



9th ANNUAL SYMPOSIUM ON COMPETITION LAW AND POLICY

DIRECTOR-GENERAL'S SPEECH

28th OCTOBER, 2022

1. My Colleagues and our Stakeholders, Good Morning

2. Let me take this opportunity to welcome you to our 9th Symposium. This year's symposium is special because it is the 1st Physical meeting since the disruption occasioned by the Covid-19 Pandemic.

3. **We are happy** that we are alive and able to meet again.

4. **Although** the disruptive effects of Covid-19 may have subsided, it is quite unfortunate that its ramifications to the family unit, which is the core unit of our society, is still evident. Families have been affected economically; health wise including mental issues, and; **Others** lost their loved ones.

5. **Businesses were also affected.** As a result, we have been experiencing an increased mortality rate of Businesses, especially SMEs, due to effects of Covid-19 disruptions.

6. This situation has been **exacerbated** by the current economic crisis not only facing Kenya but the whole Globe.

7. **From where I sit**, the economic crisis is a result of our immediate past fiscal measures, **especially the debt portfolio**; the **climate change** and the **disruption of global and regional supply chains due to the active tensions in Eastern Europe and the ineffective implementation of our regional trade agreements**.
8. **Ladies and Gentlemen**, we need to remind ourselves that for every 100 Kshs collected by Kenya Revenue Authority, Kshs. 65 is allocated to debt repayment. As a result, the economy is starved off development money, definitely affecting economic growth negatively. This means that Government Agencies' budget, including CAK's, may remain stagnant while more is demanded from us in terms of deepening competition in the markets.
9. Climate Change has resulted to escalation of food prices. Maize meal prices have increased by about 50% while the retail milk prices have escalated by an average of 10% over the last one year. The current seemingly *La Nina* weather phenomenon may worsen this situation unless interventions are actualized urgently.
10. **The Russia/Ukraine active tension** has disrupted supply chains of our major sources of fertilizer and wheat. This has occasioned fertilizer prices increasing by 100% over the last one year while wheat flour prices by around 13%. Soya Prices have risen by over 90% affecting the prices of animal feeds which have increased by 40%. It is unfortunate that we are experiencing such high prices, yet Southern Africa countries have a bumper maize and soya beans harvest.
11. The highlighted scenario definitely calls for concerted efforts by all Government agencies. We have to be part of this machinery. We are aware that most of the challenges are macro in nature. **However**, we

should inform and support the market recovery and sustainability initiatives while also ensuring the interventions proposed by the Government are within the competition policy tenets.

12. **Towards this**, CAK has seen it appropriate, as always, to discuss and seek your opinion in order to inform our interventions in attending to the current Economic crisis. This will in the end aid us in achieving the primary objective of the Competition Act. **That is**, promoting consumer welfare.

13. **Ladies and Gentlemen**,

You will bear us witness that the past Authority's Symposia have not been '**Coffee shop talks**'.

14. Borne of the past interactions, we have in place a Leasing Framework that will inform development of a Leasing Regulatory Regime in Kenya. It is my conviction that the regime will play a critical role in aiding the SMEs competitive capacity.

15. As you may recall, this is one of the Key Pillars of the current Government's Economic Plan.

16. **Further**, Digital Financial Service Providers are now being regulated. The regulations which were informed by the findings of a Digital Credit Market inquiry conducted by the Authority, attests to the very many issues that have been canvassed at length in past Symposia.

17. Your advice from other past events have informed amendments to the Competition Act with regard to Abuse of Buyer Power provisions, CAK.

18. We are therefore gathered here today on a noble, but challenging mission: to discuss what role, if any, we individually and collectively, within ethos of market competition, can play to alleviate the economic challenges we are facing, or reduce their adverse impacts on our society.
19. As highlighted earlier, these are macro-economic issues and I am glad that representatives from the National Treasury and the Central Bank of Kenya are in the room to chart a common way forward.
20. We have also invited Practitioners from other parts of the world, specifically OECD membership, to share their experience. Let me take this opportunity to recognize the Presence of Mr. Antonio Capobianco, Deputy Head of The OECD Competition Division.
21. We are also aware that regulation and research are a cog-wheel that ensure optimal decisions or effective regulatory regime is attained. It is with this realization that the Authority has consciously engaged researchers in her policy development. Prof. Simon Roberts from Centre for Competition, Regulation and Economic Development, has continued to be a credible partner in our journey. We salute you, Simon. Kwame Owino of the Institute of Economic Affairs, has also been very valuable in this journey. Asante Sana Kwame.
22. I look forward to the discussions on this topic and the recommendations.
23. On the other hand, the economic challenges have forced Governments to implement austerity measures leading to revision of the Budget downwards. In Kenya, we expect a downward revision of the Budget by Kshs. 300 B. This definitely calls for innovative ways of delivering our mandate. **Na Si Tafadhali.**

24. My message to my fellow regulators is that there is an increased urgency to step up our collaborative efforts and harness our synergies. My appeal is that we should accelerate our engagements within our MoUs. Active and deliberate cooperation is one sure way of achieving our mandates in lean times.
25. Internationally, my position is that our Cooperation demand curve is at its highest. Internationally, we have to collaborate in our enforcement activities to ensure that Supply chains are not disrupted by firms' behavior. This includes the Shipping lines, the Passenger and Cargo Airlines and the regional haulage transport system.
26. In addition, platforms have become an essential facility in facilitating travelling, including tourism. Platforms are located in the North but their behavior affects both North and South. Some of the Platforms' behavior has been spotlighted as tending towards abuse of dominance and may hamper economic revival, especially in the tourism sector. We shall be seeking the support and cooperation of OECD membership to support our enforcement initiatives targeting the platforms.
27. At Continental level we have already signed an MoU with the Competition Commission of South Africa, Mauritius Competition Commission, Egyptian Competition Authority and Nigerian Competition Commission aimed at having a common and collaborative approach in dealing with competition infringements or concerns in the Digital Economy and by Platforms.
28. I wish also, to call upon my fellow Regulators, that as an initiative to accelerate growth, we should endeavor to conduct ex-post reviews of our past decisions, especially those made at the height of the Covid-19.

29. Let us ask ourselves hard questions such as; is it conceivable that the exclusions that we granted such as in the airlines industry, during the COVID-19 pandemic, are now working against economic rebound?
30. Nonetheless, as regulators, it is our obligation to operate within the laws donated by the legislature.
31. It is incumbent upon ourselves therefore to continuously interrogate our regulatory space and seek for upgrade to ensure that it attends to the emerging issues. For example, our near past experience seems to advocate for adoption of expansive public interest provisions and the Abuse of Buyer Power mandate within the traditional precincts of a Competition law. There is another school of thought that remains conservative. This is an on-going Global discussion which we have decided to cascade to this platform. I look forward to the plenary attending to this topic to inform the bridging of the schism between the two Schools.
32. The Competition Authority of Kenya will continue to engage our stakeholders with the objective of ensuring that our regulatory framework remains effective. This does not mean that we shall at any time overlook breaches of the law but the Authority, for instance, shall fast-track merger applications, but within the statutory approval criteria. Such commitments are aimed at ensuring that businesses can quickly achieve the objective of their merger, whether it is building on synergies or salvaging assets.
33. It is also very comforting for the Business Community that during the Vetting Process of the current Cabinet Secretary for the National Treasury, Prof. Njuguna Ndung'u, he articulated his conviction to a

market economy and responsive regulation. Although I do not purport to speak on his behalf, his role in the growth of Mobile money transfers and payments in Kenya buttresses and vindicates this conviction.

34. Therefore, I see a very valuable Champion for competition policy. This should assuage any jittery stakeholder, especially during this economic crisis.

35. As you are aware, this is my last symposium as a DG. Let me therefore take this opportunity to thank all of you for travelling this journey with me. We started in deep seas with no vessel, we built the ship, got the crew, and charted the navigational route.

36. I can therefore say that I shall be disembarking from a formidable vessel but leave a competent crew. A new captain shall be embarking. The only advice I wish to offer them is to be bold but avoid the *Titanic arrogance*.

37. To conclude, I wish to thank all of you for the Support you have accorded the Authority over the years. Special commendation to the Members of the Press who have always endeavored to pass the right message. You have been an invaluable asset in our journey. Not to forget our Parliament which has continuously supported us in modernizing our law to cope with market dynamics.

38. Asanteni Sana! God Bless You

Wang'ombe Kariuki, MBS.
Director-General.