



THE COMPETITION AUTHORITY OF KENYA

ANNUAL REPORT 2013/2014

Table of Contents

Part I Annual Report 2013/2014

CORPORATE INFORMATION	iv
PREAMBLE	v
Vision	1
Mission	1
Motto	1
Core Values	1
Mandate	1
CORPORATE GOVERNANCE	3
The Board	4
Role of the Board	8
Board Meetings	8
Technical and Strategy Committee	9
Human Resources Committee	9
Audit and Risk Management Committee	9
Finance Committee	9
Senior Management	10
CHAIRMAN'S STATEMENT	13
DIRECTOR GENERAL'S STATEMENT	16
Introduction	16
Mergers and Acquisitions Department	19
Enforcement and Compliance Department	22
Consumer Affairs Department	25
Human Capital and Infrastructure Development	38
Legal Department	43

Communications and External Relations	45
ICT Unit	47
Procurement Unit	47
Internal Audit and Risk Management	48
Finance Department	49
Challenges	49
Way Forward	50
Conclusion	51
Part II Financial Statements for the year 2013/2014	52
Statement of the Directors' Responsibility	53
Report of the Independent Auditor-General	54
Statement of Financial Position	56
Statement of Financial Performance	57
Statement of Changes in Net Assets	58
Statement of Cashflows	59
Statement of Comparison of Budgets and Actual Amounts	60
Notes to the Financial Statements	61
Annexes	74
ANNEX 1: Merger Notifications	74
ANNEX 2: Advisory Opinions	84
ANNEX 3: Enforcement and Compliance and Consumer Affairs Cases	86
ANNEX 4: Summary of Consumer Affairs Cases	89

PART I
ANNUAL REPORT
2013/2014

Corporate Information

Physical Address:

Kenya Railways HQs Block 'D', Ground Floor,
Workshop Road off Haile Selassie Avenue,
P.O Box 36265 – 00200,
NAIROBI, Kenya.
Tel:+254-20-2628233
Website: www.cak.go.ke
Email: info@cak.go.ke

Auditors:

Auditor General,
Kenya National Audit Office,
Anniversary Towers,
P.O. Box 30084 – 00100,
NAIROBI.

Bankers:

Kenya Commercial Bank Limited,
KICC Branch,
P.O. Box 30081 – 00100,
NAIROBI.

Preamble

This Annual Report of the Competition Authority of Kenya (CAK) is developed pursuant to section 83 of the Competition Act, No. 12 of 2010 (the Act) and aims at providing information on the activities undertaken by the Authority, and its overall performance, based on its key performance indicators during the Financial Year 2013/2014. This Report, as required under section 83, will be laid before Parliament. In summary, it highlights the nature and scope of the Authority's activities, plans and priorities including the performance of the CAK against its key performance indicators and also complaints, studies and applications considered during the year.

The Authority's is created under section 7 of the Act as an independent Agency under the National Treasury. The Act came into effect on August 1st 2011 with the object of promoting and safeguarding competition in the national economy and to protect consumers from unfair and misleading market conduct. The Authority exercises this mandate through enforcement of the Act, including advocacy initiatives informed by market studies and inquiries.

The Authority's performance indicators are outlined in the Authority's Strategic Plan (2013/14-2016/17). This key result areas were aligned to Vision 2030's anticipation of having a market based economy, oiled by effective competition, which, inevitably, will be a means of facilitating growth in all the sectors of the economy.

Accordingly, most of the resources were directed towards enforcement of competition and protection of consumers in which 88 mergers were finalized, compared to 65 in the previous year. In regard to restrictive agreements and practices, 17 restrictive trade practices cases were handled while 2 exemption applications were determined. The Consumer Affairs Department handled a total of 14 cases. This is a significant increase from the previous year's 6 cases, clearly demonstrating that consumers are appreciating their rights as provided for under the Act.

In order to deepen stakeholders' awareness and consequently enhance self-regulation, with the ultimate objective of minimizing regulatory costs, the Authority engaged stakeholders in various activities such as in development of various guidelines, under the Act, and also in celebrating the World Consumer Rights Day and also the launch the Authority's Strategic Plan and Code of Conduct, among others.

The Authority, as an endeavor of informing its advocacy role, and thereof drive the achievement of the Kenya Vision 2030, undertook a number of market inquiries. Specifically, inquiries were conducted in the Agriculture sector, focusing on Tea production, processing and marketing; Artificial Insemination market and Seed. Other market studies focused on some drivers of investments in the economy, specifically the banking and cement sectors. In order to enhance awareness and create a culture of competition in the country, among the stakeholders, the Authority created a Communications Unit during the period under review.

The above achievements were realized through mitigation of various challenges. The key ones were; the long-process of deploying and implementing a job evaluation report and thereafter

the long process of procuring the requisite approvals to enable the Authority to populate itself. Also, the static budget allocation hampered the procurement of an Enterprise Resource Planner (ERP) system. This has posed a great challenge in automating the Authority's processes. Nonetheless, during the period, the Authority developed and rolled out various policies and manuals to guide its human resources and Finance functions. In addition, the Authority developed an Enterprise Risk Management Manual and a M&E framework and an Impact Assessment framework. These enabled the Authority to mitigate against the said challenges and risks, while increasing its efficiency and effectiveness within a static budget.

In regard to advising the Government on national and international competition matters, the Authority continued engaging COMESA with the aim of reviewing its merger enforcement regime which, according to the view of the Kenyan government, is not in support of the spirit and letter of the Treaty. The Authority also participated in activities aimed at deepening the implementation of the East Africa Community Common Market protocol especially in the operationalization of the EAC Competition Act. Also, the Authority participated in various international activities, including the OECD Global Competition Forum; UNCTAD Intergovernmental Group of Experts Conference and International Competition Forum meetings, all aimed at deepening the Authority's enforcement capacity.

To conclude, we wish to highlight that during the period, the Authority was cognizant of the fact that enforcement of the Competition policy and law is a key driver to the current government's transformation agenda and especially increasing the productivity in the agriculture sector to facilitate inclusive growth and shared prosperity.

Vision

“A Kenyan economy with globally efficient markets and enhanced consumer welfare for shared prosperity”

Mission

“To enhance competition and consumer welfare in the Kenyan economy by regulating market structure and conduct in order to ensure efficient markets for sustainable growth and development.”

Motto

Creating efficient markets for consumers.

Core Values

The guiding principles in the operations of the Authority are:

- i. Customer focus - commits to attaining the highest standards in service delivery to all stakeholders.
- ii. Integrity - commits to acting in an honest, transparent and responsible manner while implementing its programmes.
- iii. Professionalism - shall be guided by professional ethics aimed at building an appropriate corporate culture and creating the right corporate image.
- iv. Impartiality - shall uphold the highest levels of equity by treating all stakeholders without any discrimination whatsoever.
- v. Teamwork - shall adopt a participatory approach and work together at all levels in the conduct of its business.
- vi. Innovation and Creativity - shall be a learning organization that embraces change and continuously enhances creativity and innovation in its business processes.

Mandate

The Authority’s mandate is generally to promote and safeguard competition in the national economy and to protect consumers from unfair and misleading market conduct. This has the objective, as indicated in the Act, of enhancing the welfare of the people of Kenya. The Act’s approach is competition neutrality which means it applies to all persons including the national and devolved Governments’ actions, and State Corporations in so far as they engage in trade. The Authority achieves its mandate through the following specific functions: -

- a) Promotion and enforcement of compliance with the Act;
- b) Receiving and investigating complaints from legal or natural persons and Consumer bodies;

- c) Promoting public knowledge, awareness and understanding of the obligations, rights and remedies under the Act and the duties, functions and activities of the Authority;
- d) Promoting the creation of consumer bodies and the establishment of good and proper standards and rules to be followed by such bodies in protecting competition and consumer welfare;
- e) Recognizing consumer bodies duly registered under the appropriate national laws as the proper bodies, in their areas of operation, to represent consumers before the Authority;
- f) Making available to consumers' information and guidelines relating to the obligations of persons under the Act and the rights and remedies available to consumers under the Act;
- g) Carrying out inquiries, studies and research into matters relating to competition and the protection of the interests of consumers;
- h) Studying government policies, procedures and programmes, legislation and proposals for legislation so as to assess their effects on competition and consumer welfare and publicizing the results of such studies;
- i) Investigating impediments to competition, including entry into and exit from markets, in the economy as a whole or in particular sectors and publicise the results of such investigations;
- j) Investigating policies, procedures and programmes of regulatory authorities so as to assess their effects on competition and consumer welfare and publicise the results of such studies;
- k) Participating in deliberations and proceedings of government, government Commissions, regulatory authorities and other bodies in relation to competition and consumer welfare;
- l) Making representations to government, government Commissions, regulatory authorities and other bodies on matters relating to competition and consumer welfare;
- m) Liaising with regulatory bodies and other public bodies in all matters relating to competition and consumer welfare; and
- n) Advising the government on matters relating to competition and consumer welfare.

CORPORATE GOVERNANCE

The Authority recognizes governance as an indispensable factor in achieving its mandate. Towards this, CAK has clearly highlighted enhancement of visibility and corporate image and also optimal utilization of resources among its Key result areas in the current Strategic Plan. Therefore, the Authority always employs the following in guiding its activities:-

- i. The Constitution of Kenya 2010;
- ii. The Competition Act No. 12 of 2010 (the Act);
- iii. The Public Officer Ethics Act, Cap 183;
- iv. The State Corporations Act, Cap. 446;
- v. Various National Treasury and The Presidency Circulars;
- vi. The Members' / Board's Charter, and;
- vii. The Code of Conduct for Members and Staff of the Authority.

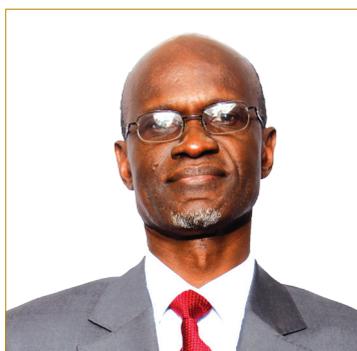
The Authority's Members always exercise independent judgment, though in a collegiate manner, and apply utmost professional competencies for effective governance of the Authority. This is as encapsulated in the Act and the Code of Conduct. In addition, the Members' Charter sets the responsibilities of the Chairman, the Members and the Director – General. Specifically, it highlights the rules that govern the conduct of individual Members. These include honesty, transparency, accountability and professionalism in service delivery.

To complement the above, relevant skills development initiatives were undertaken during the year under review all aimed at equipping the Members with skills and knowledge to effectively perform their responsibilities. In particular, all the Members were exposed to Corporate Governance courses; competition law and policy management and also training on how to improve Agency effectiveness.

The Board

The Authority's Board is established under section 10 of the Act and comprises of six (6) independent, non-executives, Members. The Chairman, as provided by the law, is appointed by the Cabinet Secretary (National Treasury) from among persons experienced in competition and consumer welfare matters. The other five independent Members were appointed competitively and thereafter vetted and approved by Parliament. The Government's representation comprises of The National Treasury, The Attorney – General and the Principal Secretary to the Ministry of East African Affairs, Commerce and Tourism. The Director – General is an ex-officio Member and Secretary of the Board.

The Membership of the Board during this period comprised of:-



Mr. David O. Ong'olo - Chairman

Mr. Ong'olo was appointed Chairman of the Competition Authority with effect from 1st January, 2012 for a period of 3 years. He has a long standing interest in competition policy and private sector development and has worked on these topics spanning institutional development, sectoral regulation and industrial policy analysis. He is particularly interested in bridging the worlds of rigorous industrial sector analysis and practical policy making and implementation. He

holds a Bachelor's degree in Economics from the University of Nairobi and a Master of Science degree in Industrial Economics from Lancaster University, U.K.



Mr. Francis W. Kariuki - Director General

Mr. Kariuki's has a vast experience in competition enforcement having risen through the ranks to become the 1st Director-General of the Competition Authority of Kenya. His main interests are in competition regulation and also Economics of institutions' development. He is very well respected in the Competition Enforcement World for his advocacy efforts and other initiatives geared towards modernizing various competition regimes. Francis is a holder of Master of Science

in Economic Regulation and Competition from City University, London; BA-Economics and Business Studies (Kenyatta University) and various Certificates in Strategic Leadership and Corporate Governance.

Ms. Judith A. Guserwa

Ms. Judith Abrahams Guserwa is the managing partner of J. A. Guserwa and Company Advocates - a firm specializing in Labour and Commercial Law, a procurement law expert with close to 30 years practice as an advocate of the High Court of Kenya. She holds an LL.B degree and LL.M degree from the University of Nairobi and an MBA in Strategic Management. She is a member of the Chartered Institute of Arbitrators (CI Arb), International Labour Organization (ILO) consultant in labour and human capital and director at the State Corporations Appeals Tribunal. Judith is also a former member of the Public Procurement Oversight Authority Review Board, Law Society of Kenya Council Member. She previously worked with the Federation of Kenya Employers and Muthoga Gaturu and Company Advocates, before setting up her own practice in 1992.



Mr. Stephen K. Kiptinness

Mr. Kiptinness was appointed Member of the Competition Authority on 26th September, 2012 for a period of three (3) years. He is a Senior Partner in Kiptinness and Odhiambo Associates—a technology media telecommunications law practice, an Advocate of the High Court of Kenya. He has also been appointed and served on several national and regional committees in ICT law and Competition Law. Mr. Kiptinness also lectures on Cyberspace, E-Commerce, Competition, Telecommunications, Media and Entertainment Law at the University of Nairobi's School of Law. His previous work experience has included roles such as Head of Regulatory Affairs at Telkom Orange, Senior Legal Officer at the Communications Commission of Kenya, Manager of the Alternative Dispute Resolutions Centre at the Commonwealth Telecommunications Organization in London, and as Legal Assistant at Oraro and Co. Advocates. Mr. Kiptinness obtained his LL.B degree from the ILS Law College and LL.M from the London School of Economics. He is a member of the Law Society of Kenya and the Institute of Certified Public Secretaries Kenya. He is also a certified patent agent for the Kenya Industrial Property Institute and a Notary Public. His expertise has granted him appointments on several public and private sector boards including the Kenya ICT Board and the Scripture Union National Executive Board.





Canon Charles G. Komu

Canon Gikunju was appointed Member of the Competition Authority on 26th September, 2012 for a period of three (3) years. Canon Komu started his career in the Government service with the Ministry of Works (Purchasing and Supply Department.). He joined the Tea Industry (Kenya Tea Development Authority) in 1980 as a trainee Factory Manager which saw him serve tea farmers in Central Kenya, North Rift, Nyanza and Eastern Regions rising to the position of Regional Operations Manager. He holds a Bachelor of Science Degree in Human Resources, a Masters in Strategic Management and Diploma in Management and Logistics. He also holds a certificate in advanced Christian Leadership from Haggai Institute of Advanced Christian Leadership from Hawaii, USA. He is a full Member of Kenya Institute of Management and a life Member of Kenya Red Cross.



Ms. Eunice Maranya

Ms. Eunice Maranya is a Business, Management and institutional development specialist with over 15 years of banking experience and 7 years of consulting for large donor, private and public sector organizations. She is the Country Director of the Digital Opportunity Trust, a Canadian NGO that works in the youth and ICT space. She was also the CEO of KARA, a national lobby organization for Residents Associations. She has worked as an independent consultant in several areas in development including DFID, Danida, UNDPSSC unit, USAID, IFAD projects; financial services sector, corporate and the public sector and has also undertaken several scoping and research assignments. She has sat in the Board of the Communications Commission of Kenya (CCK); now the Communications Authority of Kenya and is now a Board member of the Competition Authority of Kenya. Eunice holds an MBA from the United States International University (San Diego) and a BSc from the University of Nairobi. She is a member of the Institute of Directors, holds an Auditor SA 8000 Standard: Amana Ltd, Switzerland and is a Lead Auditor ISO 9001:2000: SQML Center, South Africa.



Ms. Susan A. Ayako

Ms. Ayako was appointed Member of the Competition Authority on 26th September, 2012 for a period of three (3) years. She is a Lecturer at the School of Economics of the University of Nairobi. She is an associate Member of the Kenya Institute of Banking. Ms. Ayako graduated from the University of Nairobi in 1986 and earned a Master's Degree in Economics in 1988 from the same University. She subsequently received training in Monetary Economics and Industrial Organization in Carleton University, Ottawa, Canada.

Mr. Protus Sigei - *Alternate to the Cabinet Secretary/ The National Treasury*

Mr. Sigei, a Deputy Director of Investments at the National Treasury, has worked in Kenya's public service for over two decades. He holds a B.A (Hons) degree in Economics from the University of Nairobi and a Master of Science from the University of York, U.K. He was one of the pioneer seven (7) officers selected by the Government of Kenya in 2004 to be trained, at the Boston Institute for Developing Economies, as trainers in Performance Contracting; subsequent to which he helped introduce performance contracting in Kenya's public service. Mr. Sigei is a member of the Society for Benefit-Cost Analysis, a professional society of academics and practitioners, headquartered at the University of Washington at Seattle, USA.



Mr. Michael Onyancha - *Alternate to the Principal Secretary Ministry of East African Affairs, Commerce and Tourism*

Mr. Onyancha currently is the Director of Weights and Measures, Ministry of East African Affairs, Commerce and Tourism. He joined Public Service in 1984 as Inspector Trainee in the then Ministry of Commerce and Industry rising through ranks to the current position. He holds BED Hons (Mathematics) and MBA from the University of Nairobi. Mr. Onyancha is the Country representative to the International Organization of Legal Metrology (OIML) and a member of the International Legal Metrology Committee (CIML), Board member of East Africa Standard Committee, Member of the Institute of Trade Standard Administration, Kenya (ITSA).



Ms. Elizabeth Ng'ang'a - *Alternate to The Attorney-General*

Ms. Ng'ang'a is a Parliamentary Counsel in the Office of the Attorney-General. She is an advocate of the High Court of Kenya and holds a Bachelor of Laws degree from the University of Nairobi as well as a postgraduate Advanced Diploma in Legislative Drafting from the University of West Indies Cave Hill Campus, Barbados. She has also not only undergone a range of other drafting training but also boast of a wide experience in legislative drafting. Over the years, Ms. Ng'ang'a has served on numerous committees and task forces as a drafting expert, more recently being drafting financial legislation under the National Treasury.



Role of the Board

The Members of the Authority are responsible for the overall management of the Authority. Towards this, they are committed to ensuring that the Authority's activities and operations are conducted with integrity and compliance with the law and best practices in corporate governance. The Members are also responsible for drawing up strategies for the long term success of the Authority as well as carrying out the fiduciary duty of monitoring and overseeing the activities of the Management. To actualize the aforementioned, the Members meet regularly to make determinations/decisions, based on formal schedule of matters. These matters include determination of merger applications and other enforcement activities including exemption applications and restrictive trade practices determinations; providing the Strategic direction of the Authority and overseeing the Authority's compliance with statutory and regulatory obligations. The Chairman is primarily responsible for providing leadership to the Board including Chairing of the Board's meetings. The Chairman also ensures that the Board is supplied with timely and sufficient information to enable it to discharge its duties effectively. The Director – General is the Chief Executive, and is responsible for the day to day management of the Authority.

Board Meetings

The Board meets at least once every quarter or more depending on the exigencies of the business. Members receive adequate notice for meetings and detailed papers on issues to be discussed are transmitted before the meetings.

During the year under review,

- i. The Authority's Board held 7 meetings; The Human Resources Committee held 13 meetings; Technical and Strategy Committee held 6 meetings; Audit and Risk Committee held 2 meetings, and; Finance Committee held 4 meetings during the 2013/14 Financial Year.
- ii. The Board also participated in the celebrations of the World Consumer Rights Day and The World Competition day which was also used to launch the Strategic Plan and Code of Conduct. The Board also participates in other several consultative workshops held by our stakeholders aimed at informing development of various guidelines.
- iii. The Board also approved various policies focusing on Human Resources Management; Public Finance Management; Procurement; Complaints handling, Environmental Sustainability; Fines and Settlements; Gender Based Violence; Communications (Internal and External); ICT; Procurement and also the Code of Conduct and the Service Charter.
- iv. During the period under review, the Board considered and determined 88 Mergers applications and concluded 2 Settlements on the restrictive trade practices investigations in the mobile money transfer and retail sectors.

In order to interrogate and appreciate deeper issues presented by the Management, for effective decision making by the Board, the four Standing Committees that were constituted in the preceding year continued to operate within their defined Terms of Reference.

The Committees also submit reports, of their deliberations, to the full Board, for final decision making. During the reporting period, the following Committees were in existence: -

Technical and Strategy Committee

The Committee is mandated to: -

- i. Advise on strategic planning for the Authority and related technical aspects of the operational performance of the Authority;
- ii. Work with management on technical issues related to the functions of the Authority; and
- iii. Review the quality of technical work carried out by the Authority.

The membership is constituted of Mr. Stephen Kiptinness (Chairperson), Mr. Francis W. Kariuki (Director – General), Ms. Eunice Maranya, Ms. Susan A. Ayako and Mr. Protus Sigei.

Human Resources Committee

The Committee is mandated to: -

- i. Review Human Resource policies and succession planning aspects of the Authority;
- ii. Review of Human Resources compliance with national legislation; and
- iii. Organize the structuring and performance evaluation of Senior Staff.

The Members are Ms. Judith Guserwa (Chairperson), Mr. Francis W. Kariuki (Director – General), Canon Charles G. Komu, Mr. Michael Onyancha and Ms. Elizabeth Ng'ang'a.

Audit and Risk Management Committee

The Committee is mandated to:-

- i. Periodically review the Authority's Financial reports in liaison with the External Auditors;
- ii. Review the Authority's financial statutory and non-statutory reporting obligations; and
- iii. Advice on Authority-wide risk identification and mitigation measures and checks on effectiveness and robustness of internal control measures.

The Members are Canon Charles G. Komu (Chairperson), Ms. Judith Guserwa, Mr. Michael Onyancha and Mr. Protus Sigei.

Finance Committee

The Committee is mandated to: -

- i. Review the budgeting processes of the Authority and measures to broaden sources of Authority's financial resources;
- ii. Review the interface between Authority's resource inputs and outputs; and
- iii. Advise on internal financial control systems and oversight on financial reporting.

The Members are Ms. Eunice Maranya (Chairperson), Mr. Francis W. Kariuki (Director – General), Mr. Stephen Kiptinness, Ms. Elizabeth Ng'ang'a and Ms. Susan A. Ayako.

Senior Management



Francis W. Kariuki

Director-General

Mr. Kariuki's has a vast experience in competition enforcement having risen through the ranks to become the 1st Director-General of the Competition Authority of Kenya. His main interests are in competition regulation and also Economics of institutions' development. He is very well respected in the Competition Enforcement World for his advocacy efforts and other initiatives geared towards modernizing various competition regimes. Francis is a holder of Master of Science in Economic Regulation and Competition from City University, London; BA-Economics and Business Studies (Kenyatta University) and various Certificates in Strategic Leadership and Corporate Governance.



Stellah N. Onyancha

Manager, Mergers and Acquisitions

Ms. Stellah Nyambeki Onyancha is a holder of Master of Arts in Economic Policy Management (University of Ghana, Legon); Bachelor of Arts (B.A. Hons) in Economics and Business Studies (Kenyatta University); Diploma in Management of Information Systems (IMIS (Strathmore University College); various certificates in Competition Policy and Law; and Corporate Governance and Senior Management Course. She Heads the Mergers and Acquisitions Department which mainly advises on regulation of the market structure through merger control and unwarranted concentration of economic power.



Robert Mbarani

Manager, Finance

Mr. Mbarani has a vast experience in Finance, Accounting and management skills drawn from over his 15 years of work experience with various public sector organizations. He holds an MBA in Finance from Moi University and a BA (Mathematics and Economics) from the University of Nairobi. Mr. Mbarani also holds a Higher Diploma in Human Resource Management and is a member of the Institute of Certified Accountants of Kenya (ICPAK). He has attended various management courses including Corporate Governance, Risk management and Strategic management. As part of his contribution to the betterment of the society, Mr. Mbarani is involved in a number of Board activities for schools and community based organizations. The Finance Department is responsible for finance management and reporting, resource mobilization, asset management and financial accounting in the Authority.

Anthony Muriithi Njagi

Manager, Human Resources Management and Administration

Mr. Njagi was appointed the Head of Human Resources Management and Administration unit on 1st May, 2013. Previously, he worked at Kenya Electricity Generating Company Ltd. for 16 years where he was involved in implementation of various staff welfare programmes. His main interests are in staff development and welfare issues. Mr. Njagi holds a Master of Business Administration; Moi University, Bachelor of Arts degree in Sociology from Kenyatta University and Higher National Diploma in Human Resources from Inorero University. He has attended various courses on leadership and management. He is also a member of Institute of Human Resources Management. The Human Resources and Development Unit seeks to develop the Authority's human capital by attracting, recruiting, developing, motivating and maintaining a highly skilled workforce to execute the mandate of the Authority.



Boniface M. Makongo

Manager, Legal (and Interim head of Consumer Affairs)

Mr. Makongo has over 11 years of experience in litigation, corporate and commercial law. He has previously worked for both Constituencies Development Fund Board and at the Water Services Trust Fund as a Legal Officer, heading and having helped establish the said departments. Mr. Makongo holds a Masters Degree in International Economic Law from the University of South Africa, a Bachelors of Law Degree from Moi University and a Diploma in Management in Information Systems from the Institute for Management of Information Systems (UK) as well as a postgraduate Diploma in Corporate Governance. He is an active member of the Law Society of Kenya. The Legal Unit is responsible for providing legal advice and strategic direction on the interpretation and application of relevant legislation in regard to investigations. The Unit also offers Secretarial Services to the Authority's Board.



Elizabeth G. Ntonjira

Manager, Communications and External Relations.

Ms. Ntonjira joined the Authority on 13th January 2014. She previously worked at the Nation's Media Groups NTV where she won various awards including the Best TV Reporter on Gender and Development issues. Ms. Ntonjira has also worked as the lead Public Relations Officer at Ahadi Kenya Trust and also consulted on other various PR projects. Ms. Ntonjira holds a Bachelor's Degree in Law (LLB) from the Catholic University of Eastern Africa, a Diploma in German as well as a Certificate from the School of Journalism, Missouri University. She is a member of the Public Relations Society of Kenya. The Unit's main role in the Authority is to implement the Authority's communication strategy as well as communicate with the media.

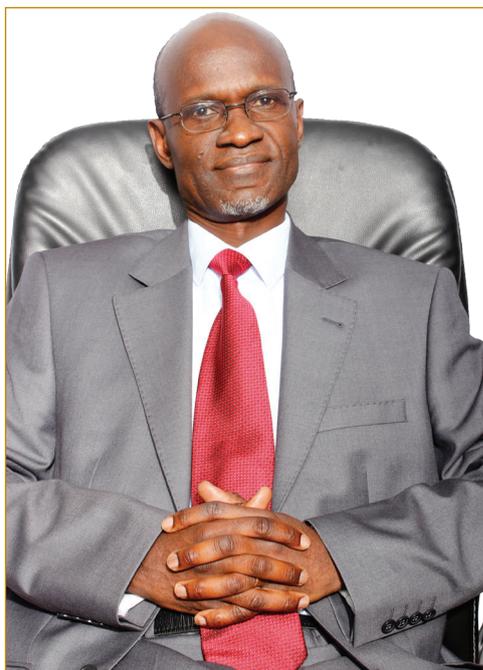




Mr. John M Wachiuri
Manager, Internal Audit

Mr. Wachiuri joined Competition Authority of Kenya from the East African Development Bank where he served as a Senior Internal Auditor. He has also worked in Equity Bank as an Internal Auditor, a Finance Officer at Credit Bank, a Lecturer in Finance, Accounting and Auditing at Strathmore University and also as a Head of Internal Audit at Family Bank Limited. Mr. Wachiuri has vast experience in areas of, Accounting, Financial Reporting, Compliance, Quality Assurance, Risk Management, Corporate Governance, Internal Controls, and Internal Audit. He holds a Master's Degree in Business Administration (MBA) from the United States International University and a Bachelors of Education Degree (Business Studies and Economics) from Kenyatta University. He is also a Certified Public Accountant of Kenya (CPA K), a qualified Certified Information Systems Auditor and a Certified Internal Auditor (CIA). Mr. Wachiuri is a registered and an active member of the Institute of Certified Public Accountants of Kenya (ICPAK), the Institute of Internal Auditors (IIA) and Information Systems Audit, Control Association (ISACA).

CHAIRMAN'S STATEMENT



The Authority is once again delighted to present its Annual Report for the 2013/14 Financial Year.

During this period, the Authority was cognizant of the fact that the economy's growth remained significantly below the target of 10% as envisaged in the Vision 2030. This situation was exacerbated further by emerging fiscal pressure from the implementation of the Constitution, and financing of the Government's mega infrastructure projects and other social programmes like in health and education. The Authority is of the opinion that private sector growth, supported by expansion of bank credit to the sector, is expected to underpin growth prospects.

Another Authority's view is that to increase the economy's resilience to external and domestic shocks, the government's commitment to macroeconomic stability needs to be sustained through preservation of low inflation and deepening the agenda for structural reforms.

The speed of the private sector growth will be determined by the acceleration of the government's current efforts to address infrastructural and other logistic bottlenecks including business regulatory framework. However, this growth should not be concentrated in traditional business hubs but should be devolved in order to facilitate deepening of inclusive growth and inequality challenges. Inclusive growth is also expected to be supported by increased provision in social programmes, while also ensuring absorption of our youth into gainful employment.

The Authority is alive to the fact that reduction of poverty and inequalities remain a key priority of the government and the above highlighted initiatives including increasing agriculture productivity, among others, are aimed at eliminating extreme poverty by year 2030. It is on this basis that the Authority, during the period under review, aligned its activities to supporting the current government economic agenda and also implementation of the Constitution especially regarding integrity and governance issues and public finance management.

In order to improve the business regulatory framework and enhance business environment, the Authority made great strides with the implementation and clarification of the Act. Various guidelines on merger analysis and handling of restrictive trade practices, including consumer protection were developed, with the participation of the key stakeholders, and posted on the Authority's website. The Authority also entered into operational frameworks with the Central Bank of Kenya, with the objective of easing sharing of information and informing analysis and decision making concerning competition matters within the banking sector. As an endeavor to inform the Government's initiatives of minimizing regulatory bottlenecks in various sectors such as transport; banking; retailing and telecommunications, the Authority conducted a Product Market Regulatory indicative study. The Report of this study is aimed at benchmarking our regulatory regimes with developed countries' regimes within the OECD. The study will be released in the coming financial year and it will be shared with the relevant Government stakeholders as an advocacy initiative.

In regard to the agenda of increasing the agriculture sector productivity, aimed at reducing the cost of living especially to the poor households, the Authority conducted market inquiries in the seed; Artificial insemination and the Tea sectors. These inquiries were aimed at identifying the competition issues which may be affecting effective resource allocation in these sectors to the detriment of productivity and consumers benefit. Prioritization of cases was also based on the need to positively impact on the poor households. This saw a speedy conclusion of cases on mobile money transfers and retailing sector.

To support the easing of the investment agenda, the Authority directed its resources to informing the initiatives aimed at bringing down the levels of interest rates in the banking sector. Towards this, we concluded phase I of the Banking sector inquiry which was aimed at identifying the markets which may be exhibiting anti-competitive tendencies and also identifying any regulatory challenges which could be supporting the situation in the banking sector. We are expecting that Phase II of the inquiry will recommend both enforcement and regulatory actions to be actualized by the relevant actors. The Authority also focused on the Insurance industry, especially the actions of the Industry associations which may be acting as an impediment to effective competition and hence negatively affecting investors.

Efforts were also directed towards accelerating inclusive growth agenda. To actualize this agenda, the Authority ensured that the youth and women, during the period under review, procured 32%, in terms of value, of all the tenders in the Authority. Also, the Authority introduced a Young Professionals Programme, aimed at engaging the newly graduated youth, with Law and Economics qualifications, for one year before they are released to the labor market. An elaborate internship programme was also developed and implemented including interaction with various universities to motivate them develop research interest in the Competition policy area. The Authority views research as a critical element of guiding the Authority's decisions for optimal market outcomes for the benefit of consumers and investors

The Authority, with the objective of enhancing its effectiveness, developed and launched a four (4) Year Strategic Plan for the Period 2013/14 - 2016/17. The Plan identifies five key strategic themes namely: - Enforcement of competition and protection of consumers; Research, advocacy and awareness creation; Mobilization and optimal utilization of resources; Infrastructure and human capital development; and, Visibility and corporate image. This Strategic Plan lays the foundation of the Authority's objectives and outlines measurable goals for the Authority in attaining its statutory mandate. To actualize the Strategic Plan, while entrenching a culture of performance management, the Authority developed MandE and also an Impact Assessment frameworks. These frameworks will not only measure our performance but also indicate the impact of our decisions to the economy in general. In addition, the Authority documented all the risks that may impede the achievement of its mandate by developing an Enterprise Risk Management Register. The risks were constantly reviewed with aim of mitigating against them.

Towards entrenching best practices in governance, the Authority developed and published its Code of Conduct. The Code is a central guide and reference point for the Board Members and Staff of the Authority and inculcates a culture of integrity in the Authority's operations. The Authority also developed a number of Policy Manuals to aid operations on: Finance, Procurement, Communication, Information Technology; Environmental Sustainability, Complaints Handling, Gender Based Violence and Human Resource and has also operationalized a Service Charter that sets out clear timelines with regard to the Authority's engagement with both internal and external stakeholders.

Lack of adequate human capacity and lack of co-ordination framework with local and international Competition Agency's and sector regulators were the major challenges during this period. In addition, statutory limitations imposed by our constituting statute, the Competition Act were also part of the challenges.

To mitigate this, the Authority undertook a Job Evaluation Exercise under the guidance of Deloitte and Touché. After analyzing the Authority's needs and benchmarking with other Competition Agency's globally,

the consultant developed an organizational and job grading structure, job descriptions and specifications in addition to developing the Authority's remuneration and benefit structure. After obtaining approval and concurrence from the relevant government agencies, the Authority embarked on implementing the Job Evaluation Reports Recommendations and has so far populated a significant numbers of the resultant positions. The Authority filled and continues to fill all relevant vacancies competitively while strictly adhering to the constitutional requirements.

In an endeavor to minimize the challenges in the operationalization of the provisions in the Act, there has been a need to recommend amendments to some of the provisions of the Act. The amendments are necessary in order to mainstream International best practices in the regulation of competition in Kenya and also to align the Act with the provisions of the Constitution of Kenya. I am happy to report that the Authority was able to achieve this following the enactment of the Finance Act, 2014. The Authority's mandate with regard to Restrictive trade practices has now been expanded, enabling it to pursue detrimental market conduct that was previously beyond its purview.

The Authority is alive to the fact that The National Treasury continues to encounter mounting challenges in meeting the fiscal needs due to the now expansive Government structure. In order to supplement the Limited Exchequer resources, the Authority, after consultation with stakeholders during the Financial Year will start charging a nominal Merger Filing Fees effective 1st August, 2014. We hope to also introduce Exemption fees in the next Financial Year in addition to mobilizing of resources from Development Partners.

Competition regulation has both regional and global perspectives which necessitate close collaboration between the Authority and other Competition Agencies. In this regard the Authority, on 13th of June 2014, signed a Memorandum of Understanding with the Ministry of Commerce of the Peoples Republic of China. The MOU will enable the two institutions increase co-operation in the areas of information sharing, drafting of complementary regulations and rules on competition and consumer protection, exchange ideas in experiences and capacity building. The Authority anticipates engaging the South African Competition Commission in a similar framework in the coming financial year. The Authority also continued to engage COMESA with the objective of realigning the COMESA competition regulations with the letter and spirit of the COMESA Treaty. This engagement saw positive movement towards setting minimum thresholds for mergers that require COMESA notification. We expect that we shall continue with this engagement particularly aimed at revising the COMESA merger filling fees downwards; development and publication of merger handling guidelines; development of an interaction framework between COMESA and national agencies, among other areas.

Lastly, as we move forward I want to pledge the Board's continued commitment to ensuring the realization of both the goals set out in the Vision 2030 and in our Strategic Plan. We would also like to assure all Kenyans that each of our decisions, during the period under review, was reached after a thorough and dispassionate examination of the matters presented to it. The Members and Staff, in all instances, were guided by the overriding objective of promoting and safeguarding competition in the national economy for the benefit of Kenyan consumers. It is our position that despite being a young Agency, the Authority has made tremendous progress in establishing its footprint and the requisite credibility, in terms of its decisions and efficiency, and we are determined to deepen this position further in the coming years.

David O. Ong'olo
Chairman

DIRECTOR GENERAL'S STATEMENT



Introduction

I am pleased once again to undertake the statutory duty of presenting the Annual Report for the Financial Year 2013/2014. Generally, the Report as required by Section 83 of the Act details performance of the Authority against its key performance indicators, as highlighted in its Strategic Plan and cascaded in the Authority's Performance Contract with the Government and the internal Work Plans.

As indicated earlier by the Chairman, the Authority's activities during the period were prioritized premised on the resources available and their contribution and demonstrable impact to the achievement of the Government's transformational agenda as envisaged in Vision 2030, and the Medium Term Plan II.

Generally, during its 2nd year of operation, the Authority made a strong contribution to the Government's agenda, while continuing to provide services efficiently to its clients and stakeholders. In doing this, the Authority ensured that its performance targets were met, through employment of Result Based Management concept coupled with Impact Assessment approach. The planned activities for the Authority evolved around the five key Strategic themes namely: - enforcement of competition and protection of consumers; Research, advocacy and awareness creation; Mobilization and optimal utilization of resources; Infrastructure and human capital development; and, Visibility and corporate image.

The Authority witnessed an increase in the number of applications and cases mainly due to sensitization and awareness initiatives during the period. The Authority analyzed and finalized 88 merger applications, 17 restrictive trade practices (RTP) 2 exemptions and 14 consumer cases as compared to 2012-2013 where it handled 65 merger notifications and 17 RTP cases and 6 Consumer cases respectively. These included some precedent setting mergers such as Brookside and Buzeki; Britam and Real Insurance and conduct cases such as Tuskys/Ukwala supermarkets and Safaricom Limited. It is important to note that for the case of mergers, the average period for merger determination during the period was reduced from the statutory 60 days to 42 days. This is aimed at facilitating investments through mergers as long as they are not resulting to concentrations in the market.

Efforts to deepen predictability and transparency in our enforcement mandate, which is of paramount importance to the investors, were accelerated during the financial year. Towards this, the Authority developed and employed various guidelines including revised merger notification forms; relevant market definition guidelines and Unconscionable conduct guidelines, among others. The Authority also signed interaction frameworks with China's Ministry of Commerce,

the Central Bank of Kenya (CBK) and the University of Nairobi. This cooperation frameworks are aimed at further strengthening the collaboration between the organizations in regard to sharing of information and collaborating in research and capacity building.

As an initiative to drive the Government's economic agenda through the Authority's enforcement mandate, the Authority conducted market inquiries in the agriculture sector, due to its importance to the economy's GDP, and also an inquiry in the banking sector is ongoing. The banking sector was prioritized since it acts as a major driver of investment climate in the country. Specifically, the studies in the agriculture sector were on seed, Artificial Insemination and tea sectors and were all aimed at identifying any competition constraints and consumer protection infractions with the sectors. Also, the studies were meant to identify any regulatory constraints that may be impeding the competition process in these sectors to the detriment of consumers and new entrants.

In order to inform further the achievement of Vision 2030, the Authority also conducted a Product Market Regulatory Indicative study with regard to the regulatory frameworks governing sectors critical to Kenya's investment climate. These were mainly telecommunications; transport; retailing; energy, among others. The purpose of this study is to benchmark Kenya's regulatory regimes, in these sectors, with the regimes in the developed economies of the OECD and thereafter engage the relevant government stakeholders to improve on the regulatory regime.

In regard to supporting the Consumer lobby groups, the Authority organized the World Consumer Rights Day in collaboration with consumer lobby groups. The objective of this collaboration is to create awareness in regard to the rights of the consumers, under the Act and the Constitution, while also creating a critical mass advancing consumer rights.

At the regional level, the Authority participated in the review of the progress made so far in the implementation of the East African Market Protocol, specifically in regard to operationalization of the East Africa Competition Act. Also, the Authority continued to advocate for the modernization of the COMESA competition regulations in regard to setting of thresholds and other guidelines to enhance clarity, predictability and transparency under the regime. In addition, we made representations in various forums including Organization for Economic Cooperation (OECD), International Competition Network (ICN), The United Nations on Trade and Development (UNCTAD), Africa Competition Forum (ACF), among other bodies. All this is aimed at informing the Authority's ongoing initiatives to deepen our capacity in enforcement and advising the government in regional and international competition issues.

The above activities were financed by a total budget of Kshs. 312 million. This constituted Kshs. 280 million from approved budget and Kshs. 30 million carried forward from previous financial year. AIA contributed Kshs. 1.660 million. The Authority also raised funding from its Development partners in the facilitation of various market studies and dissemination workshops. The Authority wishes to extend its gratitude to the World Bank Group, Kenya Market Trust (KMT), the Financial Sector Deepening (FSD) programme and also the International Development Research Centre (IDRC) for their continued support in facilitating the Authority achieve its core mandate especially in the sectors that have a high impact on the vulnerable members of our society.

Great strides were made towards prudent management of the resources available. Various policies and manuals on finance management, procurement, IT and Human Resources Management were developed in order to ensure optimal utilization of the resources. Specifically, and of interest to highlight, the Authority adopted group in house training programmes. Also, knowledge management systems were introduced which included identifying, codifying and storing tacit knowledge inherent in staff trained in specialized areas. Other measures undertaken is procurement and installation of video conferencing facility which is aimed at minimizing foreign travels while ensuring our active participation.

The optimal utilization of resources enabled the Authority to expand its capital infrastructure and human capital numbers. During the period, a Job Analysis and Evaluation exercise was conducted and finalized which established the optimal staffing levels of the Authority. The Authority has continued to populate the establishment starting with the most critical positions. In addition a Young Professionals Programme and Internship Policy were introduced, aimed at not only building capacity to our youth in the area of competition policy enforcement but also complementing the Authority's staff establishment. Additionally, the staff have been equipped with working computers and other communication equipment to ease our interaction with stakeholders. To deepen staff skills, various development initiatives were undertaken continuously especially in applying economic models in analysis of mergers; theory of harm; investigations skills; regulatory impact assessment, corporate governance, communication, among others.

To develop a culture of competition and also to enhance its visibility, the Authority interacted with the media, internationally and regionally, on various competition and consumer topical issues. The interaction was through the print and electronic media. As an endeavor to motivate the universities to conduct research and introduce courses relevant to supporting competition regulation in Kenya, the Authority conducted Public Lectures at the Strathmore University and University of Nairobi. This exercise will continue to be replicated in all the Universities. In addition, the Authority also sponsored an Essay Writing Competition based on competition regulation issues. This Essay competition will be held every year and it targets undergraduates and postgraduates students who are interested in conducting research in this field.

As a Constitution requirement, the Authority held various consultative forums with various stakeholders. The objective of these forums was to inform the process of developing guidelines and also communicating to the public in regard to our activities. The stakeholders included journalists, Business/Industry Associations and Law firms. The Authority also provided advisory opinions to clients especially in regard to mergers, restrictive trade practices and consumer protection issues.

To achieve the above required a team of staff, who worked beyond calls of duty without other considerations apart from dedication to serve their nation. Guided by our impact oriented approach and buttressed by the Authority's core values, I am very proud of what the Authority's staff have achieved within such a short period. In addition, the Board has been a reliable satellite to the management, as it guided through the various activities during the period under review. Lastly, I would also like to acknowledge the vital role played by our Parent Ministry, The National Treasury, in terms of availing resources and supporting policy development. The Parliament has also continued to be a dependable stakeholder especially in their oversight role and in our

endeavors of minimizing statutory limitations within the current legal frame work.

We look forward to your continued important contribution to the competition regulation agenda of our nation.

Achievements during the period

Awake to the fact that resources are scarce, the Authority prioritized its activities, as per the Performance Contract with the Government, on the following key areas executed through the key technical departments, as illustrated below: -

Mergers and Acquisitions Department

The Mergers Department enforces Parts Iv (control of mergers) and V (control of unwarranted concentration of economic power) of the Act. It:-

- i) Analyses all mergers applications and gives recommendations;
- ii) Investigates all mergers that may have been consummated without approvals and gives recommendations; and
- iii) Identifies and analyses unwarranted concentration of economic power.

During the year under review, the Department achieved the following:-

- (a) Developed guidelines relating to mergers analysis. Specifically, the following guidelines were developed: Horizontal, Conglomerate and Vertical guidelines, Public Interest, Merger thresholds, and market definition guidelines. It is expected that the guidelines will facilitate better appreciation of the Authority's approach in regard to mergers analysis; scope of application; circumstances under which a merger may give rise to substantial lessening of competition while ensuring standard and consistent approach to merger analysis.
- (b) Co-ordinated the development of merger filing fees through a consultative process with stakeholders.
- (c) Reviewed its merger notification process through modernizing the applicable form. The reviewed form is meant to enhance transparency and predictability in the merger notification process.

The period under review witnessed an upward surge in the number of mergers applications. Thus during this period, the Authority considered 88 merger notifications compared to 65 of the 2012/2013 financial year. Mergers with an international dimension constituted 69% of the 88 notifications. Out of these, one (1) was approved with conditions, twenty four (24) cases were approved unconditionally and thirty two (32) were excluded from provisions of Part Iv of the Competition Act and two (2) were abandoned/withdrawn nineteen (19) were not mergers; while ten (10) were in progress by closure of the financial year.

Trends in Merger Notifications

The following table shows trends in merger notifications to the Authority.

Merger Notifications According to Sector during 2013/2014 Financial Year :

Sector	International Classification Code	No. of mergers notified and reviewed in 2013/2014	%
Accommodation	55	1	1.14
Advertising	73	2	2.27
Agriculture	01	8	9.09
Assembling and distribution	29	1	1.14
Aviation	51	4	4.55
Dairy	10	1	1.14
Distribution	46	2	2.27
Distribution of software	46	1	1.14
Education	85	1	1.14
Energy	05	3	3.41
Exploration and prospecting	06	2	2.27
Financial	64	4	4.55
General trading	46	5	5.68
Healthcare	21	4	4.55
Hospitality	56	4	4.55
ICT	63	4	4.55
Insurance	65	3	3.41
Internet	63	1	1.14
Investment	64	1	1.14
Legal	69	3	3.41
Logistics and support	49	1	1.14
Maintenance	82	1	1.14
Manufacturing	32	8	9.09
Media	18	3	3.41
Money transfer	66	2	2.27
Motor vehicle assembling	25	1	1.14
Pharmaceuticals	86	1	1.14
Rail freight	49	1	1.14
Real Estate	68	8	9.09
Retail	45	2	2.27
Security	80	1	1.14
Shipping	50	1	1.14
Telecommunication	61	1	1.14
Tertiary institution	85	1	1.14
Warehousing	52	1	1.14
Total		88	100.00

Source: CAK, Mergers and Acquisitions Department

Out of the total number of mergers notified to the Authority, most occurred in Agriculture, manufacturing, real estate, general trading sectors, among others. The specific mergers notifications during the period under review are highlighted in Annex 1.

The following were some of the cases analysed by the department and determined by the Authority: -

Acquisition of Buzeki Dairy Limited by Brookside Dairy Limited

This was a horizontal merger (merger between two direct competitors). It involved the acquisition of the business and assets of Buzeki Dairy Limited (Buzeki) by Brookside Dairy Limited.

Brookside has operations in Kenya, Tanzania and Uganda and also has a large farmers' network, milk collection and storage capacity in the region. The company processes various milk products mainly fresh, long life, cultured and cream products. Specifically, the company produces fresh milk, fermented or cultured milk, butter and ghee, Long Life Milk (UHT), yoghurt, flavored Milk and cream.

Buzeki processes fresh milk, fermented or cultured milk, butter and ghee, UHT Long Life Milk, yoghurt and UHT flavored milk.

It was therefore concluded that there were overlaps between the merging parties in respect of the following:

- i. Buying of milk from farmers.
- ii. The processing and marketing of fresh milk.
- iii. The production and marketing of UHT milk (long life milk), yoghurt/fermented milk, butter and ghee.

It was found that Kenya produces about 4.1 billion litres of milk. Out of these 2 billion litres which translates to 48% is retained at household level while the balance of 52% is marketed through formal and informal channels. Dairy processors account for about 24% of the market that is marketed and the other channels account for 76%. In addition, data from the Kenya Dairy Board showed that liquid milk accounts for more than 90% of the sales of milk processors.

The relevant product market was defined as the market for marketed milk which includes milk marketed through formal and informal channels. The marketed milk includes both processed and unprocessed milk (raw milk). Processed and unprocessed milk was found to be substitutable in terms of homogeneity and purpose among other factors. This market definition was further informed by the imposition of 16 % VAT by the government on processed milk in September 2013. The 16% VAT was used as a proxy for SSNIP test. The data obtained from one of the largest retail chains in the country, showed that milk sales for all processors declined for fresh and long life milk after the implementation of the VAT. Fresh milk sales declined by an average of 17.4% for all processors whereas for Brookside it declined by 18.1% and Buzeki by 8.05 %. Sales for long life declined by an average of 11.3%. The decline in sales implies that consumers substituted to other products.

This implied that the raw milk marketed through informal channels was easily substitutable to the processed milk and hence relevant product market was larger than the processed milk market alone.

It was also noted that milk processing firms face stiff competition from mini-industries, cottage industries, milk bars, producers, dairy co-operatives and informal traders. Therefore, with the foregoing and informed by the relevant product market, marketed milk market, the market share of Brookside was 7.35% while that of Buzeki was 1.44%. Post-merger, the market share of Brookside was 8.79% of the marketed milk market.

In addition the Authority considered that the merger would generate efficiencies and this would increase ability of Brookside to compete locally and internationally.

¹The Authority considered this market alone because liquid milk accounts for more than 90% of the sales of dairy processors. The other markets were not considered because they could not affect the market outcomes significantly.

²Small but Significant Non-transitory Increase in Price

Acquisition of Real Insurance Company Limited by British–American Investments Company (Kenya) Limited.

This was a horizontal merger between British American Investments Company (K) Limited (Britam) and Real Insurance Company Limited.

Britam is a Limited liability company incorporated in Kenya and quoted on the Nairobi Securities Exchange. The undertaking is involved in the business of non-life and life insurance and has two local subsidiaries; British-American Insurance Company (Kenya) Limited and British-American Asset Managers Limited. It also has operations through its subsidiaries in Uganda and South Sudan.

REAL Insurance Company Limited (REAL), the target undertaking, formerly known as Royal Insurance Company East Africa Ltd, is incorporated in Kenya. REAL is in the business of provision of non-life insurance and has subsidiaries in Kenya, Tanzania, Malawi and Mozambique.

The activities of Britam and Real were found to overlap in respect of non-life insurance. Therefore the broad relevant market was defined as the market for provision of non-life insurance in Kenya. The market was further segmented according to the classes of non-life insurance. These classes of insurance are engineering, fire, liability, marine, motor, personal accident, and workman's compensation, medical and miscellaneous. Each class of insurance was considered to constitute a relevant product market.

Analysis found out that, in all these markets, post-merger market share of Britam would be less than 10% save for Engineering, Personal Accident and Marine where the market would be 14.7%, 16.9% and 12.4% respectively. The post-merger non-life insurance market share of Britam would be 7.47%.

The competition test showed that the merger would not lead to substantial lessening or prevention of competition in non-life insurance market. However, the merger was found to raise public interest issues, specifically loss of jobs. This raised concern because it was noted that according to REAL financial statements, the company had been growing in terms of balance sheet and employees. In order to mitigate against the job losses, cognizant also of the fact that post-merger would inevitably lead to duplication of some positions and hence the need for restructuring, the merger was approved on condition that BRITAM would retain at least 85% of the staff of REAL.

Advisory opinions

The Department also has an advisory function regarding mergers transactions. During the period, the Department responded to a couple of opinion requests. The inquiries were responded to appropriately, within an average of three (3) days. The advisory opinions are highlighted in Annex 2. The Department also engaged with Zambia Competition Commission, Competition Commission of South Africa, Tanzania Fair Trade Commission and Botswana Competition Commission on analysis of some cross-border mergers transactions. In addition, the Department was involved in formulating of mergers best practices under the auspices of the International Competition Network (ICN).

Enforcement and Compliance Department

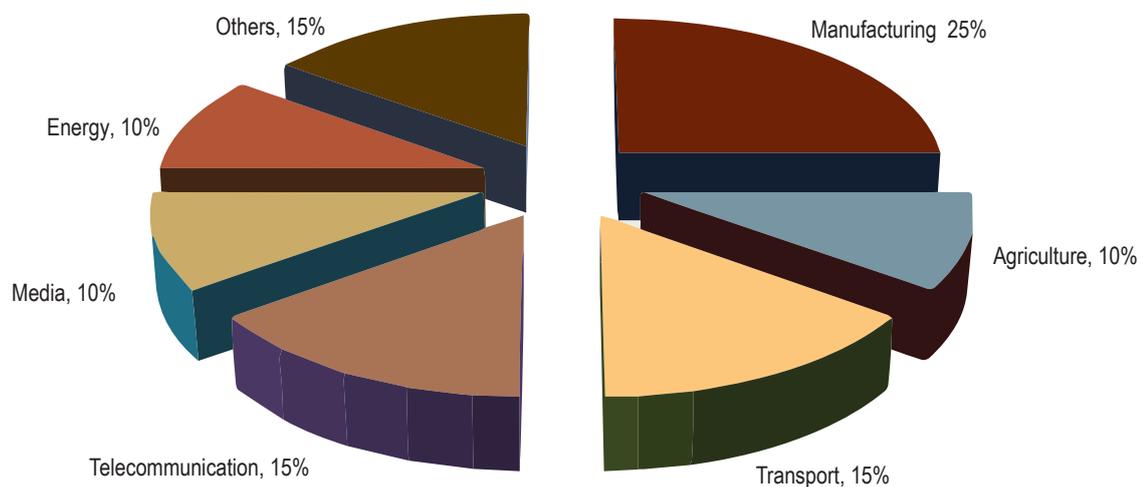
The Department is charged with investigation of restrictive trade practices and abuse of dominance, evaluation of exemption applications and ensuring compliance with the Orders issued under the Act. The department also gives advisory opinions in regard to the aforesaid practices.

Based on the prioritization framework, the Department merited complaints to ensure efficient and optimal utilization of the Limited resources. Prioritization is based on: -Sectors with great impact

on national economic and social agenda; conduct involving coordination of activities among actual competitors; likelihood of making a finding; and, whether a formal complaint was filled or the case was initiated by the Authority's own motion.

During the period under review, the department handled seventeen (17) restrictive trade practices cases and two (2) exemption applications. Seven (7) restrictive trade practices cases and one (1) exemption application were finalized. Regarding the concluded cases, penalties or other remedies were imposed to undertakings found to have infringed the Act, while the remaining cases are at different stages of analysis. The cases handled relate to price fixing; market allocation and Abuse of Dominance.

The percentage of the cases handled in terms of the sector affected are highlighted under chart 1 below. The list of all the cases handled indicating the theory of harm or violation and also the decision or status of the Case is tabulated in Annex 3.



The following is the summary of some of the cases handled by the Department during the period:

-

(a) Horizontal restrictive trade practices

Competition Authority of Kenya versus Tuskys Mattresses Limited and Ukwala Supermarkets Limited

The matter came to the attention of the Authority through a Newspaper and Internet Report in late October, 2013 which indicated that Tuskys Mattresses Limited (TML) had acquired or was in the process of acquiring Ukwala Supermarkets Limited (USL) in Nairobi. A preliminary investigation into the matter was initiated pursuant to the Authority's mandate under section 31 of the Competition Act No. 12 Of 2010 (the Act), which established that:

- a) The parties are competitors in a horizontal relationship both being supermarket chains with branches in Nairobi Central Business District;
- b) The arrangements allowed TML to manage three (3) USL Stores for a period of nine (9) months;
- c) TML had invested had invested up to Kshs. 200 million in the form of acquiring existing stock, management and system costs; and

- d) The Arrangement would involve making decisions on acquisitions of stock, setting prices, payroll management, staff reorganization, development of technology, rebranding, settling and third party costs of the three stores and generally put TML's Senior Managers in charge of the day to day management of the stores.

Key Highlights

The arrangement amounted to a horizontal restrictive trade practice in contravention of section 21(30) (a) as read together with (e) of the Act to the extent that it allowed TML to set the prices and other trading conditions of competitors, in addition to managing three (3) USL stores, in terms of marketing and management systems.

Having regard to section 38 of the Act, the Authority imposed a financial penalty in the sum of Five million three hundred thousand (Kshs. 5,300,000) and the parties have thus far complied by paying the same amount to the Authority in full and final settlement in respect to the Authority's investigation.

The Financial penalty in this case and in any horizontal restrictive trade practice was based on the affected turnover, the duration of the conduct and mitigating factors (as presented by the parties). The Authority further took cognizance of the need to incentivize acceptance by the firms of the new competition regime and settlement with the Authority rather than lengthy litigation, which may derail the Authority's focus of working for more competitive outcomes within the shortest period.

(b) Vertical restrictive trade practices

Safaricom Limited and Airtel Limited

The Authority initiated investigations on 20th January, 2013 into complaints lodged by Airtel Networks Kenya Limited (Airtel) and others against Safaricom Limited (Safaricom) relating to Safaricom's restrictive agreements with its Mobile Money Transfer agents (Mpesa agents). The allegations included the following:

- a. Safaricom requires its M-Pesa agents not to offer money transfer service of competing providers;
- b. The Mpesa agents are threatened with termination of contract if they enter into contract with competing money transfer service providers; and
- c) Safaricom was breaching section 21 of the Act by entering into an exclusive agreement with its agents which restrict them from offering financial services to other mobile commerce service providers or banks;

The Authority commenced investigations against Safaricom for contravention of:

- a) Section 24(2) (d) prohibiting abuse of dominance by making the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contracts; and
- b) Section 21(3)(g) that prohibits engaging into restrictive trade practice by making the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contracts.

Key Highlights

Preliminary investigations established that there were adequate grounds to find that Safaricom had contravened the aforementioned provisions of the Act. Safaricom was thus served with a Notice pursuant to section 34 of the Act, informing it of the Authority's proposed decision and allowing it to file written submissions and or make oral representations in its defence. Safaricom sought to be allowed to make oral hearing and subsequently, the Authority scheduled three hearing conferences between August and October, 2014, all of which were adjourned at the behest of Safaricom. Thereafter, Safaricom submitted a settlement proposal to the Authority pursuant to section 38 of the Act, necessitating the termination of the hearing conference.

Airtel filed a Judicial Review Application with the High Court challenging the termination of the hearing conference and staying the settlement proceedings until the hearing and determination of the suit. The Authority subsequently filed a Replying Affidavit opposing the Judicial Review Application wherein Safaricom applied and was enjoined as an Interested Party. The Parties explored an out of court settlement of the matter which culminated in a Consent Order dated 5th May, 2014, which lifted the Stay Orders. This allowed the Authority to continue with the Settlement negotiations with Safaricom.

Subsequently, pursuant to Section 38 of the Act, the Authority and Safaricom entered into a Settlement Agreement to resolve the matter. The terms of the agreement included:

1. All restrictive clauses in the agreement between Safaricom and its Mpesa agents be immediately expunged.
2. Mpesa agents shall be at liberty to transact the Mobile Money Transfer Businesses of any other mobile money transfer service providers;
3. Safaricom's oversight shall be thereafter Limited to its business with the Agents; and
4. Each Mobile Money Transfer Service Provider shall be responsible for ensuring compliance with Central Bank of Kenya regulations.

In this matter, it was in the Authority's interest to focus on arriving at terms which facilitate speedy resolution of the anti-competitive conduct to the benefit of consumers. In this regard, Safaricom committed to expediently expunge the contentious clauses which had the effect of expediently realizing more competitive outcomes in the mobile money transfer market segment.

In order to ensure clarity, predictability and certainty of the Authority's decision, the Department embarked on developing regulations and guidelines to guide enforcement of restrictive trade practices. The guidelines are expected to: - equip businesses and their legal representatives with information on how the Authority carries out its legal and economic analysis with the respect to restrictive trade practices and in particular provide explanations of the assessment or review standards the Authority uses in the assessment of (i) horizontal agreements, (ii) vertical agreements and (iii) abuse of dominance; Also, explain the analytical approach that the Authority may use in determining whether an undertaking is dominant; and, in addition, identify categories of restrictive trade practices that may be subject to exemptions.

It is expected that these guidelines will inform the Authority's clients as they interact with the Authority and hence reduce transactions costs resulting from lack of transparency in the enforcement procedures.

Consumer Affairs Department

The Department is charged with the responsibility of enforcing sections 55 - 70 of the Act. It is responsible for reviewing and advising on consumer protection provisions; advising and educating consumers on their rights and responsibilities and also resolving disputes between consumers and traders.

Specifically, the department investigates and advises on matters relating to misleading and false representations, unconscionable conduct, and supply of unsafe, defective or unsuitable products, including failure by firms to observe information and safety standards. The consumer protection mandate of the Authority is supported by the Constitution of Kenya under the Bill of Rights, specifically Article 46. During the year under review the department handled the cases highlighted in Annex 4.

Consumer Protection Guidelines, Notices and Forms

The Consumer Protection Guidelines, Notices and Forms were developed to guide consumers and the businesses in complying with the consumer protection provisions under the Act. These toolkits seek to illustrate how the consumer protection provisions in Part VI of the Act may apply in practice while also providing general information or a definitive list of situations where the law applies.

The Guidelines developed cover:- false or misleading representations and related offences; unconscionable conduct; product safety and information standards, and; engaging with consumer organizations. While the department developed notices and forms in the following areas:- consumer product safety warning notice (on commencement of a product safety investigation); consumer product safety notice of investigation results (on finalization of investigation); consumer product safety unsafe product declaration notice; and consumer complaint form.

It is expected that these toolkits will go a long way in ensuring consistency and predictably in case handling processes and determination thereof by the Authority; also, act as consumer education tools geared towards promoting and protecting the economic interests of consumers; and in addition provide adequate information to enable consumers to make informed decisions based on individual needs.

World Consumer Rights Day (WCRD)



CAK staff and the public commemorating the World Consumer Rights Day which is marked every 15th day of March annually.

As an endeavor of creating awareness regarding our mandate, the Authority marked the World Consumer Rights Day which is celebrated on 15th March every year. The Authority in collaboration with the Communication Authority of Kenya, Kenya Consumer Protection Advisory Committee and COFEK facilitated the celebrations.

The theme of the year's celebration, "Fix Our Phone Rights", was devoted to tackling the issues that affect consumers in the mobile telephony sector. Mobile phones have become an important

platform in the day to day livelihood of the citizenry, evident from the rising number of mobile telephony users over the years. The vital issues that were addressed included:

- i) Provision of access to an affordable, reliable service to consumers.
- ii) Provision of fair contracts explained in clear, complete and accessible language to consumers.
- iii) Provision of fair and transparent billing to consumers.
- iv) Provision of security and power to consumers over their own information.
- v) Listening and responding to consumer complaints.



Mr. Daniel Okendo, the Programmes officer of the Consumer Unit Trust (CUTs) holding up a placard during the World Consumer Rights Day public march.

Consumer Protection Cases

Mr. Ardon B. Karimi vs Fones Direct Ltd.

The complainant (Mr. Karimi) purchased an Alcatel Phone with a warranty for one year from Fones Direct Ltd. One week later the touch keys were none responsive and Mr. Karimi returned the phone to the service centre with the hope that it would be replaced courtesy of the warranty. It took almost one month to rectify the problem. Two weeks later the screen developed a problem of blinking and lack of visibility.

When Mr. Karimi returned it back to the service centre, it took more than two months to get the replacement part and when he asked for replacement for the phone, the staff at Fones Direct Ltd said they were waiting for Authorization from Alcatel. After many calls they called him to collect the same phone claiming that they had 'swapped' it. He refused and instead demanded a replacement of the handset as it was clear that the phone was defective from the beginning.

The complainant had gathered the evidence required including the receipt issued during the purchase transaction, warranty card and service job cards that were necessary to support the case. The Authority used the evidence while writing to the alleged offender, and the matter was resolved to the satisfaction of the customer.

N. Shah and Chandarana Supermarket

N. Shah complained that on 4th June, 2014 that she picked a pack of pampers advertised as being on sale until 7th June, 2014 for Kshs.1,000. However, at the till she was charged Kshs.1,410 which she refused to pay. She complained to the management who refused to honour the shelf price forcing them to remove the pampers from her shopping.

The case was investigated under section 55(b) (i) of the Competition Act on false or misleading representation with respect to price. Unfortunately the complainant did not have the evidence as she could not purchase the pampers at the higher price. The only evidence she had was a photo showing the special offer and the day the offer would come to an end. The Authority wrote to the Supermarket and highlighted the alleged complaint.

In their defense, the Supermarket apologized and claimed that it was an inadvertent mistake by the linesman in that section. As proof they claimed that their pricing is system bound in their software and could not do what the customer claimed insisting that it was purely human error. The supermarket apologized for the inconvenience caused to the customer and offered a free packet of pampers as compensation.

Advocacy and Awareness Creation Initiatives

The Advocacy Unit facilitates promotion of competition and consumer welfare by ensuring consistent application of competition principles and compliance with the Competition Act by carrying out various advocacy initiatives. The areas of advocacy are identified through a prioritization process, based on the impact to the national economic agenda, while the activities are identified by conducting market inquiries. The platforms for actualization of the advocacy activities ranged from public lectures in the universities; meetings with the government; and workshops with relevant stakeholders.

In order to inform the achievement of the Vision 2030, the Authority during the year embarked on a Product Market Regulation Indicative study. The study includes analysing the regulatory framework in the telecommunications, energy, and transport/haulage, air passenger, banking and retailing sectors with the objective of identifying regulatory burdens which may be distorting optimal market outcomes. We expect that the findings of the study, based on international best practices and cognizant of our economic environment and ecosystem will inform the Authority's advocacy initiatives in these key sectors of our economy.

The Unit also co-ordinated the development of a Regulatory Impact Assessment framework checklist. This checklist is aimed at providing guidance to policymakers on how to assess whether a proposed regulation is likely to result in major anti-competitive effects. This ultimately is aimed at ensuring that as we move forward, as an economy, our regulatory regimes in all sectors will take cognizant of and sustain the competition process.

The CAK Competition Draft Checklist for Policy-Makers

In any affected market, would the proposal ...	YES	NO
1. Directly or indirectly restrict the number or range of suppliers or buyers?		
This is likely to be the case if the proposal:		
• Awards exclusive rights to a supplier/buyer		
• Introduces procurement from a single supplier or restricted group of suppliers		
• Introduces a fixed limit on the number of firms (quotas)		
• Creates geographical barriers on the ability of companies to supply or buy goods or services		
• Establishes licencses, permit or authorization processes as a requirement for operation		
• Limits the ability of some types of suppliers to provide a good or service or the ability of some types of buyers to purchase goods or services		
• Creates higher costs of entry or exit for firms		
2. Restrict the ability or incentives of suppliers or buyers to compete vigorously?		
This is likely to be the case if the proposal:		
• Limits the extent to which prices for goods or services are defined by market forces		
• Increases scope for self-regulatory or co-regulatory regimes which negatively affect entry conditions, the ability of firms to set prices individually or other market variables		
• Introduces requirements that information on firms' outputs, prices, sales, purchases or costs be published or exchanged among competitors		
• Exempts the activity of a particular industry or group of firms from the operation of the competition law		
• Limits the freedom of firms to advertise or market their goods or services		
• Sets standards for product quality that are above the level that some well-informed customers would choose		
• Limits the scope for innovation to i) introduce new products; ii) supply existing products in new ways (using different marketing channels); or iii) purchase products in new ways (using different procurement channels for example)		
3. Discriminate (or facilitate discrimination) against certain agents?		
This is likely to be the case if the proposal:		
• Introduces discriminatory application of rules against certain types of firms (entrants, foreigners, small firms, private firms) or sets standards for product quality that provide an advantage to some firms over others		
• Allows for discretionary application of rules to market players (lack of objective requirements or criteria, reduced accountability)		
• Introduces subsidies, incentives policies, and access to Limited resources (e.g. land, water, spectrum) that distort the level playing field		
• Allows regulators to provide goods or services in competition with private players		
• Does not provide for a clear and effective access policy (e.g., non-discrimination, clear conditions, cost-oriented fees) to essential facilities		
4. Restrict the choice or information available to consumers or producers?		
This is likely to be the case if the proposal:		
• Eliminates the possibility for consumers (producers) of switching suppliers (buyers)		
• Limits the ability of consumers to decide from whom they purchase		
• Limits the ability of producers to decide to whom they sell		
• Reduces mobility of consumers between suppliers of goods or services		
• Reduces mobility of producers between buyers of goods or services		
• Reduces the information available to buyers (producers) to allow them to purchase (sell) effectively		

Criteria highlighted present a higher risk of negatively affecting competition

During the period, the Unit co-ordinated market inquiries in various sectors of the economy. The prioritized sectors were in the agriculture sector, because of its contribution to the national economy and the impact to the poor households, and also the cement sector as it acts as a key input to the construction industry which is mainly the engine of the economy.

Cement Sector Study Summary

A large number of regional economic groupings, such as the Southern African Customs Union (SACU), Common Market for Eastern and Southern Africa (COMESA), Southern African Development Community (SADC), etc. have adopted competition provisions in Agreements establishing them. This is because they recognise the increasing cross-border nature of anti-competitive conduct. It is in this context that the African Competition Forum (ACF) with CAK's collaboration launched the six country (Botswana, Kenya, Namibia, South Africa, Tanzania and Zambia) research project in the cement sector.

The study aimed at assessing the market dynamics including barriers to entry, regulatory arrangements, and the outcomes observed in terms of price and supply, in the countries identified. Cement is a critical product for infrastructure and housing which means its price and supply has wider impacts for investment and hence it plays a key role in the economic development of any economy.

It is also a product which has been prone to anti-competitive conduct, especially collusion. The inelastic demand means that the potential price increases from co-ordination are high while the homogenous nature of the product means price competition can be intense.

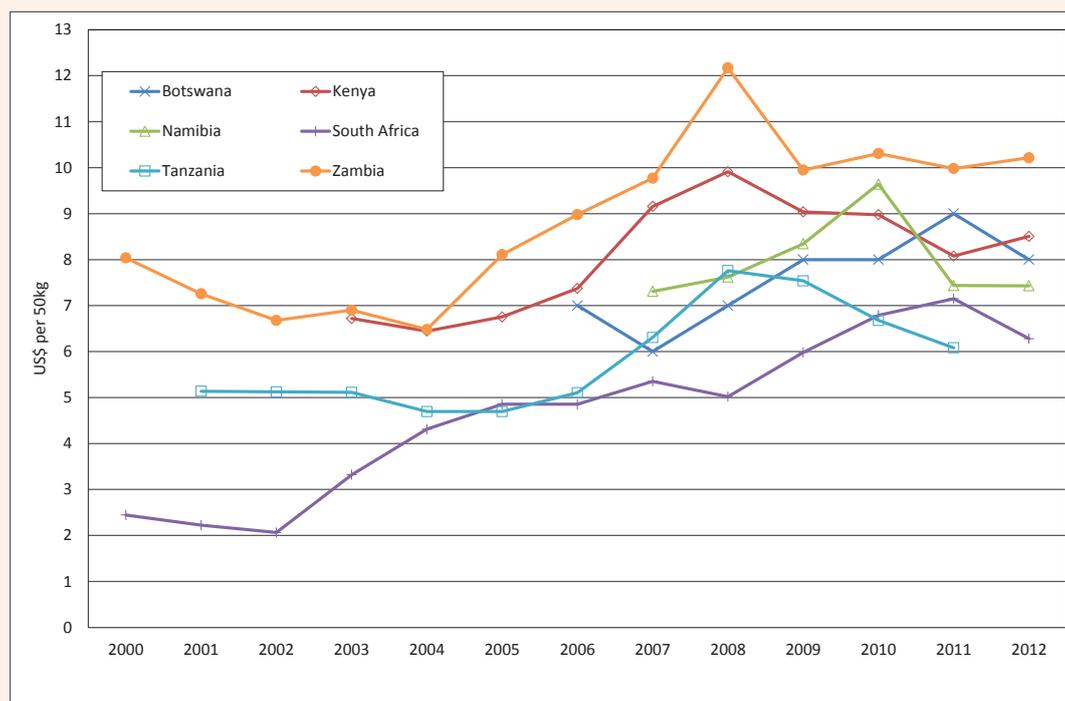
It was important learning from other country experiences, especially as many of the same companies operate across continents.

Key findings

1. The cement industry is concentrated, reflecting the importance of scale economies and the substantial capital investment required.
2. Botswana and Namibia has been more reliant on imports, whether of clinker and/or blended cement. In other countries, imports have set the ceiling to the pricing power of local producers.
3. Trade flows in the region also appear linked to production and location decisions by multinational producers. In the case of Kenya, a net trade surplus was maintained on cement over the period, with exports strong to the eastern African region.
4. South Africa has historically recorded a trade surplus but moved to a net deficit in 2005 to 2008 before returning to a positive trade balance once again in 2009. With regards to imports, South Africa sourced cement mostly from Asia (Rep. of Korea, Pakistan, China, India and Indonesia) and the European Union (France and United Kingdom), with some coming from Zimbabwe and Brazil.
5. Tanzania has consistently been a net importer from 2002 with the main sources of cement imports being from Pakistan which accounts for about 80 per cent of cement imports into Tanzania. Tanzania exports cement mainly to economies in the region.
6. By comparison, Zambia has been a net exporter in all years except 2007, and substantially so for most of the decade from 2002. Imports are insignificant and are mainly at the border towns around the country.
7. In general, the trade flows taken together with the presence of common firms across the region support the need to analyse the market dynamics of the region more holistically.

8. Industry associations are typically important institutions of producers which engage government on the regulatory environment as well as lobbying for support. In addition to these roles, industry associations could be used to facilitate cartel conduct in a number of ways. Cement producers in Kenya and Tanzania belong to the East African Cement Producers Association (EACPA), which also includes producers from Burundi, Rwanda and Uganda. There are country chapters in each of the countries.

Estimated ex-factory cement prices, 50kg bag, US\$



9. Zambia's prices have remained above those of the other countries, Kenya had the second highest prices for much of the period, although with somewhat of a gap opening up in the last two years. Prices in Tanzania appear to follow a similar trend to Kenya and Zambia, with which it shares important borders and transport corridors, however, the Tanzanian prices are substantially lower.

It is envisaged that in the coming financial year, the Authority will interact with the various stakeholders involved in these sectors in order to fully implement the recommendations and thereof minimize the market distortions which may be impeding competition to the detriment of consumers. In addition, the Authority shall embark on enforcement activities aimed at mitigating against the competition infractions identified through the inquiries.

In regard to workshops and trainings of stakeholders, the Unit coordinated various sessions as illustrated below: -

Stakeholder trainings

Four trainings targeting stakeholders were conducted with the support of various development partners such as the World Bank Group; Kenya Market Trusts, among others. The trainings:

i. The Competition Economics Capacity Building

The Workshop was held on 12th to 13th August 2013 for competition practitioners, identified law firms, sector regulators with competition responsibilities and the business community. The Workshop was aimed at deepening understanding of the provisions in the Competition Act and understanding the practical application when dealing with matters related to competition and consumer protection. Practical case studies and use of hypothetical case scenarios were used to give the participants an opportunity to assess their understanding.

At the end of the Workshop participants were able to learn appropriate tests, evidence and assessment needed to analyze specific competition matters in mergers, co-ordinated conduct, restrictive vertical practices and abuse of dominance cases.

ii. Competition Authority of Kenya and the COMESA Competition Commission Workshop

The Workshop was held on 14 to 15th November, 2013. The target audience included private sector, sector regulators and policy makers. The Workshop was geared towards enhancing the understanding of competition law matters (both Kenyan and COMESA competition laws) among stakeholders. Sessions covered were; overview of competition law and historical context of Competition law; Kenya's legal framework for regulating mergers and acquisitions compared with COMESA framework. At end of the Workshop participants were able to understand the interplay between the national competition laws and Regional Competition Regulations.

iii. Merger Consultative Workshop

The Workshop was held on 19th February, 2014. The purpose of the Workshop was to seek views of the stakeholders on the proposed merger notification process. At the end of the Workshop, participants were able to make proposals in regard to the new process and also appreciate the necessity of its introduction to the business community and the Authority itself.

iv. Industry Associations

The Authority, through its enforcement experience, has appreciated the role of the trade associations in deriving competition in the markets. It is on this basis that the Authority organized a one day workshop targeting industry associations, with the ultimate objective explaining what the law covers in terms of co-ordinated conduct and cartels, their harm to competition, as well as the nature these arrangements may take and how they are facilitated. During the Workshop, experiences were also shared from South Africa and European Union markets.

The Authority intends to develop a Special Compliance Programme (SCP) to enable the trade associations whose Articles of Association may be contrary to the provisions of the Act, to realign them. It is envisaged that the SCP will be rolled out in the coming financial year.

Public lectures in the Universities

The Authority organized lectures in various universities. The lectures which were held in the University of Nairobi and Strathmore were aimed at motivating research in the area of competition policy in order to drive efficient market outcomes. It is envisaged that the universities will co-ordinate joint research with the Authority and in the process help build research capacity within the CAK. The lectures also have the object of advocating for establishment of competition studies curricula which will not only act as a supply source of human capital, for the posterity of the Authority, but also the Authority will be a readily market for the output of the Universities. This at the end will facilitate entrenchment of a competition culture in the economy.

The public lectures included: -

- i A guest lecture by the Director-General to the students of the Public Policy programme of the Strathmore Business School. The Authority, in collaboration with The World Bank Group organized a public lecture, in the same university. The lecture centered on impact assessment in competition enforcement.
- ii A public lecture at the School of Economics, University of Nairobi on 17 June, 2014. The Director General, Competition Authority gave a key note address on 'Partnering in Research and Training" between University of Nairobi and the Authority. This culminated into signing an MOU between the two organizations. The overall objective of this MoU is to jointly develop mutual collaboration in the following areas, among others: - teaching arrangements for both Undergraduate and graduate programmes including student and faculty attachment; Joint application for funding for specific research grants, contributions and subscriptions; exchange of information and documentation (data, reports, maps, etc.) both written and electronic; Joint publications of and use of results emanating from the collaborative research; Collaboration in offering of undergraduate students' internship in the areas of economics and law.



Prof. Simon Roberts, a consultant working with the Competition Authority of Kenya giving a lecture to students of the School of Economics in the University of Nairobi.

Opinions and Advocacy to Government

During the year also, the Authority offered various opinions to the Government with the purpose of deepening competition in all sectors of the economy. These included:-

- i. Advice to the Honorable Chief Justice regarding Advocates Remuneration Order (ARO). The Authority advised that that Law Society of Kenya was required to seek for exemption under section 29 of the Act before the ARO was gazetted, since the Act of agreeing on rates by professional associations is deemed to be a restrictive trade practice. The Authority will continue interacting with the relevant stakeholders to ensure all persons adhere to the provisions and the letter and spirit of the Act.
- ii. Advice to the the Privatization Commission regarding the privatization of the Kenya Wine Agencies. The Commission was in the process of implementing phase 1A of the privatization in relation to which negotiations between the Commission and Distell Group Limited on the sale of 26% shareholding of KWAL's shares from ICDC shareholding were ongoing. The Authority advised that the sale of 26% shareholding to Distell did not require the approval of the Authority under the merger thresholds. However, the exclusive Agreement with Distell was anti- competitive and advised the parties to apply for exemption.

The Authority also participated in various other forums relevant to it's mandate. The Key consultative forums the Authority participated in included the following: -

- i. The forum on the development of the National Tea Policy organized by the Ministry of Agriculture. The aim of this policy is to unlock the potential of the industry by assuring sustainability, increasing competitiveness and enhancing investment in the tea industry.
- ii. The review of the National Payment System draft Regulation organized by the Central Bank of Kenya. The Regulation provides for:- authorization of electronic retail payment service providers; electronic retail transfers; facilitation of the provision of electronic retail payment services without compromising the safety and efficiency of the national payment system; standards for consumer protection and risk management to be adhered to by all providers of electronic retail transfers; and, the appointment of agents and cash merchants by the electronic retail payment service provider and the registration of such agents.
- iii. Participated in the Kenya Bankers Association as a Steering Committee member, in the association's initiatives to inculcate Alternative Dispute Resolution Mechanism in the sector. This is aimed at minimizing, the time and the costs of resolving bankers/ consumers disputes.
- iv. The Authority, in conjunction with the Kenya Investments Authority, held Open Days targeting the counties of Mombasa and Kisumu. The objective of exhibiting was to sensitize the public and the County Governments, on the competition law and the Authority's mandate and functions. It is envisaged that these interactions will be rolled out to the other counties progressively.



CAK's Senior Advocacy Officer, Lilian Mukoronio attending to inquiries by stakeholders.

Towards regional and global integration

As a government advisor on competition matters, locally and internationally, the Unit co-ordinated the participation of the Authority in various regional and international events, aimed at facilitating regional and global trade integration.

Regionally, the Unit played a key role in facilitating achievements of the objectives of the African Competition Forum (ACF). ACF is a platform for all competition agencies in Africa which aims at sharing and building capacity in research and advocacy, with the aim of entrenching competition principles in the African economies, to facilitate poverty reduction. The Authority accommodated the Secretariat of the ACF and CAK Director-General was a founder member and the Chair of the ACF's Secretariat.

Also, the Unit co-ordinated the hosting of the ACF's Agency Effectiveness workshop which brought together 45 stakeholders, including heads of Competition Authorities from across Africa (Botswana, Cameroon, Congo Brazzaville, Cote D'Ivoire, Ethiopia, Gabon, Kenya, Malawi, Mauritius, Senegal, Swaziland, Seychelles, South Africa, Tanzania, Togo, The Gambia, Zambia, Zimbabwe and COMESA). The objective of the workshop was to impart knowledge and enhance the Heads of Agencies to facilitate effective competition regulation across Africa to deepen integration.

In addition, the Authority participated in ACF research project titled "Competition Dynamics and Regional Trade Flows". The research which involved six countries (Botswana, Kenya, Namibia,

South Africa, Tanzania and Zambia) focused on three industries: - cement, sugar and poultry. The Authority participated in sugar and cement. The research aimed at appreciating the factors that affect cross-border trade in these industries and also benchmarking the local competition levels among the research countries. CAK is currently implementing the research findings, which can be accessed through the ACF website.

The Authority, with the view of realigning the local and regional laws, based on the best international practices, interacted with the COMESA Competition Commission on various occasions. This was through consultative meetings and communications. The main object of this interaction was geared towards ensuring that the COMESA merger regime is modernized in order to minimize regulatory burdens to investors. Specifically, these efforts aimed at reviewing merger filling fees downwards; setting of mergers thresholds and developing an interaction framework between national agencies and COMESA Competition Commission.



Delegates during the Agency Effectiveness workshop for ACF hosted by the CAK

It is important to highlight that these interactions were fruitful and it is expected that in the coming financial year, COMESA will, among others, set mergers thresholds and also review mergers filling fees downwards.

In the EAC front, the Authority participated and informed in the process of approximating of Partner States competition laws with the ultimate objective of fully actualizing the Common Market Protocol. It is expected that the EAC Competition Act will become operational on 1st December, 2014.

The above initiatives are expected to minimize non-tariff barriers, specifically anti-competitive practices, which may be distorting cross-border trade within the region and Africa as a whole to

the detriment of our citizenry. The Authority plans to continue with these initiatives as we move forward, until there shall be unfettered entry of our Kenyan investors in the whole of Africa.

In order to introduce best international practice in the actualization of our mandate, the Authority continues to interact with the International Competition Network (ICN). ICN is a voluntary network of Competition Agencies across the World and aims at developing and adopting best practices in competition regulation. The Authority has been a Member of ICN since its inception and during the period under review The Director General moderated in one of the ICN Conference Breakout Sessions “The Many Sides of Foreclosure” under the Unilateral Conduct Working Group. The Authority also participated in panels of various ICN workshops including the Cartel workshop held in October, 2014 in South Africa and Advocacy Workshop held in December, 2014 in Paris. In addition, the Authority also participated in contributing to ICN Advocacy Working Group Competition Culture project and also in the Merger Working Group teleconferences on “Economic Analysis of mergers”.

During the year under review, the Authority also participated and articulated Kenya’s position in other various Workshops and Conferences. These include: - BRICS (Brazil, Russia, India, China and South Africa) Conference held in New Delhi on 20th to 22nd November, 2013, where the Authority presented a paper titled “Challenges in setting up an affective agency”; OECD’s Global Competition Forum and presented a paper on “Competition and Corruption”, The UNCTAD Intergovernmental Experts on Competition

The Authority also made contributions in the publication of *The African and Middle Eastern Antitrust Review 2014* and *The Handbook of Competition Economics 2014* (Global Competition Review). These publications provide an overview of competition enforcement in Africa and Middle East Countries and world-wide competition laws respectively.

Bilateral Co-operation

In the spirit of international cooperation and capacity building, the Commission hosted a delegation of the Anti-monopoly Bureau and Ministry of Commerce, China in July, 2013. The meeting discussed matters related to strengthening of bilateral co-operation between the two organizations in regard to sharing of information and capacity building. This culminated into the signing of an MOU between the two organizations on 13th June, 2014.

The MoU provides for, among others: - exchange of information on new/proposed legislation; suggestions to the drafting of complementary regulations and rules on competition and consumer protection; exchange of experiences on implementation of competition law when necessary for both sides; and, exchange of experiences in capacity building.

The Authority also undertook a benchmarking activity with the Australian Competition Commission (ACCC) in October, 2013. This was aimed at adopting the international best practices in the area of consumer protection, human resources and financial management.

The Unit also coordinated the hosting of a delegation from the Botswana Competition Commission. The objective of the visit was to exchange ideas on case management and knowledge management systems between the two agencies.



Mr. David Ong'olo, CAK Board Chairman shakes hands with MING Shang the Director General of the China Anti-Trust Bureau.

Human Capital and Infrastructure Development

The Human Resources Department seeks to develop the Authority's organizational capability so as to enable the institution to deliver on its strategic objectives. The Authority's human resources (HR) objectives are aligned to the strategic objective of developing human capital development for a high performance organization. The Departments' goal is to create an efficient and effective management of the recruitment process, retain staff and ensure a defined succession management is in place.

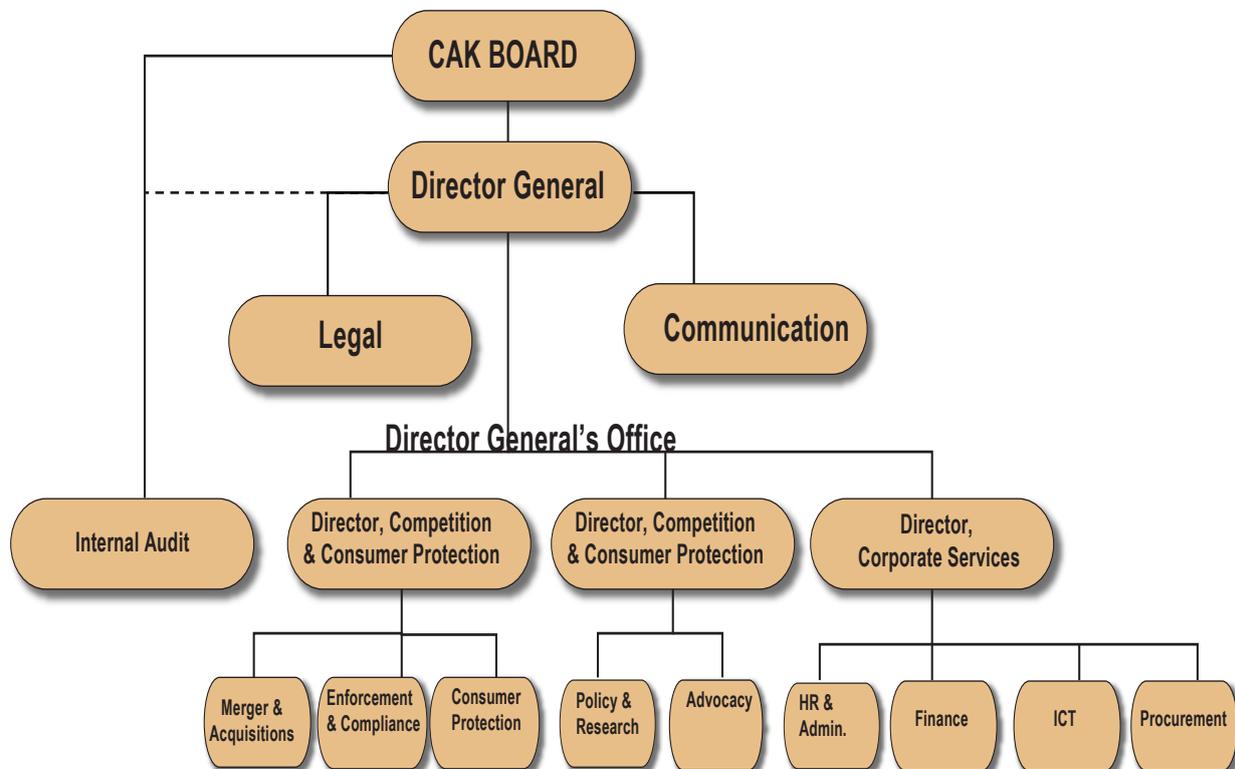
During the period, the department focused on developing an organization structure, after defining the skills required and workload to ensure optimal staffing level for the Authority. The department's activities were also geared towards deepening capacity of the staff, in regard to skills and in addition, providing them with the requisite infrastructure, equipment and office environment, to enhance productivity.

The above was guided by development and implementation of various Human resources policies.

Job Analysis and Evaluation

The Authority successfully undertook a Job Analysis and Evaluation Exercise. The Exercise Report will guide the process of populating the Authority, based on the recommended skills and optimal numbers. In summary, the Report highlights the:- Authority's organizational Structure; Job Descriptions and specifications for each category of job; Salary bands; and Reporting relations.

CAK Organizational structure



Populating the Structure

Various initiatives were undertaken during the period aimed providing the Authority with the right number of staff and with the right skills.

The first initiative was actualized based on the provisions of Section 98 of the Competition Act, No. 12 of 2010. Specifically, the Authority undertook a suitability test for the staff who were on deployment from the National Treasury. Arising out of this, twelve (12) staff were retained on substantive appointment in the Authority and fourteen (14) number were deployed to the National Treasury, after undergoing a competitive interviewing process.

In order to deepen the Authority's visibility, with the ultimate objective of building a competition culture, the Authority established a Communications and External Relations Department. The unit is currently being headed by an employee at the rank of a manager.

In regard to governance and also prudent financial management, during the year, the Authority recruited Manager, Internal Audit; Manager, Legal Services, and also expanded the staff establishment in the Human Resource and Finance departments. It is envisaged that these initiative will ensure optimal utilization of the public funds to the benefit of the greater citizenry. As highlighted in the Job Evaluation Exercise Report, the optimal staffing levels of the Authority stands at 70 (51 technical and 19 support services). During the period, the Authority had 24

employees. This number will be expanded by 100 % in the coming six (6) months, through competitive recruitment alive to all Constitutional requirements.

Recruitment and Staff

All the Authority’s staff are subjected to vetting by bodies such as Ethics and Anti-Corruption Commission, Kenya Revenue Authority, Higher Education Loans Board, Director of Criminal Investigations and Kenya Credit Reference Bureau. During the period Authority recruited nine (9) staff, out of these, four were females and five were males.

As the year came to an end, the Authority had a total of Twenty four (24) staff members. Out of these, sixteen (16) males and eight (8) females respectively. This met the Constitutional requirement gender balancing as illustrated in chart 1 below.

Chart 1
% Gender representation

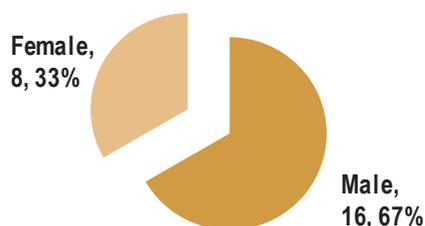
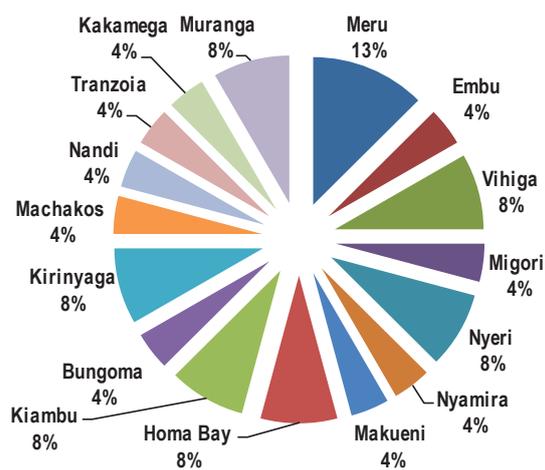


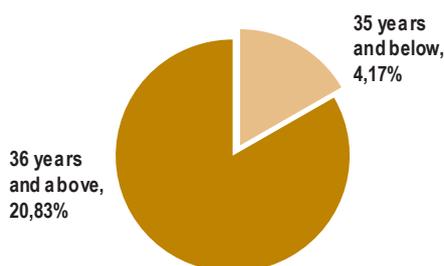
Chart 2
Staff distribution per County



Further, the County representation was as per the pie chart 2 above:

As at the end of the year, the Authority had most staff above the age of 36 years. Subsequent recruitment will ensure that the Authority structure is populated by staff below 35 years to enhance succession planning.

Staff distribution by age



The Authority, as stated earlier, will endeavor to fill the remaining vacant positions in the coming financial year still cognizant of the gender parity, County balance and also aim at bridging the age gap for succession planning.

Staff Development

During the year, various staff attended both technical and non-technical programmes ranging from deepening of technical skills to management courses. These courses included but not Limited to:

- i) Corporate Governance.
- ii) Integrity Assurance.
- iii) Advanced course on management of electronic records.
- iv) Budgetary Policy and Planning.
- v) Regulatory Impact Assessment.
- vi) Mergers Analysis, Investigative Skills and Consumer Protection trainings.

It is important to note that these trainings were conducted by reknown authorities in their areas of specialization such as Professors Tom Ross and Simon Roberts of University of British Columbia and University of Johannesburg respectively and Carl Buick formerly of Australian Competition and Consumer Commission.

- vii) Statutory trainings such as:
 - a) National Values and Ethics – National Integration and Cohesion Commission.
 - b) Complaints handling – Commission for Administrative Justice/ Office of Ombudsman.
 - c) Safety and Fire drills – Directorate of Occupational Health and Safety Services.
 - d) Disability Mainstreaming – National Council for Persons with disability.
 - e) HIv/ AIDS – National Aids Control Council.
 - f) Conservation Sustenance – National Environment and Management Authority.
 - g) Corruption Prevention – Ethics and Anti - Corruption Commission among others.

Training of CAK staff by visiting international Professors

In order to deepen skills for the Authority staff, the Competition Authority of Kenya invited the following during the year under review:

1. Professor Ross Thomas from the University of British Columbia (Sauder School of Business) made a presentation on “Alliances in the Airline Industry” to the Authority technical staff on 22nd January, 2014 in the Board.
2. Mr. Carl Buick, a Consultant in Competition and Consumer protection policy and law trained the Authority staff on consumer protection issues in February, 2014.
3. Prof. Simon Roberts made a presentation on “Prioritizing Enforcement through Screening” on 3rd April, 2014. The presentation was made to the Board Members and the Authority staff.
4. Prof. Louis Cabral of New York University made a presentation on “Current Issues in US Antitrust: A review of horizontal Agreements, abuse of dominant position, and merger analysis” on 16th May, 2014.

Young Professional Programme

The Authority introduced a Young Professional Programme (YPP) targeting post-graduates of Law and Economics of under 30 years. The programme aims at a critical mass with requisite capacity for competition law enforcement in Kenya, while at the same time enhancing a competition culture. YPP is a one (1) year programme and the successful candidates undergo training under a pre-determined curriculum which include theory and actual case handling encompassing local and international jurisdictions.

After completion of the programme, the trainees may be suitable for entry level positions in the Authority and will be appointed where there is a vacancy. However, they are also prepared for the job market in general. During the year under review, three, (1 male and 2 females,) young professionals were recruited through a competitive process. Two with an Economics background and one with a Law background.

Internship Programme

The is committed to creating internship opportunities for continuing students from institutions of higher learning that are accredited by the Commission of Higher Education. The objectives of the internship programme is to establish a link with institutions of higher learning for continued supply of competent human capital; provide a window for creating awareness of the Competition Policy and Law to learning institutions.

During 2013/2014 FY, the Authority provided internship opportunities to sixteen (16) students (5 Males , 11 Females) from four (4) public universities and three (3) private Universities.

Staff Welfare

The Authority recognizes the importance of promoting employee well-being in the work place and is therefore committed to providing service and benefits that not only motivate employees' but also inspires them towards productivity.

During the year, the Authority successfully managed to competitively source the following covers for the staff: Medical scheme – both out and in-patient; Group Personal Accident - 24 hours, and; Group life - sum assured.

The following Committees were also constituted to buttress the staff well-being at place of work:

1. HIV and AIDs.
2. Alcohol and Drug Abuse.
3. Gender and gender based violence.

The Committees are expected to articulate and deal with staff matters incidental to the above areas with the ultimate objective of enhancing the welfare of the employees and the overall productivity at work.

The HIV and AIDs committee organized a Voluntary Counseling and Testing (VCT) for the Authority's staff during the period. A total of fourteen (14) staff were tested and counseled.

The Authority operates in a non-unionized environment. Irrespective of the absence of a union, Management and staff have still maintained sound and cordial employee relations through governance structures such as the Management Committee and regular DG's 'Kamukunjis'. The Kamukunjis provide a forum where management and employees can interact on issues related to work environment and employee relations. Issues which cannot be adequately catered for during the DG's Kamukunjis are handled through the Welfare Association. This is a vehicle which handles both distress and momentous occasions in employees' lives.

Legal Department

The Legal Services Department manages the Commission's litigation before the Tribunal and the appellate courts. It also ensures that the Authority complies with all the statutory obligations which it endeavors to achieve through conducting of legal audit; vetting of all contractual obligations the Authority enters into, among others. The Department also advises on governance issues.

During the period under review, the department advised on various initiatives undertaken by the Authority, aimed at minimizing statutory limitations in regard to the enforcement mandate, nationally and regionally, and also ensuring good corporate governance.

Particularly, the department advised on:-

i. Amendment to the Competition Act

Since the Act commenced on 1st August, 2011, its implementation has posed some enforcement challenges. This is mainly due to lack of appropriate provisions to ensure international best practices that facilitate low regulatory and transaction costs. Specifically, the provisions in regard to definition of dominance; jurisdiction under the restrictive trade practices exemptions and unwarranted concentration of economic power were limiting. To address this challenge the Authority proposed amendments changes to the Competition Act to create predictability and transparency in its enforcement, the Amendments are contained in the Finance Act, 2014. The Amendments includes revision of the dominance situation thresholds to below 50%, where market power exists; definition of unwarranted concentration of economic power; providing introduction of a block exemption regime for some category of restrictive trade practices and also a leniency programme to facilitate cartel detection.

ii. Amendment to the COMESA Competition Commission Rules

Kenya is one of the signatories to the Common Market of Eastern and Southern Africa (COMESA) treaty. Pursuant to the Treaty, COMESA introduced a Competition regulation regime, through regulations which came into force on 13th January, 2013. The regulations give COMESA Competition Commission (CCC) jurisdiction over cross-border competition matters across the Common Market.

However, our opinion has been that the regulations have been an impediment to the letter and the spirit of the treaty; encouraging trade and investment across the Member States. This

is due to the serious challenges in emanating from especially a merger regime which lacks minimum thresholds and also the high merger filing fees of up to \$500,000.

Informed by the above challenges, the Authority, during the period under review, engaged the CCC on proposals to set thresholds for notification and revise the filing fees downwards. The Authority's interaction has progressively succeeded and it is expected, after the Council of Ministers approval, the revised regulations shall commence in the coming financial year.

Code of Conduct

In order to sustain good governance in the Authority, section 5 of the Schedule to the Competition Act requires that the Authority adopts and gazettes a Code of Conduct. The code of conduct is specifically expected to prescribe standards of behavior to be observed by the Members and Staff of the Authority in the performance of their duties.

During the period under review, the Authority developed and gazetted a Code of Conduct. The Code of Conduct highlights how the Members of the Authority and the staff should handle conflicts of interest; gifts and hospitality; confidential information, among others. The Code of Conduct was posted in the Authority's website after the requisite approval by the Ethics and Anti-Corruption Commission.

Operational frameworks

In order to address areas of overlapping jurisdiction with sector regulators and pursuant to its mandate under section 5(3) of the Act, the Authority worked towards developing operational frameworks to manage the said jurisdictions and also confidential information. The Authority concluded an MoU with the Central Bank of Kenya and is in the process of concluding one with Communications Authority of Kenya and Kenya Civil Aviation Authority.

Court Cases

During the Financial year the Authority was sued in the following cases:-

i) Nairobi Misc Application No. 418 of 2013: Republic versus Competition Authority of Kenya Ex parte Airtel Networks Limited

In this case Airtel Networks filed a suit challenging the Authority's decisions to enter settlement negotiations with Safaricom Limited against whom they had filed a complaint under part A and B of the Competition Act. Airtel was seeking administrative review orders of Mandamus, Prohibition and Certiorari to quash the Authority's decision. The applicant also managed to obtain a stay of the said decision. The parties later recorded a Consent Order on 20th May, 2014 lifting the stay order to allow the Authority finalize settlement proceedings. The Authority finalized settlement negotiations with Safaricom pursuant to which Safaricom opened up its MPESA agency to competition resolving the matter.

ii) In NRC HCC Misc Appl No. 112/2014 Republic Versus Beldine Omollo Ex parte Wang'ombe Kariuki and 3 others.

In this matter an officer filed suit challenging her interdiction. The matter was resolved amicably with no order and costs, vide a consent order dated on 16th May, 2014.

iii) Nairobi Misc Application no 145 of 2013: Republic Versus Beldine Omollo Exparte Wang'ombe Kariuki and 3 others

In this matter a former employee has sued the Authority challenging her redeployment back to The National Treasury and seeking special damages amounting to Kshs. 2,838,302. The matter is pending is still pending in court.

Communications and External Relations

During this financial year, the Department was set up to facilitate the interface between the Authority and its stakeholders. The main objective of the department is to communicate the decisions and activities of the Authority with the overarching aim of building a competition culture. During the year, the Department carried out the following:

Media Relations

The Department coordinated distribution of various news releases and media inquiries. It also oversaw planning for news conferences. This resulted to the coverage of the Authority in the media increasing by 300% during the period, compared to the same in last financial year (2012/2013).

Business Journalists Training workshop

Based on the fact that the Authority is a relatively a new entity, there is need to undertake awareness creation activities. The media has always been an effective tool for any organization, and more so a young agency, in relaying its message to the general public.

The Department therefore, organized a two day training covering for the media, targeting the business journalists of the main media houses. The workshop, which was co-funded with The World Bank Group, was attended by 20 business journalists.



Business Journalists during the two day training workshop.

The workshop programme focused on, among others: - explaining the importance of competition and competition law in relation to the Kenya's Development Agenda; appreciating the role and mandate of the upcoming regional competition agencies and how they relate with the Competition Authority of Kenya; and also juxtaposing the competition regime in Kenya with the other countries'.

Corporate Social Responsibility (CSR) initiative

During the period, the Authority introduced a CSR program actualized through an Essay writing competition targeting undergraduates and postgraduate students in all universities. The CSR aims at motivating research in the area of competition policy regulation among the students. The criteria for judgment involved Essay's originality and its contribution to new knowledge, insights and creative approach in this field.

The winners and runners- up, four (4) in total, were awarded through a cash prize, paid directly to their institutions, to offset their tuition fee.



CAK Director General, Mr. Wang'ombe Kariuki congratulating Ms. Belinda Kaimuri who emerged as the .postgraduate essay writing competition winner.



The Director General with panelists and the candidates of the 2014 CAK Essay writing competition.

Environmental Sustainability Initiative

As an endeavor to promote environmental protection and conservation through partnerships with stakeholders, the Authority partnered with the Department of Weights and Measures in the Ministry of East Africa Affairs Commerce and Tourism in order to promote conservation of environment through a tree planting exercise. The Authority on 26th June, 2014, planted one hundred (100) indigenous trees at the Ministry's ground in South B. The survival of the trees is being monitored by the Ministry as enshrined in the MOU. Further, the MOU highlights the key areas of collaboration between the two parties which include environmental awareness, sustainability and conservation.



CAK's Senior Accountant, Mr. Ambrose Agenga planting a tree during the tree planting drive.

ICT Unit

The Information Technology Unit provides a secure, user-friendly and efficient information technology (IT) environment for all the Authority's employees. There were no security breaches of the Authority's IT environment and system downtime was kept to a minimum.

The Strategic Plan focused on the following priority areas, Infrastructure and human capital development; and Visibility and corporate image among others.

The Authority improved and upgraded the infrastructure by increasing the internet bandwidth, acquired ISDN service of 30 channels and more Personal Computers as a means of improving service delivery. In addition, the visibility and corporate image of the Authority was enhanced by the revamping of the website which was linked with the Social sites Twitter and Facebook.

Procurement Unit

The Unit handles the procurement function of the Authority. The unit, while actualizing this function is guided by The Constitution of Kenya 2010, The Public Procurement and Disposal Act, 2005 and The Public Procurement and Disposal Regulations 2006. This aimed at ensuring that the Authority acquires assets and services of high quality at competitive terms.

During this financial year, the Department undertook the following:-

In compliance with The Constitution Article 227, The Public Procurement and Disposal Act 2005 and Regulation 2006 and Subsequent Legal Notices No. 114, Preference and Reservations, and; Legal Notice No. 106, Amendment Regulations, 2013 , the Unit was able to undertake the following:-

- 1) In compliance with statutory obligation, the Unit made quarterly reports to the relevant organization's (EACC, PPOA) as required. These included;-
 - a) Approved annual procurement plan FY 2013-2014.
 - b) Termination of procurement proceedings.
 - c) Direct procurement of a value exceeding Kshs. 500,000.00.
 - d) Contracts awards for contracts valued at Kshs. 5,000,000.00 and above.
 - e) EACC Performance contracts 2013/14 Financial year 10th Cycle guidelines, information on all tenders above the threshold of Kshs. 500,000.00.
- 2) Development and approval of the Procurement Manual: The purpose of the manual is to ensure that the Procurement of goods, works and services is conducted in an honest, competitive, fair and transparent manner that delivers the best value for money outcome whilst at the same time protecting the reputation of the Authority, by taking into account the required specification, quality, service delivery, reliability, environmental and social issues and the total cost of ownership.
- 3) Timely payments for the Goods/Services rendered: Accurate and timely payment of invoices to suppliers for the services rendered or goods supplied with the relevant supporting documents attached. The credit period is 30 days, but payment process is done out within an average period of seven (7) days.
- 4) Achievement of the 30% procurement for the Disadvantaged group (18,540,600 / 61,001,232.08 = 30.40%): In pursuant to the Presidential Directive on the 30 percent of all Government procurement allocated to the Youth, Women and Persons with Disabilities, as per the Treasury circular No. 14/2013, and in line with Article 227 of The Constitution of Kenya 2010, the Procurement Section was able to achieve 30.40% in the allocation of contracts to the designated categories of preferences.

Internal Audit and Risk Management

The Authority has a well-established Internal Audit department that offers independent and objective assurance on the effectiveness of internal controls, risk management and governance processes in order to assist the Authority in achieving its strategic objectives. The department carried out regular reviews on the Authority's policies and processes, identified internal control weaknesses and made succinct recommendations for improvement. The department also monitored the implementation of the Authority's Risk Management Framework as well as the Strategic Plan.

The Board approved the Authority's Risk Management Framework within the course of the Financial Year. This framework offers a structured, consistent and continuous process, across all the operations within the Authority. It aims at identifying risks, assessing risks, deciding on the risk mitigation responses, reporting mechanism and monitoring the adequacy of the risk management process.

The Board developed the Authority's first Risk Register. The register acts as the central repository of the Strategic and Divisional risks affecting the realization of the Authority's Strategic Objectives. The register also identifies root cause of the risks, the risk owners, impact and likelihood of the risk occurring as well as the action plans to mitigate against the risks. The Board also continued

to monitor the internal control, governance and risk management framework through the Audit and Risk Board Committee.

Finance Department

The finance unit is charged with the prudent financial stewardship of the Authority including sourcing of funds, allocation of funds as well as effective cash flow management to ensure the Authority meets its obligations to the public promptly. During the year, the Authority had an approved budget of Kshs.280M. In addition the Authority Carried forward an additional Kshs.30M in unspent balance from the previous financial year 2012/2013 bringing the total funding available for the year 2013/2014 to Kshs.310M. Exchequer receipts for the year therefore amounted to Kshs.280M.

The Authority spent Kshs. 227M which included Kshs.36M in capital expenditure towards purchase of fixed assets and Kshs. 191M in recurrent Expenditure. The recurrent expenditure consisted mainly of employee personal emoluments of Kshs. 74M and other operating expenses of Ksh. 117M. During the year the Authority had commenced the process of identification of a Service Provider to provide pension services to the Authority's pensionable staff. This process had not been concluded as at the end of the financial year. The budgetary allocation towards the pension scheme together with expected acquisition of an ERP to automate the Authority's processes therefore remained largely unspent. This is what forms the bulk of the unspent balance of Kshs. 83M carried forward to the next year. The Authority expects the processes of identification of service providers for the pension scheme and the acquisition of the ERP to be concluded.

The Department also applied its advisory role in the process of identification of a valuer to value assets provided by The National Treasury. These values have therefore been included in the financial statements presented in the succeeding pages of this report.

The Authority also met its statutory deadlines by preparing and submitting its budget estimates for the year 2014/2015 before the deadline of 31st January 2014. The Financial Statements of the Authority for the year 2013/2014 were also prepared and presented to the Auditor General by 2nd September 2014 earlier than the 30th September deadline as required by the PFM Act.

The main challenge faced by the Department was low staffing levels which is expected to be addressed by the implementation of the Job evaluation report. The financial statements of the Authority are presented in the succeeding pages.

Challenges

It is evident that during the year, the Authority realized great strides towards deepening competition culture in the economy through its enforcement activities coupled with advocacy and creation of awareness initiatives. Nonetheless, these achievements have been actualized through enjoyment and surmounting some challenges within the reporting period. The challenges include: -

i. Human Capital

Although the Authority's staff was very skilled in terms of the requisite areas of competition regulation, law and economics, in terms of the establishment, the Authority operated with a sub-optimal staff compliment of twenty-four (24) number. This meant the staff had to work well above

beyond the normal working hours to meet deadlines. It is expected that after the approval of the Job Evaluation Report, the authority shall populate its organizational structure in the first few months of the next financial year.

ii. Budgetary constraints

It is important to highlight that although the resources allocation from the Exchequer increased from Kshs. 252 million (financial year 2012/2013) to Kshs. 280 Million (financial year 2013/2014), these resources have been minimal as the Authority endeavors to build the requisite infrastructure and systems like Enterprise Resource Planning. This situation was further complicated by the increased demands of resources by the devolved system of government and buttressed by increased funding of Government's mega infrastructure projects. It is on this basis that the Authority adopted a prioritization approach to its enforcement work; focusing on the agriculture sector and sectors that drive the economy e.g. the banking sector.

The Authority also sourced for direct assistance from various development partners including the World Bank; Financial Sector Deepening Programme; DFID; Kenya Trust Markets and IDRC.

iii. Lack of a Competition culture

Low appreciation of the benefits of competition, and especially in some areas like the professional associations, has contributed to distortions in the said markets. This situation was exacerbated further when the said distortions were seemingly supported by legislation which is enforced by government agencies.

To ameliorate this situation, the Authority rolled out advocacy activities targeting certain government departments with the objective of ensuring revision of regulations that contract the competition tenets. It is also expected that with the introduction of the RIA framework and development of the MoU with certain sector regulators, this scenario will be minimized.

iv. Litigation

Litigation risk together with the related costs has been identified as one of the corporate risks facing the Authority. A number of the Authority's decisions especially those related to merger determination and enforcement actions are beginning to be challenged in the courts of law. High litigation costs tended to reduce the resources for other activities of the Authority. It is on this basis that the Authority has interacted with the appointing Authority to ensure that the Competition Tribunal is fully populated.

Way Forward

Premised on the above stated challenges, the Authority's Board, Management and the entire staff are ardent on making the year 2014-15 more successful. In this regard, special attention will be given to the following key activities:-

- a) Focus on minimization of restrictive trade practices especially by trade associations;
- b) Enforcement activities focusing on key sectors of the economy identified through the market inquiries;
- c) Advocacy and awareness creation;
- d) Market inquiries and surveillance activities;
- e) Effective stakeholder engagement;

- f) Business Process Automation;
- g) Effective Monitoring and Impact Assessment;
- h) Effective mobilization and prudent utilization of resources to complement the Exchequer funding.
- i) Implementation of the Job Evaluation Report Recommendations;
- j) Implementation of the Authority's Risk Framework;
- k) Development of subsidiary legislation;
- l) Adequate policy and operation manuals;
- m) Benchmarking with best international practices;

Conclusion

In conclusion, I wish to recognize the support of our stakeholders during this journey. The feedback and your support energized us, despite the challenges highlighted. As we move forward, we realize success is measured on challenges we overcome and that is the more reason we look forward to the year 2014/2015 in our endeavors of serving Kenyans.

PART II
FINANCIAL STATEMENTS FOR
THE YEAR 2013/2014

Statement of the Directors' Responsibility

The Public Finance Management Act, 2012 and the State Corporations Act, require the Directors to prepare financial statements in respect of the Competition Authority Of Kenya, which give a true and fair view of the state of affairs of the Authority at the end of the financial year and the operating results of the Authority for that year. The Directors are also required to ensure that the Authority keeps proper accounting records which disclose with reasonable accuracy the financial position of the Authority. The Directors are also responsible for safeguarding the assets of the Authority.

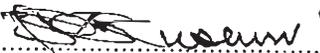
The Directors are responsible for the preparation and presentation of the Authority's financial statements, which give a true and fair view of the state of affairs of the Authority as at the end of the financial year ended on June 30, 2014. This responsibility includes: (i) maintaining adequate financial management arrangements and ensuring that these continue to be effective throughout the reporting period; (ii) maintaining proper accounting records, which disclose with reasonable accuracy at any time the financial position of the Authority; (iii) designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements, and ensuring that they are free from material misstatements, whether due to error or fraud; (iv) safeguarding the assets of the Authority; (v) selecting and applying appropriate accounting policies; and (vi) making accounting estimates that are reasonable in the circumstances.

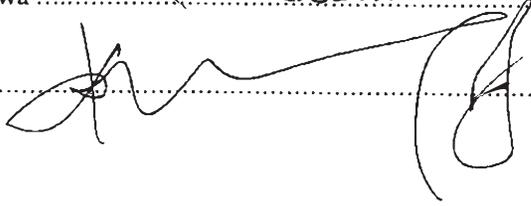
The Directors accept responsibility for the Authority's financial statements, which have been prepared using appropriate accounting policies supported by reasonable and prudent judgements and estimates, in conformity with International Public Sector Accounting Standards (IPSAS), and in the manner required by the PFM Act and the State Corporations Act. The Directors are of the opinion that the Authority's financial statements give a true and fair view of the state of Authority's transactions during the financial year ended June 30, 2014, and of the Authority's financial position as at that date. The Directors further confirm the completeness of the accounting records maintained for the Authority, which have been relied upon in the preparation of the Authority's financial statements as well as the adequacy of the systems of internal financial control.

Nothing has come to the attention of the Directors to indicate that the Authority will not remain a going concern for at least the next twelve months from the date of this statement.

Approval of the financial statements

The Authority's financial statements were approved by the Board and signed on its behalf on *28th January 2015* by:

Judith Abrahams Guserwa 
Ag. Chairman

Wang'ombe Kariuki 
Director General

REPUBLIC OF KENYA

Telephone: +254-20-342330
Fax: +254-20-311482
E-Mail: eag@oagkenya.go.ke
Website: www.kenao.go.ke



P.O. Box 30084-00100
NAIROBI

KENYA NATIONAL AUDIT OFFICE

REPORT OF THE AUDITOR-GENERAL ON COMPETITION AUTHORITY OF KENYA FOR THE YEAR ENDED 30 JUNE 2014

REPORT ON THE FINANCIAL STATEMENTS

I have audited the accompanying financial statements of Competition Authority of Kenya set out on pages 9 to 26, which comprise the statement of financial position as at June 30, 2014, and the statement of financial performance, statement of changes in net assets, statement of cash flows and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 14 of the Public Audit Act, 2003. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

Directors Responsibility for the Financial Statements

The Board of Directors is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards and for such internal control as directors determine is necessary to enable the preparation of financial statements that are free from material misstatements, whether due to fraud or error.

The Board is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 13 of the Public Audit Act, 2003.

Auditor-General's Responsibility

My responsibility is to express an opinion on these financial statements based on the audit and report in accordance with the provisions of Section 15(2) and (3) of the Public Audit Act, 2003 and submit the audit report in compliance with Article 229(7) of the Constitution of Kenya. The audit was conducted in accordance with International Standards on Auditing. Those standards require compliance with ethical requirements and that the audit be planned and performed to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the

auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Authority as at 30 June, 2014 and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with Competition Act No.12 of 2010.



Edward R. O. Ouko, CBS
AUDITOR-GENERAL

Nairobi

4 March 2015

STATEMENT OF FINANCIAL POSITION

AS AT 30TH JUNE 2014

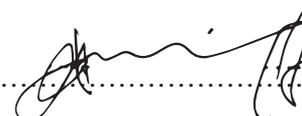
ASSETS	NOTE	2013/2014 Kshs.
Current Assets		
Cash and Cash Equivalents	11	95,355,886
Receivables From exchange transactions	12a	4,226,261
Receivables From non-exchange transactions	12b	20,091,986
		119,674,133
Non-Current Assets		
Property, Plant and Equipment	13	52,112,889
Intangible Assets	14	5,770,000
		57,882,889
TOTAL ASSETS		177,557,021
LIABILITIES		
Current Liabilities		
Trade and Other payables from Exchange Transactions	15	13,424,818
Provisions	16	2,681,230
		16,106,048
Non-Current Liabilities	15	8,552,542
TOTAL LIABILITIES		24,658,590
Net Current Assets		103,568,085
Net Assets		152,898,431
Represented by:		
Equity		
Equity Contribution by the Treasury	12.2	52,420,435
Accumulated Surplus		100,477,997
		152,898,431

The financial statements set out on pages 58 to 60 were approved by the Board of Directors on 28th January 2015 and were signed on its behalf by:

Judith Abrahams Guserwa
Ag. Chairman



Wang'ombe Kariuki
Director General



The Statement of Financial Position is to be read in conjunction with the notes to and forming part of the Financial Statements set out on pages 61 to 73.

STATEMENT OF FINANCIAL PERFORMANCE

FOR THE YEAR ENDED 30TH JUNE 2014

	NOTE	2013/2014 Kshs.
Revenue		
Revenue from non-exchange transactions		
Exchequer Receipts	3	290,000,000
Fines and Penalties	3	5,300,000
Other Income	3	810
		295,300,810
Revenue from exchange transactions		
Sale of tenders	4	1,660,000
Commission on IPPD Salary Processing	4	10,740
Contribution by Communications Authority	4	600,000
Gifts and Donations	4	10,000
		2,280,740
Total Revenue		297,581,549
Expenditure		
Staff Emoluments	5	80,955,350
Board Expenses	6	10,966,965
Depreciation and Amortization	13	7,722,284
Repairs and Maintenance	8	1,490,777
Contracted Services	9	11,573,670
Audit fees		696,000
Finance Costs	11	83,007
General Expenses	10	83,615,499
		197,103,553
Surplus/(Deficit) for the year		100,477,997

The notes set out on pages 61 to 73 form an integral part of the financial statements.

STATEMENT OF CHANGES IN NET ASSETS

AS AT 30TH JUNE 2014

	NOTE	Contribution by Treasury Kshs.	Accumulated Fund Kshs.	Total Fund Kshs.
1 July 2013		-	-	-
Contribution for the year	12.2	52,420,435	-	52,420,435
Charge for the year			-	-
Surplus/(Deficit) for the Year	-		100,477,997	100,477,997
At 30 June 2014		52,420,435	100,477,997	152,898,431

The Statement of Changes in net assets is to be read in conjunction with the notes to and forming part of the Financial Statements set out on pages 61 to 73.

STATEMENT OF CASH FLOWS

FOR THE YEAR ENDED 30TH JUNE 2014

	2013/2014 Kshs.
Cash flows from Operating Activities	
Surplus from operating Activities	100,477,997
Add back Depreciation	7,722,284
	108,200,281
Adjustments for Changes in Working Capital	
Increase in Receivables from Exchange Transactions	(4,226,261)
Increase in Receivables from Non-Exchange Transactions	(20,091,986)
Increase in Payables from Exchange Transactions	21,977,360
Increase in provisions	2,681,230
	340,343
Net Cash flows from Operating Activities	108,540,624
Cash flows from Investing Activities	
Purchase of Non-Current Assets	(36,240,073)
Purchase of Intangible Assets	-
	(36,240,073)
Cash flows from Financing Activities	
Treasury Contributions	23,055,335
	23,055,335
	-
Net Increase / (Decrease) in cash and cash equivalents	95,355,886
Cash and cash equivalents at 1st July 2013	-
Cash and Cash Equivalents as at 30th June 2014	95,355,886

The Statement of Cash flows is to be read in conjunction with the notes to and forming part of the Financial Statements set out on pages 61 to 73.

STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS FOR THE YEAR ENDED 30TH JUNE 2014.

	Original Budget	Budget Adjustments	Final Budget	Actual on Comparison Basis	Performance Difference
	2013-2014 Kshs.	2013-2014 Kshs.	2013-2014 Kshs.	2013-2014 Kshs.	2013-2014 Kshs.
Revenue					
Exchequer Allocation	280,000,000	30,000,000	310,000,000	290,000,000	20,000,000
Fines, Penalties and Levies	-	-	-	5,300,000	(5,300,000)
Sale of Tender Documents	500,000	1,010,000	1,510,000	1,660,000	(150,000)
Rendering of Services	-	-	-	11,549	(11,549)
Public Contribution and Donations	-	-	-	10,000	(10,000)
Other Income, subsidies received from	-	-	-	600,000	(600,000)
Total Income	280,500,000	31,010,000	311,510,000	297,581,549	13,928,451
Expenses					
Personal Emoluments	100,100,000	-	100,100,000	74,122,270	25,977,730
Insurance	10,500,000	-	10,500,000	6,833,080	3,666,920
Staff Welfare	3,500,000	(2,000,000)	1,500,000	1,455,530	44,470
Communication Supplies and Services	5,060,000	(1,600,000)	3,460,000	2,315,178	1,144,822
Domestic Travel and Subsistence, and Other Transportation Costs	7,700,000	(2,853,600)	4,846,400	4,846,400	-
Foreign Travel and Subsistence, and Other Transportation Costs	8,000,000	10,785,000	18,785,000	18,681,010	103,990
Printing, Advertising and Information Supplies and Services	9,000,000	7,500,000	16,500,000	16,186,919	313,081
Office Rent, Rates, Utilities and Parking	26,200,000	5,800,000	32,000,000	26,965,859	5,034,141
Training Expenses	20,000,000	(7,790,000)	12,210,000	4,839,951	7,370,049
Official Entertainment and Conference Facilities	2,200,000	5,800,000	8,000,000	4,153,532	3,846,468
Board Allowances and Expenses	10,000,000	1,175,000	11,175,000	10,966,965	208,035
Specialised Services, Policy, Research and Market Enquiries	9,500,000	(2,900,000)	6,600,000	2,495,129	4,104,871
Office and General Supplies and Services	8,000,000	(8,000,000)	-	-	-
Contracted Services	37,100,000	(9,476,400)	27,623,600	12,269,670	15,353,930
Subscriptions	3,000,000	-	3,000,000	242,047	2,757,954
Motor Vehicle Running Expenses	2,500,000	-	2,500,000	1,614,417	885,583
Routine Maintenance - Other Assets	4,000,000	-	4,000,000	972,392	3,027,608
Purchase of Assets	43,500,000	3,500,000	47,000,000	36,240,073	10,759,927
Other Operating Expenses	700,000	60,000	760,000	420,920	339,080
Provision for Depreciation	-	-	-	-	-
	310,560,000	-	310,560,000	225,621,341	84,938,659

NOTES TO THE FINANCIAL STATEMENTS

1. Statement of compliance and basis of preparation- IPSAS 1

The Authority's financial statements have been prepared in accordance with and comply with International Public Sector Accounting Standards (IPSAS). The financial statements are presented in Kenya Shillings (Kshs.) which is the functional and reporting currency of the Authority and all values are rounded to the nearest cent. The accounting policies have been consistently applied.

The financial statements have been prepared on the basis of the historical cost, except where otherwise stated in the accounting policies below. The Cash Flow statement is prepared using the indirect method. The Financial statements are prepared on accrual basis.

2. Summary of significant accounting policies

a) Revenue Recognition

i) Revenue from non-exchange transactions-IPSAS 23

Exchequer allocations

The Authority recognizes Revenue from exchequer allocation when the monies are received and asset recognition criteria are met. To the extent that there is a related condition attached that would give rise to a liability to repay the amount, deferred income is recognized instead of revenue. Other non-exchange revenues are recognized when it is probable that the future economic benefits or service potential associated with the asset will flow to the Authority and fair value of the asset can be measured reliably.

Transfers from other government entities

Revenues from non-exchange transactions with other government entities are measured at fair value and recognized on obtaining control of the asset (cash, goods, services and property) if the transfer is free from conditions and it is probable that the economic benefits or service potential related to the asset will flow to the Authority and can be measured reliably.

ii) Revenue from exchange transactions-IPSAS 9

Rendering of Services-Fines, penalties, levies

The Authority recognizes revenue from rendering of services by reference to the stage of completion when the outcome of the transaction can be estimated reliably. The stage of completion is measured by reference to labour hours incurred to date as a percentage of total estimated labour hours.

Where the contract outcome cannot be measured reliably, revenue is recognized only to the extent that the expenses incurred are recoverable.

Sale of tender goods

Revenue from the sale of goods is recognized when the significant risks and rewards of ownership have been transferred to the buyer, usually on delivery of the goods and when the amount of revenue can be measured reliably and it is probable that the economic benefits or service potential associated with the transaction will flow to the Authority.

b) Budget Information - IPSAS 24

The annual budget is prepared on the accrual basis, that is, all planned costs and income are presented in a single statement to determine the needs of the Authority. As a result of the adoption of the accrual basis for budgeting purposes, there are no basis, timing or significant differences that would require reconciliation between the actual comparable amounts and the amounts presented as a separate additional financial statement in the statement of comparison of budget and actual amounts.

c) Property, Plant and Equipment - IPSAS 17

All property, plant and equipment are stated at cost or valuation less accumulated depreciation and impairment losses. Cost includes expenditure that is directly attributable to the acquisition of the items. When significant parts of property, plant and equipment are required to be replaced at intervals, the Authority recognizes such parts as individual assets with specific useful lives and depreciates them accordingly. Likewise, when a major inspection is performed, its cost is recognized in the carrying amount of the plant and equipment as a replacement if the recognition criteria are satisfied. All other repair and maintenance costs are recognized in surplus or deficit as incurred. Where an asset is acquired in a non-exchange transaction for nil or nominal consideration the asset is initially measured at its fair value.

It is the policy of the Authority to charge full depreciation on all its non-current assets in the year of purchase and no depreciation in the year of disposal.

d) Intangible Assets - IPSAS 31

Intangible assets acquired separately are initially recognized at cost. The cost of intangible assets acquired in a non-exchange transaction is their fair value at the date of the exchange. Following initial recognition, intangible assets are carried at cost less any accumulated amortization and accumulated impairment losses. Internally generated intangible assets, excluding capitalized development costs, are not capitalized and expenditure is reflected in surplus or deficit in the period in which the expenditure is incurred. The useful life of the intangible assets is assessed as either finite or indefinite.

e) Provisions - IPSAS 19

Provisions are recognized when the Authority has a present obligation (legal or constructive) as a result of a past event, it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation.

Where the Authority expects some or all of a provision to be reimbursed, for example, under an insurance contract, the reimbursement is recognized as a separate asset only when the reimbursement is virtually certain.

The expense relating to any provision is presented in the statement of financial performance net of any reimbursement.

Contingent liabilities

The Authority does not recognize a contingent liability, but discloses details of any contingencies in the notes to the financial statements, unless the possibility of an outflow of resources embodying economic benefits or service potential is remote.

Contingent assets

The Authority does not recognize a contingent asset, but discloses details of a possible asset whose existence is contingent on the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the Authority in the notes to the financial statements. Contingent assets are assessed continually to ensure that developments are appropriately reflected in the financial statements. If it has become virtually certain that an inflow of economic benefits or service potential will arise and the asset's value can be measured reliably, the asset and the related revenue are recognized in the financial statements of the period in which the change occurs.

f) Changes in accounting policies and estimates- IPSAS 3

The Authority recognizes the effects of changes in accounting policy retrospectively. The effects of changes in accounting policy are applied prospectively if retrospective application is impractical.

g) Employee Benefits - IPSAS 25

Retirement Benefits Plans

The Authority is in the process of registering a retirement benefit scheme to cater for its permanent and pensionable employees. Further an amount equivalent to 31% of basic salary has been set aside as gratuity for all employees. The Authority's contribution towards employee pension scheme was thus Limited to employer's portion of NSSF contribution. The Authority's contribution towards NSSF on behalf of its employees are charged to the statement of financial performance for the year.

h) Foreign Currency transactions - IPSAS 4

Transactions in foreign currencies are initially accounted for at the ruling rate of exchange on the date of the transaction. Trade creditors or debtors denominated in foreign currency are reported at the statement of financial position reporting date by applying the exchange rate on that date. Exchange differences arising from the settlement of creditors, or from the reporting of creditors at rates different from those at which they were initially recorded during the period, are recognized as income or expenses in the period in which they arise.

i) Related Parties - IPSAS 20

The Authority regards a related party as a person or an Authority with the ability to exert control individually or jointly, or to exercise significant influence over the Authority, or vice versa. Members of key management are regarded as related parties and comprise the Directors including the Director General.

The following transactions were carried out with related parties:

	2013/2014 Kshs.
Key Management Compensations	
i) Salaries and Other short term employment Benefits Board Remuneration	22,905,446
ii) Allowances paid to Board Members	5,273,804
iii) Grants from GOK / Grants from Related Parties	290,000,000

j) Leases

Leases of assets under which a significant portion of the risks and rewards of ownership are effectively retained by the lessor are classified as operating leases. Amortisation of prepaid operating lease rentals is charged to the statement of comprehensive income on a straight line basis.

k) Cash and Cash equivalents

Cash and cash equivalents comprise cash on hand and cash at bank, short-term deposits on call and highly liquid investments with an original maturity of three months or less, which are readily convertible to known amounts of cash and are subject to insignificant risk of changes in value. Bank account balances include amounts held at various commercial banks at the end of the financial year. For the purposes of these financial statements, cash and cash equivalents also include short term cash imprests and advances to authorised public officers and/or institutions which were not surrendered or accounted for at the end of the financial year.

m) Significant Judgements and sources of estimation uncertainty-IPSAS 1

The preparation of the Authority's financial statements in conformity with IPSAS requires management to make judgments, estimates and assumptions that affect the reported amounts of revenues, expenses, assets and liabilities, and the disclosure of contingent liabilities, at the end of the reporting period. However, uncertainty about these assumptions and estimates could result in outcomes that require a material adjustment to the carrying amount of the asset or liability affected in future periods.

Estimates and assumptions

The key assumptions concerning the future and other key sources of estimation uncertainty at the reporting date, that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year, are described below. The Authority

based its assumptions and estimates on parameters available when the financial statements were prepared. However, existing circumstances and assumptions about future developments may change due to market changes or circumstances arising beyond the control of the Authority. Such changes are reflected in the assumptions when they occur. IPSAS 1.140

Useful lives and residual values

The useful lives and residual values of assets are assessed using the following indicators to inform potential future use and value from disposal:

- i. The condition of the asset based on the assessment of experts employed by the Authority.
- ii. The nature of the asset, its susceptibility and adaptability to changes in technology and processes.
- iii. The nature of the processes in which the asset is deployed.
- iv. Availability of funding to replace the asset.
- v. Changes in the market in relation to the asset.

Provisions

Provisions were raised and management determined an estimate based on the information available.

Provisions are measured at the management's best estimate of the expenditure required to settle the obligation at the reporting date, and are discounted to present value where the effect is material.

3. Revenue from Non-Exchange Transactions

	2013/2014 Kshs.
Exchequer Transfers	290,000,000
Fines and Penalties	5,300,000
Other Income	810
	295,300,810

4. Revenue from Exchange Transactions

	2013/2014 Kshs.
Appropriation in Aid	
Sale of Tenders	1,660,000
Contribution by Communications Authority	600,000
Commission on IPPD Salary Processing	10,740
Gifts and Donations	10,000
	2,280,740

5. Employee Costs

	2013/2014 Kshs.
Salaries and Allowances	71,362,421
Contribution to Pensions (NSSF)	78,620
CAK Staff Medical Insurance	6,833,080
Provision for Staff Entitlements	2,681,230
	80,955,350

6. Board Expenses

	2013/2014 Kshs.
Sitting allowance	4,313,804
Honoraria	960,000
Training and Induction	5,081,070
Telephone	20,000
Insurance	592,091
	10,966,965

7. Depreciation and Amortisation

	2013/2014 Kshs.
Property, Plant and Equipment	7,722,284
Intangible Assets	-
	7,722,284

8. Repairs and Maintenance

	2013/2014 Kshs.
Motor Vehicles	518,385
Property, Plant and Equipment	972,392
	1,490,777

9. Contracted Services

	2013/2014 Kshs.
Consultancy	7,383,594
Hire of Security	1,037,400
Office Cleaning Expenses	1,954,675
Legal Services	1,198,000
	11,573,670

10. General Expenses

	2013/2014 Kshs.
Travelling and Accommodation-Local	4,350,390
Travelling and Accommodation-Foreign	18,681,010
Utilities	4,350,035
Staff Welfare	1,455,530
Printing and Stationery	6,547,901
Rent and Rates	22,615,824
Hire of Transport	496,010
Publicity and Awareness	2,495,129
Computer Expenses	323,685
Training -Local	4,836,751
Motor Running Expenses-Fuel	423,461
Office Running Expenses	2,041,385
Newspapers and Periodicals	273,793
Advertising and Public Relations	9,639,018
Motor Vehicle Insurances	672,571
Training Levy	3,200
Entertainment	4,153,532
Enforcement of RTPS	13,128
Subscription to Professional Bodies	242,047
Forex Gain/(Loss)	1,100
	83,615,499

11. Cash and Cash Equivalents

	2013/2014 Kshs.
KCB-KICC Main operating account	86,803,344
Cash-on hand and in Transit	-
KCB-KICC Staff Gratuity account	8,552,542
	95,355,886

The Authority operates an imprest petty cash system and all cash balances as at close of the year are banked. The cash and cash equivalents therefore consists of bank balances as at 30th June 2014.

	2013/2014 Kshs.
Finance Charges	
General Bank Charges	83,007
	83,007

12. Receivables

a) Receivables from Exchange Transactions

	2013/2014 Kshs.
Staff Debtors	2,066,000
Prepayments (Rent)	2,055,984
Prepayments (Fuel Deposit)	104,277
Prepayments (Insurance)	
	4,226,261

Staff debtors comprise of outstanding travel imprests as at close of period

b) Receivables from Non-Exchange Transactions

	2013/2014 Kshs.
Exchequer Amount due from The National Treasury	20,000,000
Other Debtors (African Competition Forum-Medical Refund)	91,986
	20,091,986

Exchequer amount represents outstanding AIE amount due to the Authority from the National Treasury not disbursed as at the end of the financial year.

12.2. Amount Contributed by the National Treasury

	2013/2014 Kshs.
1st July 2013	-
Bank Balance Surrendered to the Authority by Treasury	25,407,819
Imprest Debtors outstanding as at 30th June 2013 Surrendered to the Authority by Treasury during the year	634,595
Fuel Deposit Balance as at 01st July 2013	27,738
Fixed Assets (At valuation)	29,365,100
Outstanding tax liability as at 30th June 2013	(484,117)
Consultancy Creditors (Eliud and Associates) as at 30th June 2013	(1,238,300)
Staff Gratuity (January 2013-June 2013)	(1,292,400)
	53,658,735

The amounts represent assets and liabilities surrendered to the Authority and either realized or settled by the Authority as well as bank balance provided by the Treasury.

12.3. Staff Gratuity

	2013/2014 Kshs.
1st July 2013	-
Accrued in the year	7,260,142
Relating to contract staff	5,447,020
Relating to Pensionable staff	1,813,122
Accrued from Salary adjustments Contract Staff	268,373
Pensionable Staff	742,271
30th June 2014	8,270,787

The Authority pays Gratuity to all its staff on contract upon expiry of their employment. In addition, the Authority's retirement benefits scheme is not yet operational. The Authority therefore transfers an equivalent of 31% of all staffs' basic salary as gratuity to the Gratuity Account until such time when the pension scheme will be operational. As at 30th June 2014, the total of gratuity amounted to Kshs. 8,270,787 and has been recognized in staff emoluments in the current period.

(i)	Motor Vehicles Kshs. 25.0%	Office Equipment Kshs. 12.5%	Computer Equipment Kshs. 30.0%	Furniture and Fittings Kshs. 12.5%	Total Kshs.
Cost/Valuation					
1-Jul-13	-	-	-	-	-
Additions	16,813,707	455,960	6,231,781	12,738,625	36,240,073
Disposals	-	-	-	-	-
30-Jun-14	16,813,707	455,960	6,231,781	12,738,625	36,240,073
Accumulated Depreciation					
1-Jul-13	-	-	-	-	-
Charge for the Year	4,203,427	56,995	1,869,534	1,592,328	7,722,284
Disposals	-	-	-	-	-
30-Jun-14	4,203,427	56,995	1,869,534	1,592,328	7,722,284
Old Assets Valuation as at 30.06.2014	6,700,000	4,814,000	3,435,400	8,645,700	23,595,100
Netbook Value					
30-Jun-14	19,310,280	5,212,965	7,797,646	19,791,997	52,112,889

13. Property, Plant and Equipment.

(ii) Furniture and Fittings

The Authority received several assets from the National Treasury at the onset of its first full year as an independent Authority. The Authority was not required to pay for the property hence did not incur any cost on the same. To recognize the property in its books, the Authority appointed a professional valuer to value the items. The values of these items have therefore been included as part of property plant and equipment in these financial statements.

14. Intangible Assets

Cost.	2013/2014 Kshs.
1st July 2013	-
Additions	-
30th June 2014	-
Amortization	
1st July 2013	-
for the year	-
30th June 2014	-
Old Assets at valuation as at 6/30/2014	5,770,000
Net Book Value	
30th June 2014	5,770,000

The intangible assets are made up of computer software biometric access system and other Local Area Networks (LAN) installed in the Authority's computers and offices.

15. Payables

Trade payables represent the outstanding payments to suppliers. Payroll deductions include outstanding amounts for statutory deductions, Bank loans and Co-operative Societies. Staff creditors comprise of unpaid staff salaries, outstanding payments due to staff and funds for Staff Welfare Association.

a) Payables from Exchange Transactions

	2013/2014 Kshs.
Current-Payables	
Local Creditors	9,014,990
Withholding Taxes	80,040
Staff Creditors	10,000

Payroll Deduction Creditors	3,000
Accrued staff Salary adjustments	3,306,144
Accrued staff Gratuity adjustments	1,010,645
	13,424,818

	2013/2014
Non-Current-Payables	Kshs.
Staff Gratuity	8,552,542
	8,552,542

16. Provisions

	2013/2014
	Kshs.
Staff Leave Days Provision	2,681,230
	2,681,230

Employees' entitlements to annual leave are recognized as they accrue to the employees. A provision is made for the estimated liability for annual leave at the reporting date.

17. Commitments and Contingencies

17.1 Capital commitments

	2013/2014
	Kshs.
Approved and contracted	-
Approved and not contracted	-
	-

17.2 Recurrent commitments

	2013/2014
	Kshs.
As at 30th June 2014	5,555,730

The Authority has contractual obligations with its suppliers of various contracted services most of them running up to 30th November 2014. The above represents items and activities approved and contracted but not yet delivered.

18. Cash Generated from Operations

	2013/2014 Kshs.
Surplus for the Year	100,477,997
<i>Adjusted for:</i>	
Depreciation	7,722,284
Contribution to provisions	2,681,230
<i>Working Capital Adjustments</i>	
Increase in receivables	(24,318,247)
Increase in Payables	21,977,360
	107,302,324

19. Financial Risk Management

The Authority's activities expose it to a variety of credit and liquidity risks. The Authority's overall risk management programme focuses on the unpredictability of the market and seeks to minimize potential adverse effects on its operations.

The Authority regularly reviews its risk management policies and systems to reflect changes in markets and emerging best practices. Risk management is carried out by the management under the direct supervision of the board of directors.

The board provides policies for overall risk management as well as policies covering specific areas such as interest rate risk, credit risk and liquidity risk.

a) Credit Risk Management

Credit Risk refers to the risk that a counterparty will default on its contractual obligation resulting in financial loss to the Authority.

Credit risk arises from bank balances, trade receivables and amounts due from related parties. The Authority's management assesses the credit quality of each customer taking into account its financial position, past experience and other factors.

The amounts that best describes the Authority's exposure to credit risk at the end of the financial year is made up as follows:-

	2013/2014 Kshs.
Cash at Bank	95,355,886
Amount Due from Treasury	20,000,000
Prepaid Rent	2,055,984
Fuel Deposit	104,277
	117,516,147

All the Authority's receivables are fully performing and are expected to be repaid.

b) Liquidity Risk Management

Liquidity risk is the risk that the Authority will not be able to meet its financial obligations when they fall due. The Authority's approach to managing liquidity is to ensure, as far as possible, that it will always have sufficient liquidity to meet its liabilities when due, under both normal and stressed conditions, without incurring unacceptable losses or at the risk of damaging the Authority's reputation.

The Authority ensures that it has sufficient cash on demand to meet expected operational expenses, including the servicing of financial obligations; this excludes the potential impact of extreme circumstances that cannot reasonably be predicted. All liquidity policies and procedures are subject to review and approval by the board of directors.

The amounts that best describes the Authority's exposure to liquidity risk at the end of the financial year is made up as follows:-

	Kshs.
Trade payables all due within 30 days	9,014,990
Staff Creditors	10,000
Payroll Deductions	3,000
Accrued Staff Gratuity	8,552,542
	17,580,532

20. Subsequent Events

The Authority received several Assets including Furniture, Computer Equipment and two vehicles from The National Treasury. The National Treasury did not provide the values of the assets given. The Authority therefore undertook to appoint a professional valuer to do the valuation and provide the values. This process was completed on 30th October 2014 and the values shown below were provided by the valuers. The Financial statements have therefore been adjusted to reflect the values of these assets.

	2013/2014
	Kshs.
Furniture and Equipment	8,645,700
Office Equipment	4,814,000
Biometric Control Access System	5,770,000
Computers and Other ICT Equipment	3,435,400
Motor Vehicles	6,700,000
	29,365,100

21. Comparatives

This being the Authority's first period for preparation of Financial statements, no comparatives have been shown alongside current year figures.

ANNEXES

ANNEX 1: MERGER NOTIFICATIONS

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
1	Dimensions Data Holdings Plc and Access Kenya Group Limited 6/5/2013	ICT	The transaction was an acquisition of the entire issued share capital of Access Kenya Group Ltd. by Dimensions Data Holdings. Analysis revealed that the transaction would not affect competition negatively nor raise negative public interest issues .	Merger approved unconditionally
2	Harper Holdings Limited and MaCuisine Limited 27/5/2013	Manufacturing	The transaction was an acquisition of the entire issued share capital of MaCuisine Limited by Harper Holdings Limited. Analysis revealed that the transaction would not affect competition negatively nor raise negative public interest issues.	Merger approved unconditionally
3	Ian Mbuthia and Peter Nthiga Njagi and Lady Lori Kenya Limited 29/5/2013	Aviation	The transaction involved acquisition of the entire issued share capital of Lady Lori by Ian Mbuthia and Peter Nthiga Njagi. Analysis revealed that the transaction would not affect competition negatively nor raise negative public interest issues.	Merger approved unconditionally
4	Coca Cola Export Corporation and Coca Cola Juices Kenya Limited 6/6/2013	Manufacturing	The transaction involved acquisition of 66.03% of the issued shares of Coca Cola Juices Kenya Limited by Coca Cola Export Corporation. Analysis revealed that the transaction would not affect competition negatively nor raise negative public interest issues.	Merger approved unconditionally
5	Eprop Kenya Limited and Eke Property Limited 18/6/2013	Real estate	The transaction was an acquisition of 99% of the issued share capital of Eke Property Limited by Eprop Kenya Limited. The transaction was not a merger as the parties are subsidiaries of ETI.	Not a merger
6	Standard Chartered Private Equity (SCPE), Prif Afrivest Limited, CSSAF Consumer 1 and ETC Group 6/2013	Agriculture	The transaction was an acquisition of veto rights on a number of reserved matters in ETC Group by SCPE, Prif Afrivest Limited and CSSAF. Analysis revealed that the transaction would not affect competition negatively nor raise negative public interest issues	Merger approved unconditionally
7	Faulu Kenya Deposit and Old Mutual Holdings 2/7/2013	Financial	Old Mutual Holdings acquired 67% shareholding in Faulu Kenya. Analysis revealed that there are no overlaps in respect of the products offered by the merging parties and the merger would not raise competition concerns nor public interest issues.	Approved unconditionally
8	FS Africa Limited and Lonrho PLC 4/7/2013	Aviation	FS Africa Limited acquired the entire issued share capital of Lonrho PLC. Analysis of the transaction revealed that the merger would not raise competition concerns nor spawn to negative public interest issues.	Approved unconditionally
9	Liquid Telecommunication Holdings Limited and Altech Data Networks Limited and Altech Sameer East Africa Data Centre Limited and KDN Employee Scheme Limited and Altech Stream Rwanda Limited Africa Digital Networks Limited 31/1/2013	ICT	The transaction was an acquisition of Majority Shares in Altech Kenya Data Networks Limited and Altech Swift Global Limited by Liquid Telecommunications Holdings Limited. Analysis of the transaction revealed that it would not negatively affect competition nor raise any negative public interest issues.	Approved unconditionally

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
10.	Agriq Group B.V and Agriq Quest Limited 5/7/2013	Agriculture	The transaction involved two-steps transaction where in the first step, AgriQ Group BV acquired the 60% shareholding held by Blgg Kenya Ltd. in AgriQ Quest Kenya Ltd. The transaction was not a merger because the merging parties are subsidiaries Blgg Groep B.V.	Not a merger
11.	Tree of Knowledge BV and Tree of Knowledge Patents BV and BLGG Kenya 5/7/2013	Agriculture	The transaction was an acquisition of 60% shareholding in Agriq Quest by Agriq Groep B.V. It also involved acquisition 99% shareholding in BLLG Kenya Limited by Tree of Knowledge B.V. The transaction was not a merger since the merging parties are subsidiaries of Blgg Groep B.V.	Not a merger
12.	TPS (OP) Limited and Ol Pejeta Ranching Limited 8/7/2013	Hospitality	The transaction was acquisition of Sweet Waters Tented Camp of Ol Pejeta Ranching Limited by TPS OP Limited. Analysis of the transaction showed that it would not negatively affect competition nor raise any negative public interest issue.	Approved unconditionally
13.	Equity Investment Bank and Francis Thuo and Partners Limited. 22/7/2013	Financial	Equity Investment Bank (EIB) acquired the entire issued shares amounting to 250,000 of Francis Thuo and Partners together with its trading rights in the NSE. Analysis of the transaction showed that the merger would not negatively affect competition.	Approved unconditionally
14.	Cavendish Square Holdings BV and Scangroup Limited 13/8/2013	Advertising	The transaction involved acquisition of additional 16.484% Shareholding in Scangroup Limited by WPP through Cavendish Square Holding BV. This brought WPP shareholding through Cavendish and Ogilvy in Scangroup to 50.1% from 33.616%. In return for the additional shareholding in Scangroup by WPP through Cavendish, all jointly owned companies became fully owned subsidiaries of Scangroup. The merger was approved based on the fact that it would not affect competition negatively, there was no change in ownership structure and finally it would not spawn negative public interest issues.	Approved unconditionally
15.	Soros Economic Development (SEDF) and Juhudi Kilimo Company Limited (Jugudi Kilimo) 20/8/2013	Agriculture	The transaction involved acquisition of 100% of the issued share capital of Juhudi Kilimo from K-Rep and Aleke Donde in the following proportions; Soros Economic Development Fund (90.6%), Acumen Fund Inc (6.7%) and Acumen Capital Markets ILP (2.7%). The analysis revealed that the merger would not have negative effects on competition.	Transaction excluded from provisions of part iv of the act
16.	Brookside Dairy Limited and Buzeki Dairy 20/8/2013	Dairy	Brookside Dairy Limited acquired the entire business and assets of the Buzeki Dairy Limited. Analysis revealed that the merger would not raise any competition concerns nor negative public interest issues.	Approved unconditionally
17.	EMIS Group Plc and Ascribe Group Limited 30/8/2013	Health	The transaction involved acquisition of 100% of the issued share capital of Ascribe Group Limited by EMIS Group Plc. The transaction was excluded since it would not negatively affect competition and the acquiring undertaking had no turnover in Kenya and the turnover of the target is below the threshold for mandatory merger notification.	Transaction excluded from provisions of part iv of the act.

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
18.	Viva Afya Limited and Japharm Chemist 30/8/2013	Healthcare	The transaction was 100% acquisition of the business and assets of Japharm chemist by Viva Afya Limited. The transaction was excluded since it would not negatively affect competition and combined turnover of the merging parties was below the threshold for mandatory notification.	The transaction was excluded from the provisions of part iv of the act
19.	School Operators Limited and Safer World Investment Limited. 2/9/2013	Education	The transaction involved acquisition of the entire business and assets of Safer World by School Operators. Analysis indicated that the merger would not affect competition and the combined turnover of the parties was below the merger threshold.	The transaction was excluded from the provisions of part iv of the act
20.	CMC Holding Limited. and Al Futtaim Auto and Machinery Company 9/9/2013	Assembling and Distribution of Motor Vehicles	The transaction was an acquisition of 100% issued share capital of CMC Holdings Limited by Al Futtaim Auto and Machinery Limited. Analysis revealed that the transaction would not impede competition nor raise any negative public interest issue.	Approved unconditionally
21.	Guaranty Trust Bank Plc and Fina Bank Limited 9/9/2013	Financial Services	The transaction was acquisition of Fina by Guaranty Trust Bank. Analysis showed that the transaction would not lead to substantial lessening and prevention of competition nor lead to negative public interest issues.	Approved unconditionally
22.	Pesatransact Limited and PEP Intermedius Holding Limited 12/9/2013	Money transfer	Pesatransact acquired 100% of the money transfer of the PEP Intermedius Holding Limited. Analysis revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory notification.	Transaction was excluded from provisions of part iv of the act
23.	Travelport International Limited and Travelport Services (K) Limited 23/9/2013	Distribution of software	The transaction was a reorganization as Travelport Services (K) Limited is a fully owned subsidiary of Travelport International Limited and as such that Competition Act did not apply.	Not a merger
24.	Zaad Holdings Limited and Klein Karoo Saad Bemarking Proprietary Limited 27/9/2013	General Trading	The transaction was not a merger since it took place in South Africa and involved South African undertaking and they did not have local subsidiaries.	The transaction was not a merger.
25.	Art-Caffee Coffee Bakery Limited and 8 Coffee Shops Dormans Coffee Limited. 2/10/2013	Hospitality	The transaction involved acquisition of 7 coffee shops of Dormans Coffee Limited by Art-café Coffee and Bakery Limited. Analysis of the transaction revealed that the merger would not lessen competition in the relevant market nor raise public interest issues.	Approved unconditionally
26.	Centum Investments Company Limited and Genesis Kenya Investment Management Limited. 4/10/2013	Investment	The transaction was an acquisition of 73.35% the issued share capital of Genesis Kenya Investment Management Limited by Centum Investments Company Limited Analysis of the transaction indicated that it would not impede competition nor raise any negative public interest issue.	Approved unconditionally
27.	Premier Oil Investments Limited and Lion Petroleum Corp 18/10/2013	Exploration and prospecting	Premier Oil Investments Limited acquired 55% participating interest in Block 2B from Lion Petroleum Corp. Analysis of the transaction revealed that the merger did not affect competition negatively and the combined turnover of the merging parties did not meet the merger threshold for mandatory notification.	Transaction was excluded from provisions of part iv of the act

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
28.	Mauritius Union Assurance Limited and Phoenix TransAfrica Holding Limited 25/10/2013	Insurance	The transaction involved acquisition of 66.38% of the issued share capital of Phoenix of East Africa Assurance Company Limited (PEAL) by MUA. This will enable MUA to control PEAL. The merger was approved based on the fact that combined turnover of the parties was below the merger threshold and it would not affect competition negatively.	Transaction was excluded from provisions of part iv of the act
29.	Tiger Brands Limited and Rafiki Millers Limited 28/10/2013	General Trading	Tiger Brands Limited acquired 100% of the issued share capital in Rafiki Millers Limited. Analysis of the transaction revealed that the merger would not raise competition concerns nor spawn negative public interest issues.	Approved unconditionally
30.	Sameer Investments Limited and Bridgestone Corporation 29/10/2013	Manufacturing	Transaction involved acquisition of shares in Sameer Africa Limited held by Bridgestone Corporation by Sameer Investment Limited. The transaction was not a merger since Sameer Investments Limited had control of Sameer Africa Limited with a shareholding of over 50%.	Not a merger
31.	Tiger Brands Limited and Magic Oven Limited 5/11/2013	General Trading	Tiger Brands Limited acquired 100% of the issued share capital Magic Oven Limited. Analysis of the transaction revealed that the merger would not raise competition concerns nor hurt public interest.	Approved unconditionally
32.	REA Trading Limited and REA Vipingo Plantation Limited 14/11/2013	Agriculture	The transaction was acquisition of 42.96% of the issued share capital of REA Vipingo by REA Trading Limited. The transaction was not a merger since REA Trading Limited had control of the target with a shareholding of over 50%.	Not a merger
33.	Africa Jobs Online Limited and My Kenya Networks Limited 19/11/2013	ICT	Africa Jobs Online acquired 999 ordinary shares of My Kenyan Limited by African Jobs Online Limited and established control. Analysis of the transaction concluded that the transaction would not affect competition negatively and the combined turnover of the parties was below the merger threshold.	Transaction was excluded from provisions of part iv of the act
34.	Promasidor Kenya Limited and Nutro Manufacturing (EPZ) Limited 22/11/2013	Manufacturing	The transaction was an acquisition of the assets of Nutro Manufacturing (EPZ) Ltd used for manufacturing of texturized soya protein. The transaction was not merger as the parties are subsidiaries of Promasidor Inc.	Not a merger
35.	Orbit Chemical Industries Limited and Ariel (EPZ) Limited and Promasidor Kenya Limited and Nutro Manufacturing (EPZ) Limited 22/11/2013	Manufacturing	Orbit Chemicals acquired the entire (100%) of the issued share capital of Nutro Manufacturing (EPZ) Limited and assets used for processing of nutritional products by Orbit Chemical Industries Limited and Ariel (EPZ) Limited. Analysis revealed that the transaction would not raise any competition concerns nor lead to negative public interest issues.	Approved unconditionally
36.	Orbit Chemical Industries Ltd and Ariel EPZ Ltd and Promasidor Kenya Ltd and Nutro Manufacturing (EPZ) Ltd 22/11/2013	Manufacturing	The transaction involved acquisition of the entire share capital of Nutro Manufacturing (EPZ) Ltd and Assets used for processing of nutritional products by Orbit Chemical Industries Ltd and Ariel EPZ Ltd and Promasidor Kenya Ltd. Analysis revealed that the transaction would not affect competition negatively nor raise negative public interest issues	Merger approved unconditionally

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
37.	Norfund and IFU and Aldwych and Finnfund and Vestas and KP and P and Lake Turkana Wind Power Limited 25/11/2013	Energy	The transaction involved sale of 74.5% of the issued shares of Lake Turkana Wind Power Limited to Norfund (12.5%), IFU (6.25%), Aldwych (30.75%), Finnfund (12.5%) and Vestas (12.5%). Analysis revealed that none of the acquiring firms would have control of the merged entity and as such the Competition Act did not apply	Not a merger
38.	ERHC Energy (K) Limited and CEPSA Kenya Limited 26/11/2013	Exploration and prospecting	The transaction entailed 55% acquisition of participating interest in Block 11A in Kenya by EHRC Energy Kenya Limited from CEPSA Kenya Limited	Excluded from the provisions of part iv of the act.
39.	CFR Inversions SPA (CFR) and ADCOCK Ingram Holdings Limited 28/11/2013	Health care	The transaction involved acquisition of 100% of the issued shares of Adcock Ingram Holdings Limited by CFR Inversiones SPA. Analysis revealed that the merger would not affect competition negatively and the combined turnover of the parties was below the threshold for mandatory merger notification.	Excluded from the provisions of part iv of the act.
40.	Kenya Grange Vehicle Industries Limited (KGV) and Scania East Africa Limited 28/11/2013	Motor Vehicle Assembling	Scania East Africa Limited acquired the vehicle assembly business of Kenya Grange Vehicle Industries Limited by Scania East Africa Limited. Analysis of the transaction revealed that it would not have negative effects on competition and public interest issues in Kenya.	Approved unconditionally
41.	Centum Investment and Real Vipingo Plantations Ltd 2/12/2013	Agriculture	The transaction involved acquisition of Rea Vipingo Plantations by Centum Investment Limited. However the transaction was halted due a court case.	Transaction abandoned
42.	Art Caffe Coffee Bakery Limited and Onami Limited 5/12/2013	Hospitality	The transaction entailed transfer of assets of Onami to Art Caffe. The transaction was not a merger because both parties are subsidiaries of Module Consulting and Investment Limited.	Not a merger
43.	Negesti Abrahams and Tony Stenning and Hiwoti Enterprises 9/12/2013	General trading	Abraham Habte Michael, Negesti Abraham and Tony Stenning acquired entire shares in Hiwoti enterprises thereby establishing total control. Analysis revealed that the transaction would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
44.	James Jalang'o and Carole Ayugi and Castanya Investments Limited 9/12/2013	General Trading	James Jalang'o and Carole Ayugi acquired 100% of the issued share capital of Castanya Investments Limited which was not operational at the time of the application. Analysis showed that the transaction would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
45.	Redhouse Group Limited and Media edge Interactive Limited 20/12/2013	Media	Redhouse Group Limited acquired the entire issued share capital of Media Edge Interactive Limited. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the thresholds for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act.

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
46.	A.B. Patel and Patel and H.A.T Anjarwalla and company 24/12/2013	Legal	M/s A.B. Patel and Patel acquired the entire business of M/S H.A.T Anjarwalla and Company by M/S A.B. Patel and Patel thereby establishing control. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
47.	British-American Investments Co. (Kenya) Limited and Real Insurance Company Limited 10/1/2014	Insurance	British-American Investments Company Limited (Britam) acquired 99% shareholding in Real Insurance Company Limited (Real). Analysis of the transaction revealed that the merger would not raise competition concerns. However, the merger was found to raise some public interest issues as it would have led to loss of jobs. The transaction was approved on condition that Britam would retain at least 85% of the employees of Real.	Approved with conditions
48.	Kone Kenya Limited and Marryat and Scott (Kenya) Limited 27/01/2014	Maintenance	Kone Kenya acquired 98.6% of the assets owned by Marryat and Scott. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
49.	Kenya Express Media Limited and City Daily Limited and TV Africa Holdings Limited. 27/01/2014	Media	TV Africa Holdings acquired 100% of the broadcasting equipment of Kenya Express Media Limited and City Daily Limited. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
50.	Hool En By Gras B.V. and Tree of Knowledge B.V. 31/01/2014	Agriculture	The transaction involved 100% acquisition of the issued share capital of Tree of Knowledge B.V. by Hooi En By Gras B.V. The transaction was not a merger as the two parties are subsidiaries of H'Element B.V.	Not a merger
51.	Eurofins Food Testing Netherlands Holdings Limited and BLGG B.V 31/01/2014	Agriculture	Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
52.	Mukeshkumar Narani Hirani and Seaforth Shipping (Kenya) Limited and Marianne Ruth Dunford 4/2/2014	Shipping	The transaction was an acquisition of 100% of the issued shares of BOS Shipping E. Africa Ltd. by Mr. and Mrs. Mukeshkumar Naran. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
53.	Mastercard International Inc. and Homesend CVBA 4/2/2014	Financial	The transaction involved proposed acquisition of 55% of the issued shares of HomeSend CVBA by Master Card International Inc. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
54.	Mobile Value Added Solutions Limited (Movas Kenya) 06/02/2014	Telecommunication	The restructuring involved the transfer by the current legal and beneficial shareholders of all their shares in Movas Kenya to Movas International.	Not a merger
55.	City Lodge Hotel Limited and FairView Hotel Limited 11/2/2014	Accommodation	The transaction involved proposed acquisition of the remaining 50% of issued shares in Fair View Hotel by City Lodges. The acquiring undertaking had acquired 50% of the issued shares in the target undertaking. Analysis indicated that the transaction would not negatively affect competition nor raise negative public interest issues.	Approved unconditionally
56.	Jairus Mohammed Nyaoga and Patience Kishaga Nyaoga and Maxwell Reeve Limited 7/3/2014	Legal	The transaction involved acquisition of all the shares of Maxwell Reeve Limited by Mr. Jairus Mohammed Nyaoga and Mrs. Patience Kishaga Nyaoga. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act.
57.	Safari Rail Company and Rift Valley Railways Kenya Limited 11/3/2014	Rail freight	Safari Rail Limited proposed to acquire the remaining 51% owned by Citadel on the assumption that Citadel would not exercise a call option right it had over the 49% remaining shares it did not own. Citadel exercised the option hence the transaction did not materialize.	Transaction withdrawn
58.	SavvyCad Solutions Limited and Gath Management Limited 18/3/2014	Money transfer	The transaction involves proposed acquisition of entire business and assets of Gath Management Limited by SavvyCad Solutions Limited. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
59.	Safaricom Limited and Essar Telecommunication Kenya Limited 31/3/2014	Telecommunication	The transaction involved sale and transfer of passive infrastructure and frequency license from Essar Telecom Kenya Limited to Safaricom Limited. Analysis revealed that the transaction would not affect competition negatively nor raise negative public interest issues	Merger approved unconditionally
60.	Vivo Energy Kenya Limited and Millennium Dealers 25/5/2014	Real Estate	The transaction involves acquisition of the properties of Millennium Dealers Limited under Block5/36 in Isiolo town and Runyenjes township/247.	Not a merger
61.	Richard E. Barrow and Capucine C. Colombe and Bella Luna Limited Co 24/4/2014	Hospitality	The proposed transaction involved the acquisition of 100% of the issued share capital for Bella Luna Limited by Richard E. Barrow and Capucine C. Colombe. The transaction also includes the transfer of all the production assets of Bella Luna and Intellectual Property Rights.	Transaction was excluded from provisions of part iv of the act
62.	Stuart Cullinan Herd and Super Properties Limited 25/04/2014	Real estate	Stuart Cullinan Herd acquired 100% of the issued share capital of Super Properties Limited. Accordingly, this led to the acquirer becoming the beneficial owner of the entire issued share capital in the target. Merger was excluded on the basis that it would not affect competition negatively and the combined turnover of the parties was below the stipulated merger threshold for mandatory notification.	Transaction was excluded from provisions of part iv of the act

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
63.	Frontier Services Group Limited and Phoenix Aviation Limited 30/4/2014	Aviation	The transaction involves acquisition of 49% shareholding in Phoenix Aviation Ltd and 5 aircraft by Frontier Services Group Analysis showed that the merger would not negatively affect competition nor raise negative public interest issues.	Merger approved unconditionally
64.	Amutum Ugnarain Limited and Ocrum Group Limited 8/5/2014	Manufacturing	The transaction involved acquisition of 60% shareholding of Ocrum Girap Limited by Amutum Limited. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
65.	MTG Kenya Limited and Innova Media Limited 8/5/2014	Media	The Transaction involved acquisition of 100% issued share capital of Innova Media Limited by MTG Kenya Limited. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
66.	Olive Group Holdings Limited and Newport Worldwide Business Limited 12/5/2014	Security	The transaction involved acquisition of 100% of the issued shares of Newport Worldwide Business Limited by Olive Group Holdings Limited. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction excluded from part iv of the act
67.	Nampak Holdings Limited and Bullpak Limited 12/5/2014	Manufacturing	The transaction involved the acquisition of 51% shareholding in Bullpak Limited by Nampak Kenya Limited. Analysis showed that the transaction would not affect competition negatively nor lead to negative public interest issues.	In progress
68.	Guy Elms and Bigot Flowers Kenya Limited 15/5/2014	Agriculture	The transaction involved acquisition of 99.8% of the issued share capital of Bigot flowers by Guy Spencer Elms. This effectively confers control to the acquirer. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
69.	Mt. Kenya University and Parkway Investment Limited 15/5/2014	Tertiary Education	Mount Kenya University acquired an idle land from Parkway with an intention of developing it to a parking for its teaching and non-teaching staff. Analysis revealed that the transaction would not affect competition negatively nor raise negative public interest issues.	Merger approved unconditionally
70.	Energy Bidco Holdings Limited and Essar Energy PLC 15/5/2014	N/A	The transaction involved acquisition 23.78% of outstanding shares of Essar Energy by Bidco Holdings Limited. The transaction was not a merger as the merging parties were subsidiaries of Essar Global Fund Limited.	Not a merger

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
71.	CEPSA Kenya Limited and Swala Energy (K) Limited 27/5/2014	Energy	CEPSA Kenya Limited acquired 25% of interest in Block 12B from Swala Energy Limited. The transaction falls under the excluded sector in the upstream oil exploration and prospecting sector. It would also not raise competition concerns nor hurt public interest.	Transaction was excluded from provisions of part iv of the act
72.	CAREGO International and VivA Afya Limited 3/6/2014	Healthcare	The transaction involved acquisition of 89% of the issued share capital in Viva Afya by Carego International Inc. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Transaction was excluded from provisions of part iv of the act
73.	Cargil Kenya Limited and Lesiolo Grain Handlers 16/6/2014	Warehousing	The transaction involves proposed acquisition of 100% of the issued shares in Lesiolo Grain Handlers by Cargill Kenya Limited. Analysis showed that the merger would not negatively affect competition nor raise negative public interest concerns.	In progress
74.	Access Kenya Limited and Internet Solutions Kenya Limited 18/6/2014	Internet	The transaction involves proposed acquisition of all the assets and certain contracts of internet solutions by Access Kenya Limited. The transaction was not a merger as the merging parties are fully owned subsidiaries of Dimensions Data Holdings Plc	Not a merger
75.	Africa Oilfield Logistics and Ardan Logistics Kenya Limited 18/6/2014	Logistics and support	Africa Oilfield Logistics proposes to acquire the entire issued shares in Ardan Logistics Kenya	In progress
76.	Goodlife Pharmacy Limited and Dove Chemist Limited 25/6/2014	Human drugs and other pharmaceuticals	Goodlife Pharmacy acquired the entire business of Dove Chemist Limited. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Excluded from the provisions of the act.
77.	Holcim Limited and Lafarge S.A. 20/6/2014	Manufacturing	The transaction involved acquisition of two thirds of the issued share capital of Lafarge	In progress
78.	Transcentury Limited and Aureos East Africa Fund 25/6/2014	Infrastructure	The transaction involved acquisition of 5.2% shareholding of Aureos East Africa Fund in Cable Holdings Limited in exchange for 2.25% shareholding in Transcentury Limited. The transaction was not a merger because Aureos acquisition did not confer control and Transcentury Limited has control of Cable Holdings Limited with a shareholding of more 50%.	It was not a merger
79.	Goodlife Pharmacy Limited and Mimosa Pharmacy Limited 25/6/2014	Pharmaceuticals	Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the threshold for mandatory merger notification.	Merger excluded from the provisions of part iv of the act
80.	Hamilton Harrison and Matthews Advocates and Oraro and Company Advocates 26/6/2014	Legal services	The transaction involves proposed amalgamation of the two law firms. Analysis of the transaction revealed that the merger would not affect competition negatively and the combined turnover of the merging parties was below the required threshold for mandatory merger notification.	Merger excluded from the provisions of part iv of the act.

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
81.	Young and Rubicam and Young and Rubicam Brands Limited 26/6/2014	Advertising	The transaction involved proposed acquisition of 58% of the issued shares in Young Rubicam Brands by Young and Rubicam Inc. The transaction was excluded since the acquiring undertaking was exercising its right pursuant to Deposit and Settlement Agreements, to recover loans it had advanced to individual shareholders in the target. Young and Rubicam Brands Limited was no longer operating; and the proposed transaction would not affect competition negatively.	In progress
82.	Van Rees Kenya Limited and Van Rees B.V. 26/6/2014	Tea Trading	The transaction involves proposed acquisition of the entire business of Van Rees BV Group Kenya branch by another wholly owned subsidiary of the Van Rees Group.	In progress
83.	MTN Business Kenya Limited and MTN Business Limited 27/6/2014	Telecommunications	The transaction involved the transfer of business assets and liabilities of MTN Business Limited to MTN Business Kenya Limited. Transaction was not merger because the transacting parties are subsidiaries of Satalite Data Networks.	Not a merger
84.	Kieran Day and Kianga Limited 30/6/2014	Real Estate	The transaction involves proposed acquisition of entire issued shares in Kianga Limited by Kieran Day.	In progress
85.	Kieran Day and Kafila Limited 30/6/2014	Real Estate	The transaction involves proposed acquisition of entire issued shares in Kafila Limited by Kieran Day.	In progress
86.	Metropolitan International Holdings Proprietary and Cannon Assurance Limited 30/6/2014	Insurance	The transaction involves proposed acquisition of 62.29% of shareholding in Cannon Assurance Limited by Metropolitan International Holdings Proprietary Limited.	In progress
87.	Tusker Mattresses Limited and Ukwala Supermarkets 30/6/2014	Retail	The transaction involves proposed acquisition of the business and operations of Ukwala by Tuskys. The two undertakings are involved in retail distribution/sale of general merchandise	In progress
88.	Fine Spinners Limited 16/12/2014	N/A	The transaction entailed reorganization of Fine Spinners Limited's operations in Kenya. The transaction did not result in change in shareholding structure.	Not a merger

ANNEX 2:

Summary of Advisory Opinions

S/No.	Parties involved and date	Issue and advisory opinion given
1.	Muthaura Mugambi Ayugi and Njonjo Advocates 8th July 2013	The Advocates sought advisory opinion as to whether a transaction involving restructuring requires approval by the Authority. They were advised to formally apply for proper analysis of the transaction to be done giving details of the nature of the transaction and to facilitate the Authority in providing its advice from an informed point of view.
2	Coulson Harney Advocates 16th July 2013	The Advocates sought clarification on whether proposed acquisition between un-related companies is notifiable to the Authority. The Authority advised that a formal application was required and based on the explanation and information presented, the transaction qualified as a merger.
3.	Viva Africa Consulting 23rd July 2013	The firm sought an advisory opinion as to whether an internal reorganization within the group (East Africa Glassware Mart Limited EAGM and affiliated companies in the EAGM group) constituted a merger within the meaning of the merger as per the Act. The Authority's response was that the transaction did not qualify as a merger and thus did not require approval.
4.	Prime Bank Limited 26th July 2013	Parties sought an advisory opinion on whether what transaction required approval under the Act. They were advised that the transaction did not require the Authority's approval since change in control would be manifested in Tanzania but not in Kenya.
5.	Walker Kontos Advocates? 4th December 2013	The Advocates sought for an advisory opinion as to whether or not the restructuring arrangements in AutoXpress Limited to a holding company, AutoXpress International Limited, required approval from the Authority. The Authority advised that the transaction did not constitute a merger as there was no change (in what?) and therefore the provisions in the Act do not apply.
6.	Anjarwalla and Khanna Advocates 21st January 2014	The subject matter of the advisory opinion was in regard to whether or not the transaction which involved restructuring of operations in East Africa resulting to a new company – Holdco, which was being incorporated and owned by the GBC2 companies, required approval under the Act. The firm was advised that their clients transaction did not qualify as a merger and thus did not require approval.
7.	Botswana Competition Authority 6th February 2014	The Botswana Competition Authority wrote inquiring whether we had handled a Woolworth's merger and what conditions, if any were considered regarding public interest. It was advised appropriately; that the merger did not raise any negative public concerns in the Kenyan relevant market.
8.	Anjarwalla and Khanna Advocates 13th February 2014	The Advocates sought confirmation from the Authority on whether the restructuring of Mobile Value Added Solutions Limited through the transfer of shares in Movas Kenya to Movas International was not a merger and that approval was not required. The parties were advised that the proposed restructuring did not qualify as a merger under section 41 of the Act and did not require prior authorization of the Authority.
9.	The Cellulant Group 10th April 2014	The company sought clarification as to whether the proposed series of transactions they wanted to implement qualified as a merger. The transactions involved the sale of Intellectual Property Rights by Cellulant Kenya Limited to Cellulant Corporation. The parties were advised that the transaction did not qualify as a merger because control of subsidiaries of the Cellulant Group by the ultimate parent company is a pre-existing condition and thus did not change as a result of the transaction.
10.	Ngao Trade Union 23rd April 2014	Ngao Trade Union, an umbrella body for the Trade Association sought to know up to what extent CAK considers the employment issue under Merger approvals. They were advised that the Authority considers Substantial Lessening of Competition and Public Interest Criteria when analyzing mergers.

S/No.	Parties involved and date	Issue and advisory opinion given
11.	Viva Africa Consulting Group 7th May 2014	The advisory opinion sought was whether the proposed agreement between Ginger Ink Films EPZ (Kenya) and Ginger Ink Films (Gilbratar) Limited was within the purview of Section 2 and 41 of the Act. The Authority's advice was that the transaction was a reorganization and did not qualify the merger criteria.
12.	Nyachae and Ashivia Advocates 16th May, 2014	The Advocates sought advice regarding a proposed transaction between the parties i.e. NVL based in Belgium, Electrical Wing (K) Limited and NV electrical Wings. They were advised to write formally, providing all the details regarding the transaction and attach all the requisite documents of the transaction. The Authority also explained in details regarding the merger notification process.
13.	Cliffe Dekker Hofmeyer Inc. Capetown 21st May 2014 25th May 2014	The firm inquired about the proposed merger notification filing fees; specifically on when it will be implemented, whether the fee will be the same as currently proposed and the deadline for submission of comments. The Authority responded that the merger filing fees were to be considered after stakeholder input and the implementation process would commence on the subsequent financial year (2014-2015) The legal firm sought for an advisory opinion on the IPSOS acquisition of Synovate which they had read in a Newspaper article published in January, 2014, and wanted more details on the matter and whether the Authority is seeking a criminal prosecution or administrative penalty. They also sought opinion regarding possibility that the Authority will order the IPSOS to divest of its acquisition in Synovate. They were informed that the matter is still in progress and with the DPP/CID.
14.	Njoroge and Regeru Advocates 12th June, 2014 10th June 2014	The advocates ought to discern the differences between vertical and horizontal mergers and requested a clarification regarding the type of merger that does not have vertical or horizontal characteristics. The differences were highlighted clearly and by distinguishing the three types i.e Conglomerate, vertical and horizontal mergers. They also sought the Authority's advice regarding application of COMESA Competition Law in merger notifications involving a Kenyan firm and a locally incorporated subsidiary owned by an American firm. CAK response was that they required to apply for approval and also were advised that if the merging parties had a COMESA inclination, they needed to notify COMESA.
15.	The National Treasury 17th June 2014	The National Treasury, the current holder of the 50% of the issued share capital of Kenya Petroleum Refineries Limited .Essar Energy Overseas Limited (EEOL) and Government of Kenya agreed that EEOL shall exit from KPRL and sought confirmation to that effect. The Authority agreed that the acquisition of EEOL shares by the government did not warrant notification pursuant to section 41 of the Act. However in cognizance of Section 5 (5) of the Act, the decision on whether a merger in which the government is involved is notifiable shall be determined on a case by case basis.
16.	Liberty Group Limited 7th July 2014	Liberty Group sought confirmation as to whether the transaction involving acquisition of additional shares (16,572,262) in Liberty Kenya Holdings Limited by Liberty Holdings Limited. The transaction did not fulfil the provisions set out in section 41 of the Act as Liberty Holdings Limited has control of Liberty Kenya Holdings before and after the transaction of 56.82% and 58.82% respectively. The parties were advised accordingly.
17.	Miller and Company Advocates 18th July 2014	The firm sought to know the relevant process involved in the merger process for a Limited liability company proposing to acquire the share capital of another Limited liability company. The merger notification process was explained to the firm clearly, who indicated he was to advise his clients accordingly.
18.	Raffman Dhamji Advocates 23rd July 2014	The Advocates sought advisory opinion whether a proposed acquisition of a locally incorporated undertaking by foreign individuals requires notification to the Authority. It was elucidated that as long as the transaction involves an undertaking under the Kenyan jurisdiction, the parties were required to notify the Authority of the merger.

ANNEX 3 :

Summary of Enforcement and Compliance Cases

No	Case /activity	Sector / market affected	Case summary	Violation/ theory of harm	Case Status/Decision
1	KIFWA vs Shipping Logistics Service Providers: (23/8/2011)	Shipping	KIFWA alleged that conduct by dominant multinational shipping logistic service providers led to high cost of doing business at the port of Mombasa.	The conduct relates to abuse of dominance which is prohibited under section 24 of the Act	Investigations on-going
2	CAK vs Daily Newspapers: (1/11/2011)	Print media	The Major Print Media Houses had been simultaneously increasing the prices of their daily newspapers.	The conduct relates collusion on prices which is prohibited under section 21 (3) (a) of the Act.	Investigations on-going
3	CAK vs. Multichoice: (1/2/2012)	Broadcasting	Various problems, identified by the Authority in the PayTV sub -sector, including: collapse of PayTV market players such as; GTV and Smart TV, after only a few years in the market, and allegations of discrimination and abuse of dominance by PayTV market players and other broadcasters led to the investigations into the conduct of firms and persons in the subsector.	The conduct by Multichoice relates to abuse of dominance through content exclusivity.	Investigations on-going
4	Consumer Information Network (CIN) vs Kenya Taxi Cabs Association (KTCA): (09/07/2012)	Taxi services	CIN alleged that taxi associations in Nairobi were levying a uniform charge to various destinations.	The conduct relates collusion on prices which is prohibited under section 21 (3) (a) of the Act.	Investigations on-going
5	Airtel Kenya Ltd vs Safaricom Ltd: (20/9/2012)	Telecommunications	Airtel Kenya Ltd complained that Safaricom Ltd is barring its Mpesa agents from offering Airtel Money services alongside their Mpesa services.	The conduct relates to abuse of dominance	The Authority entered into a Settlement agreement with Safaricom Ltd, to expunge its exclusive arrangements with the Mobile Money Transfer Agents.
6	CAK Vs Major Oil Marketers (January 8th, 2013)	Energy	It was alleged that major oil marketers in Kenya were engaged in hoarding of oil consignment to hike retail price.	The conduct relates to limiting or controlling production, market outlets or access, technical development or investment. This kind of conduct is prohibited under section 21 (3)(e)	The case was finalized because no evidence was found

S/ No.	Parties involved and date	Issue and advisory opinion given	S/No.	Parties involved and date	Issue and advisory opinion given
7	Njeru Industries vs Tea Board of Kenya 25th October, 2012	Agriculture and agribusiness	Njeru Industries alleged that Kenya Tea Development Agency (KTDA), Michimikuru Tea Company Ltd, Kiegoi Tea Factory Co. Ltd and Igembe Tea Factory Co. Ltd. are jointly restricting market entry by opposing the construction of a Specialty Tea Factory by NI. They also alleged that the Tea Board of Kenya has declined to issue NI with a Tea Manufacturing license.	The conduct relates to limiting or controlling output, market outlets or access, technical development or investment, which is prohibited under section 21 (3) (e) of the Act.	The case was finalised but the file left open to facilitate advocacy initiatives aimed at deepening competition in the sector and to monitor the outcome of the initiatives.
8	CAK vs Kenya Dairy Processors Association (2nd July, 2012)	Dairy	Milk processors under Kenya Dairy Processors Association had agreed to cap milk prices	The conduct relates to price fixing which is prohibited under section 21(3)(a)	Analysis of data obtained from KNBS indicated unlikelihood of cartelization, hence no need for inquiry.
9	SBC Kenya Limited: (7/6/2013)	Carbonated soft drinks	SBC Kenya Limited complained of removal and defacing of its advertising material by a competitor.	The conduct acts to prevent, distort or restrict competition which is prohibited under section 21(3) (i)	Investigations on-going.
10	CAK vs LPG sector (22nd December, 2011)	Energy	Co-ordination in setting prices of LPG products.	Colluding on prices is prohibited under section 21 (3) (a) of the Act	It was concluded that price uniformity can be explained by similarity in costs.
11	CAK vs Tuskys and Ukwala supermarkets (1st November, 2014)	Tertiary industry	Collusion in price fixing through a 'proof of concept' agreement between the two parties.	The conduct relates to collusion on prices which is considered a 'hard core' violation prohibited under section 21 (3) (a) of the Act.	The case was finalized through a settlement in terms of section 38 of the Act and a financial penalty of Kshs. 5.3 million was imposed on the parties.
12	NIS vs Association of Kenya Reinsurers (14th November, 2014)	Insurance	NIS complained that the Association colluded in fixing premium rating for its Group Life Cover	The conduct by the Association of Kenya Reinsurers relates to collusive tendering which is prohibited under section 21(3) (c) of the Act.	Investigations on-going.
13	CAK vs Telkom Kenya Limited (14th November, 2014)	Telecommunications	Charging unfairly high access prices by Telkom Kenya Limited.	Discrimination	Investigation on-going.

S/ No.	Parties involved and date	Issue and advisory opinion given	S/No.	Parties involved and date	Issue and advisory opinion given
14	Kumon Education SA (PTY) and prospective Franchisees	Education	Kumon Education SA (PTY) Limited, a company incorporated in South Africa, made an application under section 28 of the Act for exemption of their proposed three (3) year Franchise Agreement with various Franchisees	The matter relates to exemption application which is provided for under section 28 of the Act.	Gazette Notice published on 27th June 2014 inviting comments of the public on the proposed agreements.
15	Sports Stadia Management and Safaricom Limited	Telecommunications	Safaricom submitted application in terms of section 25 of the Act seeking exemption with regard to the naming and attendant branding rights of Kasarani Stadium and Kasarani Indoor Arena (Gymnasium)	The matter relates to exemption application which is provided for under section 28 of the Act.	Certificate of Clearance was granted because the proposed arrangement was not a prohibited practice under section 21 of the Act.
16	Uniform Shop Ltd vs Animate Limited and Haria Uniform Limited (26th November, 2013)	Textile	Uniform Shop Limited has alleged that Banda School has entered into exclusive uniform supply arrangement with Animate Limited and Haria Uniform Limited	The conduct relates to allocation of customers, suppliers, areas or specific types of goods or services. This is prohibited under section 21 (3) (b) of the Act.	Investigations ongoing.
17	CAK vs Alcoholic beverages sector players (31st March, 2014)	Alcoholic beverages	Allegation of abuse of dominance and vertical agreements thereby inhibiting intra-brand competition	The conduct relates to abuse of dominance which is prohibited under section 24 of the Act.	Investigations are ongoing.
18	Fly 540 Aviation Ltd vs Kenya Airways and Jambojet	Aviation	Fly 540 has alleged that Kenya Airways through their wholly owned subsidiary Jambojet Ltd is engaging in predatory pricing.	The main theory of harm in the case is predating on competitors to force them to exit the market to the detriment of the consumer. The conduct relates to abuse of dominance which is prohibited under Section 24 of the Act.	Investigations on-going.
19	CAK vs Cement manufactures (23rd June, 2014)	Building and construction	Allegation of existence of unwarranted concentration of economic power and co-ordination of activities	The theory of harm of the case is colluding on prices, market allocation and restricting output. These kinds of conduct are prohibited under section 21 (a), (b), and (e) of the Act	Investigations are underway.

ANNEX 4:

Summary of Consumer Affairs Cases

No.	Case/Inquiry	Sector/ Market affected	Relevant Section of the Law	Case summary	Status/ decision
1.	Perkins Engines Ltd vs Foton EA	Manufacturing	Section 55(a)(ii) on misleading representations	A consumer alleged that Foton misled clients that their vehicles were of Perkins Engine Brands.	Matter to be referred to ODP
2.	Mabati Rolling Mills vs CAK	Manufacturing (roofing materials)	Section 55 (a) (i) on misleading representations	The Authority initiated the case where MRM claimed that their iron sheets lasted four (4) times longer than normal iron sheets. The firm attached international specifications as evidence to the claim. CAK referred the International specifications to KEBS for interpretation.	Investigations on-going
3.	COFEK vs Fones Express Ltd	Retail (Electronic goods)	Section 64 (1) on defective goods	COFEK reported the case they were handling where a consumer allegedly bought a defective mobile phone and two computers from Fones Express Ltd.	Case finalized. Fones Express Ltd agreed to compensate the complainant.
4.	Top Shoes Ltd vs Ms. Mercy	Retail (Foot wear)	Section 64 (i) on defective goods	Ms. Mercy Thande alleged that she bought a defective shoe from Top Shoes Ltd. When she took the shoe back, the seller refused to address her complaint.	Case finalized. The complainant repaired the shoe.
5.	Mr. Festus Mbuimwe and Orange	Telecommunications	Section 55(a)(ii) on misleading representations	Mr. Festus Mbuimwe alleged that he was not informed of the new capping policy before he bought his latest "7 days unLimited" bundles.	Case finalized. The complainant withdrew the case.
6.	Mr. Christopher Makokha vs Petreshar (K) Ltd	Retail (Incubator)	Section 64 (i) on defective goods	Mr. Christopher Makokha alleged that he bought a defective incubator from Petreshar (K) Ltd which broke down and the supplier was unwilling to repair.	Case finalized. Petreshar (K) Ltd agreed to repair the incubator.
7.	Standard Media Group vs Nation Media Group	Print Media	Section 24 on abuse of dominance and Section 55 on misleading representations	SMG alleged that NMG were misusing their dominant position by charging below cost in regions where SMG is the market leader and misleading consumers that 9 out of 10 newspaper readers read the nation newspaper to drive SMG out of business. SMG promised to provide evidence to support the claim which they failed to do.	Case finalized. The SMG failed to produce evidence to support the claim as they had promised
8.	Maisha Mabati Mills vs CAK	Manufacturing (roofing materials)	Section 55(a)(i) on misleading representations	Maisha Mabati Mills alleged that their mabati lasted five (5) times longer than normal mabati. The firm responded by attaching international specifications. CAK referred the International specifications to KEBS for interpretation.	Investigations on-going

No.	Case/Inquiry	Sector/Market affected	Relevant Section of the Law	Case summary	Status/decision
9.	Independent Insurance Agents vs Insurance Agencies owned by Banks	Insurance	Section 57 (1) on unconscionable conduct	Independent Insurance Agents alleged that insurance agencies owned by banks are overcharging in collaboration with the Authority for alleged unconscionable conduct by bank's owned insurance agencies under bancassurance.	Investigations on-going
10.	Mr. Anjugu Okome vs Barclays Bank (K) Ltd	Banking	Section 56(1) on unconscionable conduct	Mr. Anjugu Okome allegedly borrowed loan from Barclays Bank without understanding what three (3) months moratorium meant and then lodged a complaint that the bank charged him interest during the period.	Case finalized. The consumer concurred that he failed to observe due diligence when taking up the loan.
11.	Ms. Shitul Shah vs Chandarana Supermarket -Diamond Plaza Branch	Retail (Supermarkets)	Section 55 (b) (i) on misleading representation	Ms. Shitul Shah complained that the Supermarket, allegedly displayed lower prices on the shelf and charged higher prices at the till.	Case finalized. The supermarket agreed to compensate the complainant.
12.	Allion Insurance Brokers Limited vs Standard Bank (K) Ltd and AON Minet Insurance Brokers	Insurance	Section 57(1) on unconscionable conduct	Allion Insurance Broker's complained that Standard Bank (K) Ltd allegedly included a clause in their loan offer that his client had to place his insurance business with AON Minet Insurance Brokers.	Case finalized. The two parties amicably resolved their differences and requested the Authority to terminate the case.
13.	Mr. Ardon Barine Karimi vs Fones Direct Ltd	Retail (Electronic goods)	Section 64 (1) on defective goods	Mr. Ardon Barine had allegedly purchased a defective phone (Alcatel) at Fones Direct Ltd. The supplier repaired the phone two times because it was under one year warranty without success. The complainant wanted a replacement of the phone and reported the case to CAK.	Case finalized. CAK intervened and Fones Direct Ltd offered to compensate the complainant.
14.	Mr. Daniel Kathurima vs GOtv Kenya Limited	Broadcasting	Section 55 (b) (i) on misleading representation	GOtv Kenya Ltd allegedly put advertisements on decoders in both print and electronic media that buyers would watch all the 64 World Cup matches.	Investigations on-going

