



BRIEF ON AWARENESS TALK BY MR. WANG'OMBE KARIUKI- DIRECTOR GENERAL, COMPETITION AUTHORITY OF KENYA DURING BRITISH CHAMBER OF COMMERCE KENYA (BCCK) BREAKFAST HELD ON 17TH MARCH 2016 AT CAPITAL CLUB

A. INTRODUCTION

1. The Competition Authority of Kenya (CAK) is mandated to promote and safeguard competition in the national economy and to protect consumers from unfair and misleading market conduct. To achieve this mandate, the Authority undertakes among others, the following functions:-
 - i. Promotion and enforcement of the Act;
 - ii. Promoting public knowledge, awareness and understanding of the obligations, rights and remedies under the Competition Act and the duties, functions and activities of the Authority;
2. In a bid to actualise the above, the Authority was invited to a breakfast organised by British Chamber of Commerce Kenya (BCC-Kenya) on 17th March 2016. The Director General (DG), Mr. Wang'ombe Kariuki gave the keynote speech on **"The Competition Regime in Kenya: Mergers and Acquisitions, Restrictive Trade Practices and Consumer Protection"**.
3. The attendees were: Mr. Graham Shaw, Chairman of BCC-Kenya and CEO Ms. Farida Abbas amongst other business people representing British companies in Kenya.

COMPETITION REGULATION

4. DG enlightened the members of the need to regulate business for the ultimate aim of protecting consumers. He also talked about the instruments of regulation of competition,

which is the Competition Act, implemented by the Competition Authority. Within the Act, The Competition Tribunal is also in place to regulate competition and the Judiciary.

5. DG highlighted the function of the Authority which are:
 - Regulation of market structure
 - Regulation of conduct
 - Consumer Protection
 - Advisory to the Government of Kenya
6. On regulation of market structure, DG informed the BCKC members that this looks at the merger regime and all mergers are assessed. CAK had handled 65 mergers, with 72% of the mergers being of an international dimension. The members were enlightened that, in determination of mergers, the tests used are the Substantial Lessening of Competition (SLC) test and Public Interest Test. In the Public Interest Test, conditions set can be negotiated. Indeed, there is an applicable filing fee, which has been set to enable CAK recoup the cost of analysing mergers.
7. On regulation of market conduct, CAK has dealt with concerted practices in the retail, insurance and advertising sectors. Examples used included the Tuskys Vs Ukwala case, Advertisers Association of Kenya and Association of Kenya Insurers. DG cited the Safaricom case as an example to explain the meaning of unilateral conduct. He also emphasized that while explaining the term unilateral conduct. The aspect of having exclusive agreements and offering discriminatory prices was also highlighted. DG also mentioned the Leniency Programme which gives the opportunity to firms to engage with CAK with regard to ensuring that they are within the provisions of the Competition Act.
8. In regards to the modes of investigations, CAK uses different methods of collecting information including requesting for information or conducting a search and seizure operation.
9. In regards to consumer protection, CAK has handled and successfully solved over 25 cases with a focus on false and misleading representations, unconscionable conduct and on product quality. Cases received are mostly on the retail and telecommunications sectors.
10. The advisory role of CAK focuses on Government and corporates. This has been made possible through the Product Market Regulatory (PMR) study which highlighted areas hindering competition in certain sectors. CAKs advisory role is also done through advocacy

programmes such as interacting with Parliament and other sector regulators. Market inquiries have been conducted in the Agriculture, Tea, Seed, Cement and Sugar sectors. The Cement and Sugar studies have been done on a regional level. Other market inquiries conducted include banking sector studies and USSD inquiry which is at its final stages.

11. Emerging issues highlighted by DG include: the effort to decriminalise the merger regime and how to handle passive investments and controls. Other emerging issues include the Public Interest Test versus the Substantial Lessening of Competition (SLC) as a way of determining mergers.
12. CAK has played a leading role in ensuring that the regional economic agencies remain efficient in regards to determination of mergers. In that regard, CAK has engaged the EAC Competition Authority on how they are going to relate with COMESA and regional competition authorities to minimise on duplication.
13. In an effort to come up with regulations that take care of competition, CAK has been engaging county governments to create an understanding of the effects of county regulations on health competition.
14. CAK also ensures transparency and predictability through the development of guidelines. CAK also organises the Annual Symposium which is a forum that brings together market players. The symposium is an opportunity for CAK to create awareness on its work and receive feedback.