



COMPETITION  
AUTHORITY  
OF KENYA

Creating efficient markets for consumers

# USHINDANI

Ushindani (Swahili for 'Competition') is a biannual newsletter produced by the Competition Authority of Kenya

ISSUE 10

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## CAK Brings Global Meetings Home

WE'VE  
MOVED



TO

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15th Floor,  
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# DIRECTOR-GENERAL'S FOREWORD

In competition law and enforcement, as well as protection of consumers' rights, hard enforcement and advocacy play a mutually reinforcing role.

Whereas, some may argue that behavior change can be faster achieved through the judicious use of the stick (sanctions), it has always been the Authority's position that the carrot (advocacy) is just as important in promoting a competition culture in our economy, where businesses compete on the merits and respect the rights of their consumers.

It is therefore a momentous period for the Authority to be hosting two international events, three months apart, during which we shall champion critical conversations with likeminded stakeholders in the competition and consumer protection space.

From December 6th to 8th, stakeholders from the consumers movement shall congregate in Nairobi for the Consumers International Global Congress to share ideas on how best to tackle pressing issues impacting consumers across the World. The attendees will include international agencies, businesses, civil society, and consumer bodies government representatives (including regulators).

Some of the questions we shall seek to answer, and develop actionable solutions for, include how to normalize sustainable consumption and production as well as how to build a trustworthy digital future for consumers. Further, we shall discuss how attend to consumer protection concerns occasioned by our highly globalized existence.

This is the first time that the Congress, which is held once every four years, will be taking place in Africa. As the host agency, the Authority is proud of this milestone and remains committed to delivering a world-class event.

The Authority has been a co-chair of the International Competition Network's Advocacy Working Group (AWG) since 2022, alongside the Superintendence of Industry and Commerce of Colombia and the Philippine Competition Commission.

The mission of the AWG is to facilitate development of practical competition enforcement tools and guidance, and promote knowledge sharing among the 72 member agencies, with the overarching aim of disseminating competition principles' and promoting a competition culture within our societies.

It is therefore notable that Kenya successfully bid to host the ICN Advocacy Workshop from February 22 – 23, 2024. Some of the focus areas of our conversation shall be the role of competition policy in promoting environmental sustainability, competition in digital markets and effects of State aid/stimulus packages on the competition landscape.

The Authority anticipates that the over 500 attendees at the two events will take their time to sample the various tourists attractions that Kenya has to offer.

**DR. ADANO WARIO**  
*Acting Director-General, CAK*



GLOBAL NAIROBI, KENYA 06-08 DECEMBER 2023  
**CONGRESS**  
Building a resilient future for consumers

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## EDITORIAL TEAM

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EDITOR'S NOTE 

As part of our awareness creation initiatives, the Authority produces and disseminates two Newsletters with the objective of apprising the Public regarding our interventions and activities aimed at achieving our mandate of creating efficient markets for consumers.

In furtherance of this, we have prepared Ushindani Issue 10 which focuses on three key conferences that the Authority shall host in Nairobi over the next six months, two of them being of international stature.

By hosting the Consumer Congress in December 2023, the Kenya shall achieve a first for Africa – being the maiden host country in the continent to host the event that brings together consumer protections experts and policy makers from across the World.

In February next year, we shall host the ICN Advocacy Workshop which, once again, will be taking place in Kenya for the first time. In the Newsletter, we give more details why these events are key to advancement of competition law and consumer protection in the country.

An article of note in the Newsletter details the Authority's commitment to review the merger guidelines affecting MSMEs in order to ensure that more of them are exempted from notification and full analysis, thereby promoting investments through improving the business environment.

This ambition is reinforced by the Authority's newly signed MoU with the East African Community Competition Authority which, among others, seeks to minimize the cost of doing business for our stakeholders in the common market.

We have also prepared an update regarding the Authority's accreditation as a pupillage centre as well as a positive legal outcome where the High Court ruled in our favour, underpinning our mandate to enforce competition in the professional services market.

Also, as part of efforts by the Government to bring services closer to the Public, the Authority has integrated its existing E-Filing Portal with the E-Citizen platform. Read on to get more details regarding the objectives and benefits of this integration.

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

**Mugambi Mutegi- Editor**

## DR. ADANO WARIO

Acting Director-General , CAK



**Q The Authority has been selected to coordinate and host two high profile events in Nairobi. What does this mean for the Authority?**

**A** The fact that we successfully bid for the events speaks to our track record in the consumer protection and advocacy space. We were found suitable ahead of many other mature agencies which wanted to host the events. Our commitment is that we shall not betray this trust; we shall not only organize stellar events, but also ensure that the calibre of attendees to the events is high so that we can advance conversations and suggest solutions and policy interventions that will solve the problems we are facing.

**As you have indicated, the Authority has in recent years greatly advanced consumer welfare in the country. However, there is need to do more. Do you think having a standalone directorate within the Authority will give consumer protection the impetus required?**

The Authority has a dual mandate – regulating competition in markets as well as enhancing the welfare of consumers. In some jurisdictions, these two roles are conducted by different agencies. I think one of the discussions with the like-minded persons shall be which structure is optimal for effectiveness of service delivery and to the ultimate benefit of consumers. Perhaps having a bigger but standalone directorate purely handling consumer protection matters will also enhance our visibility and attract more consumers to lodge complaints. In line with this, it would be prudent if other consumer protection laws currently domiciled outside our mandate be brought within our remit. We are ready to take up a bigger mandate and ensure that consumer welfare in the country is elevated.

**Another potential areas of conflict when it comes to consumer protection is that various Government agencies also have, within their respective laws, the mandate of protecting consumers. How does this reality progress or slow down the collective cause of offering optimal remedial services to Kenyans?**

This level of introspection is extremely necessary and timely. At the Consumer Congress, we shall have such tough conversations and that is why we have invited the highest level of participants. It is critical that we undertake an objective appraisal of what we have done, what we are doing and what is required going forward.

With regard to the cross-cutting consumer welfare mandate among Government agencies, the intention

Q&A

of the laws they implement was to collectively do good for consumers, while facilitating a good business environment. At the Congress, we shall all query, candidly, if we are effectively carrying out our respective mandates and if better inter-agency collaboration can unlock more benefits for consumers while prudently utilizing our financial and human resources.

**Some critics argue that Africans should be careful not to directly apply solutions from the West to address their problems. Are you of this view and if yes, does this apply to consumer protection-related matters?**

Indeed, Africa is unique in its own ways. For starters, many countries lack competition and consumer protection laws/agencies. This may occasion knee-jerk reactions from Governments whenever issues arise. But there is positive progress in this front. So when it comes to enforcement, we may be at different stages across the continent and also when compared to more mature jurisdictions internationally. From a digital literacy standpoint, there may be some differences with regard to how well consumers understand their rights and redress mechanisms available to them when things go wrong. The conversation needs to be elevated to how best all relevant stakeholders can work together to turn the tide in terms of consumer rights awareness within our jurisdictions. In the same regard, we have to take a step back and internalize the fact that, through implementation of AfCTA, coupled with our youthful African population, intra-continental trade will increase. There is also a risk that cross-border competition and consumer welfare concerns may increase, thereby requiring our concerted efforts to address.

**Let us segue to the ICN Advocacy Workshop slated to be hosted in Nairobi in February 2024. Simple question – why is advocacy critical in mandate execution?**

Advocacy is a form of soft enforcement. You know, sometimes there is misconception among stakeholders that competition law enforcement is meant to be punitive to be effective. On the contrary, the main aim of our work is to ensure compliance with the law.

We prioritize soft enforcement and seek to create awareness about our mandate to a wider population so that it can reduce the burden of compliance and also allow us to focus our efforts and resources on the most critical matters that impact a wide population

of Kenyans. Indeed, a majority of stakeholders want to comply. Sometimes they do not know how to or fear that any engagement with a regulator will lead to negative outcomes.

**But as the old adage goes, laws are made to be broken. There are people who, even though they are aware about the law and how to comply, choose not to. How do you plan to handle such undertakings?**

You will never miss such cases in the business environment. There are individuals who, in their quest to make as much profit as possible, resort to illegal tactics knowingly. To address this malady, we have our intelligence gathering mechanisms and, where found culpable of engaging in anti-competitive practices, the law prescribes sanctions such as penalties and fines as a tool to encourage behavioural change. At the end of the day, we require compliance with the Competition Act.

**The advocacy workshop will seek to expound the nexus between economic performance (and shocks) and competition law. What are your initial thoughts regarding this theme?**

There is always need to understand the factors at play at macro level since they, collectively, affect the economic performance nationally. It is for this reason that the Authority undertakes studies and inquiries to flag any competition and consumer protection issues that may need addressing through, among others, policy directives or even investigations, where necessary. We also use the findings of these inquiries and studies in our advocacy initiatives. [U](#)

# CAK welcomes you to Nairobi for the ICN Advocacy Workshop



**K**enya, the home of marathoners and the Big Five wildlife species, will host the ICN Advocacy Working Group (AWG) Workshop in 22nd–23rd February, 2024, marking the first East and Central Africa country to host the workshop.

The Workshop will take place in Nairobi, Kenya's capital city, under the theme; **Bouncing Back: Competition Advocacy and Resilience to Global Shocks**. The Workshop will unpack the role of advocacy in advancing the goals of competition law enforcement, thereby supporting recovery of economies from disruptions, including

pandemics, economic downturns, and extended period supply chain constrains.

Participants to the Workshop will be drawn from National Competition Agencies (NCAs), Regional Competition Regulators, government agencies, sector regulators, corporates, academia and ICN members (NCAs and Non-Governmental Advisors).

Some of the topics are; how advocacy promotes entry and participation of SMEs in economic growth, evaluating effectiveness of advocacy initiatives, and promoting regional integration through competition advocacy. Other discussion areas are >>

« competition advocacy in digital markets, advocacy and its nexus with sustainability and competitive neutrality. The presenters and panelists will be drawn from among the ICN membership and will provide practical and diverse experiences and learnings of advocacy efforts from their jurisdictions.

Nairobi-Kenya is an international hub for businesses and an entry into the East and Central African countries. It is easily accessible through the Jomo Kenyatta International Airport (JKIA). While in Nairobi, you can visit, among others, the Nairobi National Park, Karen Blixen Museum, the enchanting Giraffe Centre, or tour the Daphne Sheldrick Elephant Orphanage.

Hotel accommodation options vary,

depending on an individual's choice. However, there are numerous hotel options from where participants can easily connect to the Workshop venue through taxi services organized by your hotel or app-based options like Uber, Bolt, Little, among others.

Kenya, and Nairobi in particular, has a long history of hosting high-level international events and destination for international travels. We heartily welcome you all, our participants to experience warm hospitality of Kenyan people and sample rich diversity of our wildlife in their natural environment.

We look forward to hosting you in Nairobi, Kenya! **Karibuni Sana!**

# ICN ADVOCACY WORKSHOP

## 22 – 23 FEBRUARY 2024

**THEME: BOUNCING BACK:  
COMPETITION ADVOCACY AND  
RESILIENCE TO GLOBAL SHOCKS**

**VENUE:  
NAIROBI**



International  
Competition  
Network



COMPETITION  
AUTHORITY  
OF KENYA  
Creating efficient markets for consumers

**DAY 1**

**Plenary Session 1**

Evaluating the Effectiveness of Advocacy Initiatives

**Breakout session 1**

Advocacy as a tool to address competition Concerns and spur MSMEs entry and participation in targeted sectors

**Breakout session 2**

Analyzing Effectiveness of Advocacy Toolkits

**Breakout session 3**

**Cross-cutting Enforcement Jurisdictions:** Enhancing Gains from Collaboration with Sector Regulators

**Plenary Session 2**

**Nexus Between Competition Advocacy and Sustainability:** Deploying Market Studies and Inquiries to Achieve Green Transition Goals

**Breakout session 1**

**Competitive Neutrality:** Competition Advocacy and its Role in promoting competitive neutrality to help governments develop resilience in key markets

**Breakout session 2**

**A Fork on the Road:** The Role of Advocacy in navigating price regulation and Market Intervention by Government

**DAY 2**

**Plenary Session 3**

**Building Economic Blocks:** Advancing Regional Integration via Competition Advocacy

**Breakout Session 1**

**Competition Advocacy in Digital Markets:** Adopting Toolkits and Remedies

**Breakout Session 2**

**Monetary Policy Stabilization:** Do Competition and Consumer Protection Agencies Play a Role?

**For inquiries,  
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## Competition law enforcement central to facilitating MSMEs survival

In order to further enable start-ups and digital businesses in the Micro Small and Medium Enterprises (MSMEs) category invest and expand cost efficiently, the Authority has committed to review its merger guidelines with a view of exempting more entities from notification.

Additionally, the Authority intends to conduct surveillance audits among MSMEs in the manufacturing and agro-processing sectors in order to address any abuse of buyer concerns that may be limiting their economic survival.

The Authority shall in the FY 2023/2024

enhance its screening and investigations of infractions like cartels or abuse of dominance such as excessive and predatory pricing, price discrimination as well as margin squeezing. These interventions will ensure a level playing field in the market.

These commitments by the Authority, among others, were mentioned by Prof. Njuguna Ndungu, Cabinet Secretary, National Treasury, during the Budget Statement delivered at the National Assembly on 15th June 2023.

The CS also indicated that the Authority shall, in collaboration with the National >>



« Assembly, actualize an ongoing initiative to address the issue of price fixing by professional service providers in order to ensure that their fees are competitive and improve quality of services.

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

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 and unaffordable for MSMEs.

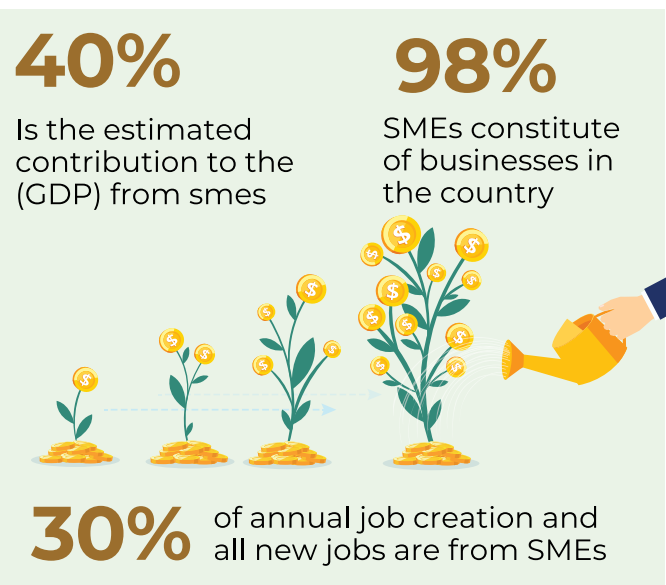
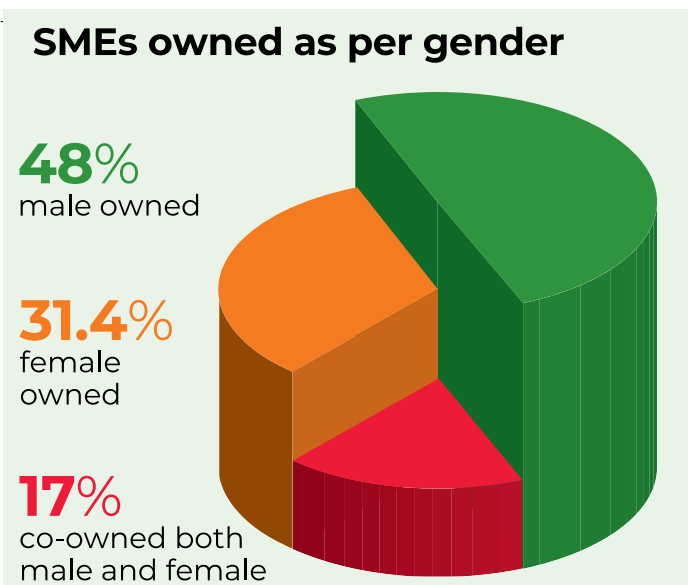
Through effective competition law enforcement, including through the aforementioned initiatives, the Authority shall seek to address some of the challenges affecting this key sub-set of the economy.

With regard to consumer protection, the CS indicated that the Authority shall monitor and investigate emerging consumer issues in sectors such as utilities, pharmaceuticals, digital financial services, insurance and aviation. [U](#)

Statutory Definition of MSMEs				
Category	Sector	Annual Turnover (Ksh.)	No. of Employees	Assets/ Investment(Ksh.)
Micro	All	≤ 500,000	<10	N/A
Small	All	500,000<x<5,000,000	10<x<49	N/A
Medium	Manufacturing	5,000,000<x<100,000,000	50<x<250	125,000,000
	Service / Farming	5,000,000<x<100,000,000	50<x<250	250,000,000
	Other	5,000,000<x<100,000,000	50<x<250	As determined by Cabinet Secretary

Source: Micro and Small Enterprises Act (2012)

**34%** MSMEs) contribute about 34% of the country's Gross Domestic Product and employ approximately 15 million people.





## Young advocates in Kenya to gain pupillage experience at the CAK

**T**he Authority has started offering pupillage to upcoming advocates following approval by the Kenya School of Law Board as a pupillage centre.

The Authority joins over 45 other local institutions that have been granted accreditation to offer pupillage training for a period of three months.

The program will promote understanding, interpretation and application of

competition law and policy and consumer welfare issues among upcoming advocates.

The program will also provide an opportunity for promoting knowledge, awareness and understanding of the obligations, rights and remedies under the Act. Lastly, upcoming advocates will be trained on the procedures, functions and processes of the Authority.

This initiative is aimed at improving >>

«the level of compliance with the Act by guiding upcoming advocates on engagement with the Authority.

“The main objective of this program is to inculcate the knowledge and practice of competition enforcement in young lawyers and help build their capacity in this critical and growing area of law specialization,” said Joel Omari, the Authority’s Corporation Secretary and Legal Manager.

The program targets lawyers that are registered for the Advocates Training Program and have completed the twelve (12) months training in the Kenya School of Law. Successful pupils will be stationed at the Authority for a three months. The program supplements the already existing Internship Programme and the Young Professionals Programme.

The Authority is eager to work with young and vibrant lawyers and hopes that the program will bring the desired change in the landscape of competition law, practice towards achieving its mandate of promoting and safeguarding competition in the national economy and also protecting consumers from unfair and misleading market conduct. **U**



**SCAN HERE TO ACCESS LIST OF ACCREDITED PUPILLAGE CENTERS**

**10<sup>TH</sup> ANNUAL CAPACITY BUILDING WORKSHOP**

25th - 26th October, 2023  
9am – 1pm  
Nairobi

**CHARGES: Ksh. 50,000 pp**  
**GROUP BOOKINGS (MINIMUM 6 PEOPLE): KSh.40,000 pp**

**Thematic Areas:**

- 01 Consolidated Administrative Remedies & Settlement Guidelines
- 02 Impact and Sanctioning of Minimum Pricing in Markets
- 03 Merger Analysis: Private Equity, Digital Mergers, & Cross-Border Mergers
- 04 Consumer Protection in the Financial Services Sector
- 05 Buyer Power: Determination of Culpability & Remedies
- 06 Role of Market Inquiries & Studies in Competition Law Enforcement

To REGISTER: <https://shorturl.at/BJXY8>

[www.cak.go.ke](http://www.cak.go.ke) <https://competition.cak.go.ke/44/> +254 (20) 2779000

**10<sup>TH</sup> ANNUAL COMPETITION LAW & POLICY SYMPOSIUM**

Friday 27th October, 2023 9am – 1pm Nairobi

**FREE OF CHARGE**

**Thematic Areas:**

- 1 Competition and Consumer Protection Policy in Advancing Sustainable Consumption & Production
- 2 Complementarity or Conflict: Interaction between Competition & Industrial Policies
- 3 One-on-One with Ag Director-General: Candid conversation on CAK's priority areas

To REGISTER: <https://shorturl.at/BJXY8>

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## CAK's mandate to ensure competition in the professional services sector upheld by the High Court

**C**ompetition in the professional service market, which includes lawyers, engineers, architects and accountants is critical for consumers to access a wide range of services at a cost singularly determined by market forces. Not the service providers.

While self-regulation in these professions is critical to ensure that only persons who meet the educational, experience and fitness can practice, such oversight should not limit competition in any sector.

To uphold this dictum, the Authority has over the years continued to safeguard competition in the professional services sector by tackling restrictions to competition, including denial of requests which, ultimately, would shortchange consumers, especially setting of minimum prices.

Other anti-competitive agreements and practices among professional bodies are those that seek to, divide markets, raise entrance requirements or limit advertising by members. >>

« To this end, the Authority has, in Court, successfully defended the constitutionality of section 29(8) of the Competition Act which the Law Society of Kenya (the Society) and two other respondents averred restricted LSK's right to carry out its functions, by dint of the provisions of the Law Society of Kenya Act.

The Society claimed that that provision of the Act restricted its right to freely, independently and effectively carry out its mandate under its constitutive legislation. In particular, the Society argued that the section's requirement that professional associations seek exemption from the Authority with regard to rules that have the effect of preventing competition in a market amounted to infringement of the Society's right to association under Article 36 of the Constitution of Kenya. Further, the Society claimed the section infringed on consumer rights as guaranteed under the Constitution of Kenya.

The LSK had sought, a declaration that section 29(8) of the Act was unconstitutional and invalid for allegedly restricting their right to association.

The Authority countered this argument stating that the section does not contain any provision which limits the right of the Society as espoused in Article 36 of the Constitution of Kenya but instead, that section 29 of the Act grants the Authority the mandate to review professional rules which are likely to prevent, distort or lessen competition in the country.

The Authority averred that by implementing this provision, it was undertaking one of its core functions.

The Authority further argued that in exercising its mandate, it is protecting consumers, promoting competition by discouraging anti-competitive behaviour, and creating freedom of trade, choice and access to markets.

The High Court held that Parliament in enacting section 29 of the Act intended that restrictive trade practices be regulated within the context of professional associations. Additionally, the Court held that the section did not dictate or determine how professional associations were to carry out their mandate in light of their enabling legislations.

The Authority will therefore continue to exercise its mandate in the professional sector to protect consumers and promote competition by discouraging anti-competitive behavior. [U](#)



## BRAIN TEASER

### Sudoku

5	3			7				
6			1	9	5			
	9	8					6	
8				6				3
4			8		3			1
7				2				6
	6					2	8	
			4	1	9			5
				8			7	9



# EMPOWERING COMMUNITIES



Mugambi Mutegi, CAK's Communications Manger, sensitizes students of Waso Mixed Secondary regarding the agency's mandate.



Members of the CAK's Environment Committee at the tree planting exercise at SKM Primary School, Marsabit



The Authority delivered 1,300 glass returnable soda bottles to SKM primary School and another 600 bottles to Waso Mixed Secondary School.



Tree planting exercise at SKM Primary School's grounds. Every year, the Authority plants trees in various parts of the country and supports their sustenance.




Mr. Samuel Roba, a CAK staff member who hails from Marsabit County, gives a motivational speech to students of SKM Primary School, Marsabit



Mercy Matara, a CAK staff member, plants a tree with a student from Waso Mixed Secondary School, Isiolo County.

# CSR: Giving Back to Society in Marsabit & Isiolo



COMPETITION AUTHORITY OF KENYA – TREE PLANTING SUMMARY				
No.	Financial Year	Institution Planted	County	No. of Trees
1.	2015/2016	Nairobi Pri. School	Nairobi	100
2.	2016/2017	Murema Pri. School	Nairobi	150
3.	2017/2018	North Coast Hotel	Kilifi	150
4.	2018/2019	Njuri High School	Tharaka Nithi	1000
5.	2018/2019	Gituamba Pri. School	Nakuru	500
6.	2019/2020	Ngong Road Forest	Nairobi	1100
7.	2020/2021	Lusigetti Hospital	Kiambu	2000
8.	2021/2022	C.C.M Mbuju Primary School	Meru	2500
9.	2022/2023	SKM Pri. School	Marsabit	2400
10.	2022/2023	Waso Secondary School	Isiolo	100
<b>Total</b>				<b>10,000</b>

**O**n the morning of 8<sup>th</sup> June, 2023, staff from the Authority drove into SKM Primary School in Marsabit County bearing 355 KICD-approved textbooks and 2,000 tree saplings. We were received with smiles, song and dance. However, a *tuk-tuk* carrying 1,300 sodas in returnable glass bottles, understandably, got more cheers.

Indeed, it was a good day for the teachers and pupils of the 51 year-old C.C.M

Mbuju Primary School which also caters to early childhood development learners and those with hearing and visual impairments.

The school has a diverse population drawn from the neighbouring constituencies of Moyale, Laisamis and North Horr. According to the head teacher, Ms. Kame Koto, SKM is an acronym drawn from the area's >>

« Sagante, Kargi, and Maikona settlements and signifies the societal coexistence

The visit to SKM Primary School was part of our annual Corporate Social Responsibility (CSR) activities through which we seek to enhance the Authority's relationship with stakeholders while sensitizing them about our mandate, including complaints handling mechanisms.

The indigenous and exotic trees, such as Cassia Tree and Silk Oak were planted as part of actualizing the existing Presidential directive of increasing the country's nationwide tree cover. The textbooks are meant to support the children's educational journey.

"SKM feels lucky and privileged that you selected our school. The teachers and pupils shall make good use of the books and nurture the trees. We have over 1,300 pupils and at no time can we say we have enough books. Asanteni sana," said Ms. Koto.

On Wednesday, 9<sup>th</sup> June 2023, the CAK visited another school – Waso Mixed Secondary School in Isiolo County. The school has a population of about 570 students and 30 teachers.

“SKM feels lucky and privileged that you selected our school. The teachers and pupils shall make good use of the books and nurture the trees.”

**Ms. Kame Koto**, Head teacher, SKM Primary School, Marsabit County

Over and above planting trees, donating books and offering some refreshments, the Authority sensitized the prospective university students about the specifics of competition law enforcement and consumer protection.

A motivational talk from one CAK staff member crowned the day.

"Our school definitely needs more tree cover and therefore we appreciate your support. We welcome you to visit the school any time to check up on us and the status of the trees we have planted," said Mr. Adan Badasa, Deputy Principal, Waso Mixed Secondary School.

In the Authority's 2021/2022 – 2024/2025 Strategic Plan, the Authority undertook to hold at least two (2) CSR activities every Financial Year in the health, education, and environment sectors. CSR Activities are coordinated by the Authority's CSR Committee.

The Authority has in the past seven years planted 10,000 trees in nine counties including Nakuru, Kiambu, Meru, Tharaka-Nithi, Kilifi, Nairobi, and Garissa. In partnership with various State and non-State stakeholders, including the Kenya Forest Service, the trees have achieved a survival rate of approximately 95%.

Last year, the Authority visited Tumaini Boys Secondary (Garissa County) and Kamuwongo Primary School (Kitui County) and supported each institution with 400 KICD-approved textbooks. [U](#)



Dr Adano Wario (left), Acting Director-General, Competition Authority of Kenya and Lilian Mukoronia, registrar, East African Community Competition Authority, during the signing of a memorandum of understanding between the two agencies in Naivasha, Kenya, on 16th May, 2023. The MoU will ensure execution of their respective mandates enhances regional integration and cross-border trade and investment.



## EACCA and CAK collaboration to minimize cost of doing business

**T**he Competition Authority of Kenya and the East African Competition Authority (EACCA) have assured the regional business community that implementation of their respective laws will seek to minimize the cost of doing business, especially with regard to merger notification and review.

The Memorandum of Understanding (MoU) signed between the two agencies

in May 2023 specifically intends to enhance regional integration and cross-border trade and investment as well as mitigate competition infringements with cross-border effects.

Further, the agreement facilitates information sharing particularly during joint investigations, market inquiries and studies, which >>

«shall be prioritized so as to safeguard the competition process and protect consumers in the region.

Businesses have previously raised concerns that implementation of the EAC Competition Act shall increase the cost of doing business and slowdown investments in instances where mergers are required to be notified to the two competition agencies.

Dr. Adano Wario, the Authority's Acting Director-General, says that the collaboration with EAC has prioritized reviewing and streamlining their merger notification guidelines by December 2024 in order to address such concerns.

"Borne of past experiences in the COMESA region, especially with regard to the cost of double merger notification to undertakings, the Authority and EACA found it fit to proactively collaborate in order to ensure that execution of our respective mandates is harmonious for all parties involved," said Dr. Wario.

The Competition (General) Rules, 2019 introduced a single notification regime for transactions with a regional dimension involving the Authority and the COMESA Competition Commission (CCC).

The Rules now prescribe a single notification regime whereby, if at least two-thirds of the merging parties' combined turnover or assets (whichever is higher) is generated or located in Kenya, approval only needs to be sought from the Authority.

Previously, entities had to make applications in both jurisdictions and await independent review and

determinations from each. This increased the cost and time of completing transactions, thereby slowing down investments.

Ms. Lilian Mukoronia, the EACCA Registrar, noted that the negative impact of double notification was a priority matter for the agency.

"We have done a lot to tackle the issue of double notification. Firstly, we only tackle mergers that affect two or more partner states. We have developed thresholds that are above that of CAK meaning that you will only be required to notify EACAA if your thresholds are above that of the national agency," she said during the MoU signing in Naivasha, Kenya.

The MoU also aims to facilitate information sharing particularly during joint investigations, market inquiries and studies, which shall be prioritized so as to safeguard the competition process and protect consumers in the region, while respecting our respective laws and policies.

In addition, the two agencies will hold joint capacity building sessions to ensure that case officers are upskilled to adequately attend to emerging issues, especially those presented by the digital economy which transcend borders. The CAK and the EACCA will also collaborate in sensitizing stakeholders about their respective laws and exchange best practices. [U](#)



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ACCESS MoU  
PRESS  
STATEMENT**

# Unilever's supplier SMEs benefit from shorter invoice terms following CAKs intervention



**S**mall and Medium Enterprises (SMEs) on-boarded by Unilever Kenya Ltd (Unilever) from January 2023 are enjoying short payment terms of thirty (30) days while legacy suppliers will see their payment terms gradually reduced to forty five (45) days from sixty (60) days.

This positive outcome for SMEs follows investigations by the Authority into alleged abuse of buyer power in which the multinational was accused of unilaterally reviewing upwards the payment period to their suppliers. In addition, it was alleged that the contract variations occurred

during the early month of the COVID-19 pandemic which had negatively impacted businesses.

This is a case of abuse of buyer power where a buyer in a powerful buyer position unilaterally varies supply contracts by extending payment periods and demanding or extracting preferential terms unfavourable to its suppliers.

The Competition Act, under section 24A(5), provides an open list of conducts that constitute abuse of buyer power. 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 justifiable reasons in breach of contractual terms, transfer of costs or risks to suppliers, or demanding suppliers limit products sold to competitors.

Unilateral variation of contract terms is another conduct that amounts to abuse of buyer power though not expressly listed in the Act.

The Micro and Small Enterprises Act defines a micro-enterprise (small) as one with an annual turnover of less than Kshs. 500,000. MSMEs constitute 98 per cent of all businesses in Kenya, creating 80 per cent of the jobs in the country as well as contributing over 30 per cent of the GDP.

By dint of their nature, SMEs that wait too long for payments face difficult decisions and may be forced to cut innovations, capital investments and training, as well as postpone hiring and expansion. More often than not, these businesses are forced to shut down.

The government has committed to transforming MSMEs through various initiatives. Thus the Authority, through enforcement of the Act is supplementing the government efforts by protecting and supporting the growth of SMEs in Kenya.

It is through these efforts that Unilever has further committed to incrementally increase localization of procurement spend by Kenya Shillings Four Hundred Million (Kes. 400,000,000) between January 2023 and December 2025 subject to the SMEs fulfilling certain conditions

## COMMITMENTS MADE BY UNILEVER

<b>Ksh.400 Million</b>	Incrementally increase its local procurement spend by Ksh. 400 Million over three years beginning January 2023
<b>30-45 days</b>	Reduce its invoice payment period to between 30 and 45 days
<b>2 local SMEs</b>	Invite at least two (2) local SMEs suppliers to all tenders, subject to meeting set procurement conditions
<b>Ksh.75 Million</b>	Dedicate an annual budget of Ksh. 75 Million toward development training for its SME suppliers for three years.

including Unilever safety, quality and responsible sourcing requirements; demonstrating a capacity to produce adequate volume or service, as well as the capacity (demonstrated ability to deliver) to supply the required goods or services and possess the requisite technical skills and competency to supply the product required; and cost competitiveness.

Further, SMEs supplying goods and services to Unilever shall benefit from the company’s supplier development training worth Kenya Shillings Seventy-Five Million (Kes. 75,000,000) for a period of three (3) years between January 2023 and December 2025. The training is aimed at up-skilling and building capacity and capability for possession of relevant skills and knowledge by the SMEs to meet the qualification criteria for procurement and supply to multinational corporations. **U**

# CAK to host 10th Annual Capacity Building Workshop



**T**he Competition Authority of Kenya will host the 10th Annual Capacity Building Workshop and Symposium on Competition Law and Policy. The Capacity Building Workshop will comprise a daily four-hour in-person session on 25th and 26th October, 2023. The Symposium will take place on 27th October, 2023.

**The Capacity Building Workshop** will address core areas of competition law and economics, with a focus on practitioners' needs. Participants will benefit from case exercises informed by the Authority's past intervention cases.

Some topics of discussion are:

- Procedural Framework for Competition Law Enforcement,
- Consumer Protection in the Financial Services Sector,
- Assessment of Vertical Agreements,

- The Role of Market Inquiries/Studies in Competition Law Enforcement.

**The Symposium on Competition Law and Policy** will focus on Role of Competition and Consumer Protection Policy in Advancing Sustainable Consumption and Production as well as Complementarity or Conflict: Interaction between Competition and Industrial Policies.

Law Society of Kenya (LSK) members who participate in the Capacity Building Workshop will earn TWO (2) Continuous Professional Development (CPD) points.

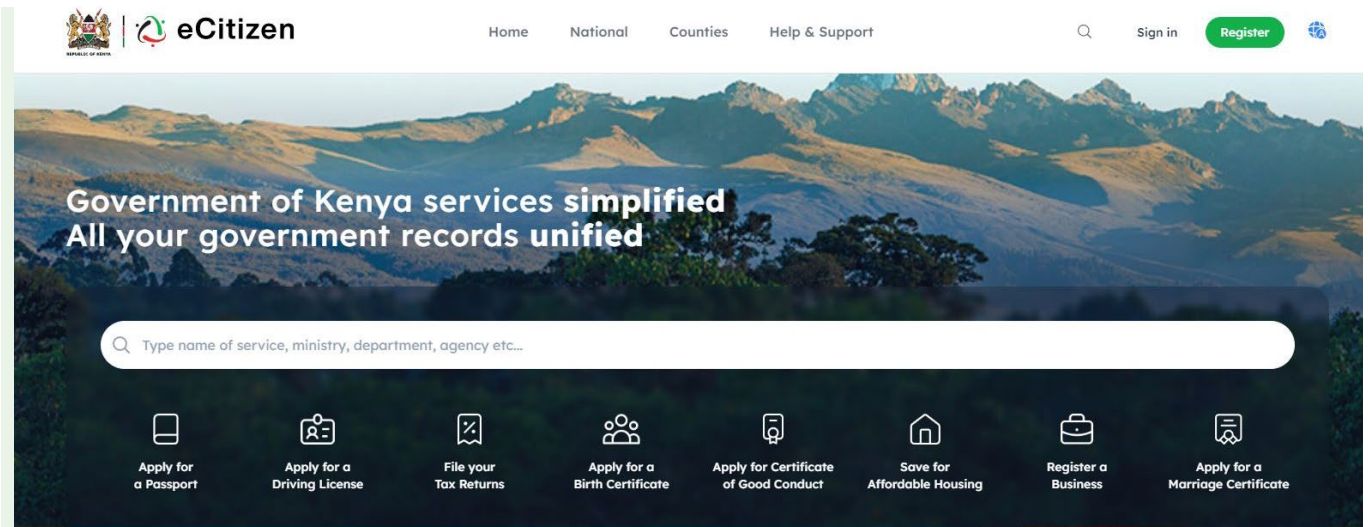
To reserve a slot for participation in the Workshop or Symposium, fill the booking form available via:

<https://t.ly/ntvZw>

In case of any queries, contact the Authority via;

Email: [symposium2023@cak.go.ke](mailto:symposium2023@cak.go.ke)

# Stakeholder Access to CAK'S Public Portal Enhanced with E-Citizen Integration



In line with the Government's agenda of increasing use of digital platforms in service delivery, the Competition Authority of Kenya's E-Filing Portal (<https://competition.cak.go.ke:444/>) has been integrated with the E-citizen platform (<https://www.ecitizen.go.ke/>).

This integration will enhance efficiency in filing applications relating to proposed mergers and exemptions and complaints relating to restrictive trade practices, abuse of buyer power and consumer rights infringements. Further, the Authority expects this integration to increase accessibility and widen visibility of its services across the country and beyond.

Ms. Mercelline Anduro, the Authority's ICT Manager, noted that since the integration was actualized in March 2023, the unique visitors to the E-Filing Portal has increased by 25%, with a majority of them lodging matters for resolution.

"This integration is a significant milestone in the Authority's ongoing automation journey. The next step, which is ongoing, is implementing a singular login system for users so that when you login into E-citizen, you are automatically logged into our system," said Ms. Anduro.

Stakeholders can access the E-Filing Portal User Manuals for various services under the E-Services tab on the Authority's Website ([www.cak.go.ke](http://www.cak.go.ke)).

Further, stakeholders are reminded that the Authority has developed a mobile application to facilitate e-filing of various technical matters at your convenience. The app is accessible on Android (<https://bit.ly/3kVZhnf>) and iOS (<https://apple.co/3LcZoFv>) platforms. Alternatively, search 'Competition Authority of Kenya' on your app marketplace.

Feedback on stakeholder experience using the E-Filing Portal or the Mobile App can be directed to the Authority via Email: [efiling@cak.go.ke](mailto:efiling@cak.go.ke) or Telephone: [+254 20 277 9000](tel:+254202779000).



## Price controls are unsustainable in correcting market distortions

**GIDEON MOKAYA**

*Manager – Enforcement and Compliance,  
Competition Authority of Kenya*

A recent Press report shows that nearly half of the tea offered for sale at Mombasa tea auction was withdrawn from the trading floor as traders prioritized buying higher quality grades of the commodity. The report further states that the teas had previously been offered for sale several times but buyers turned their noses up claiming overpricing. The explanation given was that some of the commodity had been recycled but were still being sold at the same price.

**“The practice price controls is hundreds of years old. Its proponents argue that these measures reduce prices by curtailing producer and middlemen brokerage incomes.**

The root cause of the issue was introduction of a minimum price of \$2.43 per kilo of teas in 2021, ostensibly to cushion farmers from below-cost prices. This is an example of a well-intended policy intervention that can end up with unintended bad consequences.

The practice price controls is hundredsofyearsold.Itsproponents argue that these measures reduce prices by curtailing producer and middlemen brokerage incomes. Secondly, they posit that controls have had indirect non-economic effects like convincing citizens that profiteering is under control and that the economic burden is fairly shared. Thirdly, in the face of high inflation, monetary authorities have tended to set statutory price limits

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without resorting to higher interest rates. Lastly, in less competitive markets with monopolistic firms, price limits are said to ensure availability of specific goods or services.

The key question, therefore, is whether effective competition is preferable to price control.

Free market economy supporters argue that price controls do not address the underlying cause of inflation. Excess demand will still exist. If inflation is caused by a shortage of goods and increased input cost factors, this situation cannot be resolved through price limits.

In fact, price controls can drastically reduce the incentive for firms to increase supply or invest, lead to wasteful economic activity as people queue to access limited goods and encourage proliferation of the black market economy.

With regard to maximum price setting, they seek to reduce prices below the competitive equilibrium price. Price ceilings are advantageous to consumers since it curbs the appetite to exploit consumers by monopolies and are usually reserved for highly important goods in the market such as staple foods. In contrast, minimum prices offer producers a higher income, disadvantage consumers through high prices of goods and services, and encourage oversupply therefore create inefficiencies.

Resale price maintenance (RPM), a form of minimum pricing, is illegal under the Competition Act No. 12 of

2010 since it disincentives undertakings from competing on the merits, including innovating. Worse still, consumers end up paying more for goods and services.

For example, it is illegal for manufacturers or suppliers to impose minimum prices in distribution agreements or offer retailers a discount if they adhere to the floor prices. It is also an illegality to decline to supply retailers that retail goods/services below the minimum price or sanction and threaten them.

Producers and distributors cannot hide behind distribution agreements to set restrictive pricing policies on minimum pricing. Equally, they cannot try to use apparently legitimate policies such as licensing to conceal RPM practices.

However, suppliers can provide a recommended resale price (RRP) or set maximum retail prices but it is illegal for them to dictate the actual price. This illegality extends to policies that set a minimum advertised price for online sales.

Price controls as an alternative to a liberalized market do not, in the long-term, benefit consumers. The preferred policy interventions would be providing subsidies such as agricultural inputs to increase production and supply to the markets, encourage competitive markets by discouraging non-tariff barriers, and considering progressive taxation [U](#).





## Cartels will keep you stuck in that rented house

**WILSON CHACHA,**  
Senior Investigation Officer,  
Competition Authority of Kenya



**A**fter five years of saving resources and meticulous planning, Mr. Cecil Ochieng was ready to upgrade from the small studio apartment in Kondele, Kisumu and join the coveted league of homeowners in Kenya. He planned to set up a three-bedroom house in Kisian within seven months.

When he visited Chum Hardware in Kisumu, he noted that prices of most construction materials were higher than the amounts stated in the Bill of Quantities. In some instances, the variance was 70%. The storekeeper informed him that the increase occurred over the past six months.

Upon comparing prices in other stores in search of lower quotations, Cecil discovered all the stores had similar prices, despite being in different locations. Even bigger

stores that enjoy economies of scale priced their products within a certain band.

He tried a different tactic. A friend in Busia with construction sector experience connected him with four different suppliers in the town. But even then, the prices varied negligibly from those in Kisumu stores. This variance could be attributed to the transport costs, but they seemed coordinated since the prices within Busia, to his bewilderment, were also similar.

In a bid to better understand what could be causing the similarities, Cecil engaged Dunga, one of the leading suppliers in Busia. Dunga was curt but honest: "You know omera, that's just how things are done here. Bwana, we used to suffer from price undercutting with some people selling goods at prices that were lower than agreed. Following

OPINION




years of financial losses, we formed an association for distributors in the region, so that we could set agree retail prices. We also have in place punitive sanctions to ensure every member of our association complies! Better yet, these days we have limited the number of people who can open similar businesses. If you want to join this trade, the association must approve it. A controlled market benefits us all. We are even thinking of allocating market territories for each business. *Mambo ya competition sisi hapana tambua.*"

Infuriated with Dunga's remarks, Cecil spoke to a friend who works at the Competition Authority of Kenya (CAK), to find out if such conduct is permissible within the law. He was informed Dunga and the association members were breaching the Competition Act No. 12 of 2010, specifically, market allocation, where competitors assign themselves operation areas limiting entry of new players by creating barriers and setting resale prices, among others, are all a violation of the law.


Some critics would ask why such conduct is prohibited yet it may enable existing businesses to thrive? This conduct is referred to as a restrictive trade practice and which, among others, result in businesses charging unfairly high prices leading, limiting consumer access to a variety of goods of high quality due to market allocation and limits entry of new players into specific markets to the incumbents' advantage. This may result in them gaining market power and abusing their dominant positions.

Further, people like Cecil end up overspending on various materials required in construction due to the artificial pricing regime. Indeed cartels in the construction sector are detrimental to the Government's ambitions of providing affordable housing. Therefore, such market practices interfere with market dynamism and also impede effective market competition and ultimately depress the economic welfare of consumers, or end-users in this case.

Consumers are encouraged to report such conduct that may curtail competition to the CAK through the Public Portal which is accessible via <https://competition.cak.go.ke:444/> or sending an email to: [complain@cak.go.ke](mailto:complain@cak.go.ke) This service is offered free of charge. 

# KNOW YOUR **COMPETITION ACT**

## Confidentiality (Section 20)

- (1) For the purpose of this section, “material” includes any information, document or evidence relating to any matter to which this Act applies.
- (2) Any person who gives or discloses any material to the Authority, whether under compulsion of law or otherwise, may claim confidentiality in respect of the whole or any part of the material.
- (3) The provision of this section shall not be deemed to be breached where material is disclosed to persons outside the Authority any time before a claim for confidentiality is made.
- (4) In the case of oral evidence, the claim may be made orally at the time of giving the evidence and in all other cases it shall be in writing, signed by the person making the claim specifying the material and stating the reason for the claim.
- (5) If the Authority is satisfied that material is of a confidential nature and—
- its disclosure could adversely affect the competitive position of any person; or
  - is commercially sensitive for some other reason, the Authority shall grant confidentiality for the material.
- (6) The Authority shall give notice in writing to a person making a claim for confidentiality of the Authority’s decision to grant or not grant confidentiality and, if it has not granted confidentiality, the Authority shall treat the material as confidential for a period of fourteen days after giving such notification.
- (7) If a claim for confidentiality—
- is made in relation to material supplied to the Authority voluntarily; and
  - the Authority decides not to grant confidentiality in whole or in part for the material, the person who supplied the material may, within the fourteen days’ period provided under subsection (6), withdraw the material from the Authority together with other material supplied with it.
- (8) Notwithstanding that the Authority has granted a claim for confidentiality under subsection (5), the Authority may disclose the material—
- at any time without notice to any other person if—
    - the disclosure is made to another person who is also performing a function under this Act;
    - the disclosure is made with the consent of the person who gave the material;
    - the disclosure is authorised or required under any other law; or
    - the disclosure is authorised or required by a court or a tribunal constituted by law; or
  - if the Authority is of the opinion that—
    - disclosure of the material would not cause detriment to the person supplying it or the person to whom it relates; or
    - although the disclosure of the material would cause detriment to the person supplying it or the person to whom it relates, the public benefit in disclosing it outweighs the detriment, and the Authority has given fourteen days’ prior written notice to that person of its intention to disclose the material pursuant to this provision. 

<SCAN ME>

COMPETITION ACT



SERVICE CHARTER



DETERMINATIONS

