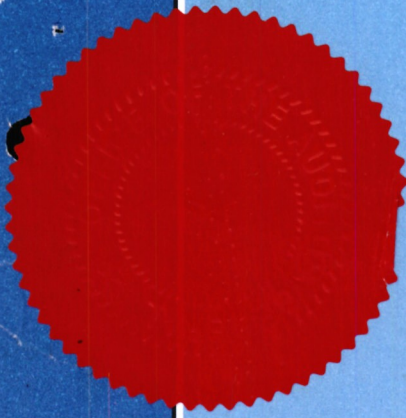


REPUBLIC OF KENYA



OFFICE OF THE AUDITOR-GENERAL

Enhancing Accountability

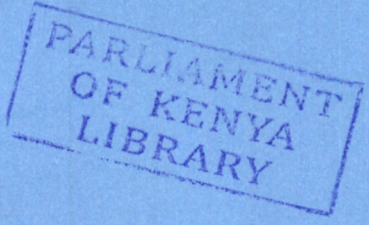


THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 23 FEB 2024

DAY: WED

OF
Hon Naomi Wago
Deputy majority whip
Mudo



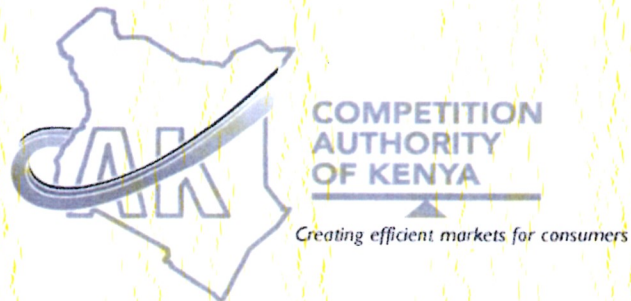
REPORT

THE AUDITOR-GENERAL

ON

COMPETITION AUTHORITY OF KENYA

**FOR THE YEAR ENDED
30 JUNE, 2023**



COMPETITION AUTHORITY OF KENYA

ANNUAL REPORT

AND

FINANCIAL STATEMENTS

FOR THE FINANCIAL YEAR ENDED

30TH JUNE, 2023

*Prepared in accordance with the Accrual Basis of Accounting Method under the International
Public Sector Accounting Standards (IPSAS)*

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CORPORATE INFORMATION

A. Physical Address

CBK Pension Tower
Harambee Avenue
P.O. Box 36265 – 00200,
NAIROBI, Kenya

Tel: +254-20-2628233 or +254-20-2779000

Website: www.cak.go.ke

Email: info@cak.go.ke

B. Independent Auditors

Auditor General
Office of the Auditor General
Anniversary Towers, University Way
P.O. Box 30084, GPO 00100
NAIROBI, Kenya

C. Legal Advisors

NO.	NAME OF LAW FIRM	ADDRESS
1.	Office of the Attorney General & Department of Justice	Sheria House, Harambee Avenue, P.O. Box 40112-00100, NAIROBI
2.	Rachier & Amollo Advocates	Mayfair Center, 5th Floor, Ralph Bunche Road, P.O. Box 55645-00200, NAIROBI
3.	Wesonga, Wamalwa & Kariuki Associates Advocates	4 th Floor, Embassy House, Harambee Avenue, P.O. Box 45770-00100 NAIROBI

D. Bankers

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

National Bank of Kenya,
Times Tower Branch,
P.O. Box 72866 - 00200,
NAIROBI

ABSA Bank,
Yaya Centre Branch,
P.O. Box 30120 - 00100,
NAIROBI

Family Bank Limited,
Family Bank Towers Branch,
P.O. Box 74175 - 00200,
NAIROBI

ACRONYMS

ABP	-	Abuse of Buyer Power
AGPO	-	Access to Government Opportunities
AIDS	-	Acquired Immuno-Deficiency Syndrome
AKS	-	Association of Kenya Suppliers
BAC	-	Budget and Appropriation Committee
BCM	-	Business Continuity Management
CAK	-	Competition Authority of Kenya
CBK	-	Central Bank of Kenya
CCC	-	COMESA Competition Commission
C&CPL	-	Competition & Consumer Protection Literacy
CGA	-	Cereal Growers Association
CIRC	-	CUTS Institute for Regulation and Competition
CMS	-	Case Management System
CMA	-	Capital Markets Authority
COMESA	-	Common Market for Eastern and Southern Africa
CPC	-	Corruption Prevention Committee
CPD	-	Continuous Professional Development
CoG	-	Council of Governors
CSR	-	Corporate Social Responsibility
DR	-	Digital Repository
EAC	-	East Africa Community
EACCA	-	East Africa Community Competition Authority
EACC	-	Ethics and Anti-Corruption Commission
EAPCC	-	East Africa Portland Cement Company
ERM	-	Enterprise Risk Management
ETR	-	Electronic Tax Register
EU	-	European Union
ICN	-	International Competition Network
IEA	-	Institute of Economic Affairs
IRA	-	Insurance Regulatory Authority
IRMF	-	Institutional Risk Management Framework
JICA	-	Japan International Cooperation Agency
JSS	-	Junior Secondary School
KAM	-	Kenya Association of Manufacturers
KFTC	-	Korea Fair Trade Commission
KICA	-	Kenya Information and Communication Regulations

KICD	-	Kenya Institute of Curriculum Development
KNBS	-	Kenya National Bureau of Statistics
KRA	-	Kenya Revenue Authority
LC	-	Local Content
LTWP	-	Lake Turkana Wind Power Limited
MAAK	-	Motor Assessors Association of Kenya
MSMEs	-	Micro, Small and Medium Enterprises
NARTD	-	Non-Alcoholic Ready to Drink
NCA	-	National Competition Agencies
NCPWD	-	National Council for Persons with Disability
NEMA	-	National Environmental Management Authority
NTSA	-	National Transport Safety Authority
PC	-	Performance Contract
PFM	-	Public Finance Management Act
PIIP	-	Public Procurement Information Portal
PPRA	-	Public Procurement Regulatory Authority
PWD	-	People with Disability
QMS	-	Quality Management System
RTP	-	Restricted Trade Practices
RETRAK	-	Retailers Trade Association of Kenya
SCAC	-	State Corporations Advisory Committee
SID	-	Society for International Development
SSS	-	Senior Secondary School
UNCTAD	-	United Nations Conference Trade and Development
UNICEF	-	United Nations Children's Emergency Fund
YPP	-	Young Professionals Program

PREAMBLE

The Competition Authority of Kenya (**'the Authority'**) is a State Corporation established under Section 7 of the Competition Act No. 12 of 2010 (**'the Act'**). Its mandate is to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Kenya, to:

- i. Increase efficiency in the production, distribution, and supply of goods and services;
- ii. Promote innovation;
- iii. Maximize the efficient allocation of resources;
- iv. Protect consumers;
- v. Create a conducive environment for investment, both foreign and local;
- vi. Capture national obligations in competition matters concerning regional integration initiatives;
- vii. Bring national competition law, policy, and practice in line with best international practices; and
- viii. Promote the competitiveness of national undertakings in World markets.

The Authority has a statutory obligation under Section 83 of the Act to prepare an Annual Report for submission to the National Assembly by the Cabinet Secretary, The National Treasury and Economic Planning. The Annual Report captures the overall performance of the Authority, based on its key interventions and performance indicators.

This Report provides the nature and scope of the Authority's activities; its plans and priorities including the number and nature of complaints and applications determined and/or under consideration; number and nature of investigations completed and continuing; and significant studies and market inquiries completed during the Financial Year 2022/23. It also includes the Authority's Financial Statements for the same period.

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 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 – we commit to attaining the highest standards in service delivery to all stakeholders in line with ISO 9001:2015;
- ii. Integrity – we commit to act in an honest, transparent, and responsible manner while implementing our programmes;
- iii. Professionalism – we are guided by professional ethics aimed at building an appropriate corporate culture and creating the right corporate image;
- iv. Impartiality – we uphold the highest levels of equity by treating all stakeholders without any discrimination whatsoever;
- v. Teamwork – we adopt a participatory approach and work together at all levels in the conduct of business; and
- vi. Innovation and Creativity – we are a learning organization that embraces change and continuously enhances creativity and innovation in our business processes.

Mandate

The Authority's mandate is to promote and safeguard competition in the national economy and to protect consumers from unfair and misleading market conduct. This, as specified in the Act, has the objective of enhancing the welfare of the people of Kenya. The Act's approach is competition neutrality, meaning 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. Promoting and enforcing compliance with the Act;
- b. Receiving and investigating complaints from legal or natural persons and Consumer entities;
- 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;
- 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 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 publicize the results of such investigations;
- j. Investigating policies, procedures, and programmes of regulatory authorities to assess their effects on competition and consumer welfare and publicize the results of such studies;
- k. Participating in deliberations and proceedings of government, government commissions, regulatory authorities, and other bodies about 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.

Quality Management System

During the year under review, the Authority maintained its certification to the ISO 9001:2015 International Standard and in so doing sustained its Quality Management System (QMS). The QMS provides the Authority the capacity to increase operational efficiency, including handling customer complaints and leveraging feedback from customers to enhance service delivery.

Further, the implementation of the QMS together with automation of key processes has led to improved and efficient utilization of resources while at the same time focusing on continual improvement of all the Authority's processes. The QMS standard emphasizes on top leadership commitment and engagement of members of the organization at all levels.

Quality Policy

The Authority is committed to enhancing the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct. Towards this end, the Authority commits to comply with all applicable statutory requirements and continual improvement of its QMS based on ISO 9001:2015 International Standard.

The Authority's top Management commits to review this policy and establish quality objectives biennially to ensure sustained improvement and suitability. The policy shall be communicated, understood, and applied throughout the organization and shall be available to relevant interested parties, as appropriate.

Quality Objectives

1. Provision of quality and effective regulation of both market conduct and structure, buyer power, and protection of consumers from unfair and misleading market conduct;
2. Enhanced use of research and data to make informed and optimal decisions to support the delivery of the Authority's mandate
3. Ensure optimal utilization of the Authority's resources in the attainment of its mandate;

4. Enhance customer satisfaction that exceeds their expectations by providing quality services;
5. Ensure that the Authority's operations comply with all applicable laws and regulations; and
6. Attract, train, and retain highly qualified, skilled, and motivated staff for the realization of its mandate.

Enterprise Risk Management

Enterprise Risk Management (ERM) includes the methods and processes that interrogate risk management strategically from the perspective of the entire organization. ERM is a top-down strategy that aims to identify, assess, and prepare for potential losses, dangers, and hazards that may interfere with the Authority's operations to manage risks and make the most of opportunities related to the achievement of strategic objectives.

The Authority is committed to an ERM process that aligned to the principles of best practice corporate governance and standards. The Authority's risk management culture is enhanced through risk reporting, which makes sure that relevant risk data is quickly available at all organizational levels and serves as the basis for decision-making. A comprehensive policy on risk management that facilitates identification, analysis and management of all key risks has been developed and integrated into the overall reporting structure.

The Board managed the ERM's implementation to guarantee that reliable governance frameworks are in place. Subsequently, ERM has reinforced adherence to the Authority's strategic objectives, control, and accountability. The major risks that were facing the Authority at the corporate level include; cyber security, business continuity, strategy implementation, reputational risk, and inadequate funding. The continuous monitoring of situations and implementation of mitigating measures aims to avert any adverse impacts in future.

Business Continuity Management

Business Continuity Management (BCM) is a continuous process of planning, preparing and addressing identified institutional vulnerabilities to minimize the effects of disruptions. It helps to mitigate against most risks, reducing the cost to the Authority while minimizing any adverse impact on our stakeholders.

The Authority continues to implement its Business Continuity Management System (BCMS). In an unlikely event of a business disruption, the Authority is able to anticipate react, manage, and seamlessly resume vital operations because of established policies and procedures.

The BCM programme consists of Business Continuity Plans, Information Technology (IT) Recovery strategies, Incident and Emergency Response procedures, Crisis Management and Communication protocols. The aforementioned components collectively provide a framework that supports the Authority's continual commitment to organizational resilience. During the Financial Year under review, there were no major incidents to trigger activation of either departmental or organizational Business Continuity plans. A continuous lifecycle for business continuity ensures that resilience protocols are being improved.

Table 1: CAK in Figures

Indicator	FY2022/23	FY 2021/22	% Change
No. of Consumer cases investigated	521	401	30
% of Consumer cases finalized	61	64	(3)
Consumer savings	KES 19.6 million	KES. 6.9 million	184
No. of RTPs investigated	58	55	5.5
% of RTPs finalized	64	60	4
No. of Exemptions	4	4	-
No. of Mergers notified	132	111	18.9
% of Mergers determined	97	97	-
No. of Buyer Power cases investigated	114	125	(8.8)
% of Buyer Power cases finalized	68	73	(5)
Sum of delayed payments recovered in Abuse of Buyer Power Cases	KES 45.4 million	KES. 24.4 million	86.1
No. of Advisories on Competition and Consumer Protection	34	59	(42.4)
% of Contracts awarded to AGPO	63.7	56.2	7.5
% of Local Content contracts	52.1	69.4	(17.3)

INTERNAL AUDIT AND ASSURANCE

The Internal Audit function provided assurance that the existing internal controls and processes are in place and optimized for effective and efficient risk mitigation.

Twelve (12) main audits, seven (7) follow-ups, four (4) spot checks on cash, three (3) spot checks on inventory stores, and two (2) reviews of the Authority's Institutional Risk Management Framework (IRMF) were undertaken during the period under review. The Audit revealed that there was a sound system of internal controls designed to ensure that the Authority's processes meet set objectives.

Corruption Prevention

The Authority has a zero-tolerance policy to corruption and bribery-related activities. Three (3) new staff members, five (5) Young Professionals (YP) and ten (10) interns on boarded in the Authority were sensitized on the phenomenon of corruption, obligations of State and Public Officers under the Leadership and Integrity Act, 2012 and the Bribery Act, 2016. This has helped maintain a culture of integrity, ethical conduct, and professionalism within the organization with no reported cases of corruption during the reporting period.

The Authority collaborated with the Ethics and Anti-Corruption Commission (EACC) to train members of the Corruption Prevention Committee (CPC) on the Bribery and Corruption Risk Assessment. In addition, the quarterly reports were prepared and submitted to EACC in line with corruption prevention indicator in the Performance Contract (PC).

Whistleblowing Policy

The Authority has a whistle-blowing policy that provides for reporting of suspected corruption cases. Reporting channels including anonymous web portal reporting, an ethics hotline, email and two (2) corruption-reporting boxes were maintained during the reporting period. Through these channels, anonymous reports on unethical/fraudulent behavior are made without fear of retribution. There were no corruption cases reported during the FY2022/23.

BOARD OF DIRECTORS FY 2022/2023

1. Mr. Shaka Kariuki

Date of Birth: 5th April 1969

Designation: Board Chair

Term: Appointed on February, 2023

Mr. Kariuki was appointed Chairperson of the Board of Directors for a period of three years, with effect from the 10th February 2023.

He serves as the Co-CEO of Kuramo Capital Management, LLC an independent investment management firm driving catalytic private institutional capital to fast-growing African businesses. In his role as the Chairman of the Investment Committee of Kuramo Capital, he leads Kuramo Capital's investment activities across Africa. Additionally, Mr. Kariuki leads Kuramo Capital's Board Governance strategy across all portfolio companies.

Further, Mr. Kariuki currently serves in leadership roles in various companies across the African continent, including in Kenya, Ethiopia, Zimbabwe, South Africa, and the Democratic Republic of Congo. He also serves on various advisory boards of companies in Europe and USA. He is the former chairperson of Deseret First Credit Union in the USA.

He has extensive experience in key leadership roles in various investment and asset classes, including in private equity, fixed incomes, domestic and emerging market, investment banking, and hospitality.

Mr. Kariuki received a Master's in Government from Harvard University and holds a B.S. in Economics, and MBA with an emphasis in Finance from Brigham Young University. He is a member of the CFA Institute and the Harvard Club in New York City.

2. Dr. Adano Roba, PhD

Date of Birth: 28th May, 1968

Designation: Ag. Director-General and Director Planning, Research, Risk and Quality Assurance

Dr. Roba was appointed the Acting Director General on 9th January 2023.

He has broad areas of interest in applied research and has over 15 years of research and policy experience. He joined the Authority in July 2018 and is responsible for developing effective strategies for economic analysis and policy, research, as well as quality management system and performance.

Before joining the Authority, he was a Senior Policy Analyst at the National Treasury's Fiscal & Economic Affairs Department, where he was involved in several taskforces that developed legislation on climate

change, petroleum, minerals, energy, and their related regulations. He also served as a Senior Lecturer in environmental economics at both University of Eldoret and Moi University. Dr Roba earned his PhD from the University of Amsterdam, the Netherlands, and an MSc from the University of York, UK. He has a number of monographs, peer-reviewed articles and book chapters to his name, and in collaboration with colleagues.

3. Mr. Stephen Githinji

Date of Birth: 29th June 1985

Designation: Alternate to the Hon. Attorney-General

Term: Appointed in January, 2023

Mr. Stephen Githinji is a State Counsel in the Office of the Attorney-General and Department of Justice. He has undergone various trainings on drafting and has a wide experience in legislative drafting. Over the years, Mr. Githinji has served on numerous committees and task forces as a drafting expert.

He is an advocate of the High Court of Kenya and holds a Bachelor of Laws Degree from the Catholic University of Eastern Africa as well as a Postgraduate Diploma in Law from the Kenya School of Law.

4. Mr. Albert Mwenda

Date of Birth: 10th May 1971

Designation: Alternate to the Principal Secretary, The National Treasury and Economic Planning

Term: Appointed in December, 2019

Mr. Mwenda is the Director-General Budget, Fiscal and Economic Affairs in The National Treasury. He represents the Principal Secretary of the National Treasury as an Alternate Member in the Commission on Revenue Allocation. Mr. Mwenda has excellent knowledge of public finance and budgeting as well as fiscal decentralisation at national, regional, and international levels. Previously, he has made significant contributions in the formulation of finance and procurement related laws such as; the Public Finance Management Act, the Public Procurement & Asset Disposal Act and the Public Audit Act. He has also contributed to the design of Kenya's current framework for management of intergovernmental fiscal transfers and coordinated the formulation of annual Division of Revenue Bills and County Allocation of Revenue Bills.

Mr. Mwenda served as the Chief Executive and member of the Board of Directors of the Institute of Economic Affairs (IEA) Kenya. Also, has previously worked as a consultant for organisations such as the World Bank, the United Nations Children's Emergency Fund (UNICEF), United Nations Development Programme (UNDP), Norwegian People's Aid (NPA-Rwanda), State University of New York (SUNY

Kenya), Society for International Development (SID), among others. He holds a Masters degree in Public and Economic Policy from the London School of Economics and Political Science (LSE), UK and a Masters of Business Administration (Finance) and a Bachelor of Arts degree in Economics both from the University of Nairobi (UoN).

5. Mr. Joseah Rotich

Date of birth: 19th December, 1965

Designation: Alternate to the Principal Secretary, State Department for Trade and Enterprise Development

Term: Appointed in October, 2020

Mr. Rotich has a wealth of experience in trade and economic policy. In addition to over 25 years' experience in trade policy, he has leadership and strong coordination skills along with long term experience in trade negotiations. He has spearheaded a number of trade negotiations among them: EAC-EU EPA, COMESA-EAC-SADC Tripartite FTA as lead negotiator for the EAC Partner States, the African Continental Free Trade Area (AfCFTA) as key Kenyan negotiator and chair of the Technical Working Group (TWG) on Rules of Origin since commencement of the negotiations, and EAC-CET and EAC Rules of Origin Review and Kenya-UK EPA and Kenya-USA as lead negotiator on market access and Rules of Origin, among other bilateral negotiations.

He has also worked at the Kenya Embassy in Brussels as a Commercial Counsellor for 6 years (2002-2009) covering the EU, Belgium and Luxembourg, African, Caribbean and the Pacific Partner States (ACP) activities, and World Customs Organisation (WCO). Mr. Rotich holds a Post Graduate Degree from Brussels University (ULB) on International Economic Law, and Diploma in Multilateral Diplomacy/Conferencing from United Nations Institute for Trade and Research (UNITAR), Bachelor of Arts (Economics) Hons, from Moi University, among other trainings on trade policy including WTO, and Leadership.

6. Ms. Lena Munuve

Date of birth: 26th May, 1970

Designation: Non-Executive Director

Term: Appointed in November, 2021

Ms. Munuve holds a Master's Degree in Strategic Management, Post Graduate Diploma and a Certificate in Leadership Development from the University of Nairobi, Chartered Institute of Marketing (CIM) UK, and the University of Witwatersrand South Africa, respectively. Ms. Munuve is an experienced business executive with over 20 years local and International work experience gained in corporations such as Esso (K) Ltd, ExxonMobil, Kenya Shell Ltd & Vivo Energy.

At these organizations, she has been involved in maximizing business opportunities, improving customer service and contract management, change management, new business development, among others. She has Board experience in various organizations in the Public and the Private sectors.

7. **Dr. David Wanyama, PhD**
Designation: Non-Executive Director
Date of birth: 1st January, 1978
Term: Appointed in November, 2021

Dr. Wanyama is a strategy and governance expert with over 20 years' commercial and consulting experience. Dr. Wanyama has a PhD Finance, MBA Finance, Bachelor of Commerce (Management), Diploma in Co-operative Management, International Diploma in Insurance, Credit Management Diploma and is a CPA (K). He is currently undertaking a Master of Laws degree at the University of East London.

Dr. Wanyama's areas of expertise are strategy, leadership, governance, finance and accounting. His consultancy experience transcends various sectors including banking, investments, agriculture, and insurance. He has lectured in local universities on portfolio management, management and financial accounting among other subjects. Dr. Wanyama also has experience serving in Boards of various institutions in the Public and Private sector.

8. **Dr. Alome Achayo, PhD**
Date of birth: 9th October, 1968
Designation: Non-Executive Director
Term: Appointed in November, 2021

Dr. Alome K. Achayo holds a PhD in Strategic Management from the Jomo Kenyatta University of Agriculture and Technology (JKUAT), an MBA in Strategic Management & Marketing from the University of Nairobi and a BSc in Medical Microbiology from the JKUAT.

With a professional background in health sciences and strategy, Dr. Achayo has experience in driving strategy, policy crafting, change management, organizational restructuring, marketing, branding, and portfolio development. She is currently the Chief Executive Officer at Oasis Health Specialist Hospital. Previously, she has held senior management positions in various institutions in the Public and Private sectors, including St. John Ambulance Kenya, E&A Industries and the Agricultural Finance Corporation.

9. Mr. Abdi Mohamed

Date of birth: 22nd June, 1974

Designation: Non-Executive Director

Term: Appointed in November, 2021

Abdi Mohamed is a Health and Conflict Management specialist with over 20 years of experience in both public and private sectors in the Horn of Africa region (Somalia, Ethiopia, Sudan, South Sudan and Kenya). Mr. Abdi is currently a Strategy Development and Program Management Specialist -Consultant at Kenbridge Consulting Ltd. He has also served in senior management positions as the Technical Specialist (Health, Food, Security, & Climate Change) at Save the Children-Somalia; Peace Building and Conflict Management Advisor at Road International-Somalia, Program Coordinator at International Medical Corps for Sudan and South Sudan, and Senior Health Coordinator at Comitato Collaborazione Medica-Italy for Somalia. He has also served as the Council Member, Tharaka University.

Mr. Abdi holds a Bachelor of Arts (Sociology and Psychology) degree from University of Nairobi, and Master of Arts (Public Policy and Administration) from Kenyatta University. Abdi also holds a Diploma in Nursing from KMTC. In addition, he has completed Strategic Leadership Development Program at Kenya School of Government, and a Certified Trainer of Facilitator (TOF) AMREF International Training Centre-Nairobi. He is passionate about peace building and conflict management, livelihoods, market systems, education, health programs and corporate governance.

BOARD OF DIRECTORS WHO EXITED IN THE FY2022/23

Board of Directors	Board of Directors
<p>1. Amb. Nelson Ndirangu, OGW Date of Birth: 31st December, 1952 Designation: Board Chairman Term: 2019 – 2023</p>	<p>4. Dr. Abdirizak Nunow, PhD Date of Birth: 5th April, 1965 Designation: Independent member Term: 2019 - 2022</p>
<p>2. Wang'ombe Kariuki, MBS Date of Birth: 24th July, 1969 Designation: Director-General Term: 2013 – 2023</p>	<p>5. Mr. Nevis Ombasa Date of Birth: 24th October, 1980 Designation: Alternate to the Hon. Attorney-General Term: 2022 - 2023</p>
<p>3. Ms. Elizabeth Ng'ang'a Date of Birth: 24th August, 1962 Designation: Alternate to the Hon. Attorney-General Term: 2012 - 2022</p>	

MANAGEMENT TEAM

1. Dr. Adano Roba, PhD

Designation: Ag. Director General and Director Planning, Research, Risk and Quality Assurance

Dr. Roba has broad areas of interest in applied research and has over 15 years of research and policy experience. He joined the Authority in July 2018 and is responsible for developing effective strategies for economic analysis and policy, research, as well as quality management system and performance.

Before joining the Authority, he was a Senior Policy Analyst at the National Treasury's Fiscal & Economic Affairs Department, where he was involved in several taskforces that developed legislation on climate change, petroleum, minerals, energy and their related regulations. He also served as a Senior Lecturer in environmental economics at both University of Eldoret and Moi University. Dr Roba earned his PhD from the University of Amsterdam, the Netherlands and an MSc from the University of York, UK. He has a number of monographs, peer reviewed articles and book chapters to his name, and also in collaboration with colleagues.

2. Boniface Makongo

Designation: Director, Competition and Consumer Protection

Mr. Makongo has over 17 years of experience in litigation, corporate and commercial law. He joined the Competition Authority of Kenya in December, 2013 as the Manager, Legal Services. He was appointed Director, Competition and Consumer Protection on 5th May, 2019, placing him in charge of the Authority's three Technical Departments. Mr. Makongo has previously worked for both Constituencies Development Fund Board and Water Services Trust Fund heading both institutions Legal Departments which he also helped establish.

Mr. Makongo holds a Master's Degree in International Economic Law from the University of South Africa, a Bachelor of Law Degree from Moi University and a Diploma in Management of Information Systems from the Institute for Management of Information Systems (UK) as well as a postgraduate Diploma in Corporate Governance and is a Certified Public Secretary. He is an active member of the Law Society of Kenya and ICPS (K).

3. Eric Mwangi

Designation: Director, Corporate Services

Mr. Mwangi joined the Authority in December 2014 as the Manager Internal Audit. He was appointed Director Corporate Services in February 2018. He has over eleven (11) years' experience in the audit of the Government Parastatals. Previously, he has worked with Kenya National Bureau of Statistics (KNBS), Kenya Film Commission (KFC) and the Kenya National Audit Office (KENAO).

He is a holder of Masters of Business Administration (Finance Option) and Bachelor of Science Degree (Hons.) from the University of Nairobi. He is a Certified Public Accountant (Kenya), Certified Fraud Examiner (CFE) and Certified Information Systems Auditor (CISA). Mr. Mwangi is an active member of the Institute of Certified Public Accountants (ICPAK), Association of Certified Fraud Examiners (ACFE) and Information System and Control Association (ISACA). He is also a qualified Quality Management System ISO 9001: 2015 Auditor.

4. Amenity Omari

Designation: Corporation Secretary & Manager Legal Services

Mr. Omari is a public sector Secretary and Legal Advisor with over 12 years' experience. He is responsible for providing secretarial services to the Authority's Board; advising on corporate governance and legal matters within the Authority; managing the litigation function and overseeing legal representation of the Authority.

Prior to his appointment, Mr. Omari served as the Principal Legal Officer and Head of Legal Division at the Witness Protection Agency of Kenya. His earlier work experience was at the Office of the Director of Public Prosecutions as Senior Prosecution Counsel and the Office of the Attorney General where he served as State Counsel. He holds a Master's in Law from the University of Zimbabwe, a Bachelor of Law from the University of Nairobi and a Postgraduate Diploma in Law from Kenya School of Law. He is a member of the Law Society of Kenya, and the East Africa Law Society. He is also a Certified Public Secretary, CPS (K) and a member of the Institute of Certified Public Secretaries of Kenya ICPS (K). He has also been trained in Leadership, Management and Effective Communication.

5. Ochieng' Ochiel

Manager, Internal Audit

Mr. Ochiel has vast experience in the fields of auditing, finance and taxation both in public and private sectors spanning over 16 years. He holds a Masters of Business Administration (MBA) degree from the University of Nairobi, a Bachelors of Commerce degree (Accounting) from Daystar University, Certified Public Accountant (CPAK) and Certified Information Systems Auditor (CISA) from Strathmore University.

Prior to his appointment as the Manager, Internal Audit at the Authority, he served as the Senior Internal Audit and Risk Management officer at the Kenya Civil Aviation Authority. His prior work experience was at the Kenya Rural Roads Authority, Compassion International and Kenya Utalii College. Mr. Ochiel's key responsibilities include offering independent and objective assurance on the effectiveness of the internal controls, risk management and governance processes. He is a member of the Institute of

Certified Public Accountants of Kenya (ICPAK) and the Information System and Control Association (ISACA).

6. Ninette K. Mwarania

Designation: Manager, Planning, Policy and Research

Ninette provides leadership in Research, strategic planning and policy development, which are critical to advance the Authority's mandate. She is also in charge of advocacy and International relations functions responsible for supporting in maintaining effective partnerships. In addition, she oversees knowledge management, resource mobilization and performance monitoring and evaluation for the Authority.

Ninette holds a Master of Business Administration (Marketing Management) Degree from the University of Nairobi and a Bachelor of Commerce (Banking and Finance) Degree from Kenyatta University. She is an active member of the Marketing and Social Research Association (MSRA) and is a full member of the Kenya Institute of Management (KIM).

7. Gideon Mokaya

Designation: Manager, Enforcement and Compliance

Mr Gideon Mokaya is the Manager of Enforcement & Compliance department which regulates Restrictive trade practices (RTP). This encompasses investigating and remedying of cartel and Abuse of Dominance conduct in the Kenyan market, evaluation of Exemption Applications and compliance to the Authority's decisions. Gideon is a holder of a Master of Business Administration Degree from University of Nairobi, a Bachelor of Commerce Degree from Kenyatta University and a postgraduate diploma in EU Competition Law from Kings College London. He is a member of the Association of Certified Fraud Examiners (ACFE) and a member of the Institute of Certified Public Accountants of Kenya (ICPAK).

He has over 15 years' experience in forensic investigations at various state agencies including Kenya National Audit Office and the Ethics and Anti-Corruption Commission where he successfully concluded number of economic and fraud cases through planning of investigations, evidence collection, analysis, reporting, facilitating prosecution and other remedial measures. At the Authority, he has guided in the development and implementation of various RTP instruments including the competition and administrative settlement guidelines and search & seizure guidelines and expeditious handling, sanctioning and deterrence of Restrictive Trade Practices in the Kenyan market.

8. Boniface Kamiti

Designation: Manager, Consumer Protection

Mr. Boniface Kamiti joined the Authority in February 2015. He heads the Consumer Protection Department where he oversees the investigation and resolution of consumer related complaints and issues. Prior to joining the Authority, he worked with various UN agencies and the Centre for Corporate Governance. Mr. Kamiti holds a Master of Global Competition and Consumer Law Degree from the University of Melbourne, a Master of Arts Degree in Economic Policy and Management from the University of Nairobi and a Bachelor of Arts Degree in Social Science (Economics) from the Catholic University of Eastern Africa.

He has over 15 years' experience in arbitration, conducting consumer related investigations, programme and project management, Results Based Management, and stakeholder management.

9. Mugambi Mutegi

Designation: Manager, Communications and External Relations

Prior to joining the Authority, Mr. Mugambi worked at the Nation Media Group (NMG). He served as a writer and editor attached to the Business Daily publication.

His main role at the Communications & External Relations Department is ensuring the Authority's stakeholders are appraised about the Authority's mandate. The department develops and executes strategies through which the Authority can increase its visibility as well as enhance its corporate image among key stakeholders. Mugambi's background working at a leading media company has benefitted the Authority as it seeks to strength its relations with members of the 4th estate, a key stakeholder, creating awareness about the Authority's mandate. Mugambi holds a Master of Arts in Communication Studies from the University of Nairobi.

10. Ambrose Ageng'a

Designation: Manager, Finance

CPA Ambrose Ageng'a is a holder of a Master of Business Administration (Finance) from the University of Nairobi and a Bachelor of Commerce Degree from the Catholic University of Eastern Africa. He is also a Certified Public Accountant of Kenya (CPAK) and an active member of the Institute of Certified Public Accountants of Kenya (ICPAK).

CPA Ageng'a has over 22 years' work experience in both the private and public sectors. He has worked in corporates and the Kenya Revenue Authority and the Kenya Competition Commission. He has also been involved in Audit Committee activities at various Government levels.

11. Raphael Mburu

Designation: Manager, Mergers and Acquisitions

Raphael Mburu joined the Authority in December 2014. He possesses advanced skills in Competition Law and Economics dealing with regulation of market structure. He holds a Master of Business Administration (Leadership and Sustainability) from University of Cumbria, Post-graduate Diploma in Competition Law from King's College London and a Bachelor of Science Degree from JKUAT.

He is an active member of Competition Law Association, the British Group of the International League of Competition Law (Ligue Internationale du Droit de la Concurrence - LIDC).

12. Priscilla Njako

Designation: Manager, Buyer Power

Priscilla Njako joined the Authority in March 2019. Prior to that she was engaged in Legal Practice and as a Senior Lecturer in Corporate Law and Competition Law at Catholic University and Strathmore Law School. In her career experience spanning 20 years, she has served in various managerial positions, including Head of Faculty and Head of Examinations and Research.

Priscilla's key responsibilities include investigating complaints of Abuse of Buyer Power and delayed payments and carrying out market assessment. Her duties also include engaging in research to identify most effective practices for effective enforcement. Priscilla has a keen interest in enforcement of competition law in ways that are apt for the needs of developing countries. Priscilla is a Doctoral Candidate at University of Pretoria, holds a Master of Laws Degree (LLM) from the University of South Africa, a Bachelor of Laws Degree (LLB) from University of Nairobi and a Diploma in Law from the Kenya School of Law. She also holds a Certified Public Secretaries qualification (CPSK) from Kenya Accountants and Secretaries Board (KASNEB) and various certificates in Competition Law. She is an active member of the Law Society of Kenya and a Certified Public Secretary.

13. Mercelline Anduro

Manager, Information and Communications Technology (ICT)

Mercelline Anduro has over 14 years' experience in network management, database administration, web design, corporate communication, hardware and software maintenance and user support from the Public Sector. She has been involved in various ICT projects, ICT Strategy formulation, execution and alignment with business processes, ICT security, Business Continuity Management, Project Management and Forensic investigations.

She holds a Master's of Science in Information Systems Management (KCAU), a Bachelor's in Business Information Technology (KEMU) and a Diploma in Computer Studies (TUM). She is also a qualified Microsoft Certified Solutions Associate and Microsoft Certified Professional. She has attended various

ENVIRONMENTAL AND SUSTAINABILITY REPORTING

The Authority aims to create efficient markets for consumers. Our mandate involves promoting and safeguarding competition in the national economy through regulation of market conduct and structure to protect consumers from unfair and misleading market conduct. Below is an outline of the Authority's policies and activities that promote sustainability.

A. Social impact

- i. **Disability Mainstreaming:** In response to **SDG 10 on Reduced Inequalities**, the Authority's percentage of Persons with Disability (PWDs) in the workforce stood at 5.4%, in line with the requirements of the National Council for Persons with Disability (NCPWD). During all recruitments, the Authority encourages qualified PWDs to apply for job vacancies through the NCPWD Employment Portal. This is a collaborative initiative by the two institutions.
- ii. **Promotion of AGPO by allocating 30% of the Authority's Annual Procurement Special Interest Groups:** Through the empowerment of the Youth, Women and Persons with Disability, under the preference & reservations group in the procurement of goods, works, and services, the Authority achieved a score of 62% for the Youth & Women and 7.6 % for Persons with Disabilities (PWD's). With regard to promotion of local content, the Authority achieve 80.6 % against a minimum threshold of 40% of the annual procurement budget.
- iii. **Authority's Decisions:**
 - a. Through the Authority's intervention in an abuse of buyer power matter, the sustainability of Unilever Kenya's SMEs suppliers has been enhanced through, among others, commitments by the manufacturer to reduce invoice payment periods from 90 to 30 days. This led to predictable cash flow cycles for SMEs to facilitate sustenance of their business operations and jobs. Additionally, there was an increase in procurement opportunities for SMEs through growth in localization of procurement spend by KES 400 million. Unilever Kenya also committed to invite at least two local SMEs to all tenders, subject to meeting procurement set conditions;
 - b. The Authority approved the green energy investment by CFP UK Holdings Limited (CFP UK) in Lake Turkana Wind Power Limited (LTWP). LTWP supplied 12.88% of the total energy purchased by the Kenya Power in the year to June, 2022, second after Kenya Electricity Generating Company (KenGen) which supplied 69.77% of the total energy. CFP UK's investment will help facilitate LTWP, which holds assets with a value above USD 650 million, to grow its capacity to supply more to the country free of greenhouse gas emissions. Approval of the transaction demonstrates the Authority's commitment to supporting both local and international institutional investors in emerging markets including the green

energy sector, which will embolden the country's position as a green energy leader in Africa; and

- c. Through the Authority's intervention in the Flower Sector 14,000 jobs were retained.
- iv. **Training:** As part of efforts to enhance organizational sustainability, the Authority facilitated staff to undertake Continuous Professional Development programmes geared towards succession planning, effective management and career progression. The training sessions were predominantly conducted in a virtual setup and in groups in order to promote efficiency and effectiveness, including on resources expended.
- v. **Young Professional Programme –** The Authority runs a programme for the Young Professionals (YPs) aimed at exposing them to the tenets of the Competition Law and Policy. Ten (10) and five (5) YPs were employed and training on competition law and policy. The objective of the program is to expose graduates joining the labour market to a real work environment in order to enhance their skillsets and employability. This is in line with the Sustainable Development Goal 8 whose objective is to promote inclusive and sustainable economic growth, employment and decent work for all.

B. Environmental

- i. **Corporate Social Responsibility:** The Authority undertook Corporate Social Responsibility (CSR) activities with the aim of giving back to the community. Some of the CSR activities undertaken were:
 - a) **Planting of trees:** The Authority participated in marking the World Environmental Day that focused on solutions to plastic pollution. Further, the Authority sensitized the Public on various environmental conservation and sustainability during tree planting in SKM Primary School in Marsabit County & Waso Mixed Secondary School in Isiolo County where 2,500 trees were planted in support of Government tree restoration program. The initiative aims to grow 15 billion trees by 2032, reduce greenhouse emissions, stop and reverse deforestation, and restore 5.1 million hectares of deforested and degraded landscapes through the African Landscape Restoration Initiative. This initiative, pursuant to SDG 13 on Climate Action, will facilitate the country achieve 10% forest cover from the current 8.83% to help reduce the effect of global warming.
 - b) **Donation of Resource Materials to Schools:** The Authority supported SKM Primary School in Marsabit County and Waso Mixed Secondary School in Isiolo County with 618 textbooks approved by the Kenya Institute of Curriculum Development. The schools were also issued with Annual Reports, Competition Act and other IEC material as library

resources for learners. The students/pupils and the teachers were sensitized on the Authority's mandate and complaints resolution mechanisms, with a focus on consumer protection issues. This initiative is part of the Authority's goals of supporting achievement of SDG 4 on Quality Education.

- ii. **Automation:** The Authority has sustained its efforts to ensure full automation thus cutting down on printing paper and toners. This is in response to SDG 13 on Climate Action that has seen the Authority reduce the carbon footprint on its products, services and processes by 80%. This has been buttressed through integration of Competition Portal on with the e-Citizen platform as part of efforts to enhance service delivery for members of the public to seamlessly access its services via Single Sign On (SSO).
- iii. **E-waste disposal:** Through the e-waste disposal method, and in line with disposal laws and regulations, the Authority disposed its obsolete ICT equipment's through the approved waste disposal handlers, licensed by the National Environmental Management Authority (NEMA) hence reducing the harmful impact of pollution and waste.

CHAIRMAN'S STATEMENT

Our esteemed stakeholders, on behalf of the Board, it gives me pleasure to present to you the Authority's Annual Report and Financial Statements for the FY 2022/23. This Annual Report elucidates the Authority's initiatives and interventions geared towards promoting and safeguarding competition and protecting consumers from unfair and misleading market conduct. This is the second year of implementation of the 3rd Strategic Plan. Despite the prevailing tough economic challenges, I am glad to report that the Authority achieved all its planned activities for the FY 2022/23 because of the unwavering support and commitment of the board, staff and stakeholders.

On the global front, the IMF reported that the global economic growth will fall from 3.4 percent in 2022 to 2.8 percent in 2023 and will settle at 3 percent in 2024. Further, the World Bank Group projected that Sub-Saharan Africa's economic growth will decrease to 3.1 percent in 2023 from 4.1 percent in 2022. The Kenya National Bureau of Statistics (KNBS), on the other hand, projected that Kenya's economic growth will slow down to 5.6 percent in 2023 from 7.6 percent in 2022. Despite the challenging economic times, the Authority recorded a 18.9% increase in the number of merger transactions notified indicating that our economy remains attractive to both domestic and foreign direct investment.


In supporting investment by easing doing business, while providing clarity, transparency and predictability in the application of the provisions of the Competition Act, the Authority consolidated and revised various remedial guidelines into the Administrative Remedies Guidelines. Further, the Board approved three (3) policies on Intellectual Property, Research and Gender Workplace Policy aimed at mainstreaming in the Authority's operations and service delivery.

Recognizing the importance of regional integration, we signed a cooperation framework with the East African Community Competition Authority (EACCA). This will boost our efforts to collaborate with sector regulators, national, regional and international agencies to realize its mandate and share knowledge and experience on competition enforcement.

We are in the process of reviewing its Strategic Plan to align its enforcement initiatives with the Bottom-Up Economic Transformation Agenda. The revised Strategic Plan will focus on: Agriculture, Micro, Small and Medium Enterprises, Housing and Settlement, and Digital and Creative economy. This will ease the cost of doing business and protect consumers from unfair and misleading market conduct. The implementation of the revised Strategic Plan is expected to increase efficiency in the production, distribution and supply of goods and services. Additionally, it will stimulate innovation, optimal allocation of resources, improve consumer welfare and create conducive environment for domestic and foreign investments.

Lastly, I would like to express my gratitude to the National Treasury and Economic Planning, strategic partners, stakeholders and the general public for their support which made it possible for us to record the above milestones. Finally, I wish to acknowledge the dedicated service and commitment of the

members of the board and staff for their invaluable contribution and enthusiasm in supporting the achievement of our mandate.



Shaka Kariuki
Board Chair

DIRECTOR-GENERAL'S STATEMENT

Ladies and gentlemen, as required by law, I present to you the Annual Report and Financial Statements for FY 2022/23, highlighting the Authority's interventions during the past twelve (12) months in our pursuit of creating efficient markets for consumers in Kenya.

During the year under review, the Authority continued to implement its Strategic Plan FY 2021/22-2024/25. Our strategic plan takes cognizance of the fact that effective enforcement of competition law is a promoter of sustainable economic development thus ensuring consumers access a wide range of quality and competitively priced goods and services.

To ensure that our decision-making process is predictable, consistent and adopts learnings from past decisions, the Authority reviewed and consolidated its restrictive trade practices, control of mergers, abuse of buyer power, and consumer protection administrative remedies & settlement guidelines to create a single reference point for determining administrative remedies relating to violations of the Act. We expect that these revised Guidelines will promote the efficiency with which we attend to matters.

As highlighted in our previous reports, incremental automation of the Authority's services over the past five years facilitated has increased efficiency of operations. In support of the Government's efforts to enhance service delivery through digitization, the Authority's services were on-boarded on the E-citizen platform in March 2023. Our commitment is to continue leveraging ICT to enhance service delivery while lowering the cost of doing business for the Authority and its stakeholders.

During the period under review, the Authority sanctioned anti-competitive practices and consumer rights infractions that determined to be impairing economic growth and innovation and disenfranchising consumers from expanded choice of goods and services, access to competitively priced products, through sector-specific investigations.

The Authority's approach to enforcement is a mix of soft enforcement through advocacy initiatives and hard enforcement through the levying of fines, penalties, and issuance of declaratory Orders. The Authority imposed penalties for infringement of the law amounting to KES 15.7 million, which represented an increase from the previous period of KES. 12.8 million. These penalties resulted from enforcement action against businesses engaging in restrictive trade practices, mergers implemented without approval and consumer rights violations.

Ladies and gentlemen, the Authority analyzed one hundred and thirty-two (132) merger transactions from various sectors including the distribution, manufacturing, real estate, finance & insurance, and agriculture sectors. Notably, there was an increased merger activity in the

flower industry with capital injections in four (4) flower farms securing over 14,000 jobs for workers in the sector.

Abuse of buyer power (ABP), depresses the competitiveness of markets through closure of businesses, limits consumer choice, and triggers increased prices of goods and services. During the reporting period, KES. 45.4 Million in delayed payments owed to suppliers was recovered, thereby securing jobs and contributing to their sustainability. This was an increase of 86.8% compared to the total amount recovered in the previous financial year.

Consumers are fundamental to the Authority's existence and mandate execution. To this end, the Authority investigated 342 consumer protection cases, with a majority relating to false or misleading representations and unconscionable conduct. A majority of these complaints were from the aviation and financial services sectors. As a result, consumer savings realized during the reporting period were KES 5,534,600 compared to KES 6,923,172 in FY 2021/22 translating to a 27.4% decrease.

The shift to digital economy has created enormous opportunities for economic growth and efficiency. As part of efforts to enable this digital transformation, the Authority conducted a digital surveillance focusing on digital marketplaces offering varied categories of products including food, grocery, pharmaceutical and medicaments and e-commerce with an aim of exploring the dynamics of the digital markets ecosystem and identifying likely incidences of abuse of buyer power.

Further, to mitigate competition infringements with cross-border effects, foster transparency and predictability about multijurisdictional merger notifications, and reduce transaction costs for businesses, the Authority and the East African Community Competition Authority (EACCA) entered into a Memorandum of Understanding (MoU). This collaboration will ultimately enhance regional integration and cross-border trade and investment.

In appreciation of the role of research in competition enforcement, specifically in achieving optimal decisions and an effective regulatory regime, the Authority commenced an inquiry into Online Food and Groceries Platforms to better understand the business model and, ultimately, inform regulatory and policy interventions for enhanced competition and consumer protection enforcement. The inquiry's objective is, among others, examining the relationships between the platforms and users, assess the role of data in operating multi-sided online (e-commerce) platforms, customer acquisition and retention as well as data portability.

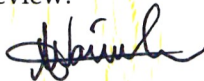
An impact assessment in the paints manufacturing and Non-Alcoholic Ready to Drink (NARTDs) beverage sectors to assess the market situation post our intervention in terms of consumer savings, access to goods and services, enhanced product and services, variety and quality, discount and pricing benefits, products and services innovation and improved incomes of small suppliers, MSMEs and, investment into the economy.

To promote stakeholder engagement and increase compliance with the Act, the Authority enhanced its advocacy efforts, including rolling out awareness creation activities. Specifically, the Authority conducted twenty six (26) sensitization sessions with various stakeholders across the country. These sessions, which involved participants from various sectors, aim to demystify the law to our stakeholders as well as educate them regarding our complaints handling system and procedures.

During the review period, the Authority published all its determinations, clearly articulating the reasoning behind each decision. This was aimed at increasing the transparency of our processes and ensuring that we remain accountable and predictable to our stakeholders. We also kept our stakeholders, including the Media, apprised of key developments in our ongoing enforcement interventions through the issuance and publicizing of various Statements, Orders, and Press Releases.

Ladies and gentlemen, achievements outlined in this Report would not have been achieved without the dedication and commitment of our employees. In order to ensure our staff, remain motivated and skilled to undertake their roles, we facilitated them to attend various on-line and in person trainings on competition law and policy, consumer protection, management, and leadership, among others geared towards, among others, improved service delivery, succession planning, effective management, and career progression.

To conclude, I wish to thank the National Treasury and Economic Planning for the continued support of the Authority's programs. I also recognize the support the Board has given the Management in actualizing the activities that had been planned for the financial year under review.



Dr. Adano W. Roba, PhD
Ag. Director-General

CORPORATE GOVERNANCE AND ACTIVITIES OF THE BOARD

Statement of Corporate Governance

The Authority is committed to maintaining the highest standards of integrity, professionalism ethics and compliance with all applicable laws in all its operations. In performance of its functions, the Authority is guided by the Constitution of Kenya, the Competition Act and other applicable laws. The Board is committed to ensuring that the Authority's obligations, roles and responsibilities to its various stakeholders are fulfilled through its corporate governance practices.

The Chairman

The Chairman provides leadership and governance to the Board and fosters the environment for the overall Board and individual Director's effectiveness, by ensuring that the Board considers all key and appropriate issues promptly. He is responsible for ensuring adherence to good corporate governance practices and procedures, and continuously promoting the highest standards of integrity, probity and corporate governance throughout the Authority and particularly at Board level. The Chairman ensures that the Board plays a full and constructive part in the development and determination of the Authority's strategies and policies. He also ensures that the Board is furnished with timely and sufficient information to enable it discharge its duties effectively.

Members of the Authority

Section 10 of the Act provides for the Composition of Members of the Authority. Members of the Authority comprise of the Chairman, the Principal Secretary for The National Treasury and Economic Planning; the Principal Secretary for Ministry of Investment, Trade and Industry and the Hon. Attorney-General.

Members also include five (5) independent, non-executive members, appointed from among persons experienced in competition and consumer welfare matters. The Director-General is an *ex-officio* member. All the Non-Executive Directors are independent of management and free from any business or other relationship, which could interfere with the exercise of their independent oversight.

The Board is responsible for overall strategic direction and operational guidance of the Authority including;

- (a) Establishing short and long-term goals of the Authority and develop strategies to achieve these goals;
- (b) Monitoring the Authority's performance against these set goals;
- (c) Overseeing the preparation of annual financial statements and reports;
- (d) Approving annual budgets; and

- (e) Ensuring that the Authority has adequate systems of internal controls together with appropriate monitoring of compliance activities to ensure business continuity.

Separation of Board and Management

The relationship between Members and Management remains at all times professional. The role of the Board is separate from that of the Management. Each party performs their duty with impartiality, honesty, transparency and accountability, professionalism, integrity, care and due diligence and acts in good faith to the best interest of the public. The Board has a formal schedule of meetings for deliberation of agenda items. Members are given appropriate and timely information to enable them to provide and maintain full and effective direction and control over strategic, financial and operational issues of the Authority. The Board is not involved in the conduct of day-to-day business, as this is the responsibility given to the Director-General by law. The Board however, retains the responsibility of oversight and approving the policies of the Authority.

Board Appointments in the FY2022/23

H.E. the President appointed the Chairman, Mr. Shaka Kariuki and the Hon. Attorney-General appointed Mr. Stephen Githinji Mwaniki.

The Board was composed of nine (9) members, from different professional backgrounds, representing Kenya's diverse communities and affording adequate representation for men and women. The Board had the Technical and Strategy Committee, Finance Committee, Human Resource Committee and the Audit Committee to support the execution of its duties.

Table 2: Board Members' Educational Background

No.	Name	Designation	Educational Background
1.	Mr. Shaka Kariuki	Chairman	Economics
2.	Dr. Adano W. Roba	Ag. Director-General	Economics
3.	Mr. Abdi Ali Mohamed	Member	Sociology
4.	Mr. Stephen Githinji	Member	Law
5.	Mr. Albert Mwenda	Member	Economics
6.	Mr. Joseah Rotich	Member	Economics
7.	Ms. Lena Munuve	Member	Marketing
8.	Dr. Kasera Achayo	Member	Management
9.	Dr. David Wanyama	Member	Accounting and Finance

Board Meeting Attendance

The Board is required to meet at least once every quarter depending on the needs of the business of the Authority. The Board held twelve (12) meetings to consider the business of the Authority.

During the year ended 30th June, 2023 the Board and Board Committees member attendance and the number of meetings held in the year were as follows:

Table 3: Board Members Meeting Attendance FY 2022/23

No.	Name	Position	No. of Meetings
1.	Mr. Shaka Kariuki	Chairman	4
2.	Dr. Adano W. Roba	Ag. Director-General	5
3.	Mr. Abdi Ali Mohamed	Member	5
4.	Mr. Stephen Githinji	Member	4
5.	Mr. Albert Mwenda	Member	5
6.	Mr. Joseph Rotich	Member	10
7.	Ms. Lena Munuve	Member	12
8.	Dr. Kasera Achayo	Member	12
9.	Dr. David Wanyama	Member	12

Technical & Strategy Committee

This Committee is mandated to advise on strategic planning, implementation of the Act, work with management on the technical aspects of the operational performance and functions of the Authority. It is responsible for advising and recommending to the Board the approval of the Strategy, examining the objectives and the progress of the Authority in achieving what it has set out to do in the Performance Contract.

It is the Boards structural means for reviewing management's recommendations on matters pursuant to Part III, IV, V and VI of the Act and recommending them to the Board for approval. The Committee is also responsible for examining management recommendations to the Board on Risk Policy, effective processes and systems of risk management and internal controls and monitor its implementation.

The Committee consisted of four (4), members, namely; Ms. Lena Munuve (Chair), Mr. Joseph Rotich, Mr. Stephen Githinji and Mr. Abdi Mohamed and held six (6) meetings.

Table 4: Technical and Strategy Committee Meeting Attendance

No.	Name	Position	No. of Meetings
1.	Ms. Lena Munuve	Chair	6
2.	Mr. Stephen Githinji	Member	3
3.	Mr. Abdi Mohamed	Member	2
4.	Mr. Joseph Rotich	Member	5

Finance Committee

This Committee is responsible for recommending financial policies, goals, and budgets that support the realization of the mission, values, and strategic goals of the Authority. It also reviews the Authority's financial performance against its set goals and targets. It is responsible for ensuring that the Authority has effective and efficient internal financial controls and reviewing and recommending the Authority's long, medium- and short-term financial plans and ensure their consistency with the Strategic Plan. It also ensures that the Authority has optimal liquidity for efficient and effective realization of its mandate and reviewing financial reports and making appropriate recommendations to the Board.

The Committee consisted of four (4) members, namely: Mr. Albert Mwenda (Chair), Dr. Kasera Achayo, Ms. Lena Munuve and Mr. Abdi Mohamed and held three (3) meetings.

Table 5: Finance Committee Meeting Attendance

No.	Name	Position	No. of Meetings
1.	Mr. Albert Mwenda	Chair	2
2.	Dr. Kasera Achayo	Member	3
3.	Ms. Lena Munuve	Member	3
4.	Mr. Abdi Mohamed	Member	1

Human Resource Committee

This Committee reviews Human Resource policies and succession planning of the Authority to ensure compliance with national policies and legislation. It organizes the structure and performance evaluation of senior staff, oversee and advise the Board on recruitment and promotion of the senior staff.

It reviews and recommends human resource policies for efficient and effective functioning of the Authority. It is responsible for forecasting and recommending the Authority's long, medium and short-term human resource needs ensuring motivated, qualified and high performing staff.

The Committee consisted of four (4) members, namely; Dr. Kasera Achayo (Chair), Mr. Joseph Rotich, Mr. Albert Mwenda and Dr. David Wanyama and held four (4) meetings.

Table 6: Human Resource Committee Meeting Attendance

No.	Name	Position	No. of Meetings
1.	Dr. Kasera Achayo	Chair	4
2.	Mr. Albert Mwenda	Member	1
3.	Mr. Joseph Rotich	Member	4
4.	Dr. David Wanyama	Member	3

Audit Committee

The Board is committed to ensuring that ethics and integrity remain at the core of the Authority's operations. The Audit Committee's objective includes ensuring that the Authority's existing internal controls are planned, structured and implemented. Further, the Committee reviews the proposed audit scope, approach and audit deliverables, and ensures implementation of internal and external audit recommendations.

The mandate relating to Financial Reporting and Related Reporting Practices requires the Audit Committee to review the annual financial statements of the Authority, the external auditor's opinion and their comments on internal controls and other observations.

It also reviews significant accounting and reporting issues and their impact on financial reports as well as legal matters that could significantly affect the financial position of the Authority, among other financial reporting responsibilities. The Board recognizes that ethical management is key to the Authority's sustainability. In furtherance of this, the Board continuously implements systems and processes that purpose to integrate ethical practices in all the Authority's operations. The Audit Committee reports to the Board on the standing and independence of the internal audit function within the Authority.

The Committee consisted of three (3) members, namely; Dr. David Wanyama (Chair), Dr. Kasero Achayo, and Mr. Joseah Rotich and held four (4) meetings.

Table 7: Audit Committee Meeting Attendance

No.	Name	Position	No. of Meetings
1.	Dr. David Wanyama	Chair	4
2.	Mr. Joseah Rotich	Member	4
3.	Dr. Kasero Achayo	Member	3

Board Evaluation FY 2022/2023

Mwongozo, the Code of Governance State Corporations, requires that Board of Directors in State Corporations carry out annual performance evaluation and file a report thereof with the parent Ministry and the State Corporations Advisory Committee (SCAC). During the year under review, the Board conducted an evaluation whereby the Authority attainedTBA.....performance.

AUTHORITY'S PERFORMANCE AGAINST PREDETERMINED STRATEGIC GOALS

STRATEGIC GOAL ONE: DELIVERING EFFECTIVE ENFORCEMENT

i. Regulation of Mergers

Part IV of the Act, the Competition (General) Rules, 2019, and various Guidelines within the Authority guide the regulation of mergers and acquisitions in Kenya. All proposed mergers within the Kenyan economy require approval by the Authority pursuant to Section 42 (2) of the Act. However, certain classes of proposed mergers are exempted from this requirement if they do not meet the full analysis threshold that is set according to the assets/revenues of the merging parties. The objective of the exemption criteria is ensuring that transactions that are unlikely to lessen competition, most of which are MSMEs, are relieved from the time and resources required to file a transaction.

The Authority handled one hundred and thirty-two (132) merger notifications during the period under review. Of these notifications, twenty-nine (29) met the threshold for full merger analysis as provided for in the Merger Threshold Guidelines and a similar number satisfied the criteria for exclusions. Five (5) notifications did not qualify as mergers within the definition of Sections 2 and 41 of the Act. Further, the Authority issued thirty-eight (38) advisory opinions to parties seeking to merge, or their legal representatives. Another thirty-one (31) proposed mergers were notified through the COMESA Competition Commission (CCC). Four (4) of the notifications were ongoing at the end of the reporting period.

Table 8 below compares transactions received by the Authority during the FY 2021/2022 and FY 2022/2023. During the year under review, there were 132 proposed mergers notified to the Authority, representing a 19.8% year-on-year increase that is attributable to the ongoing post COVID-19 economic recovery.

Table 8: Comparison of Merger Transactions handled in FY 2021/2022 and 2022/2023

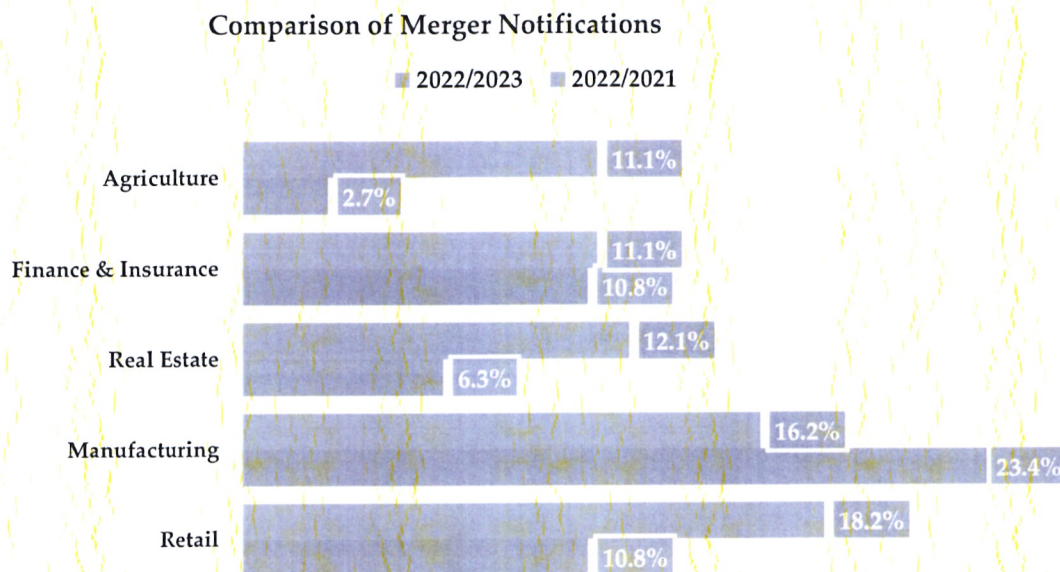
Item	2022/2023	2021/2022
Merger transactions	29	25
Transactions excluded from the provisions of Part IV of the Act	29	27
Non-merger transactions (restructuring & advisory opinions)	43 ¹	39 ²
Merger transaction notified to CCC	31	20
Total	132	111
Transactions carried forward	4	3

¹ Made up of five (5) non-mergers and thirty-eight (38) advisory opinions

² Made up of fourteen (14) non-mergers and twenty-five (25) advisory opinions

The merger notifications were predominantly from the retail (18.2%), manufacturing (16.2%), real estate (12.1%), finance & insurance (11.1%), and agriculture (11.1%) sectors. Figure 1 compares transactions handled in FY 2021/2022 and FY 2022/2023 by sectors.

Figure 1: Comparison of Merger Notifications



Sample Merger Transactions Handled

Folding/dissolution of a Joint Venture: Car & General (Trading) Limited and CMI Africa Holdings B.V.- Joint Venture

The Authority approved a merger transaction involving the end of a joint venture (JV) between Car & General (Trading) Limited and CMI Africa Holdings B.V. through acquisition of the 50% of shares in the joint venture (Cummins C&G Holdings Limited) by Car & General (Trading) Limited. In essence, one JV party was exiting the arrangement by selling their shares to the other party.

The JV was incorporated to coordinate sales of one of the joint venture parties, CMI Africa Holdings, which did not have a market presence in Kenya. The JV was full functional since: (i) during its formation, it was intended to exist infinitely; (ii) it had a dedicated management board, and (iii) it had market access and could perform the functions normally carried out by undertakings operating in the same market. The JVs main activities are; the distribution of power generators and diesel engines, maintenance of power equipment and sale of filtration and coolants.

The other JV, Car & General (Trading) Limited, principal business activity is that of; supply, distribution, and maintenance of power equipment, household goods, agricultural tractors and implements, marine engines, motorcycles and three-wheeler vehicles, commercial laundry equipment, commercial engines, forklifts, excavators, asset financing and property holding.

The transaction involved change from joint to sole ownership of the target. Therefore, it constituted a merger under Sections 2 and 41 of the Act as read together with the Competition (General) Rules, 2019, and the Consolidated Guidelines on Substantive Assessment of Mergers. The main rationale is that the selling party did not have presence in Kenya but the acquirer did. Therefore, the acquirer will be more flexible in responding to local customers' needs because of its local market knowledge than the current shareholding

structure of the target. It is anticipated that this will ultimately benefit both parties to the transaction through increased sales of Cummins products in Kenya.

The Authority determined that the relevant product markets for analysis of the proposed transaction were; (i) for power generators and engines; and (ii) market for filtration in which the target's and the acquirer's activities overlap. The relevant geographic market was determined as national. The Authority's analysis determined that; there are many players in the markets; players have low market shares (20% market shares in the diesel market and 6% market shares in the market for filtration); there exists competition from solar systems (Source: Euromonitor) and direct imports by customers. Therefore, there would no change in market structure and concentration post-merger.

Following its assessment, the Authority determined that the merger transaction was unlikely to substantially lessen or prevent competition in the markets for (a) generators and engines, and (b) filtration in Kenya. Therefore, the Authority approved the transaction without conditions.

Public Interest Consideration – Jobs in the Flower Industry

During the review period, there was increased merger activity in the flower industry whereby capital injections into four (4) flower farms secured over 14,000 jobs in the key sector. The transactions are anticipated to strengthen Kenya's position as the leading exporter of rose cut flowers to the European Union (EU) building on its 38% market share.

Karuturi Limited (Under Receivership)

Shalimar Flowers Kenya Limited acquired certain assets of Karuturi Limited (under receivership) and Rhea Holdings Limited (under receivership) resulting in the change of control over the business of Karuturi farm. Karuturi was in the business of growing and selling of cut flowers locally and in the international markets. The firm employs over 3,000 workers.

Bigot Flowers Kenya

The Authority considered the proposed acquisition of the entire issued share capital of Bigot Flowers Kenya by Flamingo Horticulture Investments Limited. Naivasha-based Bigot Flowers engaged in the growing, packaging, marketing, and distribution of sustainably produced cut flowers, in particular, roses. The business employs over 10,000 workers.

Nini Limited and Lamorna PLC

Marcoz Holding B.V. acquired the entire issued share capital of Dutch Flower Group Phima Flowers B.V., which operated two flower farms in Naivasha, Nini Limited, and Lamorna Plc. The targets were both cut-flower growers and exporters and employed over 1,500 employees. The Authority anticipates that the transaction will enable the two farms benefit from the extended international floriculture chain of the acquirer.

Following its analysis of the proposed transactions, the Authority determined that the aforementioned transactions were unlikely to occasion negative competition and public interest concerns. Therefore, the Authority approved the transactions unconditionally.

Cooperation with the COMESA Competition Commission

The Authority continued its working relationship with the COMESA Competition Commission (CCC) in analyzing thirty-one (31) transactions in the reporting period. Key among the merger transactions handled jointly is the proposed sale and purchase of 100% of the shares in Bolloré Africa Logistics SAS (BAL) by SAS Shipping Agencies Services Sàrl (SAS Lux).

The proposed transaction involved the acquisition by SAS Lux, a wholly-owned subsidiary of MSC Mediterranean Shipping Company SA ("MSC", together with its subsidiaries, the "MSC Group"), of 100% of BAL from Bolloré SE.

The MSC Group is active, at a global level, in container liner shipping, port handling activities, logistics, and inland transportation of containerized cargo, as well as passenger maritime transport and the cruise sector. In the Common Market, the MSC Group provides container liner shipping services, sea freight forwarding services, and inland transportation services, and had recently obtained approval from the CCC to acquire joint control of one container terminal in Mombasa (Kenya). The MSC Group is active in the following Member States: Burundi, Djibouti, Egypt, Eswatini, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Somalia, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe.

BAL is a French-owned group active in transport and logistics services as well as terminal activities mainly on the African continent. In the Common Market, BAL is active in the provision of terminal services, contract logistics services, inland transportation services and freight forwarding services. BAL is active in the following Member States: Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eswatini, Ethiopia, Kenya, Madagascar, Malawi, Rwanda, Somalia, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe.

The relevant markets during the Authority's analysis of the transaction were the markets for; (i) freight forwarding and (ii) road-based inland transport services. With regard to competition analysis within the market for freight forwarding, the Authority considered two submarkets (i) air freight forwarding and (ii) sea freight forwarding. The Authority further determined the geographical market as national.

The transaction, which was a vertical merger, would result in the merged entity having presence in four levels of the shipping sector, namely deep-sea container liner shipping, container terminal services (provided by the acquirer at the Port of Mombasa though the CCC approved acquisition of joint control of one container terminal), sea freight forwarding services, and road-based inland transportation.

The Authority's analysis determined that, post-transaction, the merged entity was likely to gain access to commercially sensitive information regarding upstream and downstream activities of their rivals. This scenario would likely to give the merged entity an unfair competitive advantage and create transparency in the markets for container liner shipping services, sea and air freight forwarding, and road-based inland transportation markets in Kenya. The CCC relied on the Authority's findings to make a

determination approving the transaction with conditions. The determination is accessible on the Commission's Website³.

ii. Restrictive Trade Practices

The Authority regulates market conduct under Part III of the Competition Act which deals with agreements between undertakings, decisions by undertakings or concerted practices by undertakings which have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya. Such practices include, fixing of purchase or selling prices, dividing or allocating markets, collusive tendering and sharing of commercially sensitive information.

The Authority also regulates abuse of dominant positions by undertakings. Under the Act, some practices that constitute abuse of dominance include; limiting or restricting production, market outlets/access through predatory or other practices, imposing unfair purchase of selling prices or other unfair trading conditions, among others.

The intervention of the Authority in various sectors through its enforcement activities continued to generate benefits to consumers through competitive pricing and access to a wider choice of goods and services that, through innovation, meet the varying needs of users. In furtherance of this, the Authority investigated fifty-seven (57) Restrictive Trade Practices (RTP) cases during the reporting period. Thirty-eight (38) of these cases has been finalized the end of the financial year while nineteen (19) others were at various stages of investigation.

In addition, the Authority may, in certain compelling circumstances, grant exemptions to undertakings to engage in collusive/coordinated practices prohibited under the Act. In deciding as to whether to grant an exemption, the Authority considers if the exemption will, among others, obtains greater public benefits that outweigh lessening of competition, maintaining or promoting exports, and improving or preventing decline in production of goods or provision of services.

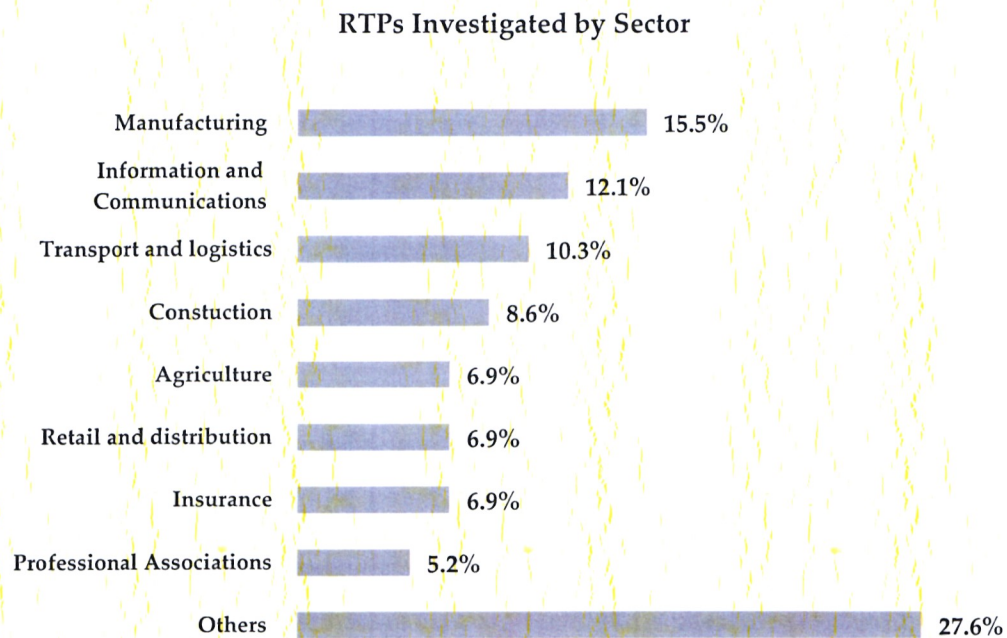
In respect of the Financial Year 2022-2023, the Authority handled four (4) exemption applications, two (2) of which were in the aviation industry, one (1) in the retail and one (1) in the agricultural sector. Two (2) applications were determined and two (2) were ongoing as at the end of the reporting period.

In addition, the Authority carried out compliance initiatives to ensure adherence to its decisions. The Authority analysed twenty-five (25) compliance cases and finalized nineteen (19). At the end of the reporting period, six (6) cases were at different stages of compliance. Further, the Authority issued advisory opinions on four (4) requests made by stakeholders.

³ <https://comesacompetition.org/mergers-acquisitions/notice-of-inquiry-into-the-proposed-merger-involving-sas-shipping-agencies-services-sarl-and-bollere-africa-logistics-sas/>

The cases investigated were mainly from eight (8) sectors namely: manufacturing, information and communications, transport and logistics, professional associations, retail and distribution, Insurance, Agriculture and Construction.

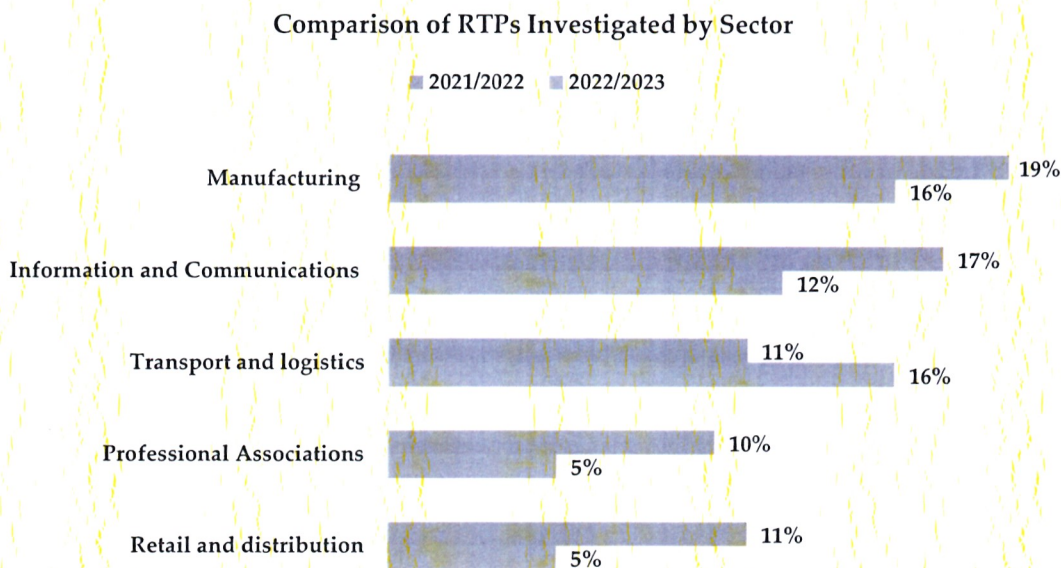
Figure 2: RTPs Investigated by Sector



Majority of the RTP cases investigated were in the manufacturing, information and communication, transport and logistics, and construction sectors that constituted 16%, 12%, 10%, 9%, respectively, of the matters handled. The other sectors like energy, airline cargo, beer/ alcohol, broadcasting, horticulture, importation, sports, reinsurance and insurance sectors accounted for 28%.

The specific restrictive trade practice cases, exemption applications and compliance cases handled during the period under review are provided in Annexure 4.

Figure 3: Comparison of RTP Cases Investigated in FY 2022/23 and FY 2021/22 by Sector



The figure above indicates that transport and logistics sectors experienced an increase in RTP cases investigated by the Authority during the year under review.

Sample RTP Cases Investigated

Vertical Restraint: Atlas Tower Kenya Limited against Airtel Africa and American Tower Corporation

The Authority received a complaint from Atlas Tower Kenya Limited (“Atlas”) regarding an agreement entered into between Airtel Africa (“Airtel”) and American Tower Corporation (“ATC”). The complainant alleged that the agreement contained a term that amounted to a discount scheme requiring Airtel to take up some ATC’s sites annually (the “Annual Quota”). In return, ATC would provide Airtel with a financial rebate (the “Rebate Incentive”).

The complainant further alleged that the Rebate Incentive reduced Airtel’s ability or willingness to collocate on any of ATC’s competitor telecommunication infrastructure, thereby diminishing competition in the market.

The Authority reviewed the complaint in line with Sections 23 and 24 of the Act that which define dominance and the practices that constitute abuse of dominance. The complaint was also assessed based on the Authority’s Consolidated Guidelines on Restrictive Trade Practices that stipulates that assessment of vertical agreements require establishing dominance and market power at either level of the supply chain, or both. The Authority’s investigations determined that:

- i. There existed a vertical relationship between Airtel (a service provider) and ATC (an infrastructure owner);
- ii. ATC Kenya held 38.81% of the total market shares in the passive infrastructure market in Kenya while Airtel Kenya held 0.93% of these shares; and

- iii. Neither ATC nor Airtel had dominance or market power in their respective markets.

The Authority closed the matter since the threshold for dominance required by section 23 of Act was not be satisfied against Airtel Kenya and ATC Kenya.

Exemption: American Airlines Inc and Qatar Airways Group

American Airlines Inc. (AA) and Qatar Airways Group (QR) applied to the Authority for exemption on restrictive clauses in their proposed Strategic Alliance Agreement for a period of ten (10) years. Specifically, the two entities applied to be granted exemption on clauses relating to; coordination of scheduled passenger services, code sharing, co-ordination for joint capacity, revenue planning and management, metal neutral selling, alignment of pricing, inventory management, discounts and marketing as well as frequent flyer programs.

The Authority analysed the exemption application under sections 26(3) of the Act to determine whether allowing the parties to implement the restrictive clauses would generate more benefits to the public than lessening of competition.

The Authority's assessment of the application determined that the public would benefit from stimulation of demand by leisure travellers and enhance Kenya's vital tourism sector. It was also envisaged that the arrangement would lower fares by eliminating double marginalization, increase frequencies on the existing trunk routes, enhance connecting flights, and improved customer experience that includes improved airport connections.

Premised on the foregoing, the Authority granted exemption for five (5) years.

Compliance: CAK vs Akiyda 2000 Limited

The Authority received growing concerns on the use of unsubstantiated nutritional claims by bread manufacturers and therefore conducted a market screening. Upon conclusion, it made a finding that Akiyda's bread products did not have the day and month of manufacture and the day of expiry was omitted. Additionally, the expiry date was given as "Best before" instead of "Sell by" and that the bread had claims of fortification with vitamins and minerals. However, the specific minerals and vitamins were not indicated.

Subsequently, the Authority required Akiyda 2000 Limited to undertake the following remedial measures:

- a) Revise the information on the wrappers as per the requirements of the KS EAS 43: 2012 standard on labelling of Pre-packaged Foods and KS EAS 38: 2014. Specifically, they were required to include;
 - i. the specific minerals and vitamins e.g. Vitamin A, B, C and fortification;
 - ii. the date and month of manufacture; and
 - iii. insertion of the information "Sell By" as opposed to the use of "Best Before".
- b) Institute a consumer compliance program aimed at sensitizing its staff on the provisions of the Act; and
- c) Installation of label printing machines.

Premised on the above, the Authority carried out a compliance check to establish whether adequate information was displayed on the bread labels as stipulated in the Act and the aforementioned standards.

It was established that Akiyda had fully complied with the Authority's orders by installing the label printing machines in all its production plants countrywide, and was providing relevant information on the wrappers as per the requirements of KS EAS 38: 2014 and the KS EAS 43: 2012 standard on labelling of Pre-packaged foods.

iii. Abuse of Buyer Power

The Authority investigated one hundred and fourteen (114) cases of abuse of buyer power, out of which fifty-six (56), equivalent to 49.1% were new complaints. Seventy-five (75) cases were finalized, representing a 66.4% completion rate.

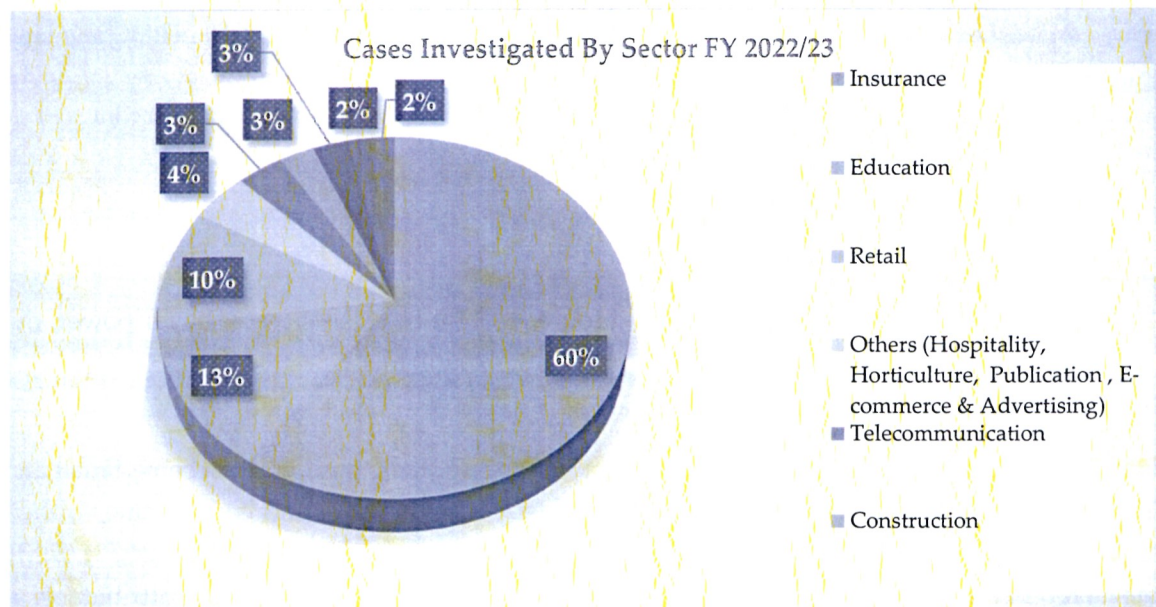
Further, KES. 45,427,467.00 delayed payments owed to suppliers, most of them being Small and Medium Enterprises (SMEs), were recovered, thereby securing jobs and contributing to their sustainability. This was an increase of 86.8% compared to the total amount of KES. 24,384,970.19 recovered in the previous financial year. The increase in the amount recovered is attributable to the enhanced awareness among the stakeholders about the Authority's role in sanctioning ABP and the efficiency in the Authority's processes in handling ABP complaints.

The ABP cases investigated were from thirteen (13) sectors namely: insurance, retail, e-commerce, telecommunication, transport, construction, agriculture, health, advertising, publication, education, hospitality, and horticulture. Cases relating to incidences of ABP in the insurance sector reduced in the year under review by 24.4%, which is attributable to increased interventions in this sector, thereby bolstering compliance.

Table 9: Comparison of ABP Cases Investigated by Sector

Sectors	Number of Cases FY2022/23	Number of Cases FY 2021/22
1 Insurance	68	90
2 Retail	12	22
3 Manufacturing	-	4
4 Telecommunication	4	4
5 Transport	3	2
6 Construction	3	1
8 Agriculture	3	1
9 Others*	21	1
TOTAL	114	125

Figure 4: ABP Cases Investigated by Sector



The majority of ABP complaints investigated related to delayed payments (86.4%). Other conducts investigated included unilateral termination of contract (6%), demand for preferential terms (3%), transfer of costs (2%), unilateral variation of contract terms (1%), transfer of commercial risk (1%) and unfair tender requirement (1%).

Table 10: ABP Cases by Conduct

Conduct in ABP	No. of Cases with the conduct in ABP	% Representation of the conducts
Delayed Payment	102	86.4%
Unilateral termination	7	5.9%
Demand for Preferential terms	4	3.4%
Transfer of cost	2	1.7%
Unilateral variation	1	0.8%
Transfer of commercial risks	1	0.8%
Unfair tender requirements	1	0.8%
TOTAL	118*	100%

* The discrepancy between the 114 recorded cases and 118 reported here is due to a case involving more than one conduct. Eg. a complaint against a retailer where there has been demand for preferential terms as well as transfer of costs.

The Authority facilitated resolution of 23.4% of the cases through alternative dispute resolution mechanism between the parties, compared to the 13% recorded in the previous financial year. On the other hand, cases closed due to non-cooperation by complainants reduced by 84% from 16%

in the previous financial year to 2.6% in the period under review. This increase in cooperation by complainants is attributable to enhanced stakeholder sensitization by the Authority.

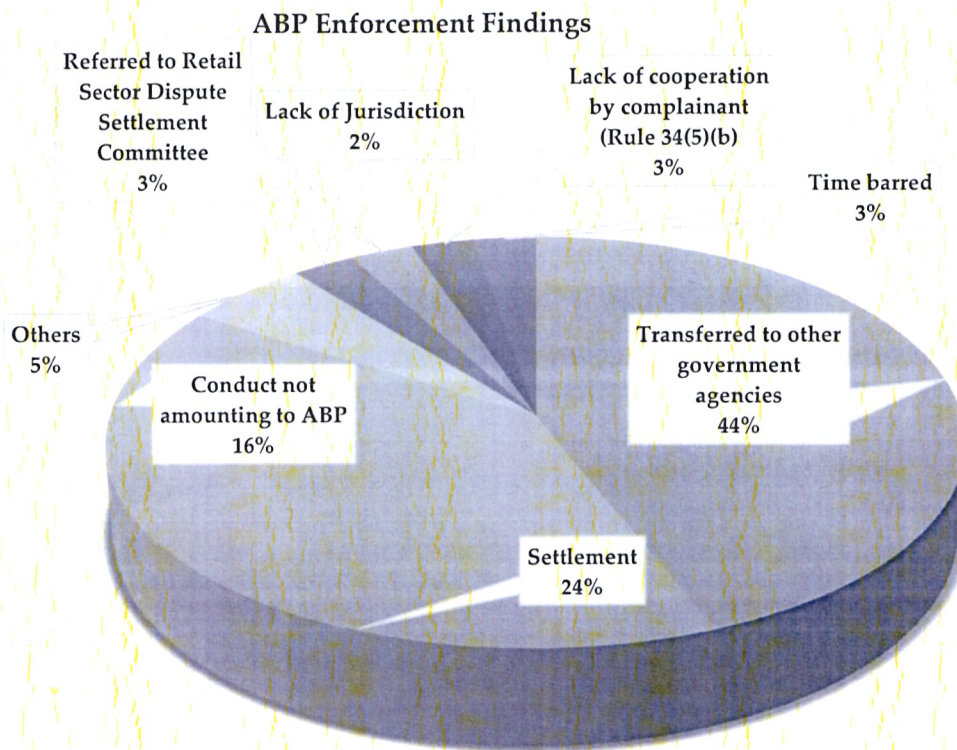
Other cases were closed for various reasons including; the conduct did not amount to ABP (16.0%); transferred to other government agencies (44.0%); settlement under section 38 (24.0%), referred to Retail Sector Dispute Settlement Committee (2.7%); were time barred (2.7%); lack of cooperation by complainant Rule 34(5)(b) (2.7%); lack of jurisdiction (2.7%); and others (5.3%).

Table 11: ABP Enforcement Findings FY2022/2023

ABP Enforcement Findings	No. of cases	% Representation
Transferred to other government agencies	33	44.0%
Settlement	18	24.0%
Conduct not amounting to ABP	12	16.0%
Others*	4	5.3%
Lack of Jurisdiction	2	2.7%
Referred to Retail Sector Dispute Settlement Committee	2	2.7%
Lack of cooperation by complainant Rule 34(5)(b) (2.7%)	2	2.7%
Time barred	2	2.7%
Total	75	100

**Others* include; Accused placed under statutory management, determination by the Authority, ongoing court proceedings and termination of investigations.*

Figure 5: ABP Enforcement Findings FY 2022/23



Sample Buyer Power Case Highlights

Delayed Payment: Arturo Paiva/ Globodent LLC (Globodent) and Dental Art Centre Malindi (Dental Art)

The Authority received a complaint from Arturo Paiva/Globodent LLC (Globodent), a manufacturing limited liability company registered in Texas – United State of America, against Dental Art Centre Malindi (Dental Art) which majorly deals with provision of dental healthcare. Dental Art’s core speciality is preventive conservative and cosmetic dentistry.

Globodent entered into a contract with Dental Art on 23rd April, 2020 where the latter was to be an authorized Globodent products reseller for the purchase and resale of its branded professional dental products in Kenya, Tanzania, Rwanda and Uganda. Globodent claimed that Dental Art delayed payments amounting to USD 8,243.75 inclusive of late payment fees without justifiable reason.

The Authority established that Dental Art did not have buyer power against Globodent and, consequently, the conduct complained of did not qualify as abuse of buyer power as contemplated under sections 24A (1), (5)(a) of the Act. Additionally, analysis based on section 24A(4)(a), revealed that the complainant wielded a higher bargaining position compared to the accused in determination of the contract terms. The Authority deduced that the complainant unilaterally drew the contract where the

accused was required to sign and abide by the terms of the contract. Further, imposition of late payment fees, which was not in the terms of the contract, firmed up this argument. Premised on the foregoing, the Authority concluded that the conduct did not fall within the threshold for abuse of buyer power and advised the complainant to pursue alternative remedies.

Alternative Dispute Resolution: Anez Catering Ltd (Anez) and Hillcrest Investments Limited (Hillcrest)

Anez Catering Ltd (Anez), a limited liability company registered under the Companies Act in Kenya, presented a complaint against Hillcrest Investments Limited (Hillcrest), claiming that Hillcrest had, without a justifiable reason, delayed payments totalling KES. 9,961,112 for Catering services rendered to Hillcrest School owned by Hillcrest Investment Limited. Anez claimed to have provided catering services as contracted and invoiced Hillcrest School accordingly, it did provide various documentary evidence thereto to support its complaint.

Hillcrest reached out to the Authority, indicating that, it had been facing challenges with cash flow and operational issues due to COVID-19 pandemic but confirmed engagements with Anez to undertake a reconciliation exercise and agree on settlement plan for the pending delayed payments. The Authority facilitated parties to settle the matter amicably. The consensus regarding the outstanding payment was KES. 7,904,840.00. The amount was settled in full., thereby averting potential job losses due to constrained financial capacity and operations of the relevant catering services provider.

Delayed Payments: Motor Care Limited and Jubilee Insurance Company of Kenya Limited

The Authority received a complaint from Motor Care Limited (Motor Care) regarding non-payment of motor vehicle repair services offered to Jubilee Insurance Company of Kenya Limited (Jubilee). Motor Care alleged that Jubilee authorized it to repair motor vehicles for its insured clients, and that in spite of conducting the repairs and invoicing for works done, Jubilee delayed payments amounting to KES 2,255,352.

The Authority reviewed the complaint pursuant to Sections 2 and 24A of the Act that, respectively, provide for definition of buyer power and conduct that amounts to abuse of buyer power offences. In addition, the Authority assessed the complaint against the Buyer Power Guidelines 2022, specifically Guideline 43 – 49 that sets out the factors taken into account when determining presence of buyer power. Preliminary analysis showed that; in the insurance market there are 38 companies offering general insurance and over 168 motor vehicle garages registered under the Kenya Motor Repairers Association (KEMRA).

Due to this imbalance in market dynamics, motor repairers were determined to be dependent on insurance companies for work. The insurance firms have no influence in determination of contract terms. In addition, insurance companies enjoyed a ready market of service providers therefore allowing them to easily switch to other service providers. Based on the assessment, the Authority established that the accused had buyer power over the complainant and that it had abused that power by delaying payments contrary to section 24A (1) of the Act.

Subsequently, the Authority engaged the accused through issuance of a Notice of Investigations, pursuant to Section 31 of the Act outlining the claims by Motor Care. The accused responded to the Authority Notice and presented evidence illustrating its reasons for the non-payment. Analysis of both party's evidences revealed glaring inconsistencies and unexplainable anomalies in the supporting documentation submitted by Motor Care.

The Authority determined that while the accused had buyer power over the complainant, the delay in payment was occasioned by justifiable reasons as guided in section 24A(5)(a) of the Act, specifically inconsistencies that imply forgery that fall outside of the Authority's mandate. The matter was closed.

iv. Consumer Protection

The Authority's consumer protection mandate under Part VI of the Act is derived from Article 46 of the Constitution of Kenya, 2010 which provides for various rights of Kenyan consumers. It provides that consumers have a right to:

- i. Goods and services of reasonable quality;
- ii. Information necessary for them to gain full benefit from goods and services;
- iii. The protection of their health, safety and economic interests; and
- iv. Compensation for loss or injury arising from defects in goods and services.

The Act mandates the Authority to receive and investigate complaints relating to false or misleading conduct, unconscionable conduct, as well as product safety, unsuitable and defective products. The Authority also creates awareness to consumers in regards to their rights and obligations under the Constitution of Kenya and the provisions of the Act, respectively. Further, the Authority promotes the creation of consumer bodies and collaborates with them to increase consumer awareness and protection. This is in addition to its role in advising the government on all matters relating to consumer protection.

The Authority investigated five hundred and twenty-one (521) consumer violation cases, an increase by 30%, from four hundred and one (401) cases in FY 2021/2022, which mirrors increased awareness by consumers on their rights. Three-hundred and seventeen (317) cases were concluded, representing 61% of the cases lodged with the Authority.

Over 90% of the consumer complaints in the year under review were on alleged violations of the Act in relation to false or misleading representations and unconscionable conduct. The complaints were drawn from seventeen (17) sectors of the economy, with manufacturing and financial services recording the highest number of consumer violations, followed by Wholesale and Retail and the aviation.

The Aviation sector recorded the highest increase in number of consumer complaints from 2% in 2021/2022 to 19% in 2022/2023 marked by refusal to refund the consumers after cancellation and rescheduling of flights by airlines that fly to local destinations. Complaints in the financial services sector were mainly against non-deposit taking microfinance institutions. The FY under review also saw the Authority receive an increase number of complaints relating to scams and

fraud, mainly in e-commerce and trade which are criminal in nature. The Authority, in the FY 2023-2024 will work with the Directorate of Criminal investigations (DCI) to address the emerging consumer issues.

In its endeavour to ensure quick redress of consumer complaints, the Authority collaborated with sector regulators including Kenya Bureau of Standards (KEBS), Insurance Regulatory Authority (IRA), Central Bank of Kenya (CBK), Communications Authority (CA), Sacco Societies Regulatory Authority (SASRA), Capital Markets Authority (CMA), and Kenya Civil Aviation Authority (KCAA). The collaboration was in relation to addressing consumer complaints in the specific sectors. This enabled the effective resolution of the consumer issues. For instance, in exercise of its mandate under section 67 of the Act, the Authority collaborated with KEBS on consumer matters involving product information and safety standards and referred consumer cases to specialized government agencies pursuant to section 68 of the Act.

Table 12 shows the consumer violation cases handled in the period under review and Figure 6 makes a comparison on the cases handled in FY 2021/22 and FY 2022/23. There was an increase in the number of cases investigated across sectors, with complaints being received from new sectors such as real estate (housing), arts recreation and entertainment and water supply. The aviation sector recorded the highest increase of 17% from the previous year. However, sectors such as wholesale and retail trade, telecommunication, construction and professional services recorded a reduction of complaints.

Consumer savings realized in FY 2022/23 are estimated at KES 19,655,074 compared to KES 6,923,172 in FY2020/21, translating to 184% increase in savings. This is attributed to the increased number of cases handled.

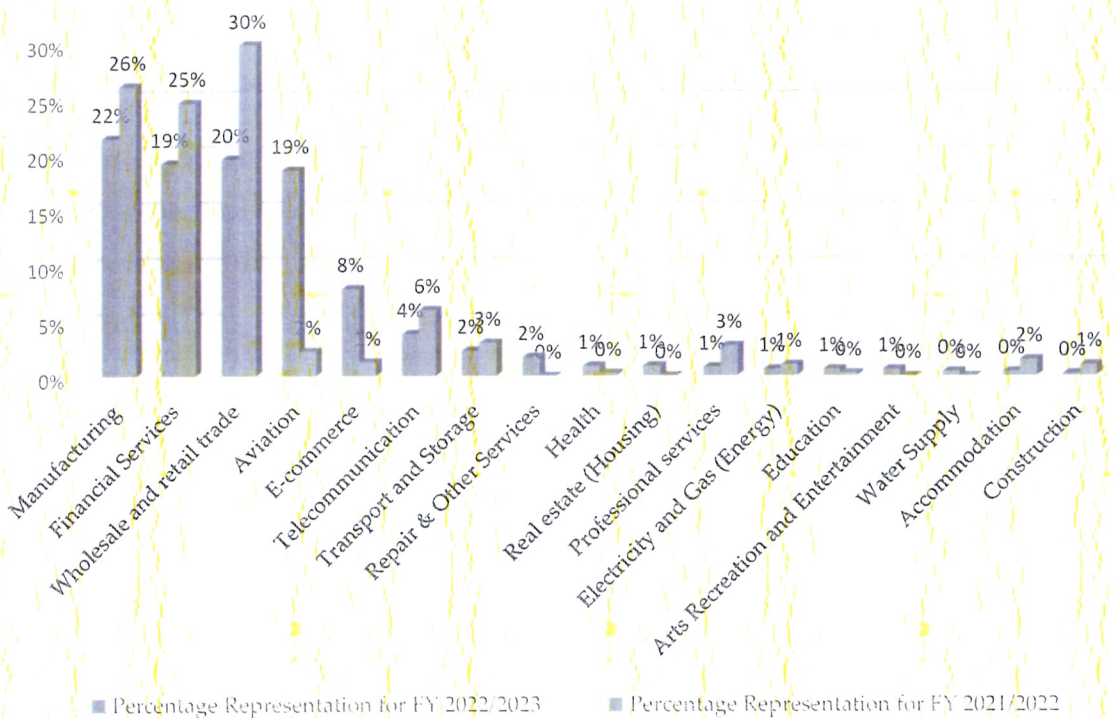
Table 12: Consumer Violation cases handled in the FY 2022/2023

Sector	Number of Cases	Percentage Representation
Manufacturing	112	21.50%
Financial Services	100	19.20%
Wholesale and retail trade	102	19.60%
Aviation	97	18.60%
E-commerce	41	7.90%
Telecommunication	20	3.80%
Transport and Storage	12	2.30%
Repair & Other Services	9	1.70%
Health	5	0.90%
Real estate (Housing)	5	0.90%
Professional services	4	0.80%

Electricity and Gas (Energy)	3	0.60%
Education	3	0.60%
Arts Recreation and Entertainment	3	0.60%
Water Supply	2	0.40%
Accommodation	2	0.40%
Construction	1	0.20%
Total	521	100%

Figure 6: Comparison of Consumer Violation cases handled in FY 2021/2022 and FY 2022/2023

Comparison of Consumer cases handled in FY2021/2022 and FY2022/2023



Pursuant to its mandate, the Authority continues to investigate alleged consumer violations by manufacturers, airlines and non-deposit taking financial institutions, specifically on food safety, refusal to refund and non-disclosure of fees and charges respectively.

Sample Consumer Violation Cases

False or Misleading Representations and Unconscionable Conduct: Family Bank Limited

The Authority received a complaint from a former employee of Family Bank Limited (Family Bank), alleging that she had a bank mortgage loan that she was servicing from 2004-2015. On exiting the employment in 2015, she was given an exit letter that gave assurance that her mortgage terms including a waiver of interest rates would be upheld, only for the bank to renege a year later after she was unable to service the loan as expected due to financial constraints. Further, in 2017 the bank unilaterally debited and overdraw her account with a total of KES. 399,800.00, to settle legal fees relating to court injunction proceedings initiated by the complainant.

Pursuant to Section 70(A) as read together with Section 31 of the Act, the Authority undertook investigations into the alleged conduct for probable violations of sections 55 (a)(ii) (v) and 56 (1) which relates to false or misleading representations and unconscionable conduct. The unconscionable conduct was assessed against the requirements of sub-section 56 (2) (a) (b) and (d) of the Act.

The Bank entered into a settlement with the Authority and waived the interest rates and refunded the complainant with a total sum of KES 1, 415, 604.20.

As a result of the Authority's intervention, the consumer was refunded KES 1.4 million which was to be waived and for the overdrawn legal fees.

False or Misleading Representations and Unconscionable Conduct: Kenya Commercial Bank Ltd (KCB)

The Authority received a complaint from a consumer who had borrowed KES 240,000 through a KCB Platinum Credit Card and was charged 6% cash advance interest at the ATM. Information on the bank's Website indicated that Platinum Credit Card holders were entitled to a 45-day interest-free period. Therefore, the complaint expected this period to lapse on 30th April, 2022. On 23rd April, 2022, the complainant settled the full amount due (KES 254,602), inclusive the aforementioned 6% cash advance interest. Upon interrogating the statement of the credit card, the complainant discovered the bank had charged a late payment interest of KES 12,724 and a debit interest of KES 8,857, totalling to KES 21,581. After seeking an enquiry regarding the unexplained charges, the consumer was informed that credit card billing is conducted on the 15th day of every month and that payment ought to be done on or before the 30th day of every month. Therefore, the complainant's failure to make any payment on or before 30th March, 2022 resulted in the late payment fee and debit interest. The complainant had not been informed of the billing and repayment cycles beforehand.

The Authority undertook investigations pursuant to Section 70(A) as read together with Section 31 of the Act, assessing the conduct under sections 55 (a)(ii) (v) and 56 (1) which relates to false or misleading representations and unconscionable conduct. The unconscionable conduct was assessed against the requirements of sub-section 56 (2) (a) (b) and (d) of the Act.

KCB entered into a settlement agreement with the Authority committing to waive and refund the late payment interest and debit charges of KES 21, 581.98 and update its website by providing a clear explanation that the 45-day interest free period offered to their credit card holders. KCB paid a pecuniary penalty of KES 16,549.13, which is 6.5% of the total amount repaid by the complainant.

False or Misleading Representations and Unconscionable Conduct: East African Portland Cement Company Ltd

The Authority received two (2) complaints against East African Portland Cement Company Ltd (EAPCC), citing similar allegations on failure to deliver and delays in delivery of the purchased products.

Pursuant to Section 70(A) as read together with Section 31 of the Act, the Authority undertook investigations into the alleged conduct for probable violations of Sections 55 (a) (ii), (b) (v) and 56 (1) of the Act, which relate to false or misleading representations and unconscionable conduct. The unconscionable conduct was assessed against the requirements of Section 56 (2)(a), (d) and (e) of the Act.

As part of the settlement, the accused agreed to refund the complainant a total sum of KES. 147,500.00 and for the other complainant they delivered 200 bags of cement.

Consequently, the Authority issued a warning letter to EAPCC where they were informed that similar conduct in future will attract more deterrent measures.

False or Misleading Representations and Unconscionable Conduct: E-Commerce Platforms

The Authority has seen the increase in complaints from consumers purchasing goods online, either from licensed e-commerce platforms or from suppliers using social media networks to market their products. A review of the complaints from consumers, and the alleged conduct reveal the manipulation of consumer choice through perpetuating dark commercial patterns. Dark commercial patterns are features which exploit behavioural biases by complicating, hiding, or omitting information, or by employing manipulative design elements, in order to trick consumers into purchasing a product online. Some of the dark commercial patterns may take the form of: hidden costs/ drip pricing; hidden subscriptions; supply of defective goods; non- refund and redress policies; disguised advertising; false urgency, creating the impression that a consumer will miss out on a deal; and privacy concerns.

For instance, the Authority received a complaint from a consumer who purchased books online from Text Book Centre Ltd. The website had indicated that any purchase of books will attract “free delivery”. After purchasing, he was informed that he would be charged for delivery since the free delivery was only for post office delivery. The Authority also handled complaints against Jumia Kenya Limited where a consumer purchase food online and the order was cancelled without a refund. After the Authority’s intervention, the consumer was refunded his money. The complaint against Jambo Shoppe Limited was in relation to a consumer who purchased shoes, but upon receiving, they were of the wrong size and Jambo Shoppe were unwilling to remedy the situation. The Authority intervened in the matter and the consumer was refunded his money.

Due to the convenience buoyed by relatively high-speed internet and availability of smart phone devices, Kenyans are now purchasing goods and services through e-commerce platforms. This means that, there will be an increase in complaints against e-commerce platforms manipulating consumers through dark commercial patterns. The Authority will continue exercising its powers under the Act to resolve them.

Collaboration with the Kenya Institute of Curriculum Development

The Authority is mandated to advise the Government on all matters relating to competition and consumer welfare in the national economy. In addition, the Authority promotes public knowledge, awareness and understanding of the obligations, rights and remedies under the Act.

In furtherance of this, the Authority collaborated with the Kenya Institute of Curriculum Development (KICD) to mainstream and integrate Competition & Consumer Protection Literacy (C&CPL) into the Competency Based Curriculum (CBC), specifically in Junior Secondary School (JSS), Senior Secondary School (SSS) and teacher education curriculum. The concepts have now been mainstreamed. It is estimated that over 3 million learners transiting into Junior Secondary School will benefit from the awareness.

The Authority also collaborated with other financial sector regulators, Central Bank of Kenya (CBK); Sacco Societies Regulatory Authority (SASRA); Retirement Benefits Authority (RBA); Capital Markets Authority (CMA); and Kenya Revenue Authority (KRA) to conceptualise the financial literacy programme being implemented by KICD with support from Old Mutual. To this effect, a pilot programme on financial literacy was carried out in four (4) regions out of eight (8) in Kenya namely; Central, Eastern, Rift Valley and Nyanza. The purpose of the induction and pilot rollout was to; create awareness on the financial literacy programme in JSS and train education field officers and teachers on how to access the financial literacy programme online, help in identifying challenges that may be encountered by JSS teachers during training and national rollout and collection of data that will help in enhancement and improvement of the course before national rollout.

Cooperation with COMESA Competition Commission on Consumer Protection

The Authority works closely with COMESA Competition Commission (CCC) on the protection of consumers in the Common Market. Through the COMESA Consumer Protection Committee chaired by CCC, the Authority has played an instrumental in sharing its experiences in undertaking consumer related investigations. Through the Committee, the Authority has articulated strategies to enhance consumer protection in the region.

During the period under review, the Authority worked together with CCC to investigate whether products that had been recalled from other jurisdictions were in the country. For instance, the Authority collaborated with CCC in interrogating the recall of certain batches of Kinder Chocolates by Ferrero International across different countries due to salmonella contamination. CCC had issued a warning notice to its Member States on the recall. The Authority, pursuant to section 67 of the Act mandating it to consult with Kenya Bureau of Standards (KEBS) collaborated with KEBS to determine if the products were present in Kenya. Investigations did not find any evidence of the presence of the Kinder products that were subject to the recall in Europe in the

Kenyan market. It was also established that the Kinder products sold locally were sourced from Italy and India, as the countries of origin. KEBS confirmed to the Authority that sample Kinder variants that were tested were free from the Salmonella contaminant and therefore compliant with relevant standards in Kenya.

STRATEGIC GOAL TWO: RESEARCH AND ADVOCACY

The Authority conducts market inquiries, studies and research into matters relating to competition and consumer protection. Premised on the foregoing, the Authority conducted one (1) market inquiry and two (2) market studies informed by emerging concerns in the business environment.

The Act also empowers the Authority to conduct competition advocacy initiative as one of the main pillars of contemporary competition law. This is aimed at creating, expanding and strengthening awareness of competition law and policy in the economy. Advocacy has been instrumental to the Authority in obtaining increasing willingness and compliance by stakeholders on competition law and policy enforcement. In the year under review, twenty-six (26) advocacy engagements were conducted as illustrated in table 13.

The Authority undertook the following policy, research and competition advocacy initiatives:

- i. Market Inquiry**
 - a) Online Food and Groceries Delivery platforms**

The Authority carried out a market inquiry into the online food and groceries delivery platforms whose main objectives were to:

- i. Identify players and services involved in digital platforms (e-commerce) business model in Kenya and examine the relationships between the platforms and the users with focus to the competition parameters (market power and conduct) and concerns amongst the players;
- ii. Assess the role of data in operating multi-sided online (e-commerce) platforms, customer acquisition, retention as well as data portability; and e-payment services and their importance in relation to the digital markets (e-commerce) business model;
- iii. Better understand the consumer protection concerns with a view to providing redress mechanisms available for consumers when shopping through online marketplaces; and
- iv. Assess the relevance of the existing regulatory framework and its applicability in the digital markets, to guide better policymaking.

The process of the market inquiry was ongoing as at the close of the reporting period. This inquiry will be finalized in the financial year 2023/2024.

- ii. Market Studies**
 - a) Impact Assessment of Decisions**

In 2019, the Authority approved an acquisition of a controlling stake in Almasi Beverages Limited by Coca-Cola SABCO (East Africa) Limited. The transaction involved acquisition of 53.95% of the

issued share Capital of Almasi Beverages Limited (Almasi) from Centum Investments Company PLC (“Centum”) by Coca-Cola Sabco (East Africa) Limited (CCSEA). The Authority approved the merger on condition, *inter alia*, that the merged entity shall reserve the lower deck or not less than 20% of the total storage space of the coolers lent to SMEs for products of competitors except for the brands of the Coca-Cola Company’s three (3) largest global Non-Alcoholic Ready to Drink (NARTD) competitors.

In 2018, the Authority conducted investigations in the paints manufacturing sector. Upon conclusion of the investigation, the Authority established that some paint manufacturers had cartelised on prices and transport charges to the detriment of consumers. The Authority imposed a financial penalty on four (4) companies found culpable of breaking the Competition Act.

Based on the foregoing, the Authority carried out a market study to assess the impact of the decisions in the paints manufacturing and Non-Alcoholic Ready-to-Drinks (NARTDs) beverage sectors. The objectives of the study were:

- i. To assess the market situation, post intervention in terms of consumer savings, access to goods and services, enhanced product and services, variety and quality, discount and pricing benefits, products and services innovation and improved incomes of small suppliers, MSMEs and, investment into the economy;
- ii. To provide a basis for the Authority to improve the quality and accountability of its decisions, and demonstrate the welfare changes of enforcing competition law and policy in line with its motto of creating efficient markets for consumers;
- iii. To evaluate the assumptions on which the merger determination and cartel decisions were based in order to improve the design and implementation of remedies and increase its knowledge in analysis; and
- iv. To assess the impact of the Authority’s merger decision on the economy in general and specifically, on the producers, consumers and SMEs.

The preliminary findings were;

- i. The Authority’s decision in the paints sector benefitted the consumers through price reduction of paint products between 2018 and 2022.
- ii. The intervention enabled entry of more players in the market especially SMEs in the market.
- iii. The intervention benefitted paint consumers through availability of wider variety of paints and increased innovation as the decision ensured sustained competition.
- iv. The Authority’s merger decision in the NARTDs sector did not have a glaring consumer price reduction benefits, nonetheless consumers benefitted through wider choices,

sustained supply of their preferred soda and water brands, presence of innovative products.

- v. The NARTDs market similarly remained competitive and SMEs producers were able to access the market and provide competition to Coca-Cola products in product segments such as energy drinks and water.

The process of the market study was ongoing as at the close of the reporting period. This inquiry will be finalized in the FY 2023/2024.

b) Digital Platforms Surveillance

The Authority conducted a surveillance focusing on digital marketplaces offering varied categories of products including food, grocery, pharmaceutical and medicaments, e-commerce - B2C (business-to-consumer) marketplaces, mobile devices & accessories, couriers and retailers.

The objectives of the study were to;

- i. Inform the Authority on the dynamics of the digital markets ecosystem.
- ii. Identify actual or likely incidences of abuse of buyer power.
- iii. Establish the adequacy or otherwise of the current legal provisions in addressing possible abuse of a superior bargaining position in the markets.

The findings of the study were;

- i. The platforms, being a gateway to consumers, tended to be in a relatively superior bargaining position in the commercial relationship with vendors giving them the power to impose unfair terms and conditions.
- ii. Sections 2 and 24A of the Act that defines that is buyer power and create the offence of abuse of buyer power respectively are not adequate to address possible abuse on platform markets. The two provisions confine themselves to commercial contracts between buyers and sellers whereas the commercial relationships on digital platforms do not fit that narrow description.

The study recommended that there is need to amend the Act to include regulation of superior bargaining power that would cover a broad spectrum of markets in order to safeguard and promote competition, deter instances of abuse of buyer power and enhance consumer welfare in the digital platforms.

iii. Stakeholder Engagement

The Authority participated in various partnerships and networking initiatives and stakeholder engagement activities aimed at sharing information and experiences, learning and adopting international best practices on competition, consumer protection law and deterrence of abuse of buyer power. These are summarized in **Table 13** below:

Table 13: Stakeholders Engagement during the FY 2022/2023

No.	Event/Forum	Stakeholders Engaged	Objective / key message	Expected Outcome
1.	African Competition Forum (ACF) Workshops	ACF Members	Exchange knowledge and experience in competition advocacy and enforcement on mergers and cartel across African jurisdictions.	Best practices on competition enforcement on mergers and cartels adopted.
2.	International Competition Network (ICN)	International Competition Network (ICN) members	Exchange knowledge and experience in competition advocacy and enforcement across jurisdictions on mergers, cartels and unilateral conduct.	Best practices on competition enforcement with regard to on mergers, cartels and unilateral conduct adopted.
6.	Sensitization of members of Kenya Transporters Association (KTA)	The management and members of KTA	Sensitize members of KTA on the provisions of the Act on restrictive trade practices especially on price recommendations, abuse of dominance and abuse of buyer power.	To avert future incidences of mandatory price recommendations by the Association to its members as well as other violations of the Act.
7.	Sensitization of Advocates of the High Court in Kenya	Advocates of the High Court from Kakamega, Eldoret and Nakuru LSK branches	Sensitize advocates on the provisions of the Competition Law and Policy to increase compliance with the Act	Enhanced awareness on the Authority's processes among the Advocates.
8.	Guest lecture on Mergers & Acquisitions and the role of the Competition Authority of Kenya	Strathmore University students	Sensitize Strathmore University students on Mergers and Acquisitions and the role of CAK.	Increased awareness on competition law and to promote compliance with the Act among the students and the lecturers.
9.	Guest lecture on mergers and acquisitions on the role of CAK and the legal practitioner	Students and Lecturers	<ul style="list-style-type: none"> To entrench the Authority as a Centre for Competition and Consumer Protection Guide students on possible career paths in Competition Law that can be pursued upon being admitted to the bar Sensitize students on Mergers and 	Increased awareness on competition law and to promote compliance with the Act among the students and the lecturers.

No.	Event/Forum	Stakeholders Engaged	Objective / key message	Expected Outcome
10.	Sensitization of students and teachers in Marsabit and Isiolo county	Students and teachers	Acquisitions and the role of CAK. Promote understanding and application of competition law and policy and consumer protection;	Increased awareness and understanding of the competition law and promote increased compliance with the Act.
11.	Sensitization of insurance sector players on abuse of buyer power in Mombasa County	Motor Assessors Association of Kenya (MAAK)	Sensitized on the provisions of the Competition Act on abuse of Buyer Power to increase compliance.	Increased awareness of the provisions of the Act with regard to the abuse of buyer power.
12.	Sensitization of manufacturing sector players on abuse of buyer power in Kiambu and Mombasa Counties.	Kenya Association of Manufacturers (KAM) members	Promoting public knowledge, awareness and understating of the Act and buyer power provisions enforcement procedures to increase compliance with the Competition Act.	Increased awareness of the Act and Buyer Power Enforcement Procedures
14.	Sensitization of Micro and Small and Medium Enterprises (MSMEs) on abuse of buyer power in Nakuru county	Micro and Small and Medium Enterprises (MSMEs)	Promoting public knowledge, awareness and understating of the Act and buyer power provisions enforcement procedures to increase compliance with the Competition Act.	Increased awareness of the Act and Buyer Power Enforcement Procedures.
15.	Sensitization of manufacturing and retail sector players on abuse of buyer of	Members of Kenya Association of Manufacturers (KAM), Association of Kenya Suppliers (AKS) and	Promoting public knowledge, awareness and understating of the Act and buyer power provisions enforcement procedures to increase compliance with the Competition Act.	Increased awareness of the Act and Buyer Power Enforcement Procedures.

No.	Event/Forum	Stakeholders Engaged	Objective / key message	Expected Outcome
	buyer power in Nakuru County	Retail Trade Association of Kenya (RETRAK)		
16.	Sensitization of insurance sector players on abuse of buyer power in Nakuru County	Kenya Motor Repairs Association (KEMRA) and Insurance companies.	Promoting public knowledge, awareness and understanding of the Act and buyer power provisions enforcement procedures to increase compliance with the Competition Act.	Increased awareness of the Act and Buyer Power Enforcement Procedures.
17.	Annual Capacity Building Workshop on Competition Law and Policy	<ul style="list-style-type: none"> • Sector regulators • Legal fraternity • Government agencies • NCAs • Corporates • Economics and Law Students 	Equip stakeholders with requisite knowledge in competition law and policy	<ul style="list-style-type: none"> • Increased awareness on competition law and compliance with the Act. • Increased Authority's brand visibility among the stakeholders.
18.	Annual Symposium on Competition Law and Policy	<ul style="list-style-type: none"> • Members of the public through social media platforms 	Deepening the understanding on competition enforcement	Increased Authority's brand visibility among the stakeholders.
19.	World Competition Day	<ul style="list-style-type: none"> • Consumers bodies • Consumers in Meru and Isiolo counties 	<ul style="list-style-type: none"> • Create awareness on the role, functions and mandate of the Authority • Enlighten and equip stakeholders with requisite knowledge in competition law and policy • To educate consumers on the role, functions and mandate of Authority • Awareness creation on consumer complaint handling process 	<ul style="list-style-type: none"> • Consumers sensitized on the consumer protection and complaint handling process • Increased the Authority's brand visibility in the counties.
20.	World Consumer Rights Day	<ul style="list-style-type: none"> • National Competition Agencies 	Exchange knowledge and experience in competition advocacy and enforcement across jurisdictions	Best practices on competition enforcement adopted
21.	OECD Global Forum on Competition			

No.	Event/Forum	Stakeholders Engaged	Objective / key message	Expected Outcome
22.	Africa-EU Competition Week and High-Level Conference	<ul style="list-style-type: none"> National Competition Agencies 	Exchange knowledge and experience in competition advocacy and enforcement across jurisdictions	Best practices on competition enforcement adopted
23.	Cooperation with EAC Competition Authority	Regional Competition and Consumer Agency	To foster cooperation with regional agencies on enforcement of competition law within the region. <ul style="list-style-type: none"> To educate consumers on the role, functions and mandate of Authority Awareness creation on consumer complaint handling process 	Formalized collaboration in enforcement of competition and consumer protection in the EAC region <ul style="list-style-type: none"> Consumers sensitized on the consumer protection and complaint handling process Increased the Authority's brand visibility in the county.
24.	Food Fortification forum in Kiambu County	<ul style="list-style-type: none"> Nutrition International Grain Millers Association Kiambu County-County department of health 	<ul style="list-style-type: none"> To educate consumers on the role, functions and mandate of Authority Awareness creation on consumer complaint handling process 	<ul style="list-style-type: none"> Consumers sensitized on the consumer protection and complaint handling process Increased the Authority's brand visibility in the county.
25.	Consumer Right to Information: Focus on food systems	<ul style="list-style-type: none"> Consumer Grassroots Association Members of the public 	<ul style="list-style-type: none"> To educate consumers on the role, functions and mandate of Authority Awareness creation on consumer complaint handling process 	<ul style="list-style-type: none"> Consumers sensitized on the consumer protection and complaint handling process Increased the Authority's brand visibility.
26.	Sensitization on the Authority's mandate on financial services	Stanbic bank staff members	<ul style="list-style-type: none"> To educate staff on the role, functions and mandate of Authority Awareness creation on consumer complaint handling process 	<ul style="list-style-type: none"> Staff sensitized on the consumer protection and complaint handling process Increased the Authority's brand visibility.
27.	Regional Experts on EAC restraints by enterprises regulations, guidelines and	Policy makers and competition practitioners from Kenya, Uganda, South Sudan, Rwanda, Burundi and Tanzania	<ul style="list-style-type: none"> To discuss and adopt the draft study report on EAC Competition Restraints by Enterprises Regulations, Guidelines and Corporate Leniency Policy 	<ul style="list-style-type: none"> Validated the draft EAC Competition Mergers and Acquisitions Assessment Guidelines Harmonized regulatory regime within the Community.

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No.	Event/Forum	Stakeholders Engaged	Objective / key message	Expected Outcome
	corporate leniency policy			<ul style="list-style-type: none"> Best practices on competition enforcement with regard to on mergers, cartels and unilateral conduct adopted.

iv. Advisory Opinions on various Bills, Regulations, Policies and Guidelines

During the year under review, the Authority reviewed various bills and regulations to inform and ensure that the various laws and policies are compliant with the provisions of the Act. These are summarized in **Table 14** below:

Table 14: Advisory opinions rendered during the FY 2022/2023

No.	Bill/Policy/Guidelines/Regulations Reviewed	Sector	Summary of the Bill/Policy	Advisory Opinion
1.	Coffee Bill 2023	Agriculture	The objects of the Coffee Act, 2023 are to: a. Promote a globally competitive coffee industry and b. Provide a framework for the registration and licensing of various players within the coffee sector.	The need to maintain database of all new entrants to facilitate competition assessment and that permits are not discriminative to favour only coffee farmers within the county but objectively consider all stakeholders including those outside the counties to foster competition and protect farmers from exploitation. <ul style="list-style-type: none"> To clarify the definition of dominant service provider. The regulations should acknowledge the role of the Authority in regulation of competition and in determination of dominance and significant market power.
2.	Kenya Information and Communication (KICA) Regulations, 2023	Information, Communication and Technology sector	The Regulations provided for regulation of Tariffs, Competition, consumer protection, licensing regulations, radio communications and frequency spectrum regulations	It should be an offence for a grower association to have in its objects or to in any way, curtail competition in any manner contemplated under the Act
3.	The Crops (Horticultural Crops) Regulations	Agriculture	Regulations are aimed at promoting, developing and regulating the growth of the horticultural industry.	The need to harmonize the definition of a merger with that of the Act to avoid parties merging without the approval by the Competition Authority of Kenya
4.	The Capital Markets (Take-overs and Mergers) Regulations, 2023	Financial Services	The Capital Markets (Take-overs and mergers) Regulations 2023 apply to the conduct of all takeover offers, and mergers made in respect of Public Listed Companies	The issues raised in the inquiry relate to conduct that is yet to occur and as such the Authority has no jurisdiction
5.	Motor Assessors Association of Kenya (MAAK)	Insurance	The association sought guidance on the new Regulation by the Kenya Revenue Authority (KRA) requiring businesses with an annual	

No.	Bill/Policy/Guidelines/ Regulations Reviewed	Sector	Summary of the Bill/Policy	Advisory Opinion
			turnover of at least KES. 5 million to install Electronic Tax Registers (ETRs) with payments remittance timelines that they cannot meet due to delayed payments from Insurance companies.	

v. Technical Assistance to other Agencies

The AfCFTA aims to harmonize competition law and policy in Africa. Upon its establishment, member states entered into Phase II of negotiations in, among other areas competition policy. A Committee on Competition Policy was established during the 5th meeting of the AfCFTA Council of Ministers responsible for Trade held in Accra, Ghana in May 2021 with the aim of facilitating the negotiations towards the Protocol on Competition Policy. The Authority has been a key pillar in this committee and has so far attended all seven meetings convened towards the negotiations.

Notably, the Authority was instrumental in the addition of Article 24 in the Protocol on Competition Policy. Article 24 seeks to establish a functional autonomous body, the Tribunal, with an independent legal personality that shall be responsible for the appeals against Decisions taken by the Board of the AfCFTA Competition Authority in the implementation of the relevant provisions of this Protocol.

vi. Knowledge Management

During the year under review, the Authority installed a Digital Institutional Repository to cater for the various reference materials that it generates. The reference materials include research reports, determinations/decisions, conference papers, annual reports and newsletters that can be referenced by other competition agencies as well as internal staff and research institutions. A Digital Repository (DR) is an online database that systematically captures, organizes and categorizes knowledge-based information. The DR provides an open access platform to capture, store, index, and distribute information resources available within and/or produced by the Authority.

The Authority's DR provides free, searchable access to digital information resources and provides for long term archiving and preservation of these resources. It also serves to ensure that the Authority's intellectual capital is permanently recorded, and that output is well preserved and disseminated. It further ensures visibility on the Internet by providing open access to research materials published by the Authority.

STRATEGIC GOAL THREE: VISIBILITY AND ORGANIZATIONAL SUSTAINABILITY

i. Information and Communication Technology

The Authority continued to leverage on ICT to ensure seamless operations and support service delivery to its stakeholders, through;

a. Enhancing Security of ICT Infrastructure

Considering the likely increase in cyber security threats occasioned by the automation of processes, the Authority continually monitored the ICT infrastructure to safeguard against attacks, including through maintaining of the firewall as well as end and server protection. The Authority continuously sensitized the staff members on appropriate measures to mitigate against threats through quarterly plenary sessions.

In an effort to enhance availability and security of its E-mail communication, the Authority implemented multi-factor authentication, intrusion prevention, and redundancy. This intervention enhanced confidentiality and integrity of communication between the Authority and its stakeholders.

The Authority began aligning its Information Security Management System (ISMS) to the ISO\IEC 27001:2022 Standard. The Standard takes into account new business practices, such as cyber security, privacy protection, remote working, bring your own device (BYOD) and cloud-based systems. These updates will provide more robust controls to enable the Authority address increasingly sophisticated security risks and ensure business continuity, thereby ensuring continued actualization of its mandate.

b. Enhanced Accessibility of Services

The Authority integrated its services onto the E-Citizen platform thus enabling the Public seamlessly access its services from E-Citizen through a Single Sign-On (SSO) in line with the Government's agenda of leveraging on technology to enhance service delivery.

Additionally, the Authority upgraded its E-procurement Portal in a bid to improve the engagement between suppliers and itself. This has led to improved efficiency, accountability and user experience.

c. Equipment and Infrastructure Enhancement

In a bid to keep pace with evolving technological needs as well as ensuring the confidentiality, integrity and availability of service provision to its stakeholders, the Authority upgraded the ICT equipment that were approaching end of life. These equipment included network switches, routers and end devices.

ii. Supply Chain Management

The Authority maintained Access to Government Procurement Opportunities (AGPO) above the minimum 30% threshold, as prescribed by the Public Procurement and Asset Disposal Act (2015) and Public Procurement and Asset Disposal Regulations (2020). The Authority awarded 63.7% and 52.1% of its total procurement spending on tenders to special interest groups (Youth, Women & PWD's) and local content (LC) respectively as per tables below.

Table 15: Contracts Awarded to AGPO

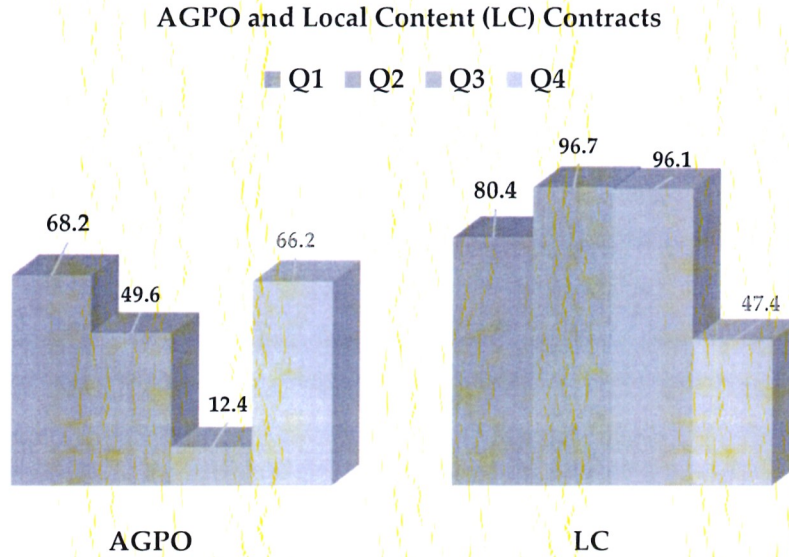
S/N	Contracts awarded to AGPO group (KES)	Total procurements per quarter (KES)	% of contracts awarded to AGPO group
Q1	9,109,719.00	13,351,410.10	68.2
Q2	5,529,725.00	11,152,305.00	49.6
Q3	1,600,610.00	12,873,600.00	12.4
Q4	201,664,355.00	304,603,139.00	66.2
Totals	217,904,409.00	341,980,454.10	63.7

Table 16: Contracts Awarded to Local Content

S/N	Contracts awarded to Local content LC (KES)	Total procurements per quarter (KES)	% of contracts awarded to LC
Q1	10,734,256.00	13,351,410.10	80.4
Q2	10,779,235.00	11,152,305.00	96.7
Q3	12,370,680.00	12,873,600.00	96.1
Q4	144,255,516.00	304,603,139.00	47.4
Totals	178,139,687.00	341,980,454.10	52.1

The sum of contracts awarded in quarter four (4) increased sharply occasioned by tender awards for the provision of partitioning and structured cabling at the Authority's new office at the CBK Pension Towers building.

Figure 7: Percentage Contracts Awarded to AGPO and Local Content by Quarter



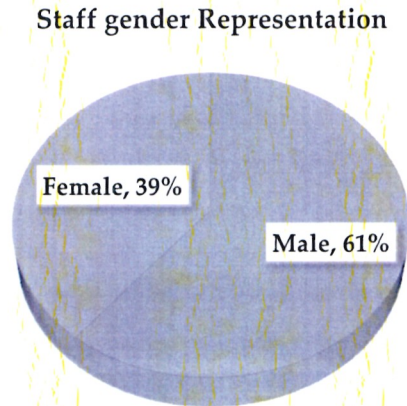
In adherence to transparency and accountability, the Authority submitted quarterly reports for contracts awarded to the Public Procurement and Regulatory Authority (PPRA). Further, contracts awarded under Local Content (Buy Kenya Build Kenya) were notified to the State Department of Industrialization & Enterprises Development in the Ministry of Investment, Trade and Industry, in compliance with PPDA, 2015 and Regulations of 2020. The Authority also published its tenders and contracts in the Public Procurement Information Portal (PPIP).

iii. Human Capital

The Human Resource and Administration function supports the achievement of the Authority’s mandate as enshrined in Section 13 of the Act by attracting, training and retaining highly qualified, skilled and motivated staff.

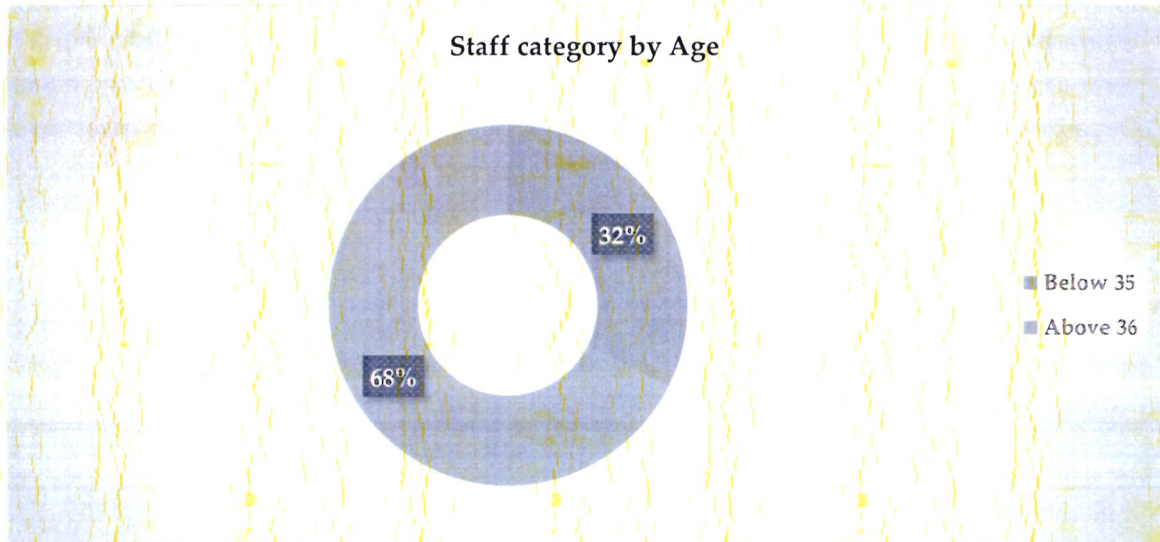
The Authority continued to enhance capacity through acquisition of talent to effectively deliver on its mandate. During the year under review, three (3) positions were competitively filled i.e. two Investigations Officers and an ICT Officer. The current staff number is comprised of forty-nine (49) males and twenty-five (25) females, in compliance with the Constitutional two-thirds gender rule as per the figure below;

Figure 8: Staff Gender Representation



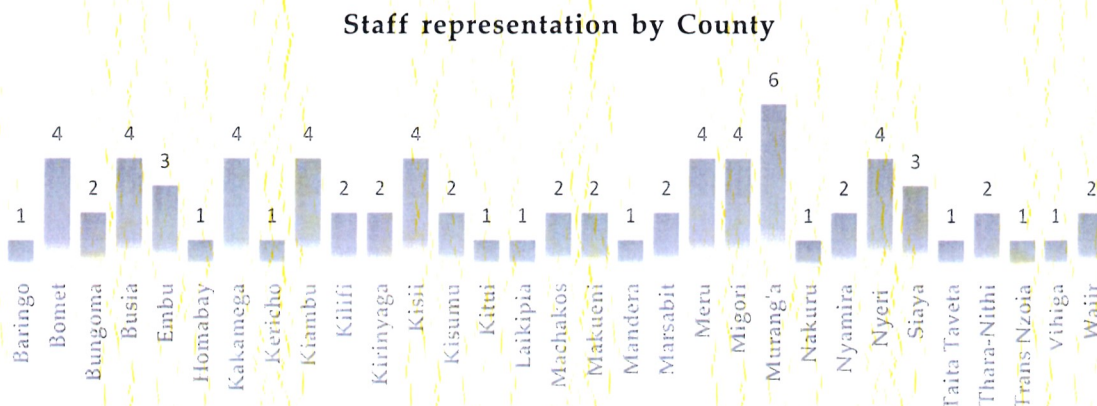
Staff by age category below is an indication that the Authority 's staff establishment is comprised of youth and other age bands ensuring an effective Succession Management.

Figure 9: Staff Category by Age



The staff composition complied with the Constitutional requirement on regional diversity as enshrined in Article 10 of the Constitution as per the figure below;

Figure 10: Staff Representation by County



In order to enhance staff skills, knowledge and abilities in the areas of Competition Law and policy, Consumer Protection, Management and Leadership amongst other technical areas, the Authority collaborated with various development partners to realize this. These capacity building sessions offered through the virtual mechanism, include; the ICT Authority (23 participants); CUTS Institute for Regulation & Competition (CIRC) (6 participants); Japan International Cooperation Agency (JICA) (2 participants); Korea Fair Trade Commission (KFTC) (9 participants); United Nations Conference on Trade and Development (UNCTAD) (12 participants); and the European Union (EU) (2 participants).

Staff members were facilitated to attend various trainings that included workshops and conferences, locally and internationally with the aim of enhancing technical and behavioural competencies, learning best practices in various jurisdictions. The Authority also prioritized facilitating staff members remain in good standing with the professional associations by facilitating them to attend Continuous Professional Development trainings. This also supported the Authority efforts in succession planning, effective management and career progression.

The Authority continued to operate the one-year apprenticeship programme (Young Professional Programme) with the aim of building capacity on Competition Law and Policy in the labour market. Towards this, five (5) Master Degree holders with a bias in Law, Economics, or Business-related field and below the age of thirty-five (35) years were engaged at the Authority on a rotational basis between various technical departments.

Further, the Authority engaged ten (10) University Graduates joining the labour market with a view of exposing them to a real work environment in order to enhance their skillsets and employability. This is in support of the government’s agenda of equipping the youth with requisite skills.

The percentage of Persons with Disability (PWDs) in the workforce stood at 5.2% in line with the requirements of the National Council for Persons with Disability (NCPWD) of 5% of in-post staff.

The Authority continues to encourage qualified PWDs to apply for job vacancies through NCPWD employment portal which is an initiative by the two institutions.

The Authority continued to implement the following staff retention and motivation initiatives; -

- Reviewed mortgage and car loan policies thus enhancing the facilities and making them more accessible to staff;
- Implementation of various staff recognition programs to reward outstanding performance;
- Conducted various capacity-building initiatives in collaboration with key partners to equip staff with requisite competencies to achieve its mandate; and
- Continued with the provision of a medical scheme for staff - both out and in-patient Group Personal Accident - 24 hours and Group life-sum assured, Annual medical wellness program geared towards ensuring Psycho-social wellness.

Statutory Compliance Activities

In compliance with statutory requirements and enhancing employee welfare, the Authority continues to implement the workplace policies championed by the various standing committees as follows;

Table 17: Standing Committees

S/No.	Committee	Objective	Achievement
1.	HIV & AIDS	To mainstream HIV & AIDS by creating awareness to members and stakeholders	<ul style="list-style-type: none"> ▪ Organized a Corporate wellness day where staff members were sensitized on HIV and AIDS and non-communicable diseases and offered voluntary counselling and testing of HIV and AIDS ▪ Distributed 600 free condoms within the washrooms allocated to members of staff and stakeholders who visit the Authority ▪ Distributed over 2,880 condoms and created awareness on HIV and AIDS to members of the Public in Meru and Isiolo Counties ▪ Marked the World's AIDs Day on 1st December, 2022'
2.	Environmental Conservation and Sustainability	To ensure and enhance environmental conservation and sustainability	Planted 2,500 trees in Isiolo and Marsabit Counties
3.	Gender Mainstreaming	Mainstream gender activities in the Authority in line with the National Gender and Equality Commission requirements	Trained employees on the provisions of the reviewed Policy on Workplace Gender based violence.
4.	National Cohesion Values	To promote National Cohesion, values and principles of Governance in the Authority and to the general public	Carried out staff sensitization on national cohesion, values and principles of governance with a view of promoting the same amongst staff.

S/No.	Committee and Principles of Governance	Objective	Achievement
5.	Disability Mainstreaming	To mainstream disability in the work place and ensure accessibility and inclusivity Promoting inclusion of Persons living With Disability (PWDs), for both members of staff and external stake-holders	Ensure inclusivity in its recruitment processes by achieving a set target of 5.2% of persons with disability (PWDs) in the workforce.
6.	Road Safety	Mainstreaming Road Safety issues within the Authority in line with NTSA guidelines.	<ul style="list-style-type: none"> ▪ Contributed to the prevention and management of road traffic injuries and fatalities in Kenya by conducting Road Safety community sensitization at Heshima Primary School, Nairobi. ▪ Collaborated with National Transport and Safety Authority (NTSA) and issued out Road Safety Equipment (a Lollipop Sign) and Personal Protective Equipment (Reflector Jackets) to the school with a view of boosting the school's road safety initiatives.
7.	Alcohol and Drug Abuse Prevention	Prevention of alcohol and drug abuse in the Authority	<ul style="list-style-type: none"> ▪ Sensitized staff members on personal financial management to equip them with financial skills. By equipping staff with personal financial management skills, the Authority aims to help staff reduce Alcohol and drugs use and abuse. ▪ Sensitized on Stress Management as a way to improve mental health and avoid alcohol and drug use and abuse in the reporting period.

iv. Visibility and Corporate Image

The Authority earmarked awareness creation activities as critical in enhancing knowledge about its mandate among stakeholders in a bid to create a competition culture and enhance consumer welfare in our economy and bolster compliance with the Competition Act. Subsequently, various activities meant to articulate the enforcement and implementation of the Act were undertaken. Determinations were published on the website, clearly highlighting the reasoning behind each decision, to ensure that the Authority remains accountable, transparent and predictable to its stakeholders.

The Authority augmented its social media presence, resulting in increased followers across all platforms. All the Authority's press statements, opinion pieces, and activities are disseminated to stakeholders through new media channels such as Twitter, Facebook and YouTube as highlighted on the table below;

Table 18: Publications

TITLE	AUTHOR	LINK
OPINION PIECES		
The Role of Competition Law in Environmental Sustainability	Cecilia Kyenze	https://www.cak.go.ke/role-competition-law-environmental-sustainability
Towards Sound Financial Health	Ninette Mwarania	https://www.cak.go.ke/towards-sound-financial-health
Reining in abuse of buyer power key to economic recovery	Priscilla Njako	https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/reining-in-abuse-of-buyer-power-key-to-economic-recovery--4186228
Fair competition key to integrating small scale farmers into economy	Priscilla Njako	https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/fair-competition-key-to-integrating-small-scale-farmers--4251144
Price controls not sustainable in fixing market distortions	Gideon Mokaya	https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/price-controls-not-sustainable-in-fixing-market-distortions--4261422
How hardware cartels are derailing home ownership dreams	Wilson Chacha	https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/how-hardware-cartels-are-derailing-home-ownership-dreams-4226758
Harness knowledge management in public sector to enhance service delivery	Truphosa Ashiko	https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/harness-knowledge-management-in-public-sector-3931838
<u>Other Publications</u>		
5 Press Releases & 3 Speeches	CAK	https://www.cak.go.ke/information-center/Speeches-Press-Releases

TITLE	AUTHOR	LINK
Publication on 11 Years of Competition Law Enforcement in Kenya	CAK	https://www.cak.go.ke/information-center/publications
20 Determinations Published	CAK	https://www.cak.go.ke/information-center/CAK-latest-determinations
1 Newsletter Published	CAK	https://www.cak.go.ke/information-center/publications
6 IEC Videos Produced	CAK	https://www.youtube.com/@competitionauthorityofkenya2933/videos

Table 19: Summary of Performance against Predetermined Objectives for FY 2022/23

Strategic Goal	Objective	Key Performance Indicators		Target	Achievements	Remarks
Delivering Effective Enforcement	To reform the Merger Analysis Process in Order to Minimize Financial Burden on Businesses	% of Merger Notifications finalized	Notifications	100	97	Notifications received towards the end of the reporting period
		% of advisory opinion requests provided		100	100	
	To Enhance Deterrence on Unfair Market Conduct to Safeguard Access to Markets and Consumers	No. of ABP cases finalized		40	75	
		No. of sectors sensitized		3	3	
		% of consumer cases finalized		75	46	Complainants delay in submission of requisite evidence
To enhance deterrence on anticompetitive practices for sustained consumer welfare	No. of cases concluded		24	35		
	No. of compliance checks finalized		14	19		
	No. of advocacy engagements with competition and consumer protection law scholars, researchers, Economists and practitioners		3	3		
Research & Advocacy	To advance knowledge of sectoral and emerging markets	No. of screening reports on emerging areas		2	2	
		No. of research reports		3	3	
	To Enhance effective Advocacy	No. of capacity building initiatives		3	3	

Strategic Goal	Objective	Key Performance Indicators	Target	Achievements	Remarks
		No. of Position papers submitted to international forums	3	3	
		No. of conferences on Competition and Consumer Protection	1	1	
Visibility and Organizational Sustainability	To enhance institutional risk management practices, business continuity and implementation of standards	Re-certification to ISO 9001:2015 Quality Management Standard	1	1	
		Capacity building in the following areas among others; Big Data and Digital economy; Artificial Intelligence; Platform marketing; Buyer Power	50	52	

FINANCIAL STATEMENTS FOR THE FY2022/23

Report of the Directors

The Directors submit their report together with the audited financial statements for the year ended 30th June 2023, which show the state of the Competition Authority's affairs.

i) Principal activities

The principal activities of the Authority continued to be regulation of market structure and conduct and consumer protection.

ii) Results

The results of the Authority for the year ended June 30, 2023, are set out on page 90.

iii) Directors

The members of the Board of Directors who served during the year are shown on pages 15 - 19.

iv) Surplus Remission

In accordance with Regulation 219 (2) of the Public Financial Management (National Government) Regulations 2015, the Authority is required to remit into the Consolidated Fund, 90% of its surplus funds reported in the audited financial statements after the end of each financial year. The Authority has made a provision of Kshs. 13,112,203 for remission (FY 2022/23 Ksh. Nil) to the Consolidated Fund.

v) Auditors

The Auditor General is responsible for the statutory audit of the Authority in accordance with Article 229 of the Constitution of Kenya and the Public Audit Act 2015.

By Order of the Board



Dr. Adano W. Roba
Secretary to the Board

STATEMENT OF DIRECTORS' RESPONSIBILITIES

Section 81 of the Public Finance Management (PFM) Act No.18 of 2012 and section 14 of the State Corporations Act Cap 446, require the Directors to prepare financial statements in respect of the Authority, 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 for and as at the end of the financial year ended 30th June, 2023. 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.

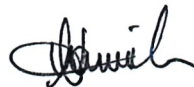
The Directors accept responsibility for the Authority's financial statements, which have been prepared using appropriate accounting policies supported by reasonable and prudent judgements and estimates, in conformity with International Public Sector Accounting Standards (IPSAS), and in the manner required by the PFM Act, 2012 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 30th June, 2023, 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.

The Authority's financial statements were approved by the Board on 17th August, 2023 and signed on its behalf by



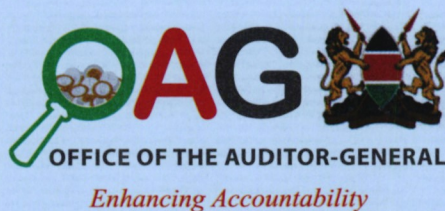
Shaka Kariuki
Board Chairman



Dr. Adano W. Roba
Ag. Director General

REPUBLIC OF KENYA

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HEADQUARTERS
Anniversary Towers
Monrovia Street
P.O. Box 30084-00100
NAIROBI

REPORT OF THE AUDITOR-GENERAL ON COMPETITION AUTHORITY OF KENYA FOR THE YEAR ENDED 30 JUNE, 2023

PREAMBLE

I draw your attention to the contents of my report which is in three parts:

- A. Report on the Financial Statements that considers whether the financial statements are fairly presented in accordance with the applicable financial reporting framework, accounting standards and the relevant laws and regulations that have a direct effect on the financial statements.
- B. Report on Lawfulness and Effectiveness in Use of Public Resources which considers compliance with applicable laws, regulations, policies, gazette notices, circulars, guidelines and manuals and whether public resources are applied in a prudent, efficient, economic, transparent and accountable manner to ensure Government achieves value for money and that such funds are applied for the intended purpose.
- C. Report on Effectiveness of Internal Controls, Risk Management and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, the risk management environment and the internal controls, developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

An unmodified opinion does not necessarily mean that an entity has complied with all relevant laws and regulations, and that its internal controls, risk management and governance systems are properly designed and were working effectively in the financial year under review.

The three parts of the report are aimed at addressing the statutory roles and responsibilities of the Auditor-General as provided by Article 229 of the Constitution, the Public Finance Management Act, 2012 and the Public Audit Act, 2015. The three parts of the report, when read together constitute the report of the Auditor-General.

REPORT ON THE FINANCIAL STATEMENTS

Opinion

I have audited the accompanying financial statements of Competition Authority of Kenya set out on pages 90 to 128, which comprise the statement of financial position

as at 30 June, 2023, and the statement of financial performance, statement of changes in net assets, statement of cash flows and the 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 35 of the Public Audit Act, 2015. 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.

In my opinion, the financial statements present fairly, in all material respects, the financial position of Competition Authority of Kenya as at 30 June, 2023, 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 the Competition Act, 2010 and the Public Finance Management Act, 2012.

Basis for Opinion

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Competition Authority of Kenya Management in accordance with ISSAI 130 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

Other Information

The Directors are responsible for the other information, which comprises the statement of corporate governance, Directors' Report and the statement of Directors' responsibilities. The other information does not include the financial statements and my auditor's report thereon.

My opinion on the financial statements does not cover the other information and I do not express any form of assurance or conclusion thereon.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, I confirm that, nothing has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

The audit was conducted in accordance with ISSAI 4000. The standard requires that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements are in compliance, in all material respects, with the authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

As required by Section 7(1)(a) of the Public Audit Act, 2015, based on the audit procedures performed, I confirm that, nothing has come to my attention to cause me to believe that internal controls, risk management and overall governance were not effective.

Basis for Conclusion

The audit was conducted in accordance with ISSAI 2315 and ISSAI 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal control, risk management and overall governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of Management and the Board of Directors

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Accrual Basis) and for maintaining effective internal controls as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal controls, risk management and overall governance.

In preparing the financial statements, Management is responsible for assessing the Authority's ability to continue to sustain its services disclosing, as applicable, matters related to sustainability of its services and using the applicable basis of accounting unless Management is aware of the intention to terminate the Authority or to cease operations.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

In addition to the responsibility for the preparation and presentation of the financial statements described above, Management is also responsible for ensuring that the

activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them, and that public resources are applied in an effective way.

The Board of Directors is responsible for overseeing the Authority's financial reporting process, reviewing the effectiveness of how Management monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to overall governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In addition to the audit of the financial statements, a compliance audit is planned and performed to express a conclusion about whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way, in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution.

Further, in planning and performing the audit of the financial statements and audit of compliance, I consider internal controls in order to give an assurance on the effectiveness of internal controls, risk management and overall governance processes and systems in accordance with the provisions of Section 7(1)(a) of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. My consideration of the internal controls would not necessarily disclose all matters in the internal control that might be material weaknesses under the ISSAIs. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Because of its inherent limitations, internal controls may not prevent or detect misstatements and instances of non-compliance. Also, projections of any evaluation of


effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

As part of an audit conducted in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal controls.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Management.
- Conclude on the appropriateness of the Management's use of the applicable basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Authority's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Authority to cease to continue to sustain its services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the Authority to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

I communicate with Management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal controls that are identified during the audit.

I also provide Management with a statement that I have complied with relevant ethical requirements regarding independence and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and where applicable, related safeguards.


FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi


06 December, 2023

STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 30TH JUNE 2023

	Notes	2022/2023 Kshs	2021/2022 Kshs
Revenue from non-exchange transactions			
Transfers from other governments entities	6	346,229,039	330,887,523
Levies, Fines, and penalties	7	15,652,071	12,721,429
Total Revenue from non-exchange transactions		361,881,110	343,608,952
Revenue from exchange transactions			
Rendering of services	8	158,710,781	120,461,168
Finance income	9	14,717,953	17,974,137
Other income	10	1,445,155	1,689,745
Total Revenue from exchange transactions		174,873,889	140,125,050
Total revenue		536,754,999	483,734,002
Expenses			
Use of goods and services	11	96,546,994	78,639,379
Employee costs	12	281,735,106	275,627,985
Board Expenses	13	15,996,436	11,341,337
Depreciation and amortization expense	14	21,013,794	23,918,205
Policy, risk, competition & consumer protection expenses	15	87,371,640	76,981,962
Repairs and maintenance	16	21,786,015	20,282,580
Contracted services	17	9,129,308	4,631,403
Total expenses		533,579,293	491,422,851
Other gains(losses)			
Gain (Loss) on sale of assets	18	(991,837)	9,953
Gain (Loss) on foreign exchange transactions		12,385,245	-
Surplus (deficit) for the year		14,569,114	(7,678,896)
Remission to National Treasury	32	13,112,203	-
Net Surplus for the year		1,456,911	(7,678,896)

The notes set out on pages 97 to 127 form an integral part of these Financial Statements.

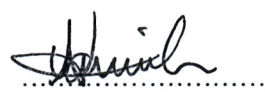
The financial statements set out on pages 90 to 96 were signed on behalf of the Board Directors on 17th, August 2023 by:



Shaka Kariuki
Board Chairman



CPA Ambrose Ageng'a
Head of Finance
ICPAK No.3461



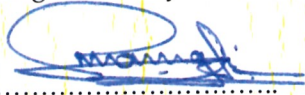
Dr. Adano W. Roba
Ag. Director General

STATEMENT OF FINANCIAL POSITION AS AT 30TH JUNE 2023

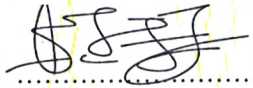
	Notes	2022/2023 Kshs	2021/2022 Kshs
Assets			
Current Assets			
Cash and Cash equivalents	19	571,984,680	241,574,879
Receivables from Exchange Transactions	20	22,085,226	206,246,469
Inventories	21	1,263,109	2,485,752
Total Current Assets		595,333,015	450,307,101
Non-Current Assets			
Property, Plant and Equipment	22	49,593,274	51,949,381
Intangible Assets	23	28,625,815	36,297,754
Receivables from Exchange Transactions	20	185,952,015	20,849,813
Securities & Deposits	24	153,042,328	137,234,562
Total Non- Current Assets		417,213,432	246,331,510
Total Assets		1,012,546,448	696,638,611
Liabilities			
Current Liabilities			
Trade and Other Payables	25	30,390,904	18,116,075
Current Provisions	26	7,102,033	6,206,400
Deferred Income	27	46,485,673	7,120,851
Employee Benefit Obligation	28	37,274,640	40,618,826
Surplus payable to National Treasury	32	13,112,202	-
Total Current Liabilities		134,365,452	72,062,152
Non-Current Liabilities			
Deferred Income	27	349,108,483	73,602,344
Non-Current Employee Benefit Obligation	28	6,395,974	29,754,490
Total Non- Current Liabilities		355,504,458	103,356,834
Total Liabilities		489,869,910	175,418,986
Net Assets		522,676,537	521,219,625
Reserves	29	416,886,181	416,886,181
Accumulated Surplus	30	52,408,537	50,951,625
Capital Fund	31	53,381,820	53,381,820
Total Net Assets		522,676,538	521,219,625
Total Net Assets and Liabilities		1,012,546,448	696,638,611

Competition Authority of Kenya
Annual Report and Financial Statements For the year ended 30th June, 2023

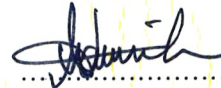
The financial statements set out on pages 90 to 96 were signed on behalf of the Board Directors on 17th,
August 2023 by:



.....
Shaka Kariuki
Board Chairman



.....
CPA Ambrose Ageng'a
Head of Finance
ICPAK No.3461



.....
Dr. Adano W. Roba
Ag. Director General

STATEMENT OF CHANGES IN NET ASSETS FOR THE YEAR ENDED 30TH JUNE 2023

	Kshs	Kshs	Kshs	Kshs
	General Reserve	Accumulated Surplus	Capital Fund	Total Fund
As at July 1, 2021	416,886,182	58,630,521	53,381,820	528,898,523
(Deficit) for the year	-	(7,678,896)	-	(7,678,896)
As at June 30, 2022	416,886,182	50,951,625	53,381,820	521,219,627
As at July 1, 2022	416,886,182	50,951,625	53,381,820	521,219,627
Surplus for the year	-	1,456,911	-	1,456,911
As at June 30, 2023	416,886,182	52,408,536	53,381,820	522,676,538

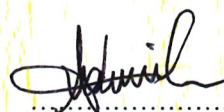
The financial statements set out on pages 90 to 96 were signed on behalf of the Board of Directors on 17th, August 2023 by:



Shaka Kariuki
Board Chairman



CPA Ambrose Ageng'a
Head of Finance
ICPAK No.3461



Dr. Adano W. Roba
Ag. Director General

STATEMENT OF CASHFLOWS FOR THE YEAR ENDED 30TH JUNE 2023

	Notes	2022/2023 Kshs	2021/2022 Kshs
Cash flows from operating activities			
Receipts			
Transfers from other governments entities	6	346,229,039	330,887,523
Levies, fines, and penalties	7	15,652,071	12,721,429
Rendering of services	8	158,710,781	120,461,168
Finance income	9	14,717,953	17,974,137
Other income	10	1,445,155	1,689,745
Total receipts		536,754,999	483,734,002
Payments			
Use of goods and services	11	96,546,994	78,639,379
Employee costs	12	281,735,106	275,627,985
Board Expenses	13	15,996,436	11,341,337
Policy, Risk, Competition & Consumer Protection Expenses	15	87,371,640	76,981,962
Repairs and maintenance	16	21,786,015	20,282,580
Contracted services	17	9,129,308	4,631,403
Total payments		512,565,499	467,504,646
Net cash flows from/(used in) operating activities	33	342,387,386	124,266,070
Cash flows from investing activities			
Purchase of PPE and Intangible assets	22	(12,675,740)	(21,921,361)
Proceeds from sale of PPE	18	698,155	92,232
Net cash flows from/(used in) investing activities		(11,977,586)	(21,829,129)
Cash flows from financing activities			
Surplus Paid to National Treasury		-	-
Net cash flows from financing Activities		-	-
Net increase/(decrease) in cash & Cash equivalents		330,409,800	102,436,941
Cash and cash equivalents at 1 July	19	241,574,880	139,137,939
Cash and cash equivalents at 30 June	19	571,984,680	241,574,880

STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS FOR THE ENDED 30TH JUNE 2023

	Original budget		Adjustments		Final budget		Actual on comparable basis		Performance difference		% of utilization
	Kshs	a	Kshs	b	Kshs	c=(a+b)	Kshs	d	Kshs	e=(c-d)	
Revenue											
Transfers from Other Governments entities	286,100,000		50,415,000		336,515,000		336,100,000		(415,000)		100%
Levies, Fines and Penalties	50,000,000		-		50,000,000		15,652,071		(34,347,929)		31%
Rendering of Services	130,000,000		-		130,000,000		158,710,781		28,710,781		122%
Finance Income	7,000,000		-		7,000,000		14,717,953		7,752,953		211%
Other Income	3,000,000		-		3,000,000		1,445,155		(1,589,845)		47%
Total Income	476,100,000		50,415,000		526,515,000		526,625,960		110,960		
Expenses											
Use of Goods and Services	82,280,000		14,284,000		96,564,000		96,546,994		17,006		100%
Employee costs	292,388,000		-		292,388,000		281,735,106		10,652,894		96%
Board Expenses	10,000,000		6,000,000		16,000,000		15,996,436		3,564		100%
Depreciation & Amortization Expense	-		-		-		21,013,794		(21,013,794)		0%
Policy, Risk, Competition & Consumer Protection Expenses	55,000,000		34,351,000		89,351,000		87,371,640		1,979,360		98%
Repairs and Maintenance	25,636,000		(3,100,000)		22,536,000		21,786,015		749,985		97%
Contracted Services	10,796,000		(1,120,000)		9,676,000		9,129,308		546,692		94%
Total Expenditure	476,100,000		50,415,000		526,515,000		533,579,293		(7,064,293)		
Surplus for the period							(6,953,333)				
Capital Expenditure	30,000,000		310,000,000		340,000,000		12,675,740		327,324,260		3%



Notes:

- i. Other than the differed capital income recognized in the statement of financial performance and actual payments for the purchase of assets, there are no reconciling items to warrant a reconciliation between surplus as per statements of financial performance and comparison of budget and actual amounts.
- ii. An explanation of differences between actual and budgeted amounts (10% over/ under) have been provided in detail under note 39 as required by IPSAS 24.14

NOTES TO THE FINANCIAL STATEMENTS

1. General Information

Competition Authority of Kenya is established by and derives its authority and accountability from Competition Act No. 12 of 2010. The Entity is wholly owned by the Government of Kenya and is domiciled in Kenya. The Entity's principal activity is to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct.

2. Statement of Compliance and Basis of Preparation

The financial statements have been prepared on a historical cost basis except for the measurement at re-valued amounts of certain items of property, plant and equipment, marketable securities and financial instruments at fair value, impaired assets at their estimated recoverable amounts and actuarially determined liabilities at their present value. The preparation of financial statements in conformity with International Public Sector Accounting Standards (IPSAS) allows the use of estimates and assumptions. It also requires management to exercise judgement in the process of applying the Entity's accounting policies. The areas involving a higher degree of judgement or complexity, or where assumptions and estimates are significant to the financial statements, are disclosed in Note 5 of these financial statements.

The financial statements have been prepared and presented in Kenya Shillings, which is the functional and reporting currency of the Entity. The financial statements have been prepared in accordance with the PFM Act, the State Corporations Act (include any other applicable legislation), and International Public Sector Accounting Standards (IPSAS). The accounting policies adopted have been consistently applied to all the years presented.

3. Adoption of new and revised standards

a) New and amended standards and interpretations in issue effective in the year ended 30th June, 2023

The Authority did not early adopt any new or amended standards in the year ended 30th June, 2023.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

While amendments to IPSAS 13, IPSAS 21 and IPSAS 26 and IPSAS 17& 33 removing the transitional provisions have no impact of note to the Authority's financial Statements given the Authority's dealings does not ordinarily result in a significant portion of cash generating assets and the Authority is not a first time IPSAS adopter.

b) New and amended standards and interpretations in issue but not yet effective in the year ended 30th June, 2023

IPSAS 41 which became effective as from 1st January 2023 outlines the requirements for recognition and measurements of financial assets, financial liabilities and some contracts to buy or sell non-financial items. Financial instruments are initially recognized when the Authority becomes a party to the contractual provisions of the instruments and are classified into various categories depending on the type of the instrument. The basis of subsequent measurement is either amortized cost or fair value depending on the categorisation of the particular instrument.

However, adoption and application of IPSAS 41 had no significant qualitative and or quantitative impact on the Authority's financial statements for the year ended 30th June, 2023 given the reliance on direct government funding through exchequer to fund its operation. Financial instruments are not projected to form a significant part of the Authorities assets in the foreseeable future.

A summary of the significant accounting policies, which have been consistently applied in the preparation of these annual financial statements, are disclosed below.

c) Early adoption of standards

The Authority did not early adopt any new or amended standards in the financial year.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

4. Summary of Significant Accounting Policies

a) Revenue Recognition

i) Revenue from non-exchange transactions

Fees, taxes and fines

The Entity recognizes revenues from fees, taxes and fines when the event occurs and the 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 Entity and the 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 Entity and can be measured reliably. To the extent that there is a related condition attached that would give rise to a liability to repay the amount, the amount is recorded in the statement of financial position and realised in the statement of financial performance over the useful life of the assets that has been acquired using such funds.

ii) Revenue from exchange transactions

Merger filling fees

This is an amount payable to the Authority by merging parties when filing for a merger in exchange for the Authority considering the application and granting approval with or without conditions as the case may be. The amount payable is graduated from **Ksh.1M-Ksh.4M** for turnover or asset base from **Ksh.1B-Ksh.50B** respectively whichever is higher.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

The Authority recognizes revenue from local merger filing fees 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 outcome cannot be measured reliably, revenue is recognized only to the extent that the expenses incurred are recoverable. The Authority's share of the Merger filing fees from COMESA Competition Commission is recognized when received.

b) Budget information

The Authority is typically subject to budgetary limits in the form of appropriations or budget authorisations, which is given effect through authorising legislation. Public Finance Management Act No.18 of 2012 requires public entities to include in their reports information on whether resources were obtained and used in accordance with the legally adopted budget.

The original budget for FY 2022/23 was approved by the National Treasury on 30th June, 2022. Subsequent revisions or additional/reduced appropriations were made to the approved budget in accordance with specific approvals from the Authority's board.

The Entity's budget is prepared on a different basis to the actual income and expenditure disclosed in the financial statements. The financial statements are prepared on accrual basis using a classification based on the nature of expenses in the statement of financial performance, whereas the budget is prepared on a cash basis. The amounts in the financial statements were recast from the accrual basis to the cash basis and reclassified by presentation to be on the same basis as the approved budget.

A comparison of budget and actual amounts, prepared on a comparable basis to the approved budget, is then presented in the statement of comparison of budget and actual amounts. In addition to the basis difference, adjustments to amounts in the financial statements are also made for differences in the formats and classification schemes adopted for the presentation of the financial statements and the approved budget.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

A statement to reconcile the actual amounts on a comparable basis included in the statement of comparison of budget and actual amounts and the actuals as per the statement of financial performance has been presented under note 39 of these financial statements.

c) Property Plant and equipment

The cost of an item of property, plant and equipment is recognized as an asset when;

- It is probable that future economic benefits or service potential associated with the item will flow to the Authority; and
- The cost can be measured reliably.

All property, plant and equipment are stated at cost 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.

The useful lives of items of property, plant and equipment have been assessed as follows:

Item	Depreciation Method	Average Useful Life
Furniture and fixtures	Reducing balance	8 Years
Motor Vehicles	Reducing balance	4 Years
Office equipment	Reducing balance	8 Years
IT equipment		
Computer equipment	Reducing balance	3 Years

The depreciable amount of an asset is allocated on a systematic basis over its useful life. The Authority assesses at each reporting date whether there is any indication that the Authority’s expectation about the residual value and the useful life of an asset have changed since the preceding reporting date. If any such indication exists, the Authority revises the expected useful life and/or residual value accordingly.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

The change is accounted for as a change in an accounting estimate. The depreciation charge for each period is recognized in surplus or deficit. Items of property, plant and equipment are derecognized when disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

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

d) Leases

The Authority has a running operating lease agreement with the CBK Pension Towers for the provision of the office block that houses its Headquarters. Obligations arising out of the operating lease are recognised as an expense on a straight line basis over the lease term. The difference between the amounts recognized as an expense in the Statement of Financial Performance and the contractual payments are recognised as an operating lease liability or asset as appropriate.

e) Intangible Assets

An intangible asset is recognized as an asset when;

- It is probable that future economic benefits or service potential associated with the item will flow to the Authority; and
- The cost or fair value can be measured reliably.

Intangible assets are carried at cost less any accumulated amortisation and any impairment losses. The cost of intangible assets acquired in a non-exchange transaction is their fair value at the date of the exchange. The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date.

The useful life of the intangible assets is assessed as either finite or indefinite. Reassessing the useful life of an intangible asset with finite useful life after it was classified as infinite is an indicator that the asset may have been impaired. As a result, the asset is tested for impairment and the remaining carrying amount is amortised over its useful life. Intangible assets are acquired.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

Amortisation is provided to write down the intangible assets, on a reducing balance basis, to their residual values as follows:

Item	Depreciation Method	Average Useful Life
Computer software	Reducing balance	4 Years

f) Inventories

Inventories are initially measured at cost except where inventories are acquired through a non-exchange transaction, then their cost are the fair value as at the date of acquisition. Inventories are recognized as an expense when deployed for utilization or consumption in the ordinary course of operations of the Authority.

g) Provisions

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.

The amount of the provision is the best estimate of the expenditure expected to be required to settle the obligation at the reporting date. 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.

Provisions are reviewed at each reporting date and are adjusted to reflect the current best estimate and are reversed if it is no longer probable that an outflow of economic resources embodying economic benefits or service potential will be required, to settle the obligation. The details of the provisions made in preparing these Financial Statements are disclosed in note 26.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

h) Contingent liabilities

The Entity 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.

i) 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 Entity 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.

j) Nature and purpose of reserves

The Authority creates and maintains reserves in terms of specific requirements. As at 30th June, 2023, the Authority had accumulated reserves of Ksh. 53,135,494 consisting of surpluses arising from the excess of income over expenses in the Statement of Financial performance.

k) Changes in Accounting policies and estimates

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.

l) Employee Benefits

The Authority operates a retirement benefit scheme for all its permanent and pensionable employees. Further an amount equivalent to 31% of basic salary has been set aside as gratuity for all employees on contract.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

The provisions for employee entitlements to salaries and annual leave represent the amount which the Authority has a present obligation to pay as a result of employees' services provided for at the reporting date. The contribution towards employee pension scheme and staff gratuity for employees on contract are recognized in the statement of financial performance in the year in which the employees rendered their services to the Authority.

m) Foreign Currency Transactions

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.

n) Financial Assets and Liabilities

The Authority recognizes financial assets or liability in the statement of financial position only when it becomes a party to the contract giving rise to the asset or liability. On initial recognition, the asset or liability is measured using the fair value model. However, where the effect of discounting is immaterial, as is often the case due to the nature of Authority's operations, short term payables and receivables are measured at the original invoice amount. Subsequent recognition is based on the amortized cost model. The Authority derecognizes a financial asset/liability when the Authority's rights/obligations under the contracts creating a financial liability or asset expires or the Authority transfers its rights/obligations to a third party. Any residual right or obligation under such contracts is recognized as a separate asset/liability.

o) Related Parties

The Authority regards a related party as a person or an entity with the ability to exert control individually or jointly, or to exercise significant influence over the Authority, or vice versa.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

Members of key management and their close family members are regarded as related parties and comprise the Director General, members of the Authority's board and Managers. Other related parties include; The Competition tribunal and the parent Ministry; The National Treasury. Details of transactions with related parties are as disclosed in note 35.

p) 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. The details of the Authority's cash balances are shown in note 19.

q) Comparative Figures

Where necessary comparative figures for the previous financial year have been amended or reconfigured to conform to the required changes in presentation.

r) Subsequent Events

Events after the reporting date are those events, both favourable and unfavourable, that occur between the reporting date and the date when the financial statements are authorised for issue. Subsequent events can be classified into two types:

- those that provide evidence of conditions that existed at the reporting date (adjusting events after the reporting date); and
- those that are indicative of conditions that arose after the reporting date (non-adjusting events)

The Authority will adjust the amounts recognised in the financial statements to reflect adjusting events after the reporting date once the event occurred. The Authority will disclose the nature of the event and an estimate of its financial effects or a statement that such estimate cannot be made in respect of all material non-adjusting events, where non-disclosure could influence the economic decisions of users taken on the basis of the financial statements.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

There have been no events subsequent to the financial year end with a significant impact on the financial statements for the year ended June 30, 2023.

5. Significant judgements and sources of estimation uncertainty

In preparing annual financial statements in conformity with IPSAS management is required to make judgments, estimates and assumptions that affect the amounts of revenues, expenses, assets and liabilities represented in the annual financial statements and related disclosures 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. Significant judgements, estimates and assumptions include;

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 as required by 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:

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

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

Depreciation and amortisation

The Authority's management determines the estimated useful lives and related depreciation charges on the basis of the industry norm and increases the depreciation charge where useful lives are less than previously estimated.

6. a) Transfers from Ministries, Departments and Agencies

	Amount recognized in Statement of financial performance	Amount in deferred of deferred Income	Amount under recognized in capital fund	Total grant income during the year	2022/2023	2021/2022
	Ksh.	Ksh.	Ksh.	Ksh.	Ksh.	Ksh.
The National Treasury	337,229,039	314,870,961	-	652,100,000.00	327,887,523	
Total	337,229,039	314,870,961	-	652,100,000.00	327,887,523	

All transfers recorded and recognized in the Statement of Financial performance have been confirmed and reconciled with those recorded by the transferring Ministry-The National Treasury.

b) Transfers from Other Government Entities

Description	2022/2023	2021/2022
	Ksh.	Ksh.
Unconditional grants		
Operational grant	-	-
Total Unconditional Grants	-	-
Conditional grants		
Regional Integration Implementation Program (RIIP)	9,000,000	3,000,000
Total government grants and subsidies	9,000,000	3,000,000

The Authority is one of the implementing agencies of the Regional Integration Implementation Program under the COMESA Competition Commission Integration Program. In the FY 2022/2023, the Authority received Ksh. 9M (FY 2021/22 - Kshs.3M) towards this program.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

All agencies which are beneficiaries of the fund are required to report on the progress and impact of the expenditure on the program to guarantee continued funding.

7. Fees, Fines & Penalties

Fees, Fines and penalties are levied against companies found to infringe the Competition law by engaging in unfair trade practices. This includes consummating mergers without approval by the Authority as well as infringements of consumer rights/welfare. Fines and penalties levied during the year were Kshs 15,652,071. (FY 2021/22 - Kshs.12,721,429)

8. Rendering of services

Rendering of services fees relates to revenue generated from merger cases filed by merging/acquiring Companies both locally and regionally with the COMESA Competition Commission. The Authority's share of the COMESA filing fees is arrived at using a predetermined formula agreed upon by and applicable to all the member Countries and is recognized when received. The total received in respect of each category is as shown below;

Description	2022/2023	2021/2022
	Ksh.	Ksh.
Merger filing fees-Local	39,000,000	34,077,158
Merger filing fees-COMESA	119,710,781	86,384,009
Total	158,710,781	120,461,167

9. Finance Income

Descriptions	2022/2023	2021/2022
	Ksh.	Ksh.
Interest from fixed deposits	14,717,953	17,974,137
Total	14,717,953	17,974,137

This is interest from investments of surplus cash mainly from gratuity, car and mortgage accounts in short-term fixed deposits to generate AIA.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

10. Other Income

Description	2022/2023	2021/2022
	Ksh.	Ksh.
Training fess	1,268,600	1,689,745
Insurance compensation received	176,555	-
Total	1,445,155	1,689,745

Other income relates to training fees charged on law and economic regulation course which the Authority conducts annually. Participants pay a fee to meet the running costs of the course.

11. Use of Goods & Services

	2022/2023	2021/2022
	Ksh.	Ksh.
Insurance of Assets	3,194,648	1,129,366
Staff Welfare	2,520,935	2,031,907
Communication Costs	5,960,003	5,877,577
Domestic Travel Subsistence Costs	4,648,202	6,898,236
Foreign Travel Subsistence Costs	2,260,045	3,948,434
Printing and Advertising Costs	2,534,336	2,018,441
Rent and Rates	45,498,861	36,860,304
Training Expenses	19,923,807	9,960,788
Official Entertainment and Conference Facilities	4,514,087	4,943,422
General Office Supplies	1,953,918	2,193,934
Motor Vehicle Expenses	1,775,402	1,109,389
Subscription to Professional Bodies	1,351,326	1,233,792
Bank Charges	411,424	433,788
Total	96,546,994	78,639,379

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

12. Employee Costs

	2022/2023	2021/2022
	Ksh.	Ksh.
Salaries and Allowances	221,274,055	214,689,225
Contribution to Pensions	17,992,719	17,270,264
Staff Gratuity	20,701,852	20,615,827
Staff Medical Insurance	21,566,846	23,203,569
Decrease in Provision for Staff Leave	199,633	(150,900)
Total	281,735,106	275,627,985

13. Board Expenses

	2022/2023	2021/2022
	Ksh.	Ksh.
Honoraria	938,249	812,903
Sitting & Lunch Allowances	3,737,985	1,845,920
Board Induction & Travel	3,106,440	2,923,881
Telephone	86,000	199,452
Insurance	234,156	37,346
Local Travel Costs	4,248,962	3,513,577
Conference Facilities	3,644,644	2,008,258
Total	15,996,436	11,341,337

14. Depreciation and Amortization

	2022/2023	2021/2022
	Ksh.	Ksh.
Property, Plant & Equipment	11,471,855	11,818,953
Intangible Assets	9,541,939	12,099,251
Total	21,013,794	23,918,205

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

15. Policy, Risk, Competition & Consumer Protection Expenses

	2022/2023	2021/2022
	Ksh.	Ksh.
Awareness & Publicity Campaigns	4,308,959	3,893,660
Policy, Research & Market Enquiries	40,945,646	34,343,764
Regulation of Mergers & Acquisitions	7,558,699	3,836,519
CPD Investigations and Enforcement	1,047,563	16,191,315
Enforcement of Restrictive Trade Practices	15,216,222	5,872,294
COMESA-RIIP	9,443,026	2,872,307
Risk and Quality Assurance	6,304,475	7,258,103
Buyer Power	2,374,851	2,714,000
Development of open gauge system	172,200	-
Total	87,371,640	76,981,962

16. Repairs and Maintenance

	2022/2023	2021/2022
	Ksh.	Ksh.
Motor Vehicles	992,310	1,057,750
Property, Plant & Equipment	20,793,705	19,224,830
Total	21,786,015	20,282,580

17. Contracted Services

	2022/2023	2021/2022
	Ksh.	Ksh.
Consultancy	1,999,070	1,082,500
Hire of Security	837,520	793,440
Cleaning Expenses	2,058,800	1,847,419
Legal Services	3,537,918	212,044
Audit Fees	696,000	696,000
Total	9,129,308	4,631,403

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

18. Gain (Loss) on Disposal of Assets

The Authority disposed assets with acquisition cost of Ksh 12,099,281 and accumulated depreciation of Ksh 10,409,289. Cash received from received from the disposal of assets amounted to Ksh 698,155. This translated to a loss on disposal of assets of Ksh 991,837 (FY 2021/22 - Gain of Ksh 9,953).

19. Cash and Cash Equivalents

	2022/2023	2021/2022
	Ksh.	Ksh.
Current Account	547,631,375	149,343,441
Staff Gratuity Account	10,902,638	83,145,729
NBK-Dollar Account	13,450,668	9,085,710
Total	571,984,680	241,574,880

Detailed Analysis of the Cash and Cash Equivalents

Financial Institution	Account Number	2022/2023	2021/2022
		Ksh.	Ksh.
a) Current Account			
Kenya Commercial Bank	1136286179	69,623,577	44,911,154
Family Bank	068000026095	478,007,798	3,324,937
Call Deposits	-	-	101,107,350
Sub- Total		547,631,375	149,343,441
b) Gratuity			
Kenya Commercial Bank	1143496191	10,902,638	8,145,729
Fixed Deposit	-	-	75,000,000
Sub- Total-		10,902,638	83,145,729
c) Dollar Account			
National Bank of Kenya	02060204765100	13,450,668	9,085,710
Sub- Total		13,450,668	9,085,710
Grand Total		571,984,680	241,574,880

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

20. Receivables from Exchange Transactions

(a) Receivables from Exchange Transactions (Current)

	2022/2023	2021/2022
	Ksh.	Ksh.
Staff Travel imprest	1,624,380	7,500,823
Staff Car Loan Scheme Debtors	1,949,083	5,348,511
Staff Car Mortgage Loan Scheme Debtors	12,717,730	205,275,955
Prepaid Rent	-	3,007,325
Prepaid Insurance	5,794,034	5,963,667
Total	22,085,226	227,096,282

(b) Receivables from Exchange Transactions (Long-term)

	2022/2023	2021/2022
	Ksh.	Ksh.
Staff Car Loan Scheme Debtors	2,987,621	-
Staff Car Mortgage Loan Scheme Debtors	182,964,394	-
Total	185,952,015	-

21. Inventories

	2022/2023	2021/2022
	Ksh.	Ksh.
Consumable stores	1,263,109	2,485,752

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

22. Property, Plant and Equipment

	Motor Vehicles	Office Equipment	Computer Equipment	Furniture & fittings	Total
Depreciation rate	25.00%	12.50%	33.33%	12.50%	
Cost					
As at 1st July 2021	44,023,707	17,855,203	51,156,581	26,715,245	139,750,735
Additions	-	9,685,006	1,530,690	8,725,665	19,941,361
Disposals	-	-	(325,700)	-	(325,700)
As at 30th June 2022	44,023,707	27,540,209	52,361,571	35,440,910	159,366,397
As at July 2022	44,023,707	27,540,209	52,361,571	35,440,910	159,366,397
Additions	-	4,395,740	6,410,000	-	10,805,740
Disposals	(3,900,000)	(12,000)	(7,056,731)	(1,130,550)	(12,099,281)
As at 30th June 2023	40,123,707	31,923,949	51,714,840	34,310,360	158,072,856
Accumulated Depreciation					
As at 1st July 2021	30,599,924	7,465,803	42,187,614	15,588,142	95,841,483
Charge for the year	3,355,946	2,509,300	3,472,112	2,481,596	11,818,953
Disposals	-	-	(243,421)	-	(243,421)
As at 30th June 2022	33,955,870	9,975,103	45,416,305	18,069,738	107,417,015
As at July 2022	33,955,870	9,975,103	45,416,305	18,069,738	107,417,015
Charge for the year	2,419,349	2,744,590	4,201,740	2,106,175	11,471,855
Disposals	(3,509,560)	(7,877)	(6,283,073)	(608,780)	(10,409,289)
As at 30th June 2023	32,865,660	12,711,817	43,334,973	19,567,133	108,479,582
Net Book Value					
As at 30th June 2022	10,067,837	17,565,106	6,945,266	17,371,172	51,949,381
As at 30th June 2023	7,258,047	19,212,132	8,379,867	14,743,227	49,593,274

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

23. Intangible Assets

	2022/2023	2021/2022
	Ksh.	Ksh.
Cost		
At the beginning of the year	106,187,937	104,207,937
Additions	1,870,000	1,980,000
Disposals	-	-
At end of the year	108,057,937	106,187,937
Accumulated Amortization		
At the beginning of the year	69,890,183	57,790,932
Amortization	9,541,939	12,099,251
Disposals	-	-
At end of the year	79,432,122	69,890,183
Net Book Value	28,625,815	36,297,754

It is the policy of the Authority to amortize all Intangible Assets at the rate of 25% on a reducing balance basis.

24. Securities & Deposits

	2022/2023	2021/2022
	Ksh.	Ksh.
NBK-Staff Car Loan Scheme Account	42,195,553	40,640,151
ABSA-Staff Mortgage Scheme Account	76,280,137	65,006,376
KCB-Staff Mortgage	253,458	231,970
KCB-Staff Mortgage Call Account	34,313,179	31,356,066
Total	153,042,328	137,234,562

These are bank balances as at 30th June, 2023 in National Bank of Kenya, Kenya Commercial Bank and Absa Bank, which are placed as security against staff car and mortgage advances to support concessionary interest rate loans to staff.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

The contract with the banks stipulate that the cash balances are available to the Authority on call or upon termination by either party in which case the outstanding loans revert to commercial terms enforceable between the lender and the borrower. All risks related to the scheme are borne by the banks except where the Authority is found directly culpable.

25. Trade and other Payables

	2022/2023	2021/2022
	Ksh.	Ksh.
Trade Payables	18,833,550	3,193,733
Staff Claims	432,227	-
Withholding Taxes	36,450	135,306
Withholding VAT	319,872	278,336
Withholding Rent	415,705	-
Unremitted Payroll Deductions	5,255,854	5,049,439
Deferred Lease Liability	5,097,245	5,097,245
Deferred Income	-	4,362,015
Total	30,390,904	18,116,075

26. Current Provisions

	Staff Leave	Audit Fees	Total
	Ksh.	Ksh.	Ksh.
Provisions as at 1st July, 2022	5,510,400	696,000	6,206,400
Additional provisions	199,633	696,000	895,633
Provision utilized during the year	-	-	-
Provisions as at 30th June, 2023	5,710,033	1,392,000	7,102,033

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

27. Deferred Capital Income

	2022/2023	2021/2022
	Ksh.	Ksh.
As at 1 st July	80,723,195	70,985,718
Additions during the year	325,000,000	30,000,000
Amortized during the year	(10,129,039)	(20,262,523)
As at 30 th June	395,594,156	80,723,195
Current Portion	46,485,673	7,120,851
Non-Current Portion	349,108,483	73,602,344

Development/capital income, Ksh. 10,129,039 was recognized in the statement of financial position and amortised in the statement of financial performance over the useful life of the related asset.

Current deferred capital income, Ksh. 46,485,673 relating to long-term capital assets acquired will be realized in the statement of financial performance within the next one year while non-current deferred capital grant, Ksh. 349,108,483 will be realized in the subsequent years.

28. Employee Benefit Obligation

The Authority contributes to the statutory National Social Security Fund (NSSF) which is a defined contribution scheme registered under the National Social Security Act. The Authority's obligation under the scheme is limited to specific contributions legislated from time to time.

Other than NSSF, the Authority also has a registered defined contribution scheme for all its employees on permanent and pensionable employment. The Scheme is administered by a Board of Trustees which is a mix of sponsor appointed and member elected trustees. Employees contribute 10% while the Authority contributes 20% of basic salary. Employer contributions are recognised as expenses in the statement of financial performance within the period they are incurred.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

In addition the statutory NSSF and the defined contribution scheme, the Authority also sets aside as gratuity for all employees on contract gratuity pay at the rate of 31% of basic pay per employee per month payable to the employees upon expiry of the contract and or during separation. The amount contributed is final obligation and is recognized in the statement of financial performance in the year contributed.

Staff Gratuity

	2022/2023	2021/2022
	Ksh.	Ksh.
As at 1 st July	70,373,316	49,757,489
Contributions during the year	20,701,852	20,615,827
Payments during the year	(47,404,553)	-
As at 30th June	43,670,614	70,373,316
Current Portion	37,274,640	40,618,826
Non-Current Portion	6,395,974	29,754,490

29. General Reserve

The general reserve fund of Ksh. 416,886,181 (FY 2021/22-Kshs. 416,886,181) represents an amount placed as security with Absa, KCB and National banks of Kenya to secure staff housing mortgage and car loans at concessionary rates.

30. Accumulated Surplus

Accumulated surpluses, Ksh. 52,408,537 (FY 2021/22-Kshs. 50,951,625) arose from 10% annual surplus retained by the Authority after remitting 90% to consolidated fund as required under regulation 219 of the Public Finance Management Act (national government) regulation 2015.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

31. Capital Fund

The Authority inherited a number of assets comprising mainly of furniture, computers, cash balances and payments due to suppliers with a net assets value of Ksh. 52,932,150 from the then Department of Monopolies and Pricing at the National Treasury.

In addition, in the financial year 2014/2015, the National Treasury contributed three computers with an invoice value of Ksh.449,670 for use by the Authority in the Regional Integration Implementation Programme. The Authority was not expected to pay for these assets.

32. Surplus Remission

The Authority, being a regulatory agency is required to submit 90% of reported surplus to the consolidated fund as per the provisions of Section 219 (2) of the Public Financial Management Act (national government) regulations 2015. In the year under review, the Authority will remit Kshs. 13,112,202 to the Exchequer (FY 2021/22 - Nil).

	2022/2023	2021/2022
	Ksh.	Ksh.
Surplus for the period	14,569,114	(7,678,896)
Less: Allowable deductions by NT	1,456,911	-
90% Computation (Included in Statement of Financial Performance)	13,112,202	-
Total	14,569,114	-

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

33. Cash Generated from Operations

	2022/2023	2021/2022
	Ksh.	Ksh.
Surplus for the year	14,569,114	(7,678,896)
Adjusted for :		
Depreciation	21,013,794	23,918,205
Loss (Profit) on disposal of non-current assets	991,837	(9,953)
Working Capital adjustments		
(Increase)/Decrease in Receivables from Exchange Transactions	19,059,041	(57,538,457)
(Increase)/Decrease in Inventories	1,222,643	1,716,299
(Increase)/Decrease in Securities & Deposits	(15,807,765)	133,921,260
Increase/(Decrease) in Trade and Other Payables	12,274,829	(264,791)
Increase/(Decrease) in Current Provisions	895,633	(150,900)
Increase/(Decrease) Employee Benefit Obligation	(26,702,701)	20,615,827
Increase/(Decrease) Deferred Capital Grant	314,870,961	9,737,477
Net cash flow from operating activities	342,387,386	124,266,070

34. Financial Risk Management

The Authority has a policy and framework on risk management. The Strategic risk register is reviewed quarterly by management. The Authority's activities expose it to interest, credit and liquidity risks.

Credit risks

Credit Risk refers to the risk that a counterparty to a financial instrument will default on its contractual obligation resulting in financial loss to the Authority. Credit Risk arises from bank balances, receivables and amounts due from related parties. Although this risk is unlikely to occur in the short term, it is mitigated as follows:

- Cash and short-term deposits are placed with well-established financial institutions of high quality and credit standing and also approved by the National Treasury;
- Funds are invested in short-term facilities; and
- The Authority does not raise receivables in its ordinary course of business.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

Credit risk with respect to accounts receivable is limited due to the nature of the Authority's business and its reliance on government grant as the main source of funding.

The Authority's exposure to credit risk at the end of the financial year is best represented by;

	2022/2023	2021/2022
	Ksh.	Ksh.
Cash at bank	571,984,680	241,574,879
Security and deposits	153,042,328	137,234,562
Staff travel imprest	1,624,380	7,500,823
Staff car loan debtors	4,936,704	5,348,511
Staff mortgage loan debtors	195,682,124	205,275,955
Prepaid rent	-	3,007,325
Prepaid insurance	5,794,034	5,963,667
Total	933,064,248	605,905,724

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

Liquidity

The Authority's liquidity risk is as a result of funds availability to cover future commitments. The Authority manages liquidity risk by monitoring forecasted cash flows and ensuring that the necessary funds are available to meet any commitments which may arise.

Cash which is not utilized is invested immediately in Treasury bills and call accounts. The amounts that best describes the Authority's exposure to liquidity risk at the end of the financial year is as follows;

At 30th June, 2023	Less than 1 month	Between 1-3 months	Over 5 months	Total
	Ksh.	Ksh.	Ksh.	Ksh.
Trade and other payables	18,833,550	-	-	18,833,550
Taxes	772,027	-	-	772,027
Payroll deductions	5,255,854	-	-	5,255,854
Staff leave provisions	7,102,033	-	-	7,102,033
Total	31,963,465			31,963,465

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

At 30th June, 2022	Less than 1 month	Between 1-3 months	Over 5 months	Total
	Ksh.	Ksh.	Ksh.	Ksh.
Trade and other payables	3,193,733	-	-	3,193,733
Taxes	413,642	-	-	413,642
Payroll deductions	5,049,439	-	-	5,049,439
Staff leave Provisions	6,206,400	-	-	6,206,400
Total	14,863,214			14,863,214

Market risks

Market risk is the risk that the value of an investment will decrease due to changes in market factors. The above stated mitigating factors apply to market risk as well. The Authority has transactional currency exposures. Such exposure arises through purchases of services especially fees for international conferences that are done in currencies other than the local currency and receivables arising mainly from the Authority's share of merger filing fees from COMESA Competition Commission. Invoices denominated in foreign currencies are paid within 7 days from the date of receipt of the invoice and conversion at the time of payment is done using the prevailing exchange rate.

The carrying amount of the Authority's foreign currency denominated monetary assets and monetary liabilities at the end of the reporting period are as follows:

	US \$ dollar	Ksh.
Cash at bank- National Bank of Kenya	95,768	13,450,668

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

35. Related Party Transactions

	2022/2023	2021/2022
	Ksh.	Ksh.
a) Grants from National Government		
i. Exchequer budgetary support	652,100,000	337,625,000
ii. COMESA-Regional Integration Implementation Programme	9,000,000	3,000,000
Total	661,100,000	340,625,000
b) Gifts/donations declared by employees	-	-
c) Key management compensation		
(i) Directors' emoluments	15,996,436	11,341,337
(ii) Compensation to the Director General	20,652,816	9,840,000
(iii) Compensation to key management	111,706,756	75,442,666
Total	148,356,008	96,624,003

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

36. Contingent Assets and Contingent Liabilities

Court cases

No.	Title	Case Summary	Contingent/Liability
1.	HC case No. CT 033/2021 Majid Al Futtaim Hypermarkets Limited vs CAK.	Majid Al Futtaim trading as "Carrefour" has appealed to the Competition Tribunal challenging the Authority's decision delivered against it on 4 th February, 2020. The Tribunal decided in favour of the Authority. The Appellants filed a second Appeal before the High Court.	The Authority is likely to incur legal liability in the sum of Kenya Shillings Seven Hundred and Ninety Thousand (Kshs. 790,000/=) plus suit costs.
2.	CMC Milimani No. E 8140 Gulf African Bank vs Simspur Ltd & Others	Gulf African Bank Limited has instituted a suit against Simspur Limited, Gideon Simiyu Wafula, George Omwakwe Omuyaku and Competition Authority of Kenya. The claim is against Simspur Ltd for failure to owner an undertaking of KSHS 2,468,337.98/=.	The plaintiff has sought general damages against the Authority. The Authority is likely to incur legal liability in the sum of Kenya Shillings One Hundred and Fifty Eight Thousand(Kshs 158,000)

37. Commitments

	2022/2023	2021/2022
	Ksh.	Ksh.
Authorized, contracted and ongoing	238,003,371	-
Authorized but not yet contracted	-	-
Total	238,003,371	-

This relates to the ongoing office partitioning works at our new offices at CBK Pension towers

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

38. Operating Leases-as Leases (expense)

	2022/2023	2021/2022
Minimum lease payments due	Ksh.	Ksh.
Within one year	36,748,800	29,630,663
In second year	36,748,800	25,712,559
Total	73,497,600	55,343,222

Operating lease payments represent rentals payable by the Authority for leased office space. The lease will be reviewed biennially before commencement of 3rd and 5th years. No contingent rent is payable.

39. Explanation of budget variances higher/lower than 10%

a) Fines & penalties

The Authority had budgeted to receive fines & penalties from the results of various cases it was investigating and were at various stages of either completion or negotiations with the parties. However, various outcomes unfavourable to the Authority including notices of appeal against the findings delayed the conclusion of those cases and the expected revenue.

b) Rendering of services

This consists of local and regional merger filing fees from COMESA. During the period under review, the number of merger filed at COMESA increased significantly especially the 1st half of the year. As a result, more merger filing fees was received then budgeted.

c) Finance Income

This consists interest income from unutilised funds mainly from gratuity, car loan and staff mortgage. Since the process acquiring these assets is lengthy, more funds were available during the year for investing in fixed deposits.

d) Other income

This is income from annual training organised by the Authority. This year recorded low uptake of the training.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

e) Capital Expenditure

The Authority had budgeted Kshs 30M, However we only received Kshs. 15M of which Kshs 13M was utilised.

40. Pending Bills

As at the close of the financial year, the Authority did not have any bill which have not been adequately covered by its cash reserves. All the Authority's recorded liabilities as at the end of the year are current and are adequately covered.

41. Events after the reporting date

There have been no material adjusting and non- adjusting events subsequent to the reporting date with a significant impact on the financial statements for the year ended 30th June, 2023.

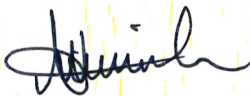
42. Ultimate and holding entity

The Authority is a State Corporation under the Ministry of the National Treasury and Planning. Its ultimate parent is the Government of Kenya.

APPENDIX 1: PROGRESS ON FOLLOW UP OF AUDITOR RECOMMENDATION

The following is the summary of issues raised by the external auditor, and management comments that were provided to the auditor.

Reference No. on the external audit Report	Issue Observations from Auditor	Management comments	Focal Person to resolve the issue (Name and designation)	Status: (Resolved/ Not Resolved)	Time frame: (Put a date when you expect the issue to be resolved)
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Director General

Date... 17th . 08 . 2023

APPENDIX II: INTER-ENTITY TRANSFERS

ENTITY NAME:		COMPETITION AUTHORITY OF KENYA		
Break down of Transfers from the ministry of the National Treasury				
FY 2022/23				
a.	Recurrent Grants	Bank Statement Date	Amount (Ksh.)	FY to which the amounts relate
		29-08-22	69,025,000	2022/23
		13-12-22	69,025,000	2022/23
		23-03-23	69,025,000	2022/23
		31-05-23	51,000,000	2022/23
		27-06-23	69,025,000	2022/23
		Total	327,100,000	
b.	Development Grants	Bank Statement Date	Amount (Ksh.)	FY to which the amounts relate
		28-09-22	7,500,000	2022/23
		29-11-22	7,500,000	2022/23
		Total	15,000,000	
	Grand Total		342,100,000	

The above amounts have been communicated to and reconciled with the Parent Ministry.



Manager, Finance
Competition Authority of Kenya

Sign

