of payment.
- Payment date.
- Interest rate payable on late payment.
- Conditions for termination &variation of the contract with reasonable notice.
- The mechanism for the resolution of disputes.

Number of Cases Investigated by Sector in FY 2021/22



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 for Undertakings Found Culpable of ABP

Criminal penalty

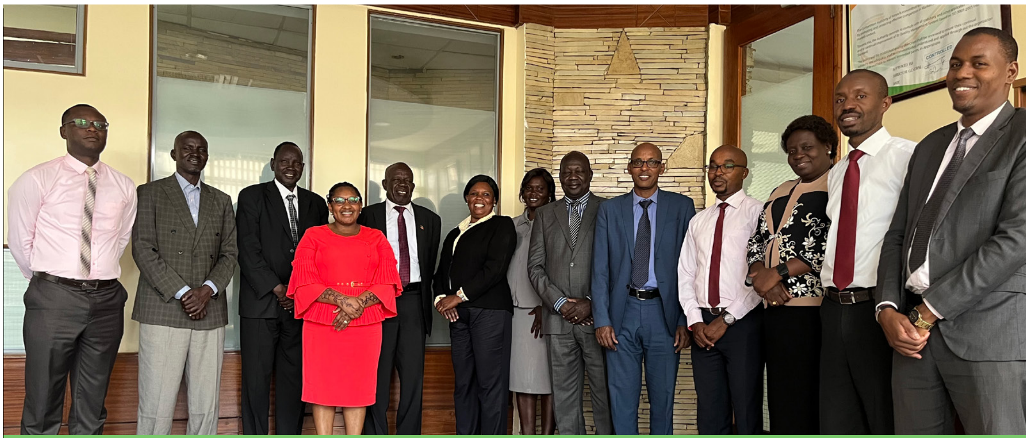
- **Imprisonment**
  Term not exceeding 5 years.
- **Fine**
  Maximum KSh. 10 Million.
- **Criminal prosecutions**
  Maximum fine of KSh. 10 Million, jail term of up to 5 years, or both.

Administrative penalty

declaration of contravention; cease and desist order; direct action to reverse or remedy effects; impose a financial penalty; other appropriate relief.

Supporting South Sudan to implement a competition regime

As part of our strategic goal of supporting regional competition agencies implement their competition laws, the Authority in May 2022 hosted a delegation from the Republic of South Sudan (RSS) and sensitized them on the mechanics of building a robust agency.



The Authority's staff and delegates from the Republic of South Sudan at the CAK Offices during a benchmarking tour in May 2022.

The delegation, comprising six (6) officers from RSS's Ministry of Trade and Industry, Ministry of Justice, and Ministry of East Africa Affairs, visited the Authority as part of ongoing plans to introduce a competition law and policy regime, and agency, in the latest EAC member state.

Mr. Ocum Genes Karlo, the 1st Undersecretary in the Ministry of Trade and Industry, and Head of Delegation, noted that the RSS is a free market in which anti-competitive conduct is taking place, adding that controlling this situation will improve the country's economy and make it "safer."

"Due to the wars, we have not had the chance to develop some important legal frameworks or institutions. The Government is now in the process of enacting these laws, including developing a Bill on competition law," said Mr. Karlo.

"Across the region and continent, the CAK is one of the leading competition enforcers from whom to learn best practice and experience. Your hand-holding will enable us leap forward and implement similar frameworks in the RSS."

Specifically, the RSS delegation noted that the main challenges they are facing include limited capacity regarding competition issues, lack of a legal framework, low competition culture in markets, confliction needs for stretched resources and the informality of markets.

Dr. Adano Wario, the Authority's Director Planning, Policy and Research, pledged that Authority shall support the RSS in its quest to introduce and implement a competition law and policy regime.

While highlighting the benefits of effective competition law to an economy, including low prices, innovation and choice, he indicated some of the pitfalls and challenges a new competition agency is likely to face.

Dr. Adano noted that young competition agencies should invest heavily in advocacy and awareness creation regarding competition law enforcement, taking special care to link this directly to benefits for the citizenry in order to get buy-in from stakeholders.

Additionally, he pointed out that enforcers in a new field should expect pushback from some incumbent large businesses who may view their quest as regulatory meddling, adding that such undertakings greatly benefit when the economy is unregulated to consumers' detriment.

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Due to the wars, we have not had the chance to develop some important legal frameworks or institutions. The Government is now in the process of enacting these laws, including developing a Bill on competition law.

Mr. Ocum Genes Karlo, 1st Undersecretary in the Ministry of Trade and Industry, and Head of Delegation

Students of C.C.M Mbuju Primary School in Timau, Meru County, and the Authority's staff members during a tree planting exercise on 30th March 2022. A total of 2,500 indigenous and exotic trees were planted.

CAK plays active role in attainment of 10% national tree cover target

In May 2022, President Uhuru Kenyatta announced that Kenya had attained the Constitutional minimum requirement of 10% tree cover before schedule (2030), while setting an ambitious target of 30% by 2050.

This milestone is captured in the National Forest Resources Assessment Report 2021 which places Kenya's tree cover at 12.13%. The national forest cover currently stands at 8.83% which is an improvement from 6.99% in 2013.

The Report showed that Central, Western and Coastal regions are the most forested parts of the country. Interestingly, some counties with Arid and Semi-Arid Lands recorded significant amount of forest cover.

Samburu, for example, had 23.29% forest cover while Turkana, which is comparatively drier, has 9.77% forest cover.

These are significant milestones for the country, given that tree resources offer various ecological benefits, improving air quality, providing fuel, improving soil fertility, helping mitigate impact of climate change, improve water quality and improves biodiversity.

As part of the contribution to the national reforestation efforts, each financial year, the Authority sets aside at least 10% of its budget towards planting and nurturing of trees across the country.

Through the Environmental Conservation & Sustenance Committee, and in collaboration with State and Non-State actors, the Authority has over the past six years planted over 8,000 trees in seven (7) counties namely Nakuru, Tharaka-Nithi, Kilifi, Nairobi, Garissa, Kiambu and Meru. The trees' survival rate is 95%.

Key Statistics

Kenya has:

7,180,000.66

Hectares of tree cover, representing **12.13**% of the total area.

1,507.48 m^2

Tree cover per capita index.

5,226,191.79

Hectares of forest cover representing **8.83%** of the total area.

Ecological Benefits of Tree Resources

- Creates job opportunities.
- Improves biodiversity.
- Improves water quality.
- Helps mitigate climate change.
- Improves air quality.
- Provides sustainable timber, fibre and fuel.
- Improves soil health.
- Provides food and forest products.
- Creates recreational opportunities.

On 30th March, 2022, the Authority planted 2,500 different species of trees at C.C.M Mbuju Primary School in Timau, Meru County. The Authority's staff, including the Director-General, and pupils planted a variety of trees, including Cypress Podo, Red Cider, Waterberry, African Cherry, and Olea which are expected to flourish in the area.

This exercise was conducted in collaboration with Kenya Forest Service (Ontulili Conservancy), and members of the community. ■

Understanding fair digital finance and our collective roles and responsibilities

Digital technologies are reshaping payments, lending, insurance, and wealth management, becoming a key enabler for consumers of financial services. However, in recent years and exacerbated by the Covid-19 pandemic, consumers are increasingly exposed to fraud, scams, and data malpractices.

Consumers who experience economic hardship are particularly vulnerable to these harms.

Indeed, results of a Digital Credit Market Study conducted by the Authority in 2021 indicated that 77% of the respondents were unable to repay a digital loan at least once and 33% have multiple loans.

It is on this backdrop that the Authority participated in commemorating this year's World Consumer Rights Day (WCRD) which

Cont'd on pg 11

>2,000

Consumers sensitized by the Authority regarding their rights, its mandate as well as the complaints handling mechanism, including the E-Filing Portal and Mobile Application

The Authority's staff and members of the Responsible Gaming Federation in Eldoret Town, during commemoration of Word Consumer Rights Day.

Consumers' financial health: Key lessons for digital lenders

By Boniface Kamiti

Manager, Consumer Protection - Competition Authority of Kenya

Kenya has in the past decade experienced an unprecedented growth in digital financial services, with innovative products reshaping how we, for instance, order meals, honor insurance premiums, purchase electricity units, and undertake financial transactions.

Our already active e-commerce sector was turbocharged by the COVID-19 pandemic. Mobile money is the ubiquitous form of payments. Further, a proliferation of mobile loan apps has bridged the financial inclusion gap, albeit with some inherent challenges.

Data from the Central Bank of Kenya indicates that the value of mobile money transactions rose by about a third to Ksh. 6.2 trillion in 2021. Further, the 2019 FinAccess Survey reveals that 79% of adult Kenyans using financial services have mobile money accounts, with a majority operating multiple accounts. These access points complement the traditional sources of finance and demonstrate the power and role of digital technologies in supporting economic growth.

Further, mobile money has been a major driver of formal inclusion in Kenya with the FinAccess Survey 2021 indicating that, despite the impact of the COVID-19 pandemic, financial inclusion expanded to 84% in 2021 from 83% in 2019. Financial inclusion in the 2006 baseline survey stood at 27%.

Worryingly, the financial health of the adult population deteriorated by 5 percentage points in the two years under review to 17%. This is perhaps attributable to the fact that a majority of the digital loans are for consumption purposes and that many borrowers take out multiple loans that have high interest and penalization rates. The result is that thousands of borrowers default and, in some cases, are subjected to unconscionable debt collection tactics.

Even as all stakeholders, including regulators, actively support financial inclusion, we should ask ourselves a critical question; what role can digital lenders play in enhancing the financial health of Kenyans?

Financial health is the extent to which a person or family can manage their current financial obligations and be reasonably confident about their future. It refers to a situation where a consumer can settle their bills as they fall due and still have resources left over. However, this is usually not the case for the majority of digital loan customers.

The adoption of services such as digital finance is associated with consumer risks such as over-indebtedness which could be attributed to the high fees which vary between 7.5% and 10% per month. Other concerns in digital finance include data privacy breaches, hidden charges and lack of customer redress mechanisms.

At the heart of financial health is therefore, financial consumer protection. In 2016, the Competition Authority of Kenya (CAK) investigated the level of transparency and disclosure by Digital Financial Services (DFS) providers. It was established they were not disclosing fees and charges for transactions conducted through SIM toolkits, USSD and mobile applications.

The CAK ordered them to remedy these infractions by, among others, disclosing all fees and charges prior to consumers completing transaction and always provide consumers with a detailed debit receipt post-transaction, including through text messages. This resulted in an improvement of consumers' awareness level regarding applicable fees and charges from 25% to 80%.

Last year, a digital credit market inquiry by the CAK identified several risks for consumers, including the high cost of products and low awareness about credit terms, including fees and applicable penalties for default. This impedes consumers' ability to make informed borrowing decisions, thereby negatively impacting their financial health. We positively note that our recommendations

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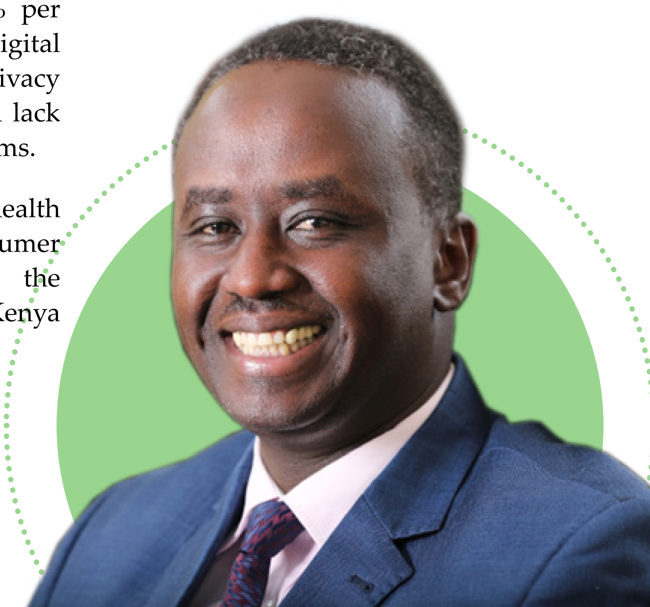

Supporting South Sudan to implement competition regime

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"Unfortunately, some players may not immediately appreciate the value of competition law enforcement. The onus is on you to centre public interest benefits as the main driver of introducing and implementing this legal framework in your country," said Dr. Adano.

The Authority's Management Team sensitized the RSS delegation regarding the technical mandate areas, including sanctioning abuse of buyer power, consumer protection, enforcement and compliance as well as merger control. This included the investigation procedures and tools.

Further, the workshop touched on the Authority's institutional dispensation and governance structure, relationship with other agencies, nationally and regionally, and organizational sustainability. Business continuity, risk management, and visibility and awareness creation were other topics of discussion.

Going forward, the Authority offered to, on request, review and inform the RSS Competition Bill, offer technical assistance on institutionalization of an effective competition regime by sharing ideas and experiences.

The Authority shall also invite the RSS delegation to attend future Annual Capacity Building Workshops and Symposiums as well as introduce the RSS team to regional agencies and networks such as the Africa Competition Forum for sharing information, knowledge and skills. ■

Understanding Fair Digital Finance and our collective roles and responsibilities

Continued from Pg. 9

sought to educate and sensitize Kenyans about their rights and responsibilities in an increasingly digitized financial markets.

The WCRD is commemorated annually on 15th March and it provides an opportunity for consumers globally to be apprised of their rights and actively participate in advocating for implementation of these rights by businesses.

Under this year's theme *"Fair Digital Finance,"* the Authority conducted sensitization activities in Kakamega and Eldoret Counties from 13th March to 15th March 2022 where it informed consumers about the rights with regard to digital financial service providers, how to protect themselves from exploitation, and the complaint channels available to them.

The Authority interacted with over 2,000 consumers and educated them about its mandate as well as the complaints handling mechanism, including the E-Filing Portal and Mobile Application. Further, the Authority registered and addressed over 20 complaints. Further, the Authority shared consumer awareness messages on social media, including engaging influencers to share consumer welfare related content.

One of the Authority's key interventions in this sector has been to promote transparency & disclosure in the Digital Financial Services Markets where it ordered service providers to inform consumers about transaction fees and charges before completing transactions. Further, debits from a mobile-enabled account without the customer's initiation should be accompanied by an electronic receipt at the debit point.

Going forward, it is the Authority's view that in order to achieve Fair Digital Finance, there is need for innovative regulatory approaches & development of products and services that centre consumer protection & empowerment. ■

Consumers' financial health: Key lessons for digital lenders

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regarding regulation of digital lenders, specifically those aimed at addressing consumer welfare concerns, were adopted in the Central Bank of Kenya (Amendment) Act, 2021.

However, digital lenders should not wait for regulatory intervention to nudge them into doing right by consumers. Rather, they should proactively develop products that attend to the concerns raised and actively work towards enhancing customers' financial health. Loan products which facilitate customers to spend and save wisely, borrow responsibly, and plan for the future will, over time, reduce over-indebtedness and the prevailing high default rates.

Digital lenders should also adopt and inculcate financial consumer protection principles and practices in their business processes. These include instituting effective complaint redress mechanisms, protecting customers' data, ensuring timely and full disclosure of fees and charges, and establishing financial literacy programs for consumers.

It is therefore timely that this year's World Consumer Rights Day (WCRD), which is commemorated annually on March 15, was themed *"Fair Digital Finance."* The WCRD raises global awareness about consumer rights and needs, promoting and protecting their basic rights, and protesting against market conduct that undermines those rights. ■

You may submit comments through: *info@cak.go.ke*

Mobile app facilitates remote complaint filing

In a bid to further decentralize its service delivery points, and in line with the Government's agenda of leveraging technology to enhance Public service, the Authority in February 2022 launched a mobile application on Android and iOS platforms.

Kenyans can file complaints regarding matters under the Competition Act including abuse of buyer power, consumer complaints as well as against businesses engaging in restrictive trade practices such as abuse of dominance, price fixing, and collusive tendering.

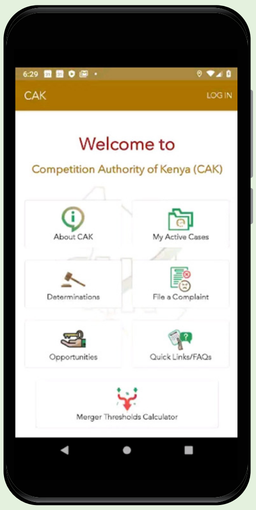
Further, the mobile application enables stakeholders to submit feedback (complaints or compliments) regarding the level of service delivery offered by the Authority in the execution of our mandate.

The application has been populated with the latest information regarding the Authority's activities, including our Service Charter, Determinations, Orders, Market Inquiries & Studies, and Annual Reports.

The latest industry data from the Communication Authority of Kenya (CA) indicates that by 31st December 2021, the total number of mobile phone devices connected to mobile networks was 59.58 million, out of which 33.06 million were feature phones and 26.51 million smartphones.

The penetration levels of feature phones and smartphones stood at 67.9% and 54.5% respectively, the CA noted.

Mercelline Anduro, the Authority' ICT Manager, noted that the development of the mobile application will ensure that Kenyans are able to interact with the Authority through the mode that they prefer.



"A consumer in, Mombasa or Garissa for instance, does not need to place a phone call to the Authority or email us regarding a complaint. They can easily file the matter, including attaching photographic evidence, through the app and we shall address it," said Ms. Anduro.

Stakeholders can download the CAK Mobile App via the following links: **iOS** -> *https://apple.co/3480Fuq* **Android** -> *https://bit.ly/3ge5ogI*

The launch of the Mobile Application is in furtherance of the Authority's continuous enhancement of its service delivery channels. On 1st September 2021, the Authority went paperless in its processes. All applications lodged with the Authority are now being received and processed through the Case Management System (CMS) "E-Filing Portal" which is accessible via the link: *https://competition.cak.go.ke:444/* ■

Relief for consumers as Competition Tribunal confirms Royal Mabati penalty

The Competition Tribunal in an April 2022 Ruling upheld the Authority's pecuniary penalty of Ksh. 2,652,363 levied against Royal Mabati Factory Limited for misleading its customers in violation of the Competition Act No. 12 of 2010.

The Ruling confirmed the validity of the Authority's May 2020 Determination that the roofing material manufacturer had, among other violations, misled its customers regarding timelines for product delivery and treated them unconscionably.

Royal Mabati was required to settle the Ksh. 2,652,363 penalty imposed by the Authority, restitute aggrieved customers through refunds or delivery of product, refrain from running misleading advertisements, and sensitize its Sales and Customer Care Team about the provisions of the Competition Act.

In the Authority's view, the Ruling will deter suppliers of goods and services from engaging in conduct that misrepresents the terms of a transaction to consumers and encourage implementation of robust and fair complaints redress mechanisms.

By way of background, the Authority, on various dates between March 2018 and March 2020, received thirteen (13) complaints from customers of Royal Mabati, a manufacturing company in Kenya located along Mombasa Road, Nairobi.

The complaints, which were similar in nature, cited Royal Mabati for allegedly failing or delaying to deliver purchased products per agreed terms and requiring customers to pay delivery fees despite advertisements indicating that the service was free of charge

Ksh **2,652,363 M**

Penalty imposed by the Authority, as restitution to aggrieved customers through refunds or delivery of products, and an order to refrain from running misleading advertisements, and sensitize its Sales and Customer Care Team about the provisions of the Competition Act.

countrywide. Royal Mabati was also accused of forcing customers to vary their iron sheet orders post purchase.

The Competition Act prohibits undertakings from engaging in false or misleading misrepresentation when trading in products or services, among others.

The Authority investigated the allegations and in May 2020 made a Determination that Royal Mabati had infringed the aforementioned provisions of the law. It also determined that the firm had also failed to comply with a Cease and Desist Order issued by the Authority.

Subsequently, the Authority ordered Royal Mabati to;

i. Pay a financial penalty of Ksh. 2,652,363.47;

ii. Refund customers with outstanding complaints within sixty (60) days from the Determination date or deliver the roofing materials to their preferred premises at no cost within thirty (30) days;

iii. Refrain from running false or misleading advertisements; and

iv. Require its Sales and Customer Care Team to be sensitized about the provisions of the Competition Act.

Royal Mabati appealed the Authority's Determination to the Competition Tribunal leading to the 12th April, 2022 Ruling. The Tribunal's Ruling is accessible on the Authority's Website via the link: https://bit.ly/3sA1s0k ■

Regulating digital markets: African competition agencies put Big Tech firms on notice

In February, five African competition agencies, including the Competition Authority of Kenya (CAK), committed to collaborate and determine how digital markets impact on domestic participation in the local and global economy and the terms of that participation.

The Heads of Competition Authorities of the CAK, the Egyptian Competition Authority (ECA); the Competition Commission of Mauritius (Competition Commission); The Federal Competition and Consumer Protection Commission (FCCPC) of Nigeria and the Competition Commission of South Africa (CCSA) committed to this during the Digital Markets Dialogue on 17th and 18th February 2022, in Johannesburg, South Africa:

The agencies noted and acknowledged that digital markets/services are rapidly transforming the global economy through disrupting traditional markets, opening new economic opportunities, and providing substantial benefits to consumers and businesses, thereby contributing to economic recovery and growth.

Further, it was noted that these markets present considerable challenges for competition law enforcement and policy in terms of the unique competition issues that arise. Arising from this, policy makers and competition authorities in the leading economies of the world are reviewing their approach to regulation and enforcement in digital markets to adequately address these competition issues.

The agencies recognized the greater shared regulatory challenges that digital markets pose for Africa necessitates that African jurisdictions work more closely in order to share knowledge, develop capacity and mutual strategies and provide a stronger and collaborative approach with respect to the regulation of digital markets. They committed to strengthening the rules for open and fair markets in Africa, as well as intensifying enforcement of competition laws to ensure protection of consumers;

The specific collaborative efforts shall be on:

1. Scoping the conduct in digital markets, that has been the subject of investigation in other jurisdictions, on African consumers, businesses and economies with the purpose of fair regulation and enforcement in Africa (where applicable);
2. Researching the barriers to the emergence and expansion of African digital platforms and firms that may contribute to enhanced competition and inclusion in these markets for the benefit of African consumers and economies;
3. Cooperating in the assessment of global, continental, and regional mergers and acquisitions in digital markets, including harmonizing the notification framework; without prejudice to confidentiality commitments;
4. To share information in accordance with existing laws and applicable protocols;
5. Sharing knowledge and build capacity to deal with digital markets.

Critically, the competition agencies committed to expanding and deepening the dialogue on digital markets amongst competition authorities on the continent. ■

Delegates from five (5) African competition authorities at the Digital Markets Dialogue on 17th and 18th February 2022, in Johannesburg, South Africa.

CAK strengthens collaboration with Media for enhanced awareness creation

Raphael Mburu, Manager, Mergers and Acquisitions, being interviewed by journalists from Citizen TV and KTN News at the Workshop.

One of the Authority's critical partners in the ongoing efforts to sensitize stakeholders and raise nationwide awareness about our mandate, activities, and interventions are members of the Fourth Estate.

The Media, both traditional and new (such as bloggers), are a direct link with the Public in terms of disseminating key information, including explaining the various provisions of the Competition Act and the reasoning behind the Authority's decisions.

This co-existence is borne of the belief that, ultimately, the Media and the Authority have similar objectives – enhancing Public good.

Based on this, the Authority regularly engages the Press through promptly responding to queries, disseminating Press Releases, Orders, and Determinations. The Authority also proactively shares other key resource material, including Annual Reports, Newsletters, and Subsidiary Legislation such as Guidelines, Market Inquiries and Studies.

"Over the past year, the Authority's mentions across Media platforms has increased by over 120%. This supplements our awareness creation activities and explains why we view the Media as our partners," said Eric Mwangi, the Authority's Corporate Affairs Director.

Ms. Pricilla Njako, Manager Buyer Power, making a presentation to journalists during the Workshop held on 21st June 2022 in Nairobi.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LOOPHOLE Rogue workers have been accused of helping to fraudulently clear cargo and alter tax returns

State risks Sh32bn in Kwale Sugar land dispute

Travellers to be hit as airports slash flights

THE DIGIT
20
NUMBER
of stations Vivo plans to open before end of year

Watchdog probes steel companies over price fixing

The competition watchdog has launched a probe into the country's top steel manufacturers over allegations of price fixing blamed for the elevated costs in the construction industry.

Healthy jig

In order to bolster this existing relationship, the Authority in June 2022 hosted twenty-one (21) journalists at a Training Workshop in Nairobi for interactive and candid discussions regarding the Authority's four technical mandate areas.

The Media houses represented at the Workshop included Bloomberg, Standard Media (Standard newspaper and KTN News), Metropol TV, Nation Media Group (Business Daily & East African), Xhinua News Agency, Kenyan Wallstreet (Blogger), Capital FM, Citizen TV, and The Star.

One of the topics of discussion was how the Authority regulates against dominant incumbents buying out small and nascent firms in order to discontinue the target's innovative products and curtailing the emergence of a future competitor.

It was indicated that the Authority has reviewed its merger thresholds in order to ensure that transactions that could be described as killer acquisitions fall under its remit and are fully analysed.

Continued on Pg. 17

Supporting the education agenda and mentoring future leaders

As part of its annual Corporate Social Responsibility (CSR) initiatives, the Authority in June 2022 visited Tumaini Boys Secondary School (Garissa County) and Kamuwongo Primary School (Kitui County) and supported each institution with 400 KICD-approved textbooks.

This initiative is in line with the Authority's objective of supporting achievement of one the Sustainable Development Goals (SDGs) of ensuring "inclusive and equitable quality education and promote lifelong learning opportunities for all."

The Authority also equipped the schools' libraries with other resources copies such as Annual Reports, the Competition Act and brochures elaborating the Authority's mandate. The Authority's staff members supplemented this CSR activity by giving personal donations of books.

Garissa Secondary, which was founded in 2017, is located in Madina Location, 17 kilometres from Garissa Town. Over the past five years, the student population has increased from 100 to 534 students across Form 1 to Form 4, putting a strain on educational resources available for the students.

Mr. Ahmed Aden, while thanking the Authority for the support, facilitated the Authority to sensitize the Form 3 and Form 4 students regarding competition law and policy, our mandate, and complaints handling mechanisms.

"These text books will go a long way in supporting the education of our students and enable them successfully complete their exams and compete equally and favourably for jobs in the marketplace," said Mr. Aden.

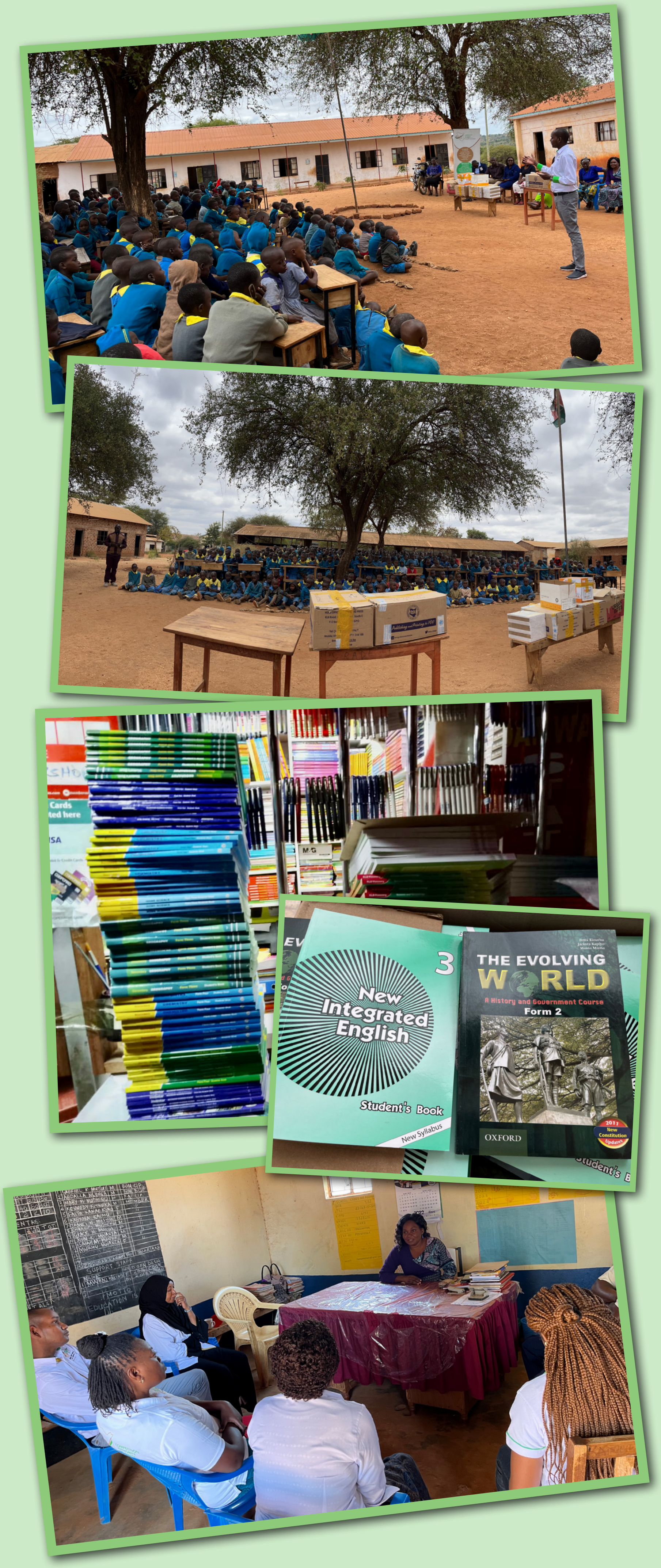
Some of the books the boys received were; New Integrated English, Chemchemi Za Kiswahili, Secondary Biology, Principles of Chemistry, Secondary Physics, Inventor Secondary Business Studies, The Evolving World, Islamic Religious Education, and Secondary Agriculture.

196 kilometres away from Tumaini Secondary, the Authority visited Kamuwongo Primary School in Mwingi Constituency (Kitui County) and supported the Grade 1 to Grade 6 pupils with 400 text books across all subjects under the Competency-Based Curriculum (CBC). The books were on subjects such as Everyday Hygiene, Mazoezi ya Kiswahili, English Activities, Environmental Activities, CRE Activities, Mathematics, and Beginning Music.

In addition to the support, the Authority's staff sensitized the school administration regarding our mandate, with a focus on consumer welfare and their consumer rights and obligations under the Competition Act.

"One of the key challenges we are facing is drought. Back at home, o ur pupils have no food. So you can imagine when it comes to reading material, their parents have more pressing needs. That is why your support is timely," said Zipporah Kathenge, the school's head teacher. ■

Photo Reel: Various images from the Authority's CSR initiatives in Garissa and Kitui counties held on 23rd and 24th June, 2022.



Continued from Pg. 15

CAK strengthens collaboration with Media for enhanced awareness creation

It was noted that whereas the Authority has not flagged any transaction as an outright killer merger, it has in the past conditionally approved some transactions to ensure that they do not curtain competition or occasion negative public interest concerns.

Mr. Gideon Mokaya, Manager Enforcement & Compliance, made a presentation regarding cartels, noting that these illegal alliances are typically found in markets with product homogeneity, excess capacity, or where there is sharing of strategic market information.

The journalists were given a background on cartel cases that the Authority has handled in the past, including in the outdoor advertising and paints manufacturing sectors, where the parties were found culpable of, among others, price fixing.

Mr. Boniface Kamiti, the Authority's Consumer Protection Manager, made a presentation on the consumer welfare concerns in the E-commerce sector, including low digital literacy levels, lack or effective redress mechanisms, data breaches and security concerns. He also apprised the atendees about the Authority's interventions in this key market, including conducting market inquiries, investigations, and awareness creation initiatives.

Following the Sensitization, the Authority was mentioned in the Press at least eleven (11) times. Some of the coverage related to a Press Release issued to Workshop participants regarding the Authority's Abuse of Buyer Power interventions in the Insurance Sector *(See Page 3 Article)*. ■

New Buyer Power Guidelines enhance enforcement predictability and transparency

The Authority has reviewed the Buyer Power Guidelines to ensure transparency, predictability and consistency in the application of the competition law.

When the Competition Act was amended in 2016 to introduce new provisions on abuse of buyer power (ABP), the Buyer Power Guidelines 2017 were issued by the Authority to provide clarity regarding application of the ABP provisions in the law.

However, after four years of application, precedents and best practices were established, requiring review of the Guidelines to incorporate the learnings.

A key challenge witnessed in enforcement of the Buyer Power provisions of the Act was lack of understanding by stakeholders of the processes and tools the Authority uses in analysing and concluding that an undertaking has Buyer Power and that it has abused this commercial advantage.

The limited stakeholder information and knowledge has, in some instances, curtailed speedy resolution of cases through lack of cooperation from the stakeholders on what is required of them once a case is under review.

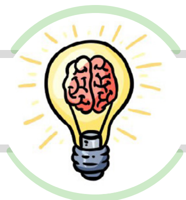
To remedy this, the new Guidelines equip stakeholders with information on how the Authority carries out analysis (legal and economic) and investigations into instances of ABP to effectively remedy the negative effects of ABP on market players, sectors and the economy.

Further, they provide explanations on standards that the Authority will use in the assessment of instances of ABP, investigate ABP complaints, monitor sectors that may exhibit ABP and publish developed code of practice by various sectors.

The Guidelines also elucidate the analytical framework that the Authority may use in determining whether an undertaking has buyer power over a supplier and also elaborate how the Authority establishes that a sector or an undertaking is experiencing or is likely to experience incidences of ABP for purposes of monitoring and imposition of reporting and prudential requirements.

The Guidelines also explain to stakeholders how the Authority identifies industries and sectors where it will require development of a binding code of practice, and give an overview of an agreement between buyer undertaking and supplier undertaking that are in line with Section 24A of the Act.

The Guidelines are accessible on the Authority's Website via the link: *https://www.cak.go.ke/sites/default/files/Buyer_Power_Guidelines_2022.pdf* ■



Brain Teaser

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Power to Hold Inquiries

(1) The Authority may conduct an inquiry or a sectoral study where-

(a) it considers it necessary or desirable for the purpose of carrying out its functions;

(b) upon a direction by the Minister in writing to the Authority, requiring it to conduct an inquiry or a sectoral study into a matter specified in the direction.

(2) A direction by the Minister under subsection (1)(b) shall specify a period within which the Authority shall specify a period within which the Authority shall submit its report to the Minister.

(3) In appropriate cases, after conclusion of an inquiry or a sectoral study, the Authority shall in its report to the Minister identify sectors where factors relating to unwarranted concentrations of economic power subsist and give advice regarding measures which may ameliorate such situations.

(4) At the request of a regulatory body, or at its own instance, the Authority may conduct an inquiry into any matter affecting competition, abuse of buyer power or consumer welfare and provide a report within a reasonable period.

(5) The Authority shall give notice of an intended inquiry or sectoral study by-

(a) publishing a notice in the Gazette and in at least one daily newspaper of national circulation specifying-

(i) the subject matter of the intended inquiry;

(ii) inviting submissions on the subject from members of the public within a specified period; and

(iii) in the case of an inquiry conducted at the direction of the Minister, the terms of reference issued by the Minister;

(b) Sending written notice of the inquiry, including the information in paragraph (a) to-

(i) undertakings whose interests the Authority considers likely to be affected by the outcome of the inquiry;

(ii) industry and consumer organizations which the Authority considers may have an interest in the matter;

(iii) the Minister.

(6) Every person, undertaking, trade association or body shall be under an obligation to provide information requested by the Authority in fulfillment of its statutory mandate for conducting an inquiry or sectoral study regulated by this section.

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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