



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE EAST AFRICAN COMMUNITY COMPETITION AUTHORITY

AND

THE COMPETITION AUTHORITY OF KENYA

MAY, 2023

**MEMORANDUM OF UNDERSTANDING BETWEEN THE EAST AFRICAN COMMUNITY
COMPETITION AUTHORITY AND THE COMPETITION AUTHORITY OF KENYA
REGARDING COOPERATION IN THE APPLICATION AND ENFORCEMENT OF THEIR
COMPETITION LAWS**

This Memorandum of Understanding is entered into on this...16th...day of May..., 2023.

BETWEEN

- I. **East African Community Competition Authority**, an institution of the East African Community established by the Treaty for the Establishment of the East African Community (Treaty) and EAC Competition Act of 2006 and whose address of service is care of EAC Close, Afrika Mashariki Road, P.O. Box 1096 Arusha, Tanzania on one hand; (hereinafter referred to as "the EACCA")

AND

- II. **Competition Authority of Kenya**, a National Competition Authority established under the Kenya Competition Act No. 12 of 2010 and whose address of service for purposes of this Memorandum of Understanding (MoU) is care of Kenya Railways Headquarters, Block D, P.O. Box 36265-00200, Nairobi, on the other hand. (hereinafter referred to as "the CAK")
- III. The objective of the parties is to enhance the welfare of the people in the community, and it is imperative that parties give effect to the principles of regional competition law.

RECOGNISING:

Section 42 of the EAC Competition Act of 2006 states that the Authority shall have all the powers, express and implied, necessary for and conducive to the implementation and enforcement of the East African Community Law. Further, Section 43 of the EAC Competition Act mandates the Authority and the Partner States to mutually cooperate in the implementation of the East African Community Competition Law.

Equally, Section 5 (3) of the Competition Act No. 12 of 2010 mandates the Competition Authority of Kenya ("CAK") to cooperate with regulatory and public bodies on matters relating to competition and consumer welfare.

In furtherance of this, the parties seek to cooperate through this memorandum of understanding.

Now, therefore, the Parties agree as follows:

Article 1

Definitions

In this Memorandum of Understanding;

1. **"Competition Law(s)"** means:
 - a. The East African Community Competition Act, 2006.
 - b. The Competition Act No.12 of 2010 Laws of Kenya.
 - c. Any such other regional laws or regulations recognized as "competition and consumer protection law" for the purpose of this MoU.
2. **"Enforcement activities"** means any application of competition law by way of investigation or proceedings on either Mergers and Acquisitions, Restrictive Trade Practices / Restraints by Enterprises, Abuse of Market Dominance/Buyer Power, Consumer Welfare and Market Inquiries or Studies conducted by a Party.
3. **"Parties"** means
 - a. the East African Community Competition Authority established by Section 37 of the East African Community Competition Act, 2006; and
 - b. the Competition Authority of Kenya established by Section 7 of the Competition Act No. 12 of 2010 Laws of Kenya.

Article 2

Purpose of this Memorandum of Understanding

The Purpose of this Memorandum of Understanding (MoU) is to promote and facilitate cooperation and coordination between the Parties in:

- a. Joint investigations on competition, abuse of buyer power and consumer protection matters;
- b. Sharing and handling of information;
- c. Joint market inquiries and studies;
- d. Joint advocacy and sensitization initiatives; and
- e. Capacity building.



Article 3

Notification

1. Each Party will notify the other Party in writing whenever it becomes aware that its enforcement activities may affect important interests of the other Party.
2. Enforcement activities as to which notification generally will be appropriate include those that:
 - a. Involve anticompetitive activities carried out in the whole or in a significant part of the EAC and consumer protection matters affecting the EAC;
 - b. Involve conduct believed to have been required, encouraged or approved by a Party; or
 - c. Involve the imposition of remedies, conditions, undertakings or commitments that would, in significant respects, require or prohibit conduct affecting the EAC.
3. Each Party shall notify the other Party whenever it intervenes or otherwise participates in a regulatory or judicial proceeding that does not arise from its enforcement activities, if the issues addressed in the intervention or participation may affect the interests of the other Party.
4. Notifications shall include the nature of the activities under investigation and the legal provisions concerned and will be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the activities on its territory.

Article 4

Undertakings of the Parties

1. The Parties will take all appropriate measures to ensure fulfillment of the obligations arising out of this MoU or resulting from action taken by the Parties in implementing this MoU.
2. The Parties will facilitate the achievement of the objectives of this MoU, respective competition laws and in so doing, will abstain from taking any measure which could jeopardize the attainment of the objectives of this MoU.
3. The Parties may determine the appropriate method of implementing the provisions of this MoU as long as such method of implementation enhances the efficient and effective attainment of the objectives of this MoU.



Article 5
Sharing and Handling of Information

1. Each Party agrees to provide to the other party on request and to the extent compatible with their respective laws such information within its possession as the requesting party may describe as relevant to an enforcement activity that is being contemplated or conducted by the requesting party.
2. Each Party will provide the other party with information that comes to its attention regarding enforcement activities that the Party believes is relevant to or may warrant, enforcement activity by the other Party.
3. In the case of concurrent action by the Parties with a view to the application of their competition laws, each party shall on request from the other party, ascertain whether the natural or legal person will consent to the sharing of confidential information related thereto between the parties.
4. The sharing and handling of information in the custody of either party, will be done through investigations; conducting compliance checks on joint decisions; publicizing product recalls, among other things.

Article 6
Coordination and Cooperation in Market Inquiries or Studies

1. Where circumstances suggest that competition may be restricted or distorted within an economic sector, the Parties may conduct joint inquiries or studies in that sector.
2. The Parties will coordinate in undertaking market inquiries in identified sectors to ascertain any competition concerns in those sectors.
3. Each Party may prioritize implementation of the recommendations from market inquiries and studies.

Article 7
Coordination and Cooperation in Enforcement

1. The Parties will undertake joint investigations and enforcement activities, to the extent compatible with their respective competition laws and the respective interests, and within the reasonably available resources.
2. The requested Party will assist in the investigations which the requesting Party considers to be necessary. Such investigations shall be carried out with the assistance of officials of the requesting Party, upon request, in accordance with the respective Party's laws.
3. With respect to enforcement activities, each Party will notify the other Party of any significant information that comes to its attention that it believes is relevant to, or may warrant investigations and may request that the other Party to initiate appropriate enforcement activities.
4. The notification shall be as specific as possible about the nature of the conduct taking place in its territory and its likely effects and if enforcement has already taken place, it shall state the measures or remedies (if any) imposed.
5. The notified Party shall advise the notifying Party if enforcement activities are initiated, the outcome and, to the extent possible, of interim developments.
6. In considering whether particular enforcement activities are of mutual interest to coordinate their enforcement, the Parties will take account of the following factors, among others:
 - a. the opportunity to make more efficient use of their resources devoted to the enforcement activities;
 - b. the relative abilities of the Parties to obtain information necessary to conduct the enforcement activities;
 - c. the effect of such coordination on the ability of both Parties to achieve the objectives of their enforcement activities; and
 - d. the possibility of reducing costs incurred by persons subject to the enforcement activities.

7. In any coordination arrangement, each Party shall conduct its enforcement activities expeditiously and, insofar as possible, consistently with the enforcement objectives of their respective competition laws.
8. The Parties shall carry out the investigations expeditiously and in consistency with their relevant laws and shall take into account the enforcement objectives of the respective laws and the deadlines stipulated in their respective competition laws.
9. Nothing in this Article limits the discretion of the notified Party as to whether or not to undertake enforcement activities under its competition laws.
10. The Parties will collaborate in the development of tools for the better carrying into effect of the provisions of this MoU.

Article 8 **Consultation**

1. Each Party agrees to consult promptly with the other Party in response to a request by the other Party for consultations regarding any matter related to this MoU and conclude consultations expeditiously with a view to reaching mutually satisfactory conclusions.
2. Any request for consultations shall include the reasons thereof and shall state whether procedural time limits or other considerations require that the consultations be expedited. These consultations shall take place at the appropriate level, which may include consultations between the heads of the competition authorities concerned.
3. Each Party shall take into account the principles of cooperation set forth in this MoU and shall be prepared to explain to the other Party the specific results of its application of those principles to the issue that is the subject of consultation.
4. A Party shall inform the other Party of any amendment made to its competition laws as well as any change in the enforcement practice of its competition authority that may affect the operation of this MoU. Upon request of either Party, the Parties shall hold consultations in order to assess the specific implications of such amendments or changes for this MoU, and in particular to determine whether this MoU should be amended pursuant to Article 16.



5. The Parties shall meet at the appropriate level, at the request of either Party to among others:
 - a. update each other on their current enforcement efforts and priorities in relation to the competition laws of each Party;
 - b. exchange views on economic sectors of common interest;
 - c. discuss policy issues of mutual interest; and
 - d. discuss other matters of mutual interest relating to the application of the competition laws of each Party.

Article 9

Technical Assistance and Capacity Building

1. The Parties shall pursue technical assistance and capacity building programs through integrated strategies that are political, economic, social, technological, environmental and legal elements unique to each Party.
2. The technical assistance and capacity building programs shall pay systematic attention to institutional aspects and in this context, will aim at supporting the efforts of either Party to develop and strengthen structures, institutions and procedures that help to enhance the effective enforcement of the competition laws in their respective territories. In this context, the Parties shall for the mutual benefit of both Authorities:
 - a. carry out technical assistance and capacity building through exchange programmes; exchange of resource persons; development and review of guidelines and regulations; market inquiries and studies; impact assessment; development of investigation tools among others.
 - b. be responsible for its costs and expenses of capacity building and any such costs that apply to both Parties.
3. Joint advocacy and sensitization initiatives
 - a. The Parties will conduct sensitization and training of stakeholders on competition law in order to increase compliance, deeper appreciation of the competition policy and increase the number of well-informed stakeholders.
 - b. The Parties will partner in conducting impact assessment on specific cases, especially those jointly investigated, aimed at assessing and reporting on the impact of the interventions in order to promote accountability and communicating the importance of competition policy.



- c. The Parties will jointly facilitate and develop competition and consumer protection advocacy programmes involving the sensitization of stakeholders on competition law and policy.

Article 10

Confidentiality of Information

1. Notwithstanding any other provision of this MoU, neither Party is required to provide information to the other Party if disclosure of that information to the requesting Party is prohibited by the law of the Party possessing the information or would be incompatible with important interests of the Party possessing the information.
2. Each Party agrees to maintain, to the fullest extent possible, the confidentiality of information provided to it in confidence by the other Party under this MoU and to oppose, to the fullest extent possible, any application for disclosure of such information by a third party that is not authorized by the Party that supplied the information.
3. Press releases or public statements relative to this MoU or its implementation shall be approved by both Parties, prior to release and disclosure. Parties will also endeavor to issue joint statements or avoid contradictory responses on decisions reached at jointly.

Article 11

Communication under this Memorandum of Understanding

1. Communication under this MoU shall be written in English and addressed to:

For EACCA:

The Registrar
East African Community Competition Authority
EAC Close, Afrika Mashariki Road
P.O. Box 1096
Tel: +255 27 2162100
Arusha, Tanzania
Email. info@eacompetition.org



For CAK:

The Director General
Competition Authority of Kenya
Kenya Railways Headquarters
Block D, Workshop Road
P.O. Box 36265-00100
Tel: +254 20 2628233
Nairobi, Kenya
Email: info@cak.go.ke

2. Communication under this MoU will be made in a timely and practicable manner.

Article 12 Dispute Resolution

Any disputes that may arise from this MoU will be amicably resolved through consultations.

Article 13 Establishment of a Joint Working Committee

1. The Parties shall within six months of signing this MoU establish a joint working committee and designate a Liaison Officer responsible for coordinating implementation of this MoU.
2. The committee will be comprised of representatives nominated by each party pursuant to this MoU.
3. The functions of the joint working committee shall include:
 - a. Facilitating cooperation and consultation in respect of matters relating to this MoU;
 - b. Proposing, where necessary, amendment or supplementation to this MOU;
 - c. Advising Parties on issues affecting competition and consumer protection matters such as:
 - i. Cooperation and collaboration in conducting joint market inquiries and studies;
 - ii. Proposing amendments to the relevant or applicable statutes that may be necessary from time to time;
 - iii. Providing updates and sharing information on recent developments; and



- iv. Conducting joint advocacy initiatives in areas of mutual interest.
- d. Monitoring and evaluation of the MoU implementation.

Article 14
Legal Effect

1. This MoU does not have legal effect.
2. For the avoidance of doubt, nothing in this MoU shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the competition laws of the Parties.

Article 15
Entry into Force and Review

1. This MoU shall enter into force upon signing by the Parties and will remain in force unless terminated by either Party.
2. The Parties may, at any time, review this MoU with a view to adopting such further arrangements as may be feasible and desirable to enhance cooperation in the enforcement of the respective competition laws.

Article 16
Amendment

1. This MoU may be amended from time to time by mutual written consent of both parties. Such amendments shall be signed and dated by both parties prior to the changes being made and shall come into force on such a date as shall be mutually agreed upon by the parties and shall form part of this MoU.
2. Any amendments shall be done without prejudice to the rights and obligations arising from or based on this amendment prior to the date of such amendments.



Article 17
Termination

1. Each Party may terminate this MoU by giving sixty (60) days written notice of intention to terminate this MoU.
2. The termination of this MoU will not affect any ongoing activities and programmes under the MoU, unless the Parties jointly decide otherwise.

IN WITNESS WHEREOF, the undersigned, have signed this Cooperation MoU.

DONE in two original texts on the 16th day of May, 2023.

The East African Community Competition Authority



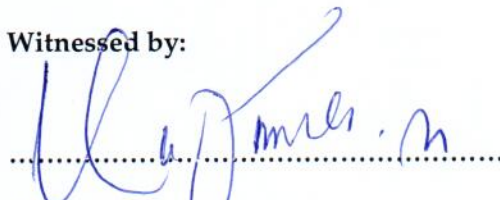
Ms. Lilian K. Mukoronia
Registrar

The Competition Authority of Kenya



Dr. Adano W. Roba
Ag. Director - General

Witnessed by:



Dr. Anthony L. Kafumbe
Counsel to the Community

Witnessed by:



Mr. Amenya Omari
Corporation Secretary &
Manager, Legal Services