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COMPETITION AUTHORITY OF KENYA



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OF KENYA

Creating efficient markets for consumers

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ANNUAL REPORT

2012/2013



COMPETITION AUTHORITY OF KENYA

Annual Report 2012/2013

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Corporate Information

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NAIROBI, Kenya

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Website: www.cak.go.ke

Email: info@cak.go.ke

Auditors:

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

Bankers

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

This Annual Report of the Competition Authority of Kenya (the Authority) is developed pursuant to section 83 of the Competition Act, No. 12 of 2010 (the Act) and aims at providing information on the activities undertaken by the Authority, and its overall performance, based on its key performance indicators during the Financial Year 2012/2013. The Report, as required under section 83, will be laid before Parliament. In summary, it highlights the activities and progress of the Authority towards achieving its mandate, challenges encountered and the deployed mitigating factors.

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

During the year under review, the Authority's performance indicators were articulated under the Activities Review and Budget Outlook Paper (ARABOP). The indicators were aligned to the national economic agenda particularly geared towards promoting growth and sustainable development. Accordingly, effort was placed on sectors with high impact on livelihood of Kenyans - food and energy. On consumer protection, attention was placed on enhancing level of awareness, among consumers, regarding their own individual rights, roles and obligations under the Act.

The Authority achieved a lot of success in the enforcement arena. Over 65 merger notifications were analyzed and determined on time. In regard to restrictive agreements and practices, 17 cases were investigated and three exemptions considered. The Consumer Affairs Division handled six (6) cases, most of which related to misleading representations.

In order to espouse the interests and concerns of Kenya in matters of competition and consumer protection, regionally and internationally, the Authority participated in a number of conferences and workshops. These workshops were mainly negotiations to develop the East Africa Community Competition Regulations and also COMESA's.

The successes attributable to the Authority under the period under review were not without challenges. The key ones were; the long-process of constituting the Authority's Board, since it involved competitive recruitment, a 1st in the history of Board formation in Kenya, and vetting and approval of the nominees by Parliament; budgetary constraints, and sub optimal staff levels. Nonetheless, the challenges were mitigated against by prioritizing enforcement on high impact sectors.

The Board was fully constituted during the reporting period. Also, the Director-General was recruited competitively and vetted and approved by Parliament. In addition, the Head of Finance and Human Resources were recruited competitively. In order to ensure the Authority is insulated from governance risks, all the substantive Management staff of the Authority were cleared by the specialized Agencies before engagement.

Vision

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

Mission

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

Motto

Creating efficient markets for consumers

Core Values

The guiding principles in the operations of the Authority are:

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

Mandate

As indicated earlier, the Authority is mandated to promote and safeguard competition in the national economy and to protect consumers from unfair and misleading market conduct. This has the objective of enhancing the welfare of the people of Kenya.

The Act applies to all persons including the Government, State Corporations and devolved governments in so far as they engage in trade. The Authority achieves its mandate through the following specific functions: -

- a). Promotion and enforcement of compliance with the Act;
- b). Receiving and investigating complaints from legal or natural persons and Consumer bodies;
- c). Promoting public knowledge, awareness and understanding of the obligations, rights and remedies under the Act and the duties, functions and activities of the Authority;
- d). Promoting the creation of consumer bodies and the establishment of good and proper standards and rules to be followed by such bodies in protecting competition and consumer welfare;
- e). Recognizing consumer bodies duly registered under the appropriate national laws as the proper bodies, in their areas of operation, to represent consumers before the Authority;

- f). Making available to consumers' information and guidelines relating to the obligations of persons under the Act and the rights and remedies available to consumers under the Act;
- g). Carrying out inquiries, studies and research into matters relating to competition and the protection of the interests of consumers;
- h). Studying government policies, procedures and programmes, legislation and proposals for legislation so as to assess their effects on competition and consumer welfare and publicizing the results of such studies;
- i). Investigating impediments to competition, including entry into and exit from markets, in the economy as a whole or in particular sectors and publicise the results of such investigations;
- j). Investigating policies, procedures and programmes of regulatory authorities so as to assess their effects on competition and consumer welfare and publicise the results of such studies;
- k). Participating in deliberations and proceedings of government, government Commissions, regulatory authorities and other bodies in relation to competition and consumer welfare;
- l). Making representations to government, government Commissions, regulatory authorities and other bodies on matters relating to competition and consumer welfare;
- m). Liaising with regulatory bodies and other public bodies in all matters relating to competition and consumer welfare; and
- n). Advising the government on matters relating to competition and consumer welfare.

Corporate Governance

The Authority is aware to the fact that corporate governance is crucial and indispensable to the success of its business. The tools directly guiding the corporate governance of the Authority include:-

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

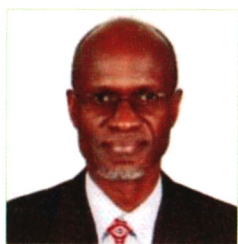
The Authority's Members always exercise independent judgment, though in a collegiate manner, and apply utmost professional competencies for effective governance of the Authority. This is as encapsulated in the Act and the Code of Conduct. In addition, the Members' Charter sets the responsibilities of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

To complement the above, relevant skills development initiatives were undertaken during the year under review all aimed at equipping the Members with skills and knowledge to effectively perform their responsibilities. In particular, all the Members were exposed to competition law and policy management and challenges facing a young competition agency.

The Board of Directors

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

The Membership of the Board during this period was as below:-



Mr. David O. Ong'olo - Chairman

Mr. Ong'olo was appointed Chairman of the Competition Authority with effect from 1st January, 2012 for a period of 3 years.

He has a long standing interest in competition policy and private sector development and has worked on topics spanning institutional development, sectoral regulation and industrial policy analysis. He is particularly interested in bridging the worlds of rigorous industrial sector analysis and practical policy making and implementation.

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

Mr. Francis W. Kariuki - Director - General

Mr. Kariuki was appointed Director - General of the Competition Authority on 9th January, 2013. His main interests are in competition regulation and also Economics of institutions' development. In addition, he has been focusing on impact of budget constraints on Agencies' investigative process and HR policy. He is also well known for his advocacy initiatives, nationally and internationally, geared towards entrenching competition in various sectors of the economy and boosting regional trade. Mr. Kariuki is a founder Member and the current Chairman of the African Competition Forum - *'A Network of African Competition Authorities which seeks to promote the adoption of Competition principles in the implementation of national and regional economic policies of African countries'*.



He is a holder of Master of Science in Economic Regulation and Competition from City University-London; BA-Economics & Business Studies (Kenyatta University) and various Certificates in Strategic Leadership and Corporate Governance.



Ms. Judith A. Guserwa

Ms. Judith Abrahams Guserwa is the Managing Partner of J.A. Guserwa & Company Advocates - a firm specializing in Labour and Commercial Law, a procurement law expert with close to 30 years practice as an advocate of the High Court of Kenya. She holds an LL.B degree and LL.M degree from the University of Nairobi and an MBA in Strategic Management. She is a member of the Chartered Institute of Arbitrators (CI Arb), International Labour

Organization (ILO) consultant in labour and human capital and a Director at the State Corporations Appeals Tribunal.

Judith is also a former member of the Public Procurement Oversight Authority Review Board, Law Society of Kenya Council Member. She previously worked with the Federation of Kenya Employers and Muthoga Gaturu & Company Advocates, before setting up her own practice in 1992. Ms. Guserwa was appointed Member of the Competition Authority on 26th September, 2012 for a period of three (3) years.

Mr. Stephen K. Kiptinness

Mr. Kiptinness was appointed Member of the Competition Authority on 26th September, 2012 for a period of three (3) years. He is a Senior Partner in Kiptinness & Odhiambo Associates - a Technology Media Telecommunications law practice and an Advocate of the High Court of Kenya. He has also been appointed and served on several national and regional committees in ICT law and Competition Law. Mr. Kiptinness also lectures on Cyberspace, E-Commerce, Competition, Telecommunications, Media and Entertainment Law at the University of Nairobi's School of Law.



His previous work experience includes roles such as Head of Regulatory Affairs at Telkom Orange, Senior Legal Officer at the Communications Commission of Kenya, Manager of the Alternative Dispute Resolutions Centre at the Commonwealth Telecommunications Organization in London, and as Legal Assistant at Oraro & Co. Advocates.

Mr. Kiptinness obtained his LL.B degree from the ILS Law College and LL.M from the London School of Economics. He is a member of the Law Society of Kenya and the Institute of Certified Public Secretaries Kenya. He is also a certified patent agent for the Kenya Industrial Property Institute and a Notary Public. His expertise has granted him appointments on several public and private sector boards including the Kenya ICT Board and the Scripture Union National Executive Board.



Canon Charles G. Komu

Canon Gikunju was appointed Member of the Competition Authority on 26th September, 2012 for a period of three (3) years. Canon Komu started his career in the Government service with the Ministry of Works (Purchasing and Supply Department.). He joined the Tea Industry (Kenya Tea Development Authority) in 1980 as a trainee Factory Manager which saw him serve tea farmers in Central Kenya, North Rift, Nyanza and Eastern Regions rising to the

position of Regional operations Manager.

He holds a Bachelor of Science Degree in Human Resources, a Masters in Strategic Management and Diploma in Management and Logistics. He also holds a certificate in advanced Christian Leadership from Haggai Institute of Advanced Christian Leadership from Hawaii - USA. He is a full Member of Kenya Institute of Management and a life Member of Kenya Red Cross.



Ms. Eunice Maranya

Ms. Eunice Maranya is a Business Management and Institutional development specialist with over 15 years of banking experience and 7 years of consulting for large donor, private and public sector organizations. She is the Country Director of the Digital Opportunity Trust, a Canadian NGO that works in the youth and ICT space. She is a former CEO of KARA, a nationally lobby organization for Residents Associations. She has also worked as an independent consultant in several areas in development including DFID, Danida, UNDPSSC unit, USAID, IFAD projects; financial services sector, corporate and the public sector and has also undertaken several scoping and research assignments. She has previously served on the Board of the Communications Commission of Kenya (CCK) and was appointed a Board member of the Competition Authority of Kenya effective 26th September, 2012 for a period of three (3) years.

Eunice holds an MBA from the United States International University (San Diego) and a BSc from the University of Nairobi. She is a member of the Institute of Directors, holds an Auditor SA 8000 Standard: Amana Ltd, Switzerland and is a Lead Auditor ISO 9001:2000: SQML Center, South Africa.

Ms. Susan A. Ayako

Ms. Ayako was appointed Member of the Competition Authority on 26th September, 2012 for a period of three (3) years. She is a Lecturer at the School of Economics of the University of Nairobi. She is an associate Member of the Kenya Institute of Banking.



Ms. Ayako graduated from the University of Nairobi in 1986 and earned a Master's Degree in Economics in 1988 from the same University. She subsequently received training in Monetary Economics and Industrial Organization in Carleton University, Ottawa, Canada.



Mr. Protus Sigei

Alternate to the Cabinet Secretary/ The National Treasury

Mr. Sigei, a Deputy Director of Investments at the National Treasury, has worked in Kenya's public service for over two decades. He holds a B.A (Hons) degree in Economics from the University of Nairobi and a Master of Science from the University of York, U.K.

He was one of the pioneer seven (7) officers selected by the Government of Kenya in 2004 to be trained, at the Boston Institute for Developing Economies, as trainers in Performance Contracting; subsequent to which he helped introduce performance contracting in Kenya's public service.

Mr. Sigei is a member of the Society for Benefit-Cost Analysis, a professional society of academics and practitioners, headquartered at the University of Washington at Seattle, USA.



Mr. Michael Onyancha

Alternate to the Principal Secretary Ministry of East African Affairs, Commerce and Tourism

Mr. Onyancha is currently the Director of Weights and Measures, Ministry of East African Affairs, Commerce and Tourism. He joined Public Service in 1984 as Inspector Trainee in the then Ministry of Commerce and Industry rising through ranks to the current position. He holds BED Hons (Mathematics) and MBA from the University of Nairobi.

Mr. Onyancha also serves as the Country Representative to the International Organization of Legal Metrology (OIML) and is a member of the International Legal Metrology Committee (CIML), Board member of East Africa Standard Committee, Member of the Institute of Trade Standard Administration, Kenya (ITSA).

Ms. Elizabeth Ng'ang'a

Alternate to The Attorney - General

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



Role of the Board

The Members of the Authority are responsible for the overall management of the Authority. Towards this, they are committed to ensuring that the Authority's activities and operations are conducted with integrity and compliance with the law and best practices in corporate governance. The Members are also responsible for drawing up strategies for the long term success of the Authority as well as carrying out the fiduciary duty of monitoring and overseeing the activities of the Management. To actualize the aforementioned, the Members meet regularly to make determinations/decisions, based on formal schedule of matters. These matters include determination of merger applications and other enforcement activities including exemption applications and restrictive trade practices determinations; providing the Strategic direction of the Authority and overseeing the Authority's compliance with statutory and regulatory obligations.

The Chairman is primarily responsible for providing leadership to the Board including Chairing of the Board's meetings. The Chairman also ensures that the Board is supplied with timely and sufficient information to enable it to discharge its duties effectively. The Director - General is the Chief Executive, and is responsible for the day to day management of the Authority.

Board Meetings

The Board meets at least once every quarter or more depending on the exigencies of the business. Members receive adequate notice for meetings and detailed papers on issues to be discussed are transmitted before the meetings. During the year under review, the Board held ten (10) meetings.

To facilitate deeper interrogation of issues presented by the Management, for effective decision making by the full Board, four Standing Committees, have been constituted, and operate within defined Terms of Reference.

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

Technical and Strategy Committee

The Committee is mandated to;

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

The Members are Mr. Stephen Kiptinness (Chairperson), Mr. Francis W. Kariuki (Director - General), Ms. Eunice Maranya, Ms. Susan A. Ayako and Mr. Protus Sigei.

Human Resources Committee

The Committee's mandate is to;

1. Review Human Resource policies and succession planning aspects of the Authority;
2. Review of Human Resources compliance with national legislation; and
3. Organize the structuring and performance evaluation of Senior Staff.

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

Audit and Risk Management Committee

The Committee is mandated to:

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

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

Finance Committee

The Committee is mandated to:

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

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

Senior Management



Francis W. Kariuki - Director-General

The Director-General who is the Chief Executive Officer oversees the day to day management of the Authority.

Robert I. Mbarani - Head of Finance Unit

The Finance Unit is responsible for finance management and reporting, resource mobilization, asset management and financial accounting.



Anthony N. Muriithi - Head of Human Resources and Development Unit

The Human Resources and Development Unit seeks to develop the Authority's Human capital by attracting, recruiting, developing, motivating and maintaining a highly skilled workforce to execute the mandate of the Authority.

Stellah N. Onyancha - Interim Head of Mergers and Acquisition Division

The Division advises on regulations of the market structure through merger control and unwarranted concentration of economic power.



Benson O. Nyagol - Interim Head of Enforcement and Compliance Division

The mandate of the Division is to advise on cartels and abuse of dominance. The Division also evaluates applications for exemptions to engage in agreements prohibited under section 21 of the Act.

Senior Management (continued)



Beldine A. Omolo - Interim Head of Consumer Affairs Division

The mandate of the Division is to advise on protection of consumers from unfair and misleading market conduct such as unconscionable conduct, false and misleading representation and supply of unsafe, defective and unsuitable products.

Lilian K. Mukoronia - Interim Head of International Affairs Unit

The Unit is responsible for coordination of regional and international matters related to competition policy and law; collecting, collating and evaluating documents/reports emerging from the international and regional meetings and thereafter managing their dissemination; as part of knowledge management



Mumbi Githaiga- Interim Head of Legal Services Unit

The Unit is responsible for providing legal advice and strategic direction on the interpretation and application of relevant legislation in regard to investigations. Also the Unit offers Secretarial Services to the Authority's Board.

Faith L. Waithira - Interim Head of Internal Audit Unit

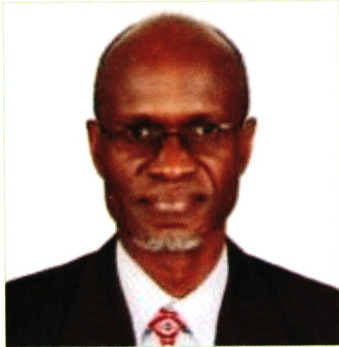
The Unit evaluates and provides a reasonable assurance that a Risk Management, Internal Controls and Governance systems are functioning as intended to enable the Authority achieve its set goals and objectives.



Marcellina Anduro - Interim Head of ICT Unit

The Unit provides the Authority with the highest computing and web services. The Unit also endeavors to create an efficient, secure and conducive environment for the staff of the Authority.

Chairman's Statement



Subsequently, the Act came into force on 1st August 2011. The Act introduced a new autonomous agency- The Competition Authority of Kenya."

The Authority is delighted to present this inaugural Annual Report. The report highlights initiatives undertaken by the Authority towards transforming and modernizing our economy by significantly reducing poverty through competition regulation and consumer protection.

During the year under review, we note that the Country was faced with the inflationary pressures that continued depreciating the Kenya shilling which resulted to high prices of food and oil coupled with the challenge of growing the GDP by between 5.2 and 6.0 percent. To achieve this growth the Government continued to deepen reforms to enhance efficiency and effectiveness in public service delivery, improve competitiveness by removing regulatory burden on businesses and also accelerate regional integration.

As part of these reforms the government modernized laws supportive of the competition process; the Restrictive Trade Practices, Monopolies and Price Control Act (RTP) was reviewed to strengthen the institutional frame work and ease the enforcement process. Subsequently, the Act came into force on 1st August 2011. The Act introduced a new autonomous agency- The Competition Authority of Kenya. The Cabinet Secretary to the National Treasury is responsible for policy formulation; the Board, appointed by the Cabinet Secretary/The National Treasury, vetted and approved by Parliament, is responsible for management and the regulation function of the Authority is under the Director-General.

As a young institution, the Authority was faced by a number of challenges. These included inadequate human capital, budgetary constraints and underdeveloped systems. This was mainly due to the de-linkage from the National Treasury and taking cognizance of the expanded mandate of the Authority under the Act, which required extra funding to enforce, at a time when demand for resources, by other government Agencies, was at peak level.

Against this back drop, the Authority continued to focus on its key mandate of driving the competition process thereby creating a conducive environment for investment, economic growth and protecting consumers. However, faced with the reality of dwindling resources, the Authority embarked, towards the last half of the reporting period, on developing a Strategic Plan that is aligned to both the dynamic operating environment and the strategic priorities of the Government as outlined in the Kenya *Vision 2030* and also the Constitution. This process is being benchmarked on relevant regional and international best practices.

Chairman's Statement (continued)

In addition, during the period, the Board oversaw the setting up of frameworks, requisite structures, policies and operational procedures that would enable the Authority to achieve exemplary performance in line with its mandate. Towards this, these attendant regulations and enforcement toolkits were regularly evaluated in order to ensure that any gaps are identified and relevant corrective measures put in place.

Lastly, although the challenges were many, the Authority took them as exciting interludes in pursuit of our goals and objectives during the year. This was made possible by the commitment of all Board Members and the entire staff and also their appreciation of the environment we were operating under, which facilitated prudent utilization of the resources, both human and capital, at our disposal while also adhering to the principles of corporate governance.

As we move forward, I pledge my and also the Board's continued commitment to ensuring achievement of our targets. Also, we will continue engaging with all the Authority's stakeholders as an imperative in sustained input and support.

David Otieno Ong'olo
Chairman

DIRECTOR GENERAL'S STATEMENT



At the regional level, the Authority participated in review of the implementation of the East African Community Common Market Protocol; developing a framework to facilitate operationalization of the East African Community Competition Act, 2006, and the COMESA Regional Integration Implementation Program (RIIP).

Introduction

It is with great pleasure that I present this Annual Report for the Financial Year 2012/2013. Despite the Agency's nascent age, we continued to execute our mandate of promoting and safeguarding competition in the national economy and protecting consumers from unfair and misleading market conduct.

The Act establishing the Authority came into force on 1st August 2011, through the Gazette Notice No. 59 of 24th June, 2011, after the Government Performance Contracting cycle had been executed. Nonetheless, to enable the Authority execute its mandate in the Financial year 2012-2013, and to ensure we are guided by Performance parameters, the Management developed the Activities Review and Budget Outlook Paper (ARABOP), which was approved by the Board in October 2012. The ARABOP, in summary, focused on concretizing the requisite infrastructure to support the Authority achieve its mandate.

The planned activities under the ARABOP included:-

- 1. Establishment of infrastructure and human capacity.** These included acquisition of adequate office space, requisite ICT infrastructure and enhancement of human capital; both numbers and skills;
- 2. Enforcement** through awareness creation, building coalitions, investigations of restrictive trade practices, consumer issues and analysis of mergers.

The Authority was also to conduct studies in some prioritized sectors and;

- 3. Advisory and Advocacy initiatives** aimed at facilitating review of legislation that act as impediment to contestability in some selected markets.

The Authority focused mainly, though not overlooking others, on sectors which have higher impact on the vulnerable members of our society. These initiatives were proactive efforts aimed at determining the contestability of the sectors, detect any restrictive trade practices and consumer protection infractions and thereafter recommend apposite intervention options.

Also, during this period, the Authority witnessed a substantial increase in its workload (applications and cases), which to a greater extent, is attributable to the awareness initiatives, more so, targeting the business stakeholders. Specifically, the year saw a surge in the number of merger notifications and restrictive trade practices (RTP) cases. Merger notifications reached a record high of sixty-five (65) while seventeen (17) RTPs cases were handled. These included some high profile and complex mergers like that of Toyota Tshusho Corporation and CFAO.

DIRECTOR GENERAL'S STATEMENT(continued)

Furthermore, the Authority recorded a modest number of consumer protection cases, which could be attributed to the lack of awareness of the new mandate. This situation, unfortunately, was exacerbated by inadequate funding to roll-out adequate awareness creation programmes.

Premised on the fact that competition enforcement is also awake to the public interest issues, the Authority granted three (3) exemption applications from the provisions of Part III of the Act. The exemptions were granted in the franchise concession, airline and Stadia management services markets.

To enhance clarity, predictability and transparency in its enforcement mandate, which is a prerequisite for any investor, the Authority developed various guidelines and other enforcement toolkits. The guidelines facilitated in reduction of transaction costs by investors, while the toolkits enhanced the Authority's efficiency in handling cases. This led to minimization of resources deployed in case analysis. Also, the Authority was able to secure adequate office space and infrastructure and enhanced its human capacity through Secondment, competitive recruitment and skills development initiatives.

At the regional level, the Authority participated in review of the implementation of the East African Community Common Market Protocol; developing a framework to facilitate operationalization of the East African Community Competition Act, 2006, and the COMESA Regional Integration Implementation Program (RIIP). Also, under the Africa Competition Forum (ACF) it participated in activities aimed at increasing trade inflows in the Regional Economic Communities in which Kenya is a member.

In order to improve our human capital productivity, and therefore facilitate the Authority in building a competitive economy as envisaged in the *Vision 2030*, the Authority will continue to embrace the concept of Result Based Management and ensure that agreed performance targets are met. We wish to witness that the effectiveness of the Authority will undoubtedly be enhanced when the Authority's Strategic Plan (2013/2014-2016/2017) is fully implemented.

To guide and accelerate the aforementioned, I wish to request for enhanced cooperation from all stakeholders so that we can continue to achieve our noble goal of creating competitive production and distribution structures and to eliminate any form of anti-competitive practices and unfair business practices. This is because the Authority recognizes that successful execution of its mandate depends also on the cooperation and commitment of key stakeholders. Towards this, the Authority will therefore continue building coalitions with the relevant stakeholders to ensure that the planned activities are implemented within the limited available resources.

Achievements during the period

In line with ARABOP, the Authority's focused on enforcement in high impact sectors and, in these formative stages adopted a problem solving approach rather than case-centric approach in making markets work. This was executed through its technical and support services Divisions as illustrated below.

Mergers and Acquisitions Division

The Mergers Division advises in regard to Parts IV (Mergers) and V (control of unwarranted concentration of economic power) of the Act. Specifically, the Division:-

- Analyses and advises on all mergers notifications;
- Investigates all mergers that may have been consummated without approval and makes recommendations, and;
- Identifies and analyzes unwarranted concentration of economic power.

A merger is defined as an acquisition of shares, business or other assets, whether inside or outside Kenya, resulting in the change of control of a business, part of a business or an asset of a business in Kenya in any manner. Each of the undertakings involved in a merger must notify the Authority of the proposal in writing or in a prescribed manner (Merger Notification Form) and attach the requisite documents which include Sale Purchase Agreement and Audited Financial Statements for the preceding three (3) years.

In making determinations, the Authority is guided by the criteria set out under section 46(2) of the Act. The criteria can be summed up as

(i) Substantial Lessening of Competition criteria, and; the Public Interest Test.

(ii) The Act provides that in making a determination in respect of a proposed merger, the Authority may either give approval for implementation, decline to give approval or give conditional approval which may include divestiture and behavioral remedies.

It is important to note that mergers can increase efficiency, leading to benefits such as lower prices, greater product choice and higher quality services. However, it is also pertinent to be alive to the fact that mergers can also lead to substantial lessening of competition and therefore the Authority pays close attention to such mergers.

The 2012/2013 financial year saw an upsurge in the number of mergers reviewed. Thus during this period, the Authority handled sixty-five (65) merger notifications which originated from across all the sectors of the economy. Including these, was one (1) case of unauthorized merger consummation, and another of unwarranted concentration of economic power.

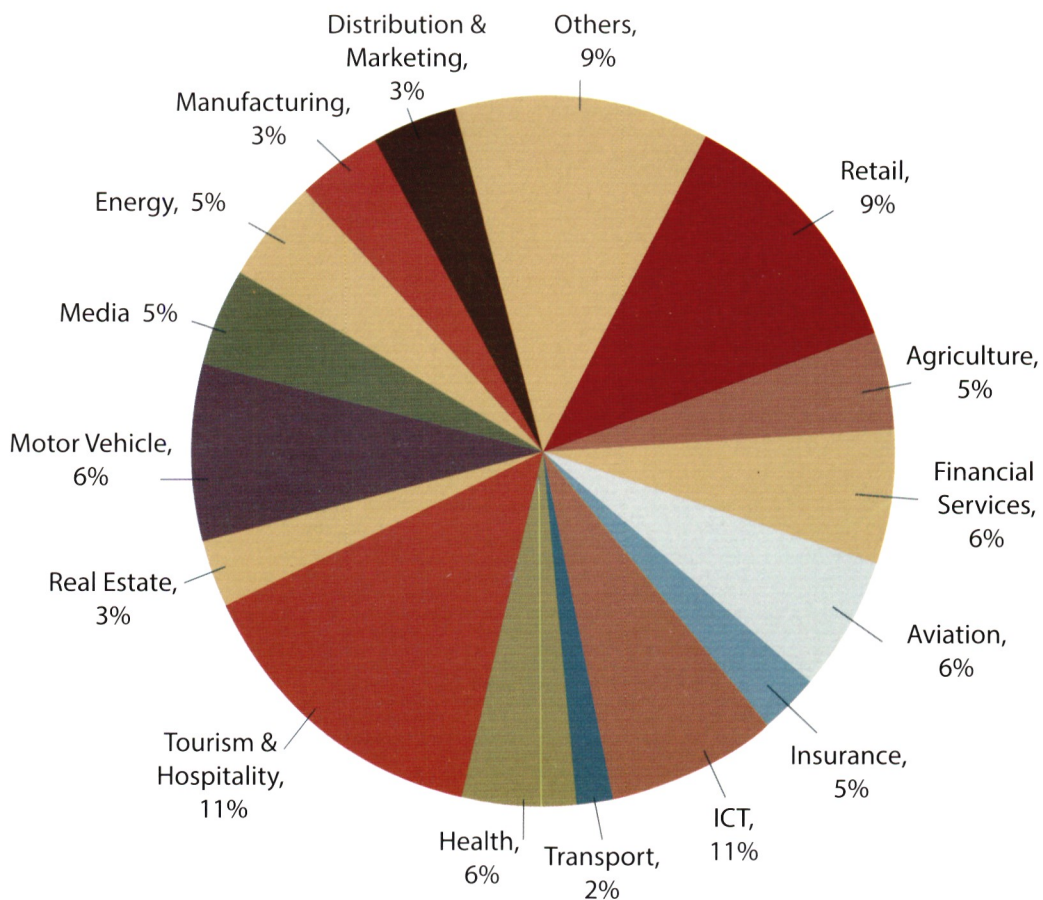
Trends in Merger Notifications according to Sector

Out of the total number of mergers notified, the following sectors had the greatest notifications, as shown in **Table 1** and **Chart 1**. Tourism and Hospitality-7, ICT-7, Retail-6, Mining and Exploration-4, Financial services-4, Health-4, and Motor vehicle-4, among other sectors

Table 1

Industry	No. of mergers	%
Retail	6	9
Agriculture	3	5
Mining & exploration	4	6
Financial services	4	6
Aviation	4	6
Insurance	3	5
ICT	7	11
Transport	1	2
Health	4	6
Tourism & Hospitality	7	11
Real estate	2	3
Motor vehicle	4	6
Media	3	5
Energy	3	5
Manufacturing	2	3
Distribution & marketing	2	3
Others	6	9
Total	65	100

Chart 1: Mergers notifications per Sectors



All the specific mergers notifications during the period under review are provided for in Annex 1. Taking into account the high number of merger applications, and most of them were found to be benign to the competition process, the Authority, in the coming financial year, will introduce mergers thresholds, in order to direct its enforcement in areas of high impact.

We wish to highlight the following cases analyzed/investigated by the Division: -

Acquisition of CFAO by Toyota Tshusho

This was a global merger involving Toyota Tshusho Corporation (TTC) and CFAO. TTC, through its subsidiaries in Kenya is active in the distribution of motor vehicles. Currently, Toyota Kenya Limited distributes new Toyota vehicles (passenger cars as well as light commercial vehicles) and Yamaha motorcycles from TTC. It also deals in repair, maintenance services and distribution of Toyota spare parts.

DT Dobie was a fully owned (100%) subsidiary of CFAO and incorporated in Kenya. It distributed the following brands of motor vehicle: Nissan, Mercedes, Chrysler/Jeep/Dodge and Renault. It operated its motor vehicle distribution activity via three dealerships which are located in Nairobi, Nakuru and Mombasa. It was also involved in the sale of spare parts, maintenance and repair of its brand of cars which it distributed.

The relevant product markets for the analysis of this transaction were found to be the markets for supply of: - Personal saloon cars divided into personal saloon cars less than 1800cc; and personal saloon cars above 1800cc; Passenger commercial vehicles; Light and medium cargo commercial; heavy and prime cargo commercial vehicles; motorcycles; spare parts; and repair and maintenance of motor vehicles. This market definition was informed by the factors that influenced customer choice. These include fuel capacity of vehicles, the usage, maintenance cost, special vehicle features, durability and comfort.

After analysis, the markets which tended towards dominance were: - (i) the market for the supply of saloon cars below 1800cc, and; (ii) the market for supply of saloon cars 1800cc and above. The acquiring undertaking, TTC, through Toyota Kenya had 44.5% of the market for the supply of saloon cars below 1800cc, CMC (31%), Simba Colt Motors (11.6%) and DT Dobie (8.6%). The resultant market share of TTC after the merger was to be 53.1%, which would lead to dominance. Also in some markets like the market for medium cargo commercial vehicles Simba Colt had 51.8% market share and General Motors East Africa (GMEA) had 30.4% in the same market. In the market for new passenger commercial vehicles GMEA had 40.3% and in the market for heavy cargo commercial vehicles, the market share was 23.3% for CMC and 22.8% for Tata Africa.

In the market for supply of saloon cars 1800cc and above, the acquiring undertaking, TTC, through Toyota Kenya led by controlling 41.4%, CMC(22.7%) and DT Dobie(17%). The post-merger market share of TTC was 58.4% and therefore leads to dominance. Based on the foregoing, the Authority authorized the proposed acquisition on condition that the future conduct of DT Dobie Limited and Toyota Tsusho Corporation in the markets for saloon cars do not infringe any provisions of the Act. To ensure this, the Authority will be closely monitoring the market.

Merger consummated without authorization

Proposed acquisition of Synovate by Ipsos

The above transaction came to the attention of the Authority through various sources which indicated that Ipsos, a French based research firm had acquired Synovate. In addition, it would change its name to Ipsos-Synovate, where Synovate has had a strong presence including Kenya, Tanzania, Uganda, Zambia, before fully changing to Ipsos.

Upon investigation by the Authority, it was established that the transaction took place without authorization as required under Section 42 of the Act. These undertakings therefore contravened the provisions of the Act and the penalty for such offence as provided under section 42 (5) is imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or both. In addition, the Authority may impose a financial penalty in an amount not exceeding ten percent of the preceding year's gross annual turnover in Kenya of the undertakings as provided for in section 42 (6).

Based on these investigations, the Authority forwarded the matter to the Director of Public Prosecution (DPP) for further necessary action. Subsequently, the DPP advised the Directorate of Criminal Investigations (DCI) to handle the matter since they are the ones bestowed with the requisite capacity. Premised on this, and in order to facilitate investigations the Authority shall be interacting with the Inspector General of Police to request for Secondment of the DCI staff to the Authority.

In addition, the Authority is considering proposing the review of the mergers provisions in the Act in order to provide for administrative sanctions regime, in lieu of criminal provisions for mergers consummated without approval.

Unwarranted Concentration of Economic Power

Unwarranted concentration of economic power is provided for under sections 50-54 of the Act. The Authority identifies where concentration of economic power exists whose detrimental impact on the economy outweighs the efficiency advantages, if any, of integration in production or distribution. It does this by investigating any economic sector which it has reason to believe may feature one or more factors relating to unwarranted concentrations of economic power. Market inquiries, studies and research in the identified areas are conducted to inform the process. The Act provides, taking into account the prevailing economy conditions in the country, the following factors to be prejudicial to the public interest, if the effect thereof would be to:

- Unreasonably increasing the cost relating to production, supply, or distribution of goods or the provision of any service;
- Unreasonably increasing the price at which goods are sold, or the profits derived;
- Lessening, distorting, preventing or limiting competition in the production supply or distribution of any goods or the provision of any service;
- Resulting in deterioration in the quality of any goods or in the performance of any service; or
- Resulting in an inadequacy in the production, supply or distribution of any goods or services.

Lafarge and East African Portland Cement Company (EAPCC) Limited

The Authority guided by provisions of section 50 of the Act, had been reviewing the structure of production and distribution in the cement sector in Kenya. This was aimed at determining any existence of unwarranted concentrations of economic power whose detrimental impact on the economy out-weighs the efficiency advantages. Preliminary findings were that Lafarge:

- i). Controlled a large share of the cement market in Kenya (approx. 55.43%), and
- ii). Had representation through two (2) Directors in the EAPCC Board.

The Authority was of the view that this high market share and the directorship of Lafarge in key strategic committees (Tender & Procurement oversight and Technical Committees) in EAPCC exhibited features of unwarranted concentration of economic power. This arrangement would unreasonably lessen, distort, prevent or limit competition in the production, supply, or distribution of cement in Kenya. The Authority consequently invoked section 51(2) of the Act and convened a Hearing Conference attended by Lafarge and EAPCC.

In order to inform the decisions of the Authority further, inquiries/benchmarking initiatives are continuing and in particular, a regional cement study is being conducted across six (6) East and Southern African countries namely Kenya, Tanzania, Zambia, South Africa, Botswana and Namibia.

In addition to the above activities and in order to create certainty while enhancing requisite information collection, the Division developed Merger Notification and Confidentiality Claim Forms. In addition, towards the end of the period, the Division embarked on the process of developing guidelines such as market definition, merger thresholds and public interest guidelines. This will go a long way in minimizing transaction costs through enhancing predictability and transparency in the Authority's merger enforcement process.

Advisory Opinions provided through the Division

The Division received a number of inquiries regarding merger transactions. The inquiries were responded to promptly and appropriately. The opinions were based on the information received or submitted to the Authority. In most of these transactions, it was a reorganization of internal business, and some other transactions did not fall under the purview of the Act. The advisory opinions are highlighted in **Annex 2**.

Lastly, in some specific mergers notification analysis the Division interacted with other international agencies. These included the Competition Commission of South Africa (CCSA) in the proposed acquisition of *Pfizer by Nestle* and European Union in the analysis of *Toyota Tshusho* and *CFAO* merger.

In addition, in the international forum, the Division shared our experiences in merger analysis and also contributed to developing international best practices by responding to questionnaires under the auspices of International Competition Network (ICN).

Enforcement and Compliance Division

- i). The Division contributes to the mandate of the Authority through investigating and advising on cartels and abuse of dominance. Specifically, the Division:
- iv). Investigates cases relating to restrictive agreements (cartels);
- v). Investigates cases relating to abuse of dominant position;
- vi). Evaluates applications for exemption from the provisions of sections 21 and 22 of the Act which respectively relates to agreements and activities of trade and professional associations.

Restrictive agreements include agreements that:-

- i). directly or indirectly fixes purchase or selling prices or any other trading conditions;
- ii). divides markets by allocating customers, suppliers, areas or specific types of goods or services;
- iii). involve collusive tendering;
- iv). involve a practice of minimum resale price maintenance;
- v). limits or controls production, market outlets or access, technical development or investment
- vi). applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- vii). makes the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject of the contracts;
- viii). amounts to the use of an intellectual property right in a manner that goes beyond the limits of legal protection;
- ix). Otherwise prevents, distorts or restricts competition.

On the other hand, the Act defines “dominant undertaking” as an undertaking which:-

- produces, supplies, distributes or otherwise controls not less than one-half of the total goods of any description which are produced, supplied or distributed in Kenya or any substantial part thereof; or
- provides or otherwise controls not less than one-half of the services which are rendered in Kenya or any substantial part thereof.

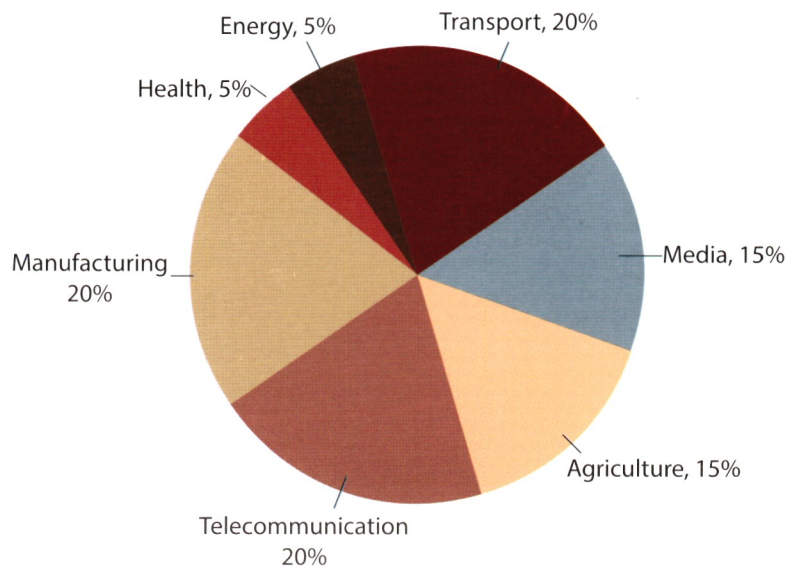
Acquiring dominance is not an illegality, but the abuse of that position is what is prohibited.

Abuse of a dominant position includes:-

- i). directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- ii). limiting or restricting production, market outlets or market access, investment, distribution, technical development or technological progress through predatory or other practices;
- iii). applying dissimilar conditions to equivalent transactions with other trading parties;
- iv). making the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject-matter of the contracts; and
- v). abuse of an intellectual property rights.

As mentioned earlier on, the Division handled seventeen (17) restrictive trade practice cases in various sectors three (3) exemption cases and three (3) advisories. Majority of the cases were from manufacturing and communications (both at 20%) and agriculture (at 15%). The Division also conducted investigative studies in the cement and Liquefied Petroleum Gas (LPG) sectors. The specific cases handled, sectors and status of each case are as shown in **Annex 3**.

Chart 2: Sector Investigated



As an initiative of easing data/information collection the Division developed Exemption Application and General Complaint Forms. It also embarked on developing Exemption Regulations.

Some of the major matters handled by the Division are as summarized below:

RECOMMENDATION BY PHP CONSORTIUM TO ITS MEMBERS TO REVIEW CHARGES FOR HEALTHCARE SERVICES

- i). The Chairman of Kenya Private Health Care Providers Consortium (PHP) wrote to the Association of Kenya Insurers indicating that the private hospitals may be forced to adjust their prices upward by 20%. According to Consortium private hospitals were under pressure to raise the salaries of their doctors and nurses to match the increase in allowances and salaries of doctors employed by the government and costs of rising services and goods.
- ii). According to the data available from the Ministry of Health there are 5,129 health facilities in the country, 2,217 were in the private commercial sector, 792 are non-profits, and 2,120 were in the public sector. Therefore, the private sector accounts for more than 50% of the health facilities that were in the country.

High Highlights

- i). The practice of recommending prices by Trade Associations falls under the ambit of the Act. Specifically section 22(b) (i) of the Act applied to the conduct. The section prohibits, "the making, directly or indirectly of recommendation by a trade association to its members or to any class of its members which relates to the prices charged or to be charged by such members or any such class of members or to the margins included in the prices or to the pricing formula used in the calculation of those prices.
- ii). The practice of recommending the percentage by which fees may be revised by private hospitals was therefore a restrictive trade practice and would deprive consumers of health care services the benefits of price competition.
- iii). It was observed that it is not illegal to raise rates/prices individually in response to market dynamics. However, it is illegal to adjust them in a concerted manner.
- iv). Consequently, the Authority issued an order and demanded the Consortium to rescind its recommendation and provide proof. The Consortium complied.
- v). The decision resulted in protection of the competition process in the private health care sub sector, therefore safeguarding the consumers from high cost of health care services.

Exemption of the Agreement Between Sports Stadia Management Board (SSMB) and Coca-Cola East and West Africa (CCEWA) Limited

1. The Sports Stadia Management Board (SSMB) is a State Corporation whose mandate includes management, maintenance of as well as marketing sports facilities in Kenya and maximizes their utilization.
2. Coca Cola Central, East & West Africa Ltd (CCEWA) is a subsidiary of the Coca Cola Company and carries out the activities of bottling and marketing carbonated and non-carbonated soft drinks in the country.
3. The parties sought for exemption, for a period of one (1) year in regard to:
 - Exclusive rights to brand Nyayo Sports Complex covering the Main Stadium, the Aquatic Centre and the Basketball and Handball courts;
 - The sole and exclusive rights to provide non-alcoholic, non-carbonated and carbonated beverages during events at the Stadium in respect of which SSMB has control. In consideration of the rights granted CCEWA was to pay a total of Kshs.16 million.

Key Highlights

1. The arrangement involved two parties which were in a vertical relationship since SSMB owned the facility, which was to be leased out to CCEWA and was therefore in the jurisdiction of the Act. The proposed arrangement was prohibited under section 21 of the Act unless exempted based on section 25 of the Act.
2. The relationship between the stadium owner and the concessionaire was one in which a franchise (rights) was sold by the stadium owner to the purchasing concessionaire in exchange for a consideration.
3. In terms of the arrangement, articles of commerce were to be sold to sports spectators and events participants in the stadium during events managed and controlled by SSMB in Nyayo National Stadium.
4. The agreement contained the following restrictive clauses:
 - Appointment of CCEWA as exclusive branding rights sponsor;
 - SSMB not to grant the rights to CCEWA's competitors;
 - SSMB not to appoint a competitor of CCEWA to be a sponsor or official supplier of the venue.
5. Notwithstanding the above, the Authority considered and concluded that the Agreement was necessary and indispensable because:
 - SSMB would be facilitated to finance the costly infrastructure development required to bring the sports facilities in Kenya to a reasonable standard, to the benefits of the public;
 - SSMB would access funds for the development of sports services in Kenya hence preventing decline of the industry;
 - Sports generate multiplier effect since it provides opportunities for advertising, event organization and development of athletes who may represent the country in international events; and
 - Sports also generate employment opportunities, especially for the youth ; and
 - Sports events afford the youth an opportunity to spend their leisure time in a beneficial way as they play or watch games;
 - Premised on the above, the Agreement was exempted from the provisions of section 21 of the Act for a period of one (1) year.

Advisory opinion on Exclusive mining rights agreement between Pokot County Council and Cemtech Limited

1. Cemtech Limited entered into Memorandum of Understanding with the then County Council of Pokot. They consequently applied for exemption under the provision of section 21 of the Act. The salient features of the agreement were:
 - That Cemtech be granted ninety nine (99) years exclusive mining rights in the Greater Pokot region;
 - The Cemtech Limited be granted ninety nine (99) years permission and authority to access and extract limestone in all established limestone areas and those that may be identified in future in greater Pokot District; and
 - That the Council was not allowed to give way leaves for unoccupied limestone deposit areas vested in the Council without prior consultation with Cemtech or until after exhaustive mining and rehabilitation by Cemtech.

Key Highlights

1. The Authority, after the evaluation of documents/materials submitted, made the following findings:
 - Although the issue involved grant of license, which the Council had jurisdiction, the agreement had the ramifications of foreclosing exploitation of limestone deposits by other investors in the greater Pokot. Specifically, the exclusivity period was too long and way beyond the international best practice. Consequently, the Authority advised that it would be of much benefit to the Council; the whole Community and Kenya in general that such exclusive mining agreement are issued for a lesser period, approximately twenty-five (25) years but open for renewal.
 - This area anticipates to witness a lot of activities especially after the discovery of oil in Turkana and attainment of peace in South Sudan coupled with the anticipated actualization of the LAPSET project hence need for many investors in the cement sector to cater for the anticipated construction boom.
 - That the limestone deposits in Ortum, Sebit and Chepchoi were sufficient to cater for a cement plant with a capacity of 1 million tonnes for over fifty (50) years. Therefore, it was the opinion of the Authority that the Pokot area can accommodate more cement plants, now and in the near future, which would assure the Council enhanced and progressively escalated royalty fees.
 - In addition, although Cemtech indicated that they intended to plough back some of the profits to the Community, under the socio-economic obligations, the commitments were not highlighted in the agreement. The Authority advised that it was prudent to highlight the commitments in the agreement in order to facilitate monitoring and evaluation.
 - Lastly, the Authority was categorical that the agreement should have included standard terms and conditions to, among others; discourage hoarding and encourage active use of the mineral rights. This could have been actualized by pegging and escalating royalty fees per unit area; mandatory relinquishment criteria aimed at decreasing passive speculative practices, and; minimum investment requirement and work obligations.

Consumer Affairs Division

The Consumer Affairs Division is charged with advising on enforcement of sections 55 - 70 of the Act. Specifically, it investigates and advises on matters relating to misleading and false representations, unconscionable conduct, and supply of unsafe, defective or unsuitable products, including failure by firms to observe public notices issued in respect of unsafe products, and prescribed product information and safety standards. Through this Division, and as provided for under the Constitution, the Authority is expected to play an important role in protecting the consumer rights.

During the year under review, the Division handled six (6) cases. As highlighted in **Annex 3**, four (4) of the cases related to false and misleading representation while two (2) were defective goods cases. Two of the cases were referred by a Consumer lobby group. Also, during the period, the Division identified four (4) consumer bodies namely; COFEK, CUTS, Kenya Consumer Organization (KCO) and Consumer Information Network (CIN) as contact institutions in regard to consumer issues.

Market inquiries

During the period, the Authority conducted market inquiries in two sectors as identified in the ARABOP. We wish to highlight some of the preliminary findings in the ongoing sugar sector;

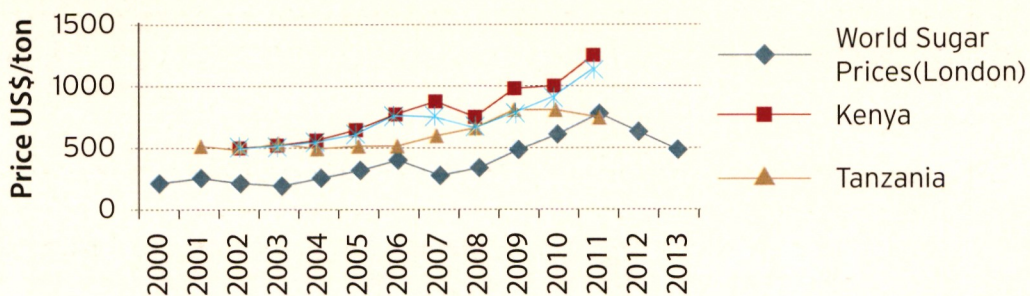
Sugar Sector Study

The sugar industry contributes 3.2 per cent of Gross Domestic Product and overall, it is estimated to support six (6) million people who directly or indirectly draw their livelihood from sugar-related activities. Therefore, the industry serves the national objective of creating jobs and wealth especially in the rural areas thus accelerating socio-economic development.

Based on the above, and in cognizance of several challenges facing the sector which include low capacity utilization, limited usage and value addition of by-products, use of inefficient production methods at both the farm and the factory, the Authority initiated a two phase study. The main objective of the phase one study was to gain a deeper understanding of the competition issues affecting the industry including the market structure and concentration, determinants of sugar prices at various levels in the value chain, geographic markets, entry barriers and vertical arrangements in the industry. This was to facilitate the Authority in understanding the competition dynamics in the industry, so as to inform phase two of the study.

This phase established that the principal determinants of ex-factory price of sugar include cost of raw materials (52%), agricultural overheads (26%), factory overheads (14%); and distribution and other support costs (8%). Although the contribution of each item to ex-factory price varies from one factory to the other depending on operational efficiency, the cost of raw materials and agricultural overheads accounts for the largest proportion in most factories.

The phase two study was initiated towards the end of the year and this was to entail broader and deepened research, involving benchmarking Kenya, with other sugar producing countries across the East and Southern African region. The preliminary findings as reflected in the graph below shows that ex-factory prices of sugar in Kenya are the highest in the said region. This, as per the study, has been occasioned by among others, trade barriers as a result of the sugar licensing regime in the country. For instance, the study notes that although Tanzania imports sugar from Zambia its prices are relatively lower than Kenya's. It is expected that the study will inform the government's initiative to improve productivity and hence availability of sugar in the country especially to the vulnerable members of the society. The graph below compares ex-factory prices in Kenya (Highest), Tanzania, South Africa and Zambia.



Advocacy and Awareness Creation Initiatives



Mr. Stephen K.Kiptinness-Board Member, Ms. Joyce Karanja Ng'ang'a-Coulson Harney Advocates, Mr. Francis W.Kariuki-Director General, Mr. Mahesh Acharya-Kaplan & Stratton Advocates

The Authority, during the year, in its efforts to increase awareness and understanding of the Act, interacted with the business community, professionals, Universities and consumers organizations, among others. The following were some of the engagements during the year.

1. Sensitization Workshops and meetings
 - i). The Authority organized several sensitization and induction workshops and meetings targeted at various stakeholders with the objective of providing a better understanding of the Act and competition law and policy management in Kenya.
2. Competition law programme for students
 - i). The Authority with the aim of ensuring succession management through supply of competent human capital introduced the University of British Columbia, Sauders School of Business, to the Strathmore and Nairobi universities with the objective of motivating them to introduce courses relevant to competition policy and law regulation.
3. Kenya Association of Manufacturers (KAM)Seminar
 - i). The Authority presented in a Seminar on Fair Trade Practices organized by KAM. This had the object of highlighting to all KAM Members the provisions of the Act and the benefits of Competition Law and policy in Kenya.
4. KAM-Authority Half Day Workshop
 - i). The Authority also held a half-day Workshop, in the Authority's premises, with some members of KAM. The Workshop was aimed at interrogating the COMESA competition regulations, their implications to competition regulation regime in Kenya and Business environment and chart the way forward.
5. Kenya School of Law
 - i). The Authority presented a paper on Competition Policy in Kenya, East African Community and COMESA competition laws. The main objective of the workshop was for the students and other invited participants, especially the law firms, to appreciate the national and regional competition laws.

6. International Conference on International Policy and Research and Business Leaders
 - i). The Authority made presentations on the COMESA and EAC competition laws during the conference organized by Trust Africa, IDRC and CRDI whose objective was to create enabling environment for small and medium enterprises.
7. Also, the Authority provided various advisory opinions to corporates and law firms with regard to COMESA Competition Regulations. The issues in which the Authority advised ranged from; domestication of regulations to interactions between the regional and national laws.
8. The Authority also participated in the observation of the World Consumer Rights Day held on 15th March, 2013.

International Affairs Unit

During the year under review, the Authority participated and articulated Kenya's position in various regional and international forums. These included the International Competition Network (ICN), the United Nations on Trade and Development (UNCTAD), Organization for Economic Co-operation and Development (OECD) and World Trade Organization (WTO). In addition, the Authority participated in various benchmarking activities aimed at promoting and applying the best practices to its activities. For example, the Authority has borrowed heavily from ICN products such as in setting merger thresholds and developing various guidelines.

Regionally, the Authority articulated Kenya's position in East Africa Community (EAC) and Common Market for Eastern and Southern Africa (COMESA). Specifically:

- a) The Authority has continued to play an active role in providing the technical expertise towards the initiatives that are geared towards operationalizing the EAC Competition law. These include capacity building in Partner Member States and creation of awareness.
- b) The COMESA Competition Regulations (CCRs) commenced in January, 2013. However, despite the commencement, a number of challenges have been encountered in their implementation. These include the process of domesticating the regulations at national level, undefined merger thresholds, very high merger filing fees and the issues relating to uneven development of competition law in the COMESA region. The Authority has continuously offered advice as an endeavor to minimize the highlighted challenges.

The Authority, under the African Competition Forum (ACF), a forum that seeks to promote the adoption of competition principles among the African countries in order to alleviate poverty, is conducting research in sugar and cement sectors with five other countries (Zambia, South Africa, Botswana, Namibia and Tanzania).

This research is aimed at appreciating trade in-flows within the region and highlighting what negatively affects the same in order to minimize these externalities. In addition, it is expected that the Authority will concurrently be deepening its capacity in research.

The Authority also contributed in the publication of the Global Competition Review's 2012/2013 Handbook of Competition Economics and the Euromoney Yearbook's Competition Antitrust Review 2012. These two publications provide a comprehensive overview of international competition laws world-wide and also the enforcement activities of the various competition agencies.

In addition, the Authority hosted a delegation of the Anti-Monopoly Bureau of China. The meeting had the objective of initiating bilateral discussions on competition enforcement through capacity building and non-confidential information sharing. Also, Bowman & Gilfillan Advocates of South Africa visited the Authority and discussed the recent developments of Competition policy and law in Kenya. Lastly, Prof. Thomas W. Ross, from University of British Columbia, Canada, visited the Authority and held discussions with respect to competition enforcement in Kenya and Canada.

Human Capital and Infrastructure Development Human Resources and Development Unit

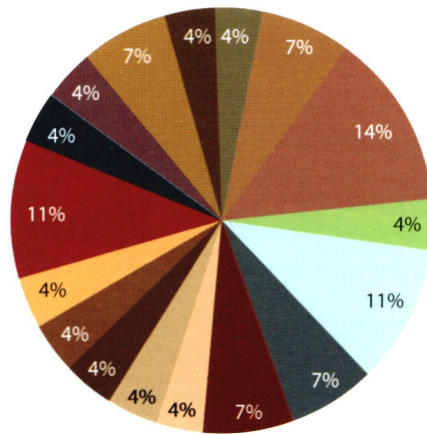


The Authority Staff

During the period, the Authority had a total of thirty two (32) staff members out of these Seventeen (17), approximately 53%, were females. This far surpassed the Constitutional requirement of 30% gender rule. The staff were distributed as per the Interim organization structure, depicted below:-



The County distribution of the staff was fairly even as depicted in the pie chart below:



- | | | | | | |
|----------|----------|---------|-----------|-----------|---------|
| Meru | Murang'a | Baringo | Kiambu | Vihiga | Nyamira |
| Kakamega | Kitui | Embu | Makueni | Machakos | Nyeri |
| Kisii | Homa Bay | Nairobi | Kirinyaga | Nyandarua | |

As we move forward, the Authority will endeavor to maintain the gender parity and County balance as it continues building human capital capacity. In regard to the age distribution of the staff, 94% is above thirty-five (35) years. Consequently, in the coming years, the Authority will rollout deliberate initiatives to bridge the age imbalance.

As required by the Constitution, all appointments in the Authority were conducted through competitive processes. These included Members of the Board. Also, the Director-General and two other Senior Staff Members were also recruited competitively and subjected to vetting by bodies such as Parliament, EACC and NIS. These initiatives shall be the guiding principles of the Authority in order to safe guard the National values and principles of Governance.

In November 2012, the Authority relocated from Bima House, Harambee Avenue, to the current location. The offices meet the requirements of Occupational Health and Safety Act, 2007.

During the period various staff attended both technical and non-technical programmes ranging from deepening of technical skills to management courses. In regard to staff discipline, apart from few soft skills issues which were handled at the shop levels there were no major reported cases.



Mr. Anthony M. Njagi - Human Resource Development Unit, Mr. John K. Daina - Enforcement Division, Mr. Robert I. Mbarani - Finance Unit, Mr. Benson O. Nyagol - Enforcement Division, Mr John N. Mwangi - Consumer Division

Finance and Administration

During this period, the Authority was allocated Kenya Shillings Two Hundred and Fifty-two Million (Kshs. 252 Million), under the National Treasury Vote. The allocation was specifically under the Monopolies and Prices Division Head. This arrangement was necessitated by capacity underdevelopment challenges in the Finance and Procurement functions of the Authority. Due to these challenges, the full budget allocation was expensed and accounted for under the National Treasury. The Authority would from the forth coming period manage and account for its budgetary allocation including, preparations of separate financial statements.

Internal Audit and Risk Management

The Internal Audit Unit appreciates that the Authority being a young agency requires sustained checks and balances to ensure that internal control systems are in place and applied across all its operations. Towards this end, the Unit carried out regular reviews on the Authority's systems, procedures and policies and proactively engaged the management in addressing inherent gaps and weaknesses. The Unit also evaluated and provided assurance on reliability of management initiatives and assets utilization, among others.

ICT Unit

The Authority values IT as a means of enhancing efficiency and creativity in service delivery. Towards this, the Authority ensured that the ratio of computers to staff is 1:1. However, to keep abreast with the rapid technological changes the Unit regularly reviews both hardware and software needs to ensure they are up to date.

Also the Unit enhanced communication and accessibility through creation of Wi-Fi Hot spots and expanded the infrastructure of the Local Area Network and internet connectivity in our new offices. In addition, Intrusion Detection/Prevention Systems (CCTV, Biometric, Motion and Smoke Detection systems) were installed.



Ms. Beldine A. Omolo - Consumer Division, Ms. Stella A. Onyanha - Mergers & Acquisitions Division, Ms. Millicent Muriithi - ACF, Ms. Jane Koech - DG's Office

Challenges

Notwithstanding realization of the above milestones, the Authority faced several challenges, particularly the ones inherent to young Agencies. These challenges can be classified into the following broad thematic areas:-

- a) **Human Capital:** The establishment was not optimal, taking into account the expanded mandate under the Act. This included both front and back office staff and was further exacerbated by demand for skills development for the existing staff, especially in areas of merger simulation; forensic investigations, and; consumer protection. Secondly, the lengthy process of vetting and absorbing the staff deployed from the mainstream Civil Service eroded the staff morale. Also there existed indispensable need of re-engineering the Authority in order to deepen dynamism and fresh culture to enhance productivity and efficiency further.
- b) **Budgetary constraints:** Although the resource allocation from the Exchequer increased from Kshs. 52 Million to Kshs. 252 Million in the period, this was quite a minimal allocation taking into account the Country's GDP of 33.62 billion US dollars, as at December, 2012. This minimal budget, especially, at the formative stages of the Authority hampered the actualization of some activities, particularly of building the requisite infrastructure and human capital. This situation was further complicated by the difficulties in generating revenue internally without seemingly affecting the investment climate. The high threshold and convoluted process to access development partners' support also slowed initiatives geared towards ameliorating the situation.
- c) **Underdeveloped Systems:** The delinking of the Authority from the National Treasury demanded the Authority to develop its various systems requisite to manage its resources (finances and human capital) in order to ensure efficient and prudent utilization of these resources. The adoption of these systems was delayed by various factors ranging from the lengthy process of populating the Board, subsequently delaying the process of recruiting the staff to champion the adoption and rolling out of these systems.
- d) **The Expanded Mandate under the Act:** Although the expansion was a necessity and therefore justified, it demanded for expansion of the current establishment and also deepening of human resource skills - specifically in consumer protection and legal affairs. The expanded mandate also required up-scaling the awareness creation initiatives in order to facilitate the regulated to appreciate their obligations and the consumers, including potential market entrants, to understand their rights under the Act. To complement this, there was undisputed need to support a strong consumer movement in the country which in the long-run would be expected to act as the Court of First Instance before the consumer matters are escalated to the Authority. This was expected, and also going forward, to not only enhance private enforcement but also minimize the Authority's enforcement budget.
- e) **Formative stage challenges:** As a young Agency, the Authority required to build and sustain credibility and visibility in these formative years. It required prioritization and focus on activities that have a higher impact on a larger percentage of the society. This would facilitate the impact of the Authority's interventions to be visible in most households of our economy and could be bolstered further by building a corporate image and a dynamic culture. Towards this, there was acceleration of initiatives aimed at building coalitions with all stakeholders and coupled with development of guidelines and appropriate legislation to enhance transparency and hence predictability in decision making. Unfortunately the above was slowed by lack of a competition culture in the economy.
- f) **Globalization and Regional Economic Communities (RECs):** The Authority was faced with the reality of borderless markets while the Act's jurisdictional compound did not extend beyond

borders. Lack of framework or criteria of sharing information between the Authority and the upcoming Regional Economic Communities (RECs) Competition Agencies, not to mention the need to ensure provision for exchange and handling of confidential information compounded this situation further. This created uncertainty to the investors who intended to invest in the RECs through mergers. The other challenge was in regard to different levels of competition law development and priorities among RECs Members leading to creation of non-tariff barriers to the detriment of trade, especially for our exports. This reality demanded efforts towards actualizing advocacy activities across borders.

- g) Requirements of the Constitution: Implementation and specifically devolvement of the Constitution meant less budget support from the Exchequer. Hence need to rationalize the Authority's activities. On the other hand, the Constitution sets a high threshold in regard to operations of the Authority, including other government agencies. These include enhancing transparency and accountability; leading to demand for publication of guidelines and other regulations to support the enforcement of the Act in a transparent and predictable manner. Secondly, the devolvement of the Government to the Counties demands the presence of the Authority in the Counties and at the same time actualize the performance management systems (PMS) to enhance service delivery. Moreover, the Constitutional requirements demand the Authority to develop systems to insulate it from risk of integrity issues. All the above required adequate budget outlay.
- h) Information Asymmetry: The cost of accessing information, in regard to time involved, was enormous. This challenge was exacerbated by continuous dynamism in the market especially involving the new economy. It therefore required continuous staff skills development to facilitate analysis of competition cases and collection of information including adequate resources outlay to develop knowledge management systems.
- i) Overlapping Jurisdiction: The Authority has some overlapping roles with some of the sector regulators. Although the Act provides that the Authority has primary jurisdiction in all competition and consumer welfare matters, lack of cooperation from some sector regulators led to increased transactions costs for the regulated and also increasing the risk of contradictory decisions emanating from two government agencies.

Way Forward

Premised on the foregoing challenges, the Authority's Board, Management and the entire staff are focused on making the year 2013-14 more successful. In this regard, special attention will be given to achieving the following key activities:-

- i. Finalizing and launching the Authority's Strategic Plan 2013/2014 - 2016/2017 which will provide the performance road map for the next four years. The Plan will be predicated upon the need to prioritize and also manage the minimal resources, while ensuring visibility and enhanced performance. Consequently, the Authority's Annual Work Plans for the subsequent four (4) years will be derived from this Plan;
- ii. Development of the requisite working templates including relevant guidelines, procedures and policies and the Forms necessary for implementing the Authority's mandate;
- iii. Prioritization of resources and cases to facilitate better utilization of available resources by focusing on cases which have high impact on the economy and which will act as deterrents for firms especially in concentrated sectors;
- iv. Generate rules and regulations to manage cartel investigations;
- v. Facilitate investment in the Kenyan market by creating a fair play ground for businesses through timely and objective determinations and decisions ;
- vi. Building human resource capacity through recruitment of staff with the requisite skills



and also ensuring their retention by motivating them through various initiatives including welfare and learning growth programmes;

- vii. Establishing cooperation framework with specific and relevant sector regulators in order to address the issues of cooperation and sharing information;
- viii. Undertaking awareness and advocacy activities in order to enlighten stakeholders about the role and mandate of the Authority as well as the stakeholders' obligations and role under the Act. This initiative will, among others, re-ignite the emergence of strong and vibrant consumer movement in the country;
- ix. Engaging more with development partners to build coalitions and partnerships in building capacity (human, regulatory framework, systems and capital), and;
- x. Undertaking Business Process Automation and re-engineering as a way of ensuring efficient and quality service delivery.

Conclusion

In conclusion, I wish to witness that although the Authority has surmounted challenges, which are inherent to any young Agency, it could not have been possible without the support of some key stakeholders. These stakeholders include Parliament, specifically the 10th Parliament which facilitated in the recruitment process of the Board Members and the Director-General; the National Treasury for the continued budget support; the Board, Management and the Staff. We wish also to recognize the immense support which have been advanced by our Development Partners, which has greatly contributed to the successes of the year under review. We look forward to a more interactive and productive year 2013/2014 in our pursuit of creating efficient markets for consumers.

ANNEXES

ANNEX 1: Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
1.	Aureos Capital Limited and Abraaj Capital Holding Limited 15/3/2012	Private equity funds and advisory services	The transaction involved the acquisition of the entire issued shares of Aureos Capital Limited by Abraaj Capital Holdings Limited. Competition analysis of the transaction indicated that it would not have negative effects on competition in the private equity advisory services market and was not likely to raise any negative public interest concerns.	Approved unconditionally
2.	Pan Africa Insurance Holdings Limited and Hubris Holdings Limited 21/3/2012	Insurance	The acquiring undertaking acquired 10% further shares that were not already held by it in Pan Africa. Analysis concluded that the transaction would not prevent or lessen competition in the relevant market and not likely to raise any negative public interest concern	Approved unconditionally
3.	Nairobi Java House Limited and ECP Africa Fund III PCC 30/3/2012	Food services market	ECP Africa Fund III PCC acquired 75% of the issued share capital of Nairobi Java House Limited. Analysis of the transaction indicated that it was not expected to prevent or lessen competition in the relevant market and would not raise any negative public interest issues.	Approved unconditionally
4.	Dodhia Packaging Limited Vs. Corpak Africa Limited and Corpak Kenya Limited 4/6/2012	Manufacturing	Corpak Africa Limited indirectly acquired 100% of the issued Share capital in both Dodhia Packaging Limited and Riley Packaging Uganda Limited through Corpak Kenya Limited and Corpak Uganda Limited respectively. Competition analysis indicated that the transaction was not expected to have any negative effects on competition nor would it raise negative public issues	Approved unconditionally
5.	PTTEP Africa Investment and Cove Energy PLC 7.6.2012	Oil and gas exploration	The proposed transaction involved the acquisition of the entire share capital of Cove Energy Kenya Limited indirectly through Cove Energy East Africa Limited, therefore leading to establishment of control over Cove Energy Kenya Limited. Competition analysis indicated that the transaction would not prevent or lessen competition in the relevant market.	Approved unconditionally
6.	Puma Energy LLC and KenolKobil Limited 8.6.2012.	Distribution and marketing of oil and gas	The transaction entailed the acquisition of all the existing issued shares of KenolKobil by Puma, thereby establishing control. Parties were yet to provide information by close of the year.	The merger file is still open.

ANNEXES (continued)

ANNEX 1: Summary of Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
7.	Siret Tea Company Limited and Siret Out-growers Empowerment & Produce Company Limited 20/6/2012	Growing, manufacturing and processing of black tea	The acquiring undertaking acquired the remaining 50.25% and established total control of the target undertaking as it had already acquired 49.75% of the issued shares of the target undertaking. Analysis indicated the transaction would not raise any competition concern in the relevant market.	Approved unconditionally.
8.	Ocean Agriculture (E.A) Ltd and J.H. Verwiel 26/6/2012	Fertilizer	Mr. J.H. Verwiel acquired 70% of the issued shares in Ocean Agriculture (E.A.) Ltd thereby establishing a 100% ownership since he had 30% shareholding before the transaction. The transaction would not to raise any competition concern in the relevant Market.	Approved unconditionally
9.	Economic Housing Group Limited and Mali Rasili Group Limited 27/6/2012	Investment	The transaction involved acquisition of the entire issued shares of Economic Housing Group by Mali Rasili Group Limited. Analyses of the transaction concluded that it would not prevention or lessen competition in the relevant market nor would it raise any public interest concern.	Approved unconditionally
10.	Vittoria Limited, Olarro Conservancy Limited and Arabian Ranchers Property Investments Limited 29/6/2012	Tourist Accommodation services	The transaction involved acquisition of 100% of the issued ordinary shares in Vittoria Limited and subscription of two (2) issued redeemable preference nominal shares in Olarro Conservancy Limited by Arabian Ranchers Property Investments limited. Competition assessment indicated that the transaction would not raise any competition concern in the relevant market.	Approved unconditionally
11.	Style Industries Ltd. and Strategic Industries Ltd 6/7/2012	Synthetic hair (additions) market and hair cosmetics market	Strategic Industries Ltd. acquired majority (51%) stake in Style Industries Ltd. Competition analysis indicated that acquisition of majority stake in Style by Strategic would not cause harm to competition.	Approved unconditionally
12.	Glaxo Smithkline Plc and Aspen Global Incorporated 12/7/2012	Pharmaceutical	Aspen made an application to acquire a portfolio of GSK's over the counter (OTC) products specifically Hedex and Cofta brands. The proposed transaction would enable the acquiring undertaking to establish control over the target undertaking. The analysis revealed that the merger would not raise competition concerns nor spawn negative public interest issues.	Approved unconditionally

ANNEXES (continued)

ANNEX 1: Summary of Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
13.	Aviva Mining(Kenya) Limited and Africa Barrick Gold Plc from Aviva Corporation Limited 23/7/2012	Mining	African Barrick Gold acquired the entire share capital of Aviva Kenya. The evaluation of the transaction revealed that the transaction would not raise any competition concern in the relevant market. Instead it would enable African Barrick Gold, which is endowed with the financial and technical capacity, to expand on with the project of Aviva in Kenya.	Approved unconditionally
14.	Baran Telecom Networks Kenya Limited and Bara Telecommunications Networks 26/7/2012	Telecommunication	Bara sought to acquire the entire issued share capital of the Bara Telecom, therefore resulting in it establishing control over Baran Telecommunications Networks Kenya Ltd. The assessment indicated that the merger would not have competition concerns nor was it harmful to public interest.	Approved unconditionally
15.	I&M Bank Limited and City Trust Limited 2/8/2012	Banking	City Trust Limited acquired 92.72% of the entire issued capital of I & M Bank from I & M shareholders in exchange for shares in City Trust via a share swap. The transaction would not prevent or lessen competition in the relevant market.	Approved unconditionally
16.	Improchem (Pty) Limited and Monitoring Solutions Business 9/8/2012	Water management solution	GE East Africa incorporated in Kenya sold its entire Kenyan Chemical and Monitoring Solutions business (the GE CMS Business) to Improchem Proprietary Limited (registered in South Africa), as a going concern. This included the goodwill of the business and the finished stock but excluded cash, debtors and liabilities. It was concluded that the transaction would not lessen or prevent competition in the relevant market, but would instead ensure continued supply of CMS services to the consumers	Approved unconditionally
17.	Collogne Investments Limited and Nakumatt Holdings Limited 31/8/2012	Retail and property market	Nakumatt acquired the entire issued share capital of Collogne. This was a tenant who bought a single building in which it had been renting. Analysis revealed that the transaction would not lessen or prevent competition in the market.	Approved unconditionally
18.	East Africa Safari Ventures Limited and Natural Habitat Safaris Limited 3/9/2012	Tourism	Natural Habitat Safaris Ltd. acquired 99% of the issued shares in East Africa Safari Ventures Ltd The transaction would not spawn any negative effect on competition in the relevant market.	Approved unconditionally

ANNEXES (continued)

ANNEX 1: Summary of Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
19.	Leleshwa Safari Company Limited (LSC) and Natural Safaris Limited 3/9/2012	Tourism	The transaction entailed the acquisition of the existing majority issued shares of LSC by NHSL, thereby resulting in the change of ownership and establishment of control of LSC. The acquiring undertaking acquired LSC as a going on concern. The transaction will not spawn any negative effect on competition.	Approved unconditionally
20.	Almasi Beverages Limited and Kisii Bottlers Limited, Rift Valley Bottlers Limited & Mount Kenya Bottlers Limited 3/9/2012	Non-alcoholic beverages sector specifically (a) Sparkling carbonated soft drink (soda) market; (b) Bottled water market; and (c) Juices Market.	The proposed transaction entailed the transfer of all the Bottler's issued shares into Almasi Beverages Limited, which would result in the targets being wholly owned and controlled by acquirer. Competition analysis indicated that the transaction would not prevent or lessen competition in the relevant markets.	The merger was approved unconditionally
21.	Air Connection Limited and Aramex (UK) Limited 5/9/2012	Airfreight cargo transport	Aramex UK through its subsidiary, Aramex Kenya Limited sought to acquire 75% of the issued shares in Air connection Limited. Analysis concluded that the transaction would not to have any negative effect on competition.	Approved unconditionally
22.	Cemtech Limited and Rock Field Corporation PTE Limited 6/9/2012	Mining	Rock Field acquired 74% of the issued share capital of Cemtech and therefore directly established control over Cemtech. The two undertakings were, however, to continue in existence and operate as separate legal entities. The proposed transaction was to enable Cemtech tap the requisite financial resources and technical know-how from Sanghi Industries Limited, India, to execute the project, fulfill its envisaged social responsibilities and enjoy other public interest benefits which may accrue as a result of the proposed acquisition	Approved unconditionally
23.	Nairobi Tented Camp Limited(NTC) and Porini Limited 10/9/2012	Tourist accommodation and tour operation services	Porini proposed to acquire 80% of the beneficial stake in NTC. Analysis indicated that post-merger, the transaction would not change market shares and therefore no negative effect on competition and public interest concerns were envisaged.	Approved unconditionally
24.	Jaswant Singh Rai, Tejveer Singh Rai, Onkr Singh Rai and Amrita Kaur Rai(The Rai Family) and Sukari Industries Limited 10/9/2012	Sugar sector	The proposed transaction involved acquisition of all the shares in Sukari by the Rai Family (the acquirers), the owners of West Kenya Sugar Company Limited effectively establishing control over Sukari. The transaction would not have any negative effect on competition was likely to result from the transaction.	Approved unconditionally

ANNEXES (continued)

ANNEX 1: Summary of Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
25.	Vtechnologies (Kenya) Limited and UTH Sas 11/9/2012	Supply and installation of elevators, and provision of elevator maintenance services.	The transaction entailed acquisition of 80% of the shares of the target undertaking. Analysis indicated that the transaction would not hurt competition in the relevant market nor would it lead to negative public interest concerns.	Approved unconditionally
26.	RTT Health Sciences and Imperial Group (Proprietary)Limited 3/10/2012	Pharmaceutical logistics and supply chain services	Imperial Group acquired certain assets (excluding cash at bank and intellectual property rights) and liabilities (excluding tax liabilities) of RTT Health business. Imperial Holdings also acquired all the shares in RTT Group's divisions namely; a) Fuel Africa Logistics Solutions (Proprietary) Limited, a wholly owned subsidiary of RTT Group incorporated in South Africa; b) RTT Kenya, and; c) RTT Ghana. The analysis concluded that the transaction would not have any negative competition concerns in the relevant market.	Approved unconditionally
27.	Alexander Forbes Healthcare Limited and Zanele Investments Holding Company Limited 6/10/2012	Healthcare Insurance services	Zanele acquired 100 % of the issued share capital of Alexander Forbes Healthcare Limited (Afrinet) thereby resulting in the establishment of control. The analysis indicated that the transaction would not raise any negative effect on competition in the relevant market nor would it lead to negative public interest concerns.	Approved unconditionally
28.	Colina Holdings Limited and Mercantile Insurance Company Limited 12/10/2012	Insurance and reinsurance services	Colina Holdings acquired 66.66% of the issued share capital in Mercantile Insurance Company Limited thereby leading to establishment of control. Analysis revealed that the transaction would not have any negative effects on competition in the identified market nor would it be a threat to public interest.	The transaction was approved unconditionally
29.	DT Dobie Limited, and Toyota Tsusho Corporation (TTC). 16/10/2012	Motor Vehicle market	This was a global transaction. It entailed TTC acquiring 97.81% stake in CFAO. This indicated that Toyota Tsusho would indirectly own 97.81% of stakes in DT Dobie. Analysis concluded that the merger would lead to dominance in some relevant product markets specifically on the supply of saloon cars above 1800cc and below 1800cc.	Approved with conditions
30.	Cica Motors Kenya Limited and Toyota Tshusho Corporation 16/10/2012	Motor vehicle	This was a global transaction. It entailed TTC acquiring 97.81% stake in CFAO. The transaction would not have any negative competition concerns nor would it result to negative public interest issues.	Approved unconditionally

ANNEXES (continued)

ANNEX 1: Summary of Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
31.	Pacific Seaboard Investments Limited (PSIL) and Tardigrade International Inc. 22/10/2012	Exploration for oil and gas	Tardigrade International Inc. acquired 87.25% of the issued share capital of PSIL, resulting in the acquirer having control over PSIL. Analysis of the transaction revealed that it would not prevent or lessen competition in the relevant market.	Approved unconditionally
32.	Kagiso Media Investments Proprietary Limited and Marc Group Limited 23/10/2012	Media	Kagiso Media Investments proprietary Limited acquired 100% of total issued share capital in Marc Group Limited.	Application was withdrawn by the parties.
33.	EMC Acquisition, LLC And Emerging Markets Communication, LLC and The Issued Membership Interest in EMC LLC 8/11/2012	Internet services and Installation, preventive and corrective maintenance	EMC Acquisition LLC and Emerging Markets Communications acquired 100% of the issued Membership Interest in EMC LLC. Analysis of the transaction concluded that it would not have any negative competition nor would it result to negative public interest issues.	Approved unconditionally
34.	Alldean Networks Limited and Isat Africa Limited Fzc And Richard W. Bell 16/11/2012	ICT	Africa Limited FZC And Richard Bell acquired the entire issued shares of the Alldean Networks Limited and ISAT, therefore establishing control over the target. The transaction did not spawn any negative competition concerns nor would it result to negative public interest issues.	Approved unconditionally
35.	Swift Global Logistics Limited and DSV AS & Sea Holdings A/S 20/11/2012	Freight and Logistics	The DSV AS and Sea Holdings acquired the entire issued share capital of Swift Global logistics Ltd. Analysis concluded that the transaction would not lessen nor prevent competition in the relevant market.	Approved unconditionally
36.	Lyntons Pharmacy Limited and Luwanda Management Services Limited 20/11/2012	wholesale and retail dispensing of pharmaceutical products	The transaction involved the acquisition of 99% shareholding of Lyntons by Luwada, therefore resulting in establishment of control. The transaction would not lead to any negative impact on competition nor would it spawn negative public interest concerns.	Approved unconditionally
37.	Digitopia Limited and T.V. Africa Holdings Limited 27/11/2012	Free to air radio services	The transaction entailed the acquisition of all the issued shares in Digitopia limited by T.V. Africa Holdings Limited, which would result in the establishment of control. The merger did not have any negative effects on competition in the relevant market	Approved unconditionally

ANNEXES (continued)

ANNEX 1: Summary of Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
38.	Toyota Tsusho Corporation and Laborex Kenya Limited 28/11/2012	Motor Vehicle	This was a global transaction. Toyota Tshusho through Toyota Kenya indirectly acquired Laborex Kenya Limited through acquisition of CFAO, the holding company of Laborex. The transaction would not raise any negative effect on competition.	Approved unconditionally
39.	Toyota Tshusho Corporation and Epdis Kenya Limited 28/11/2012	Motor Vehicle	This was a global transaction. Toyota Tshusho through Toyota Kenya indirectly acquired 100% of the shares in Epdis Kenya Limited. The transaction would not have negative impact on competition.	Approved unconditionally
40.	Metropolis Healthcare Limited and Star Biotech Lab & Diagnostics Limited 6/12/2012	Medical Laboratory and diagnostic services	The transaction involved acquisition of the entire issued share capital of Star Biotech Lab & Diagnostics Limited by Metropolis healthcare Limited The transaction would not lessen or prevent competition in the relevant market.	Approved unconditionally
41.	Treadsetters Tyres Limited and Tredcor Kenya Limited 11/12/2012	New and retread tyres	Treadsetters Tyres Limited acquired the entire assets of the target. Analysis of the transaction concluded that there would be no negative effect on competition and public interest concerns.	Approved unconditionally
42.	Woolworths Franchise Business Currently Carried on By Deacons Kenya Limited and Woolworths Holdings(Mauritius) Limited 13/12/2012	Retail distribution of: clothing, home-ware and beauty products	The transaction involved acquisition of entire business currently carried on by Woolworths Holdings (Mauritius) Limited. Analysis concluded that the transaction would not have any negative effects on competition and public interest concerns.	Approved unconditionally
43.	Delamere Estates Limited and Ng'ombe Limited 14/12/2012	Cattle rearing	The transaction involved acquisition of 100% of Delamere Estates Limited's by Ng'ombe Limited. Evaluation of the transaction indicated that it would not have any negative effect on competition in the relevant market nor would it lead to any negative public interest concerns.	Approved unconditionally
44.	PSJ & Associates and PKF Kenya 19/12/2012	Accounting services	PKF Kenya acquired 100% shares of the issued share capital in PSJ & Associates, hence established control over the target. The analysis of the transaction indicated that it would not have any negative effect on competition in the relevant market nor would it lead to any negative public interest issues.	Approved unconditionally

ANNEXES (continued)

ANNEX 1: Summary of Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
45.	Lord Errol Limited and Koita International Kenya Limited 19/12/2012	La carte restaurant dining services	Koita International Kenya Limited acquired 100% of the issued shares in the target undertaking. The transaction would not cause any negative effect on competition nor would it lead to any negative public interest concerns.	Approved unconditionally
46.	Tradewinds Aviation Services and Nas Africa Aviation Limited 20/12/2012	Aviation ground handling support services	Nas Africa Aviation Ltd. acquired 55% of the issued shares in Tradewinds Aviation Services. It was concluded the transaction would not raise any competition concerns in the relevant market nor would it spawn any negative public interest concerns.	Approved unconditionally
47.	InterConsumer Products Ltd. and L'OREAL East Africa Ltd. 21/12/2012	Beauty products	The transaction involved acquisition of 100% stake in the assets of InterConsumer Products Ltd by L'Oreal East Africa Ltd. This would lead to establishment of control by L'Oreal over InterConsumer products Ltd. Analysis concluded that transaction would not lessen or prevent competition in the relevant markets in Kenya.	Approved unconditionally
48.	Mutonga Mutuandaju Small Hydro Power Project and Intrepid Energy Limited 4/1/2013	Power Generation	Intrepid Energy Limited acquired the entire business of Mutonga Mutuandaju Small Hydro Power Project. The transaction was not expected to cause negative competition concerns nor would it lead to any negative public interest issues.	Approved unconditionally
49.	Baloobhai Chhatobhai Patel and Endeless Estate Kilifi Holding Ltd. 8/1/2013	Tourist accommodation.	The transaction involved the acquisition by the acquirer of the entire issued shares in the target company from the existing shareholders. Analysis of the transaction revealed that the merger would not have negative impact on competition nor would it spawn any negative public interest concerns.	Approved unconditionally
50.	Airborne African Antics Limited & Kitenden Wildlife Conservancy Limited and Brick Amara Baloon Safaris Limited & Tazim Ramji-Wissanji Trading Limited 31/1/2013	Tourist accomodation	Brick Amara Baloon Safaris Ltd. & Tazim Ramji-Wissanji Trading Ltd proposed to acquire 100% of the issued shares of Airborne African Antics Ltd. and Kitenden Wildlife Conservancy Ltd. Parties have not yet submitted some documents and other additional information.	Incomplete filing. Required the parties to complete the Merger Notification Forms. Case in progress
51.	World Bicycle Relief and Buffalo Bicycle Kenya Limited 12/2/2013	importation and supply of bicycles and bicycle spare parts	The transaction entailed the acquisition of the entire issued share capital of the commercial arm of the bicycle business. Analysis concluded that the transaction would not have any negative impact on competition nor would it lead to any negative public interest issues	Approved unconditionally

ANNEXES (continued)

ANNEX 1: Summary of Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
52.	Iroko Securities (Kenya) Limited and Ecobank Development Corporation 15/2/2013	Investment advisory services	The transaction entailed the acquisition of the entire issued share capital of Iroko Securities (Kenya) Limited, resulting in establishment of control. Analysis of the transaction indicated that the transaction would not lead to any negative competition effects in the relevant market and would not spawn any public interest issues.	Approved unconditionally
53.	Wananchi Group (Kenya) Ltd. and Cable Television Network Ltd. 7/3/2013	Fibre infrastructure	Post-merger, Wananchi Group Ltd. acquired 99.9% of the issued share capital in Cable Television Network Limited. The transaction would not result in lessening or prevention of competition in the relevant market.	Approved unconditionally
54	Datatec Limited and Comztek Holding(Proprietary) Limited 13/3/2013	ICT	The transaction entailed the acquisition of the entire issued share capital of the target firm. Analysis revealed that the transaction would not raise any negative effect on competition.	Approved unconditionally
55.	Viva Afya Ltd. and Daru Shifa Medical Centre 22/3/2013	Primary health care services	The transaction involved acquisition of the business and assets of Viva Afya Ltd thereby established control of the target. Analysis of the transaction concluded that the transaction would not lessen or prevent competition in the relevant market.	Approved unconditionally
56.	Brightermonday.Com Limited and Cheki Africa Media 22/3/2013	Provision of Online employment and job advertisements	The acquiring undertaking purchased 55% shareholding in Brightermonday.com Limited, thereby became the beneficial owner and established control over the target Analysis concluded that the transaction would not impact negatively on competition.	Approved unconditionally
57	Parle Biscuits Private Limited and Kilimanjaro Foods Limited 4/4/2013	Food	Parle Biscuits Private Limited acquired 60% of the issued share capital in Kilimanjaro Foods Limited. The acquisition was not expected to pose negative impact on competition. Instead, it would likely lead to Public interest benefits.	Approved unconditionally
58.	Intersat Africa Limited and BSS Africa Limited	Wireless data communication	The case involved purchase of assets of Intersat Africa limited incorporated in Kenya, by BSS Africa Ltd owned by Belgium Satellite Services SA. The transaction would not have any negative impact on competition nor public interest concerns.	Approved unconditionally.

ANNEXES (continued)

ANNEX 1: Summary of Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
59	Dimension Data Holdings Plc and AccessKenya Group Ltd. 6/5/2013	ICT	Dimension Data Holdings PLC. Acquired 100% of the issued Share Capital of Access Kenya Group Limited. Analysis indicated that the transaction would not have any negative effect on competition in the relevant market.	Approved unconditionally
60.	Harper Holdings Ltd. and Ma Cuisine Ltd. 27/5/2013	Edible spreads and confectionary	The acquiring undertaking acquired 100% of the issued share capital of Ma Cuisine Limited. Analysis indicated that the transaction would not raise any competition concerns.	Approved unconditionally.
61.	Ian Mbuthia Mimano & Adi Vinner and Peter Nthiga Njagi and Lady Lori Kenya Ltd 29/5/2013	Aviation	The transaction involved acquisition of 100% of the shares in Lady Lori Kenya Limited by Ian Mbuthia Mimano, Adi Vinner and Peter Nthiga Analysis revealed that the transaction would not have resulted in any negative impact on competition and negative public interest concerns.	Approved unconditionally
62.	The Coca Cola Export Corporation and Coca Cola Juices Kenya 16/6/2013	Still Beverages market	The merger conferred Coca Cola Export Corporation 66.03% of the Coca Cola Juices Kenya. Analysis of the transaction indicated that the transaction would not injure competition in the relevant market.	Approved unconditionally
63.	Liquid Telecommunications Holdings Limited and Altech Kenya Data Networks Limited and Altech Swift Global Limited 31/1/2013	Fibre optic cables, Wireless network, broadband services and ISP	The transaction involved acquisition of majority shares in Altech Kenya data Networks Limited and Altech swift Global Limited by Liquid Telecommunications Holdings Limited. Analysis of the transaction concluded that the transaction would have no negative effects on competition and no negative public interest issues were envisaged.	Approved unconditionally
64.	Microensure Advisory Services Limited and Microensure Holding Limited 24/1/2013	Insurance advisory and insurance brokerage services	Microensure Holding Limited acquired 99% of the issued shares in Microensure Advisory Services Limited. The transaction would not raise any negative effect on competition.	Approved unconditionally

ANNEXES (continued)

ANNEX 1: Summary of Merger Notifications

S/ No	Parties involved and commencement date	Sector/market	Summary	Decisions
65.	Standard Chartered Private Equity limited (Mauritius) III Limited (SCPE), PRIF AfriVest Limited (PemgroFund) and CSSAF Consumer I (CSSAF) and ETC Group of Mauritius. 25/6/2013	The firms operate in the following markets, including; strategic consulting, brand engagement, sales promotion and retail marketing; production and marketing of fine wines spirits and flavored alcoholic beverages; undersea broadband internet connectivity; banking; and in the supply chain of agricultural commodities.	The transaction will involve acquisition by SCPE, PemgroFund and CSSAF of veto rights on a number of reserved matters. Post-merger, the acquirers will obtain enhanced voting rights in respect of strategic reserved matters and will therefore have the ability to materially influence the target undertaking's policies.	The analysis is in progress

ANNEXES (continued)

ANNEX 2: Summary of Advisory Opinions

S/No	Parties involved and date	Issue and advisory opinion given
1	City Lodge Hotels Ltd and Fairview Hotel Ltd 18th June 2012	The transaction entailed the proposed acquisition of 50% of the entire issued share capital in Fair View Hotel Limited by City Lodge Hotels Limited hence no acquisition of control in terms of section 41 of the Act.
2.	Yara Nederlands B.V. & NU3 B.V and Nutri SI Holdings N.V and NU3 N.V. 9th July 2012	The acquisition involved four entities, all in foreign jurisdictions with no subsidiaries in Kenya but one had its presence in Kenya through a supply arrangement. The Authority's advice was that since the transaction was taking place between entities falling under Yara Holdings Netherlands B.V arm which fully owned Yara Nederlands, and which is different from Yara UK Limited arm which indirectly controls Yara East Africa, there would be no change in control in the Kenyan undertaking. Similarly, Nutri SI through its indirect association with Everris Kenya Limited would be unaffected by the proposed transaction.
3.	Nestle S.A. and the Infant Nutrition Business 11th September, 2012	The transaction involved acquisition by Nestle of the infant nutrition business of Pfizer which involved separate foreign agreements. The Advisory opinion provided was that the proposed transaction is not a merger within the purview of section 41 of the Act and therefore did not require prior Authorization to facilitate its actualization.
4.	TPS Eastern Africa Ltd. And TPS Uganda Limited 12th October, 2012	TPS Eastern Africa Ltd. Proposed to acquire 79.19% of TPS Uganda through a share swap agreement. The Authority's advice was that there will be no change of control in the Kenyan undertaking and that the share swap would not lead to control of TPS Eastern Africa Limited by Aga Khan Fund for Economic Development S.A. the undertakings involved in the share swap.
5.	Adamantine Energy (Kenya) and Bowleven PLC. 24th October, 2012	They sought advisory opinion as to whether the proposed joint venture between the two undertakings constituted a merger. The Authority's requested them to provide the requisite documents to facilitate in giving an informed advice, which they failed to submit.
6.	Barclays and ABSA 22nd November, 2012	This was a restructuring aimed at putting the Barclays African business under a consolidated management and ownership structure. The Authority advised the Parties that the transaction was not a merger.
7.	Kenya Data Networks and Liquid Telecoms 29th November, 2012	A major shareholder, Altech, was intending to withdraw its shareholding from Kenya Data Networks and another firm Liquid Telecoms intended to buy the said shares. The parties were advised to formally notify the Authority of the proposed merger.
8.	Style Industries and Strategic Industries 4th December, 2012	The advisory opinion was as to whether the proposed Agreement between Style Industries Limited and Weave Trading Mauritius PVT Limited was within the purview of section 21 (1) of the Act. The Authority's advise was that the ownership structure and proposed agreement fell within the provisions of the Act and therefore the need of seeking for exemption from the application of the Act.
9.	Anjarwalla & Khanna Advocates 6th February, 2013	They sought for confirmation as to whether the entry into: <ul style="list-style-type: none"> • a petroleum or gas sharing contract; • an exclusive mining license, and; or • a mining lease would constitute a restrictive trade practice as defined in section 21 of the Act. <p>The Authority's advise was that it evaluates matters on a cases by case basis.</p>

ANNEXES (continued)

ANNEX 2: Summary of Advisory Opinions

S/No	Parties involved and date	Issue and advisory opinion given
10.	Deloitte reorganization of Kenya operations 18th March, 2013	The transaction involved restructuring of Deloitte's operations in East Africa where the Trust was to be dissolved and individual partners become direct shareholders. This kind of arrangement did not constitute a merger and the parties were advised accordingly.
11.	Bowman & Gilfillan Advocates 19th March, 2013	They sought confirmation as to whether proposed transaction involving two South African Companies was within the ambit of the Act. Both companies had no presence nor did they conduct business operations in Kenya. However the target delivered products to Kenya during the preceding year. The Authority's advised the parties that transaction did not qualify as a merger.
12.	Naushad Merali & Joseph Schwartzman 16th April, 2013	The transaction involved adjustment of certain ownership of shares. The transaction entailed transfer of stake in Tombeen, an overseas company to JS. The transaction did not qualify as a merger under the Act as it entailed a readjustment/ share swap.
13.	Pacis Holding Company and Pacis General Insurance 14th May, 2013	Pacis Holding Company was acquiring 100% of shares of both Pacis General Insurance and Pacis Life Insurance resulting in the transfer of the management and commercial activity. This was reorganization within a single economic unit and hence the transaction did not qualify as a merger.

ANNEXES (continued)

ANNEX 3: Summary of Enforcement, Compliance and Consumer Affairs Cases

No	Case/activity and commencement date	Sector/ Market affected	Case summary	Status/decision
1.	Kenya Association of Travel Agents(KATA) Vs. International Air Transport Association(IATA): (01/02/2011)	Travel insurance	KATA complained that IATA was engaging in anti-competitive behavior (discrimination and refusal to deal) in regard to default insurance. After the investigations, the Authority issued an order of cease and desist which was challenged by IATA at the High Court on procedural grounds.	The matter was settled out of court upholding the decision of the Authority.
2	KIFWA Vs Shipping Logistics Service Providers: (23/8/2011)	Shipping	KIFWA alleged that conduct by dominant multinational shipping logistic service providers led to high cost of doing business at the port of Mombasa.	The matter is at the final stages of the analysis.
3	CAK Vs Daily Newspapers: (1/11/2011)	Print media	The Major Print Media Houses had been simultaneously increasing the prices of their daily newspapers.	Investigations (screening process) ongoing and have been expanded to include other relevant markets and to gather more relevant data with a view to establish whether a cartel exists.
4	CAK Vs Macadamia Nut Processors Association: 30/1/2012	Horticulture	NUT PAK were restricting farmers to sell their produce to specified buyers	The investigations were concluded and the report recommended advocacy initiative targeting Ministry of Agriculture for action.
5	CAK Vs. Multichoice: (1/2/2012)	Broadcasting	Various problems, identified by the Authority in the pay TV sub -sector, including: collapse of Pay TV market players such as; GTV and Smart TV, after only a few years in the market, and allegations of discrimination and abuse of dominance by pay TV market players and other broadcasters led to the investigations into the conduct of firms and persons in the subsector.	Investigations ongoing
6	CAK VS Horticultural Crop Development Authority (HCDA): 16/2/2012	Horticulture	The allegation was that HCDA threatened to deregister players who deal in Organdi bean variety which was to be grown exclusively by Frigoken (K) Ltd.	The Authority made a determination that the purpose of the exclusivity is to protect Intellectual Property Rights (IPR) and encourage innovation. The case was therefore terminated.



ANNEXES (continued)

ANNEX 3: Summary of Enforcement, Compliance and Consumer Affairs Cases

No	Case/activity and commencement date	Sector/ Market affected	Case summary	Status/decision
7	Jamii Telkom Vs Runda Association: (21/02/2012)	Communication services	Jamii Telkom submitted complaint that Runda association had barred it from installing fibre network cables in the region.	The matter was resolved and Jamii was allowed entry.
8	Exemption of the agreement between Sports Stadia Management Board (SSMB) and Coca-cola East and West Africa (CCEWA) Limited: 11/04/2012	Concession franchise	SSMB and CCEWA made an application to the Authority for exemption of their proposed one (1) year exclusive branding rights of Nyayo Stadium and exclusive rights to provide beverages during any events managed by SSMB at the Stadium.	Exemption was granted because of the overriding public benefits such as employment, infrastructure development, recreation for youth and multiplier effects in advertising, event organization and development of athletics.
9	Exemption application of proposed sponsorship arrangements between Kenya Breweries Limited (KBL) and Kenya Premier League (KPL): 08/05/2012	concession franchise	The two parties applied for exemption from the provisions of the Competition Act clause 5.3 of the agreement which made KBL the exclusive alcoholic beverage sponsor in relation to the KPL events with sole rights to sell and distribute its portfolio of brands at KPL events venues.	Exemption was granted because of the overriding public benefits such as; availability of financial resources to football clubs under KPL, for the improvement of the sport, stability of the KPL league, growing of talent and creation of employment, and therefore safeguarding the youth from drug abuse and crime.
10	Telkom Kenya Ltd vs. Airtel Kenya Ltd & Essar Telkom Kenya Ltd: (6/7/2012)	Telecommunications	Telkom alleged that off-net calling rates of Airtel and Essar were predatory as they were below costs. They also alleged that promotions by Telkom and Essar violated consumer rights	The investigations were conducted. The allegations were not confirmed.
11	Consumer Information Network (CIN) & Kenya Taxi Cabs Association (KTCA): (09/07/2012)	Taxi services	CIN alleged that taxi associations in Nairobi were levying a uniform charge to various destinations. The scope of investigations was widen to include the practices of other taxi associations and geographic scope.	The investigations were ongoing by the closure of the reporting period.

ANNEXES (continued)

ANNEX 3: Summary of Enforcement, Compliance and Consumer Affairs Cases

No	Case/activity and commencement date	Sector/ Market affected	Case summary	Status/decision
12	CAK Vs. Kenya Private Health Care Providers (PHP) Consortium: 26/07/2012	Health care	PHP Consortium had recommended the percentage by which fees may be revised by private hospitals	The Authority issued a cease and desist order and demanded proof of compliance. This enforcement action prevented the Healthcare providers from adjusting their prices upwards by 20%.
13	Out-door Advertising Agencies (OAA) vs. Kenya Roads Board (KRB): (21/8/2012)	Outdoor Advertising	OAA complained of plans by the KRB, a roads network regulator, to enter into the trade of outdoor advertising, therefore, giving it undue advantage over its competitors. The complainant also alleged that KRB had intentions of foreclosing the market through predatory practices	The file was closed when the matter was taken to the Court.
14	Kenya Data Network (KDN) Vs. Safaricom Ltd: 17/09/2012	Communications	KDN Complained that Safaricom had abused its dominance after it "prematurely" terminated their contract for the supply of various fiber optic links.	The Parties withdrew the matter in favor of arbitration as provided in their Contract.
15	Airtel Kenya Ltd Vs Safaricom Ltd: (20/9/2012)	Telecommunications	Airtel Kenya Ltd complained that Safaricom Ltd is barring its Mpesa agents from offering Airtel Money services alongside their Mpesa services.	Investigations were ongoing by close of the reporting period.
16	Njeru Industries vs. Kenya Tea Board & various tea factories: (25/10/2012)	Tea	Njeru Industries' (NI) alleged that Kenya Tea Development Agency (KTDA), Michimikuru Tea Factory Ltd, Kiegoi Tea Factory Co. Ltd and Igembe Tea Factory Co. Ltd were jointly restricting market entry by opposing the construction of a Specialty Tea Factory by NI.	The case was finalized and Advisory Opinion of the Authority was presented to the Tea Board of Kenya indicating that the said market is contestable and hence more investors should be licensed.
17	Proposed arrangement between Kenya Airways Limited and KLM: 05/11/2012	Air Transport services	The parties made an application for exemption of their Joint Venture (JV) arrangements from the application of Part III (A) of the Act in respect of specific provisions found under the arrangements, which may have some of the effects contemplated under section 21(3) (a) and (b) of the Act.	Exemption was granted because of the overriding public benefits.

ANNEXES (continued)

ANNEX 3: Summary of Enforcement, Compliance and Consumer Affairs Cases

No	Case/activity and commencement date	Sector/ Market affected	Case summary	Status/decision
18	Marina Machineries Vs Echochicks and Petreshah: (09/1/2013)	Distribution of Egg incubators	Marina Machineries & Echochicks complained that Petreshah, after registering model of egg incubator as his own trade mark, had seized their stock of egg incubators, alleging that they were counterfeit.	The file was closed after the complainant went to court challenging the registration of the trade mark.
19	SBC KENYA LIMITED: (7/6/2013)	Carbonated soft drinks	SBC Kenya Limited complained of removal and defacing of its advertising material by a competitor.	The case was at the initial stages at the close of the reporting period.
Consumer Affairs Division				
1	Telkom and Airtel Kenya CAK/ EC/06/07/A 14.1.2012	Mobile Telephony services	Telkom claimed that Airtel posted what they alleged to be a misleading promotion advert in which every shopper who purchased Airtel top up cards at Nakumatt stores would earn free airtime depending on the value of the cards. Telkom alleged that advert created the impression that the promotion was permanent.	The case was closed after Airtel confirmed that information regarding the promotion was available at points of sale that is within the stores.
2	Mabati Rolling Mills and CAK CAK/ CW/06/01/A 13.3.2012	Manufacturing (roofing materials)	The case was initiated following the posting of a TV advert deemed to be misleading. Mabati Rolling Mills claimed their product, <i>Dumu zas</i> , a type of galvanized roofing sheet was 4 times more durable than ordinary roofing sheets.	The matter was referred to KEBS. However, the Standard's body indicated that they do not have standards specifying the durability aspect. However, they informed the Authority that they would conduct further research on other international Standards in the said area to confirm the veracity of the Claims.

ANNEXES (continued)

ANNEX 3: Summary of Enforcement, Compliance and Consumer Affairs Cases

No	Case/activity and commencement date	Sector/ Market affected	Case summary	Status/decision
Consumer Affairs Division				
3	COFEK and Fone Express CAK/ CW/06/15/A 18.9.2012	Retail (electronic goods)	COFEK reported a case in which a consumer unknowingly bought a defective mobile phone and two computers from Fone Express. Though the seller severally attempted to repair the goods, the warranties expired before the work was completed. Consequently, the consumer was asked to purchase spare parts to complete the repairs.	The matter was in progress at the close of the year as more information requests had been made.
4	Eden Roc Hotel and Mr. Desai CAK/CW/06/01 23.1. 2013	Hospitality (hotel)	The allegation in this case was that Mr. Desai was misled after he was booked into a hotel room that did not meet the specifications as per the reservations made by his travel agent. The hotel refused to refund the booking fee but offered him the chance to take up the holiday the following year, which period was not convenient to him.	The case was finalized after the parties negotiated and the hotel management agreed to extend the offer to December 2013. The complainant agreed
5	Top Shoes Ltd and Mercy Thande CAK/ CW/06/07/A 1.3.2013	Retail (footwear)	The complainant bought a pair shoes from the store. The soles were damaged within the first day of use. The seller refused to address the buyer's grievances.	In Progress
6	CAK and Foton EA Ltd CAK/ CW/06/16/A 20.6.2013	Manufacturing (vehicle spare parts)	The case regarded misleading representation claims made against Foton by a consumer. Foton was apparently misleading consumers that their vehicles are of Perkins engine brands. Foton admitted liability	The matter was referred to the Office of Directorate of Public Prosecution for necessary intervention

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