CAK DECISION REGARDING CHANGE IN SHAREHOLDING IN MORINGA SCHOOL BY AUDREY PATRICIA CHENG WITHOUT PRIOR AUTHORIZATION

1. The Competition Authority of Kenya has penalized Moringa School Limited Ksh. 503,656 for implementing a merger without seeking approval as stipulated by the Competition Act No.12 of 2010.

2. Moringa School (the target) and Audrey Patricia Cheng (the acquirer) voluntarily informed the Authority that they had implemented a merger in 2016 without receiving the requisite regulatory approval.

3. Moringa is a multi-disciplinary coding school offering technical and professional training. The institution is headquartered in Nairobi, Kenya. The institution also has presence in Hong Kong, Pakistan, and Ghana.

4. The Authority engaged the two parties and, upon interrogating the relevant documentation, confirmed that the merger had been implemented without approval.

5. The transaction involved an acquisition of an additional 50% shareholding in Moringa School by Ms. Cheng, from Frank Collins Tamre, **resulting in a change from joint to sole control**. The transaction qualified as a merger within the meaning of Section 41(2) (a) of the Act and was therefore notifiable.

6. Section 42(2) of the Act states that: "*No person, either individually or jointly or in concert with any person, may implement a proposed merger to which this part applies unless this merger is approved by the Authority.*"

7. Section 42(5) of the Act further provides that: "*Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings, or both.*"

8. Additionally, Section 42(6) of the Act provides that: *"The Authority may impose a financial penalty in an amount not exceeding ten percent of the preceding year's gross annual turnover in Kenya of the undertaking or undertakings in question."*

9. The parties acknowledged having contravened the law.

10. It is worth noting that administrative penalties take into account deterrence and proportionality of the infringement. Further, they also reflect the infraction's effect on competition, public interest concerns, and the level of cooperation of the parties.

11. In the matter at hand, it is the Authority's view that the change of ownership was unlikely to have had a negative effect of competition in the education sub-sector of technology coding.

12. Further, the parties self-reported with the aim of regularizing the transaction and cooperated fully during the penalization process.

13. However, the Authority's position is that an attempt to voluntarily regularize a contravention does not exonerate the parties from being held liable for failure to abide with the law.

14. The transaction resulted in positive public interest benefits including offering education to over 1,000 students learning various coding technology such as Java, Spark, Django, Flask, among others. Further, the school provides employment to almost 100 persons.

15. The parties were desirous to regularize that transaction and agreeable to paying a penalty. The mitigating factors that the Authority considered when determining the amount of fine were the positive effects on public interest, the fact that the transaction did not have a negative impact on competition, and the level of cooperation exhibited by the merged entity.

16. The Authority therefore fined the parties Ksh. 503,656. The parties have paid the penalty and the transaction has been regularized by the Authority.