



**SPECIAL COMPLIANCE PROCESS
FINAL REPORT
NON-CONFIDENTIAL**

September 2016

EXECUTIVE SUMMARY

A. INTRODUCTION AND BACKGROUND

1. In the exercise of the powers conferred under section 18, and in line with sections 9(1) (a) (g) and 18(1) (a) of the Competition Act of Kenya No. 12 of 2010 (the Act), the Competition Authority of Kenya (the Authority) undertook an inquiry also referred to as the Special Compliance Process (SCP) into the activities of trade associations operating in the financial and Agriculture and Agro-processing (“Agriculture”) sectors in Kenya.
2. The process was motivated by the realization that notwithstanding the Act coming into force in 2011, many Trade Associations continue to have rules, practices and procedures which are likely to contravene the Act.
3. The core objectives of the Special Compliance Process were, amongst others, to ensure that trade associations are in compliance with the Act, particularly, with section 21 and 22, to increase awareness of the Act and to foster best practices in the future.
4. Also the inquiry aimed at encouraging self-regulation and as a result reduce the regulatory costs incurred by the Authority.

B. IMPLEMENTATION

5. The process entailed engagement with stakeholders, which included sector regulators and trade associations from the Financial and Agriculture sectors. Additionally, the inquiry was gazetted to notify the general public.
6. Trade Associations were expected to carry out a self-evaluation of their conduct, operational tools and documents such as Rule Books, Codes Of Conduct, Articles, Memorandum of Associations and Constitutions, Minutes Of Meetings and Board Reports, to identify potentially anticompetitive clauses and conduct. Further, the Associations had to suggest and implement remedial actions and make submissions to the Authority.

7. In the financial Sector, the inquiry covered associations within Insurance, Banking services, Micro-financial, Forex-exchange bureaus, and Capital markets subsectors.
8. In the Agricultural Sector, the inquiry covered associations dealing with agricultural inputs, produce, agro-processing, exports and other overarching associations.
9. These subsectors were selected after consideration of:
 - i. Priorities activities under the Kenya Vision 2030;
 - ii. The CAK prioritization policy, impact on the economy and particularly on low income consumers;
 - iii. CAK's experience to date from its ongoing competition enforcement initiatives; and;
 - iv. Existence of active trade associations.
10. Eleven (11) trade associations were identified in the Financial sector, out of which six (6) participated in the process. In the Agricultural sector, 27 industry associations were identified.

A. INTRODUCTION AND BACKGROUND

1. The Competition Authority of Kenya pursued a Special Compliance Process (SCP) for Trade Associations. This process was motivated by the realisation that notwithstanding the Competition Act No. 12 of 2010 having a number of specific provisions that apply to Trade Associations (*inter alia* sections 21 and 22), many Trade Associations continue to have rules, practices and procedures which are likely to contravene the Act.¹
2. The core objectives of the SCP were to:
 - a) Ensure that Trade Associations were in compliance with the Competition Act and more particularly, with section 21 and 22 of The Act;
 - b) Facilitate the identification and rectifying of past conduct regarding competition in their specified markets;
 - c) Increase awareness and to foster best practices in the future; and
 - d) Address and resolve contraventions, without requiring in-depth investigations under section 31, thus reducing the costs of compliance for Trade Associations and their members.

B. TYPICAL CONCERNS THAT ARISE FROM INDUSTRY ASSOCIATIONS AND THE POTENTIAL IMPACT OF CARTEL CONDUCT

3. Unlawful practices that are covered under the SCP include but are not limited to price fixing, market allocation, bid rigging and unjustifiable exclusion from a trade Association. These kind of anticompetitive practices which are horizontal in nature are very aggravating in nature to the consumer thus the reason for the SCP coverage. The Authority therefore targeted the trade association owing to the fact that the associations provide avenues through which undertakings may exchange competitively sensitive information. The unlawful practices are explained herein as follows;

¹ This realisation is informed by the engagements the CAK has had with businesses and associations including workshops such as held on 12 May 2014, as well as by the CAK's studies, inquiries and investigations.

i. Price Fixing

4. Price fixing, or colluding to fix prices, refers to an agreement, understanding or concerted practice (written, verbal, or inferred from conduct) among actual or potential competitors that raises, lowers, or stabilizes prices or competitive terms which ultimately impacts on price. The Competition Act requires that each company established prices and other terms on its own, without agreeing or collaborating with competitors. When consumers make choices about what products and services to buy, they expect that the price has been determined independently by each supplier on the basis of market forces, and not by agreement amongst competitors.
5. When firms get together to fix, control or maintain prices, final consumers are harmed as prices are higher than what they would be if the firms were competing. Intermediate customers, such as small business that rely on inputs from colluding firms, are also negatively affected.
6. Examples of price-fixing agreements include those that agree to sell at a common target price; establish or adhere to set discounting terms; hold prices firm or adhere to specific list price; adopt a standard formula for computing prices; set components that go into the pricing formulae; maintain certain delivery services terms or any other terms of sale; adhere to a minimum fee or price schedule; adopt not to advertise prices or engage in cooperative price advertising; exchange current non-public price information; standardize financial credit terms; and purposefully and collectively reduce output or sales in order to charge higher prices.

ii. Dividing Markets

7. This refers to agreements between players in a horizontal relationship to divide up the market amongst themselves in terms of allocating customers, products, services and/or geographical regions. Such agreements typically stipulate that competitors shall not compete in markets not allocated to them.

8. Market division can occur in a number of ways, including but not limited to:
- a) **Customer allocation-** This is where competitors allocate specific customers or certain groups of customers to each other. For instance, customers can be allocated in terms of corporate, retail, private and/or public customers to different suppliers by agreement.
 - b) **Geographical allocation-** This is where competitors agree to divide markets geographically i.e. by city, county, neighbourhood, streets etc.
 - c) **Suppliers, specific types of goods-** Businesses through their associations or otherwise may decide on dividing the market in terms of supply of specific goods which can be done.
9. Firms may engage in more than one type of conduct simultaneously, for instance, they could fix prices and allocate markets or customers.

iii. Bid Rigging

10. Bid rigging, also referred to as collusive tendering, occurs when two or more competitors agree they will not compete genuinely with each other for tenders, allowing one of the cartel members to 'win' the tender. Participants in a bid rigging cartel may take turns to be the 'winner' by agreeing about the way they submit tenders, including some competitors agreeing not to tender. This means that the winning tender price will be higher relative to the price that would prevail under effective competition.
11. Bid rigging can take a variety of forms. Some of the common forms include:
- a) **Cover bidding** – This is also known as complementary bidding, 'protective' or 'shadow' bidding. It occurs when competitors submit token tenders that they know are priced too high to be accepted. Such tenders are not intended to be accepted, but are merely designed to give the appearance of genuine tendering. This enables the agreed upon competitor to win the tender. In other words,

through an agreement between themselves, competitors choose a winner and everyone else but the chosen winner deliberately bids above an agreed amount to establish the illusion that the allocated winner's quote is competitive.

- b) **Bid suppression** – This is where a business agrees not to tender to ensure that the pre-agreed participant will win the contract. In 'bid suppression' or 'bid limiting' schemes, one or several competitors, who would otherwise be expected to tender for a contract, refrain from tendering or withdraw a previously submitted tender, so that the agreed competitor's tender will be accepted instead.
- c) **Bid withdrawal** – This is where a business withdraws its winning bid so that an agreed competitor will be successful instead.
- d) **Bid rotation** – This is where competitors submit tenders, but by agreement take turns in being the lowest bidder and therefore the winner. Competitors may also take turns on contracts according to the size of the contract. Competitors under this type of agreement tend to share information on projects or market shares for monitoring purposes to ensure they adhere to the agreement.
- e) **Non-conforming bids** – This is where businesses deliberately include terms and conditions that they know will not be acceptable to the client in order to 'lose' the bid to the pre-determined winner.

iv. **Exclusionary Behavior in a Trade Association**

This is the exclusion of any person carrying on or intending to carry on in good faith the trade in relation to which the Association is formed. This is because new members may disrupt the status quo and undermine agreements/ways of working.

v. **Practices that would otherwise prevent, distort or restricts competition**

These are acts that either directly or indirectly using A to D above or any other concerted practice which have their object or effect the prevention, distortion or lessening of competition.

Do's and Don'ts for Trade Associations

12. The following “Do’s and Don’ts” can help achieve compliance with the Competition Act No.12 of 2010.

Do’s

- Do establish an effective compliance program; and have a written competition law compliance policy along with regular training session especially for new members;
- Do exercise care when collecting and sharing competitively sensitive information within the association. Use a third party to collect the information and have it disseminated in an aggregated form;
- Do ensure that measures are in place to prevent the disclosure of competitively sensitive information among individual association members.
- Do ensure that association meetings have agendas and that minutes accurately reflect attendance and discussions;
- Do ensure that attendees use caution during association meetings. A member of a trade association is deemed to be a party to an agreement or practice of the association unless expressly notifying the association in writing that he disassociates himself entirely from an agreement made by that association.;
- Do allow all members to attend annual and other general meetings so as not to exclude a specific firm or category of the association’s membership;
- Do ensure that the exercise of standard-setting and other statutorily granted self-regulatory powers is appropriately related to the regulatory mandate established by the Competition Act No.12 of 2010;
- Do ensure that association set common standards are freely available and open for all to use;
- Do ensure that rules, codes of conduct or standards (rules) include a clear statement of objectives, expectations and responsibilities, as well as a transparent dispute resolution mechanism;
- Do ensure open consultations in the development of any rules;

- Do undertake an internal or external compliance review/Audit to identify any anticompetitive past or current practices, rules and regulation.

Don'ts

- Don't enter into agreements or any recommendation with fellow members on prices (including minimum price), pricing formulae, margins, discount structures, rebates, terms of sale, transport and delivery costs, sales and production volumes, customer allocation, geographic allocation, bid rigging or collusive tendering or any other practice that restricts competition;
- Don't agree or even discuss company pricing policies or any other strategic policies;
- Don't exchange competitively sensitive information in particular individual member information on recent past and future pricing, sales volumes, pricing formulae, production capacity, costs, etc.
- Don't engage in communications at association meetings or social events about competitively sensitive information, such as private meetings between competitors under the pretext of association meetings;
- Don't use unreasonable disciplinary measures to coerce members to provide information or data for information sharing purposes;
- Don't establish arbitrary criteria for membership that will exclude a competitor or category of competitors from membership in the association;
- Don't impose sanctions or discriminate against members that do not adhere to rules with respect to competitively important considerations;
- Don't use rules to establish prices, mandate levels or types of services, restrict advertising, or exclude viable competitors from the market;
- Don't use standard-setting to artificially provide some competitors with a competitive advantage over others, including firms with the potential to enter the market; and
- Don't make materially false or misleading representations to the public promoting the business interests of the association's members.

C. IMPLEMENTATION

13. In light of the core objectives outlined, the SCP began with individual engagement with tier 1 stakeholders (regulators in both the financial² and agriculture³ sectors). This was followed by the publication of Gazette Notices notifying the general public of the Inquiry. Thereafter, there were meetings with stakeholders, specifically industry associations in both the financial and agriculture sectors, who were invited to awareness forums for the SCP as illustrated by **Figure 1**. Subsequently, the participating Associations provided their submissions which were evaluated by the Authority after which further meetings were held to discuss the probable contraventions and the way forward. Furthermore, some of the participating Associations committed themselves through signed undertakings to remedy the identified probable contraventions.
14. The Authority held three meetings between the 29th March, 2015 and the 6th May, 2015 with Tier 1 stakeholders (regulators and other government actors) with jurisdiction in the financial and agriculture sector. The objective of these meetings were to;
 - a. Abreast stakeholders with the objectives and implementation of the SCP;
 - b. Cultivate buy in to the process amongst or co-sector regulators; and
 - c. Encourage the sector regulators to provide any relevant information that would facilitate the SCP.
15. During these meetings, the Authority additionally exposed sector regulators to the CAK's Competition Regulatory Impact Assessment framework (RIA) and received valuable information on sector specific industry associations and how to contact them.

²Central Bank of Kenya and Insurance Regulatory Authority

³Agriculture, Food and Fisheries Authority

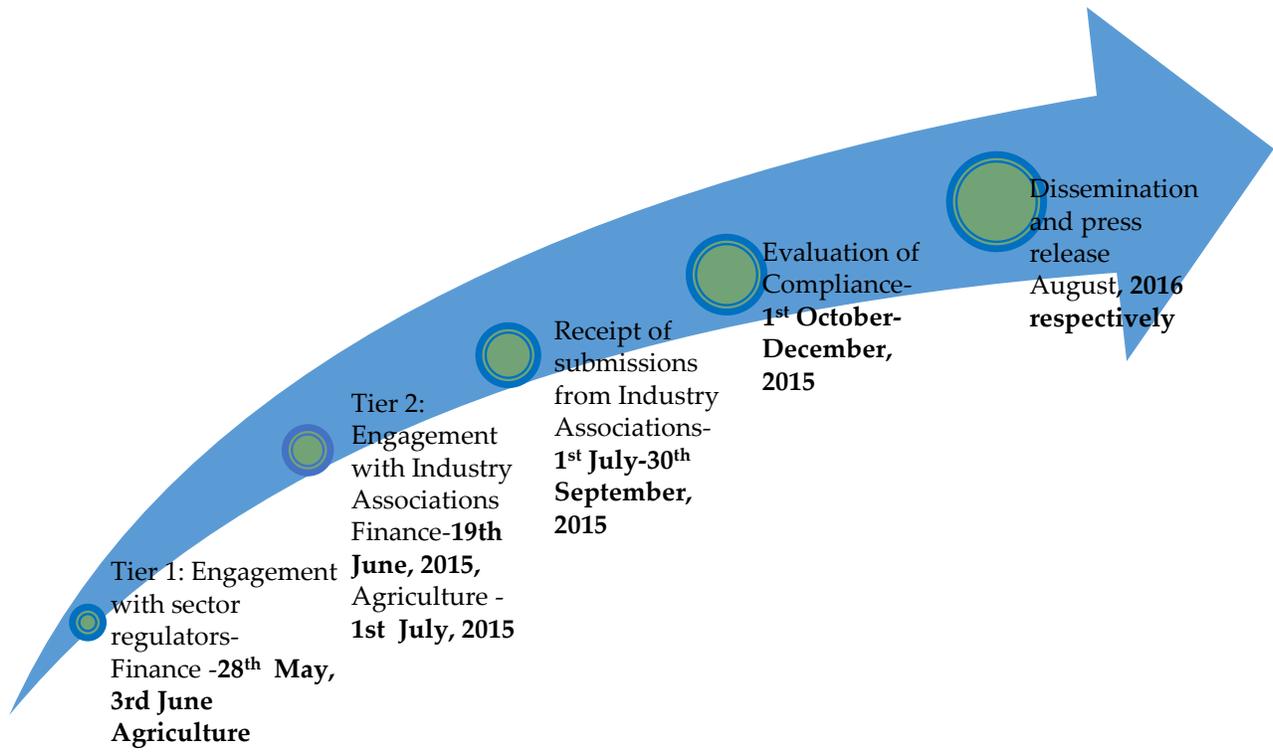


Figure 1: Sequence of the Special Compliance Process

16. The Authority held a second-tier workshop with trade associations in the financial sector on 19th June, 2015. Out of the 11 identified associations, 9 were in attendance⁴.

The purpose of the workshop was to:

- i. Sensitize the associations on the SCP
- ii. Get feedback from the associations

17. During the workshop, the associations raised various issues which included:

- i. Sector regulators being involved in fixing of premium rates;
- ii. Whether there is collaboration between CAK and sector regulators particularly in the insurance sector;

⁴Kenya Forex Bureau of Association, Kenya Bankers Association; Association of Kenya Insurance; Association of Microfinancial Institutions BIMA Intermediaries, East African Venture Capital Association, Kenya Association of Stock Brokers and Investment, Kenya Association of Investment Groups, Association of Insurance Brokers of Kenya.

- iii. Whether information-sharing among commercial banks through credit Reference Bureaus violates the Competition Act.
18. The Authority held a second-tier sensitization workshop on 1st July, 2015 for trade associations from the Agro-processing and Agricultural sectors. Out of the 27 identified associations, 16 were in attendance⁵. The purpose of the workshop was to:
- i. Sensitize the associations on the SCP
 - ii. Get feedback from the associations
19. Various issues were raised in the course of organizing and conducting the workshop and these included:
- i. Some associations were not involved in trade, but were policy organizations that specialized in lobbying.
 - ii. Information-sharing identified by the Authority as a potential contravention of the Act was used to inform farmers of best prices rather than to distort market outcomes.
 - iii. Some Associations pointed out that they did not have enough capacity to take up the SCP.
 - iv. It was noted that since the workshop was based out of Nairobi, some associations were unable to attend because of various financial constraints.
20. The Authority in dealing with the aforementioned challenges advised that:
- i. The associations which were formed for lobbying purposes did not fall within the definition of trade associations according to the Act.
 - ii. Sharing of information which is already in the public domain or historical data may not amount to restrictive trade practices.
 - iii. Associations lacking capacity could consult with CAK in regard to their compliance level with the Competition Law.

⁵Kenya Tea Growers Association, Kenya Livestock Producers Association, Kenya Potato Council, Kenya Coffee Traders Association, Cereal Growers Association, Cereal Millers Association, Kenya Potato Farmers Association, East Africa Tea Traders Association, Africa Women in Agriculture Network, Kenya National Federation of Farmers, Kenya Poultry Farmers Association, Kenya Coffee Producers Association, East Africa Grain Council, Kenya Livestock Producers Association, Kenya Horticultural Producers Association, Kenya Rural Savings and Credit Corporative Societies Union .

- iv. They would network through existing associations to reach out to other regional associations.
21. As per the terms of the SCP process, the Authority invited the associations to make submissions after conducting a self-evaluation process, these were thereafter evaluated by the Authority and further engagements held with the associations in regard to the probable contraventions identified by the Authority.
22. In order to evaluate the level of compliance; the following documents were assessed:
- The associations' constitution and or rule book, Code of Conduct, guidelines;
 - Articles and Memorandum of Association;
 - Minutes of all the Associations' meetings and subcommittee meetings from October 2011;
 - Board packs, reports and presentations made during the association's meetings;
 - Comprehensive list of the association's members for the years 2011 to 2015 and their contact details;
 - Circulars made to members and stakeholders; and
 - Associations' directive to the members on products and services pricing.
23. The final statistics on responses are as follows: six (6) industry associations from the financial sector and five (5) from the agricultural sector responded within the ambit of the Special Compliance Process (Table 1).

Table 1: List of industry associations that participated in SCP

Financial Industry Associations	Agriculture Industry Associations
1. Kenya Forex Bureaus Association	1. East Africa Tea Traders Association
2. Association of Kenya Insurers	2. Cereal Millers' Association of Kenya
3. Kenya Bankers Association	3. Kenya Aqua cultural society of Kenya
4. BIMA intermediaries	4. Kenya Coffee Producers Association
5. Association of Kenya Reinsures	5. Kenya Coffee Traders Association
6. Association of Kenya Insurance Brokers	

D. APPROACH TO THE DIFFERENT LEVELS OF PARTICIPATION

24. Recalling that the overarching objective of the SCP was to achieve compliance with the Competition Act, it was recommended that the SCP team develop a methodology to deal with different levels of participation in the process by the industry associations. The three different levels of participation were captured as follows:

i. Participated:

- a. **CATEGORY A:** Industry associations which fully participated in the SCP by providing duly filled self-evaluation form and/or subsequently requested information.
- b. **CATEGORY B:** Industry associations which provided duly filled self-evaluation form, but did not make full submission to the Authority particularly in regard to additional information requested.

ii. Did not participate:

- c. **CATEGORY C:** Associations which did not make any submissions or engage the Authority through the SCP.

25. The methodology used for each category is illustrated in Table 2 below.

Table 2: Methodology per category of Participant

A. PARTICIPATED (CATEGORY A)	B. PARTICIPATED BUT NOT FULLY (CATEGORY B)	C. DID NOT PARTICIPATE (CATEGORY C)
1. Evaluated submissions made to the CAK; 2. <i>If Submissions are not complete they are then part of category B;</i> →	1. Engaged with the Industry Association to fully comply 2. Received and evaluated submissions 3. For those with completed submissions →	1. Prioritize high impact trade of associations that have not participated. 2. Carry out verification exercises with stakeholders to authenticate the level

<p>3. For those with completed submissions, CAK made a determination on the level of compliance;</p> <p>4. Engaged the Industry Associations on the level of compliance with the SCP</p>	<p>CAK made a determination on the level of compliance;</p> <p>4. Engaged the Industry Associations and on the level of compliance with the SCP</p>	<p>of compliance with the Act</p> <p>3. <i>Prioritise and initiate investigations into high impact associations with likely contraventions</i></p>
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Way Forward for Category A&B

26. The means of evaluation required engagement with Industry associations that have participated in order to:

- a. **Verify** any submissions made by participating industry associations in regard to complying with the Competition Act.
- b. **Authenticate** the actual level of compliance of the industry associations covered under the special compliance process.
- c. **Prioritize** any industry associations to establish whether the Authority has a basis to commence investigations in the industry.

Way Forward category C

27. There was need to map out the way forward for this category of industry associations. Specifically, the way forward included:

- i. Prioritising the industry Associations that have not participated and need further review;



- ii. Carrying out further inquiry into the conduct of prioritized industry associations; and
- iii. Recommending the next course of action for each of the selected Industry Associations (Investigation/ Advocacy).

28. The principles used to prioritise non-participating associations or those that participated but did not fully comply, were:

- a. **Impact Potential**, which has two dimensions within this context. First, it is the ability of the investigation into the trade associations to directly influence prices at the consumer level. Secondly, impact potential can be considered in terms of the ability of the investigation to increase the visibility of the CAK. In this regard, priority may be given to trade associations that:
 - i. Have straightforward infractions with evidence to support these assertions;
 - ii. Have the potential to generate significant public interest;
 - iii. Have the potential to contribute directly to the lives and living standards of the vulnerable groups especially the poor and marginalised; and
 - iv. Are likely to affect the Investment climate.

The test of impact potential will be further corroborated by field visits.

E. Past anti-competitive conduct; the CAK will initiate investigations on trade associations based on previous claims of anticompetitive behaviour that were levied against these associations. In addition, previous market or association specific studies that are relevant to the current competitive landscape have been used to inform current investigations. In this regard, institutional memory on trade associations would give priority to markets where the CAK has had previous engagement. If trade associations have demonstrated the ability and incentive to engage in anticompetitive conduct, these trade associations should be a priority.

E. FINDINGS

Financial Sector

29. This part of the inquiry focused on three sub sectors namely; Insurance, Banking services, Micro-financial, Forex-exchange Bureaus and Capital Markets.
30. Out of the 6 associations that submitted their documents, two associations admitted to having probable contraventions.
31. Contraventions admitted in this sector were;
 - i. Fixing of premiums rates;
 - ii. Fixing of commissions;
 - iii. Unjustifiable exclusion to ordinary membership (who make determinations/resolutions);
 - iv. Price fixing;
 - v. Collusive trading; and
 - vi. Market allocation.
32. All the associations that admitted to have contraventions in this sector signed an undertaking with the Authority in which they undertook that they would desist from activities that contravened the Competition Act.

Agriculture Sector

33. This part of the inquiry focused on the agriculture and agro-processing sub sector with specific focus on the following sub categories: (a) Inputs, (b) Produce (c) Agro-processing, including meat (c) Exporters; and (d) overarching associations.
34. It covered various levels of the agricultural value chain, from inputs such as seed, fertilizer, animal feed and pesticides, through crop production by farmers, to processing of agricultural outputs into consumer products. This includes livestock and meat production. The commodity nature of the products makes the Agricultural and Agro-processing sector especially susceptible to contraventions of the relevant sections of the Act.
35. Out of the twenty six (26) industry associations contacted to participate in the Agricultural sector, five agricultural associations responded.

36. It was noted that there were indications of contraventions taking place in the agricultural sector. Contraventions that were probable, after review of the documents submitted were unjustifiable exclusion from a trade association and price fixing.

G. CHALLENGES

37. The challenges faced during the evaluation process for both sectors were
- i. Some documents requested were not submitted in the first instance.
 - ii. Some minutes submitted were not executed while others were not authentic.
 - iii. Some associations did not identify their contraventions in their submissions.
 - iv. Participation from the agriculture and agro-processing sectors was poor with only 5 associations participating in the process.
 - v. Associations were wary of identifying probable contraventions for fear that it constituted an admission of guilt that would adversely affect the rights of their members.
 - vi. The remedial measures and compliance programmes suggested by associations will require monitoring compliance process. Some associations indicated that some conduct would not be stopped as it would destabilize the industry. This meant applying for exemptions. The Authority would evaluate the exemption applications made separately from the SCP process.

H. LESSONS LEARNT

38. Despite the large turnout at the sensitization workshops, the actual participation of the associations in the SCP was low. This was due to the fact that the process would make them incur legal and administrative costs which they had not taken into account. It would be necessary for the Authority to put in resources for the SCP so as more associations can participate in the process

39. It was noted that though there are many registered associations but most of them are not active therefore could not participate in the SCP process. It is important for the Authority to segregate active associations from those which are not. The Authority will now focus on associations which have high impact to the vulnerable members of the society.
40. The Authority observed that some trade associations are located outside Nairobi especially the agriculture ones, hence need to expand the awareness outside Nairobi.
41. The SCP process was sometimes misunderstood by the stakeholders who framed it as an investigation initiative rather than a soft enforcement initiative. To manage this the Authority has developed annual workshops for stakeholders including journalists to sensitize them on competition matters.
42. There was reluctance from the associations to admit to activities as they were not aware that they were contravening the Act. It is evident that still there is ignorance and lack of awareness of the law. It is essential that CAK creates awareness to all sectors and explicitly associations as they are the ones who formulate policies that govern most organizations.
43. Through the SCP process, it was noted that there is need for more collaborations with other sector regulators in the form of MOUs as this would enable them to be aware of the mandate of the CAK. The Authority has since then developed and signed MOU's with the IRA (insurance sector) and AFFA (agriculture sector).

I. CONCLUSION

44. The main objective of the SCP process was to remedy past conduct and ensure future compliance. As per the terms of the SCP process, Trade Associations were required to identify contraventions and provide remedial action to ensure future compliance with the Competition Act.

45. Among the probable contraventions admitted to by the associations and those identified by the Authority, the most prevalent in the financial sector include hard-core restrictions such as fixing of premium rates and commissions, recommendation of terms of sale and sharing of accounts between association members. In the agriculture sector, the most prevalent contraventions were unjustifiable exclusion from membership and price fixing.
46. It is notable that 5 industry associations in both Financial and Agriculture, found clarity on their particular contraventions and subsequently gave an undertaking to the Authority in terms of acknowledging the contraventions, providing commitments on timelines to comply and formulation of internal compliance programmes. It is however worth noting that the main associations of the two sectors participated in the process.
47. As a result of the process, 10 industry associations now are fully aware of what they need to do to be fully compliant with the competition Act. In addition, the participating industry associations have made commitments to ensure that there are compliance mechanisms in place to prevent future unwitting contraventions.
48. The Special compliance process was non-adversarial and encouraged IA'S to participate without the risk of litigation on declared conduct. Several contraventions spanning from the unjustifiable exclusion of members to price fixing and coordination were identified by both the IA's themselves and the CAK. This saved the Authority approximately (USD 207,331.642)⁶
49. The publicity surrounding the SCP served to increase awareness of the Act, its provisions and the requirements for IA's to be compliant. This is evidenced by the attendance of 25 industry associations to two stakeholder engagement forums for the SCP. In addition, there was a significant increase in the number of times the CAK was mentioned in the press before during and after the conduct of the SCP process. Moreover, by successfully gaining the commitment of 10 Industry associations to develop and apply internal compliance mechanisms, the CAK effectively reduced the probability of future non-compliance to the Act.

⁶ The average cost of an investigation estimated at Ksh 2,000,000 at an exchange rate of 1USD= KES 101.287

50. Overall, the SCP process created awareness of the Competition Law not only to the participating associations but also the general public. Furthermore, the SCP has contributed to inculcating a culture of adherence to Competition Law and Policy by ensuring that participating Industry Associations undertook to set up internal compliance programs. In addition, due to the SCP some associations have sought for exemption for certain conduct such as Price Fixing and Unjustifiable Exclusion from a Trade Association.
51. Further, in the agriculture sector it was noted that some government policies in the value chain raised competition concerns. Similarly in the financial sector, certain laws and regulations presented competition concerns. Currently CAK has developed, jointly with The World Bank, a Regulatory Impact Assessment (RIA) framework and Product Market Regulation (PMR) to guide in addressing laws and policies that infringe the Competition Act.

Way Forward

52. The Authority will continue monitoring the compliance for those Associations who undertook through a monitoring process given the timelines set by the Associations.
53. For the Associations who participated but did not fully comply with the terms of the SCP, the Authority may open up investigations especially on fresh complaints and this may lead to sanctions such as penalties.
54. It is envisaged the Authority will extend, resources allowing the SCP to other sectors of the economy, based on their impact to our economy and into regional integration.