
THE EAST AFRICAN COMMUNITY

ACTS SUPPLEMENT

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THE EAST AFRICAN COMMUNITY COMPETITION
(AMENDMENT) ACT, 2023

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**THE EAST AFRICAN COMMUNITY COMPETITION
(AMENDMENT) ACT, 2023.**

An Act of the Community to amend the East African Community Competition Act, 2006 to streamline the provisions on mergers with the international practice on competition; to confer legal personality on the Authority; to empower the Authority to impose and collect financial penalties; and provide for related matters.

DATE OF ASSENT: 24th November, 2023

Date of Commencement: 31st December, 2024

ENACTED by the East African Community and assented to by the Heads of State.

1. This Act may be cited as the East African Community Competition (Amendment) Act, 2023. Short title.

2. The East African Community Competition Act, 2006, in this Act referred to as the “principal Act” is amended in section 2— Amendment of the East African Community Competition Act, 2006.

- (a) by substituting the definition of “agreement” with the following new definition—

“agreement” means a contract, arrangement or understanding between two or more persons, whether or not it is in writing and whether or not it is intended to be enforceable by legal proceedings;”

- (b) by substituting the definition of “competition” with the following new definition—

“competition” means the process whereby two or more undertakings strive to produce, distribute, supply, purchase or consume the same or substitutable goods or services in the relevant market;”;

- (c) by substituting the definition of “competitor” with the following new definition—

“competitor” means an undertaking that produces, distributes or supplies substantially similar goods or services at the same stage of production or distribution of goods or supply of services in relation to another undertaking”;

- (d) by substituting the definition of “concerted practice” with the following new definition—

“concerted practice” means associative, co-operative or coordinated anti-competitive conduct between undertakings, achieved through direct or indirect contact, whether by agreement or not, which replaces the independent action of the undertakings;”;

- (e) by substituting the word “effective” appearing in the definition of “dominant position” with the word “fair”;
- (f) by repealing the definition of “predatory pricing”;
- (g) by repealing the definition of “price squeezing”;
- (h) by inserting the following new definitions in their proper alphabetical order—

“control” means the right by an undertaking to exercise restraint or direction over another undertaking and includes—

- (a) beneficial ownership of more than one half of the issued share capital, business or assets of the other undertaking;
- (b) the ability to appoint or veto the appointment of more than half of the members of board of directors or similar body in the other undertaking; or
- (c) the potential or actual ability of the undertaking to materially influence the business policy and operations of the other undertaking irrespective of the size of ownership change;

“merger” means the acquisition of shares, business or other assets whether inside or outside the community resulting in the change of control of a business, part of a business or an asset of a business in the community in any manner and includes a take-over;

“predatory practice” means any practice seeking to drive competitors out of business or to deter market entry”.

Amendment
of section
3 of the
principal
Act.

3. The principal Act is amended in section 3 by adding immediately after paragraph (e) the following new paragraph—

“(f) protect consumers against unfair and misleading conduct”.

Amendment
of section
5 of the
principal
Act.

4. The principal Act is amended in section 5—

(a) by substituting subsection (1) with the following—

“(1) Subject to section 6, an undertaking shall not engage in a concerted practice or enter into an agreement if that concerted practice or agreement has, or is intended to have an anti-competitive effect in the relevant market.”;

(b) by substituting the opening phrase of subsection (2) with the following—

“(2) Without prejudice to the generality of subsection (1) an undertaking shall not engage in, or conclude agreements, giving effect to the following concerted practices - “;

(c) in subsection (4) by substituting for the words “A person” the words “An undertaking”;

(d) in subsection (5) by repealing the words “area of the” appearing immediately before the words “relevant market”.

5. Section 7 of the principal Act is amended—
- Amendment
of section
7 of the
principal
Act.
- (a) in subsection (1) and (2) by substituting the words “A person” wherever they appear, with the words “An undertaking”
 - (b) in subsection (3) by substituting the words “forty-five” with the word “sixty”;
 - (c) in subsection (4) by substituting the words “A person who” with the words “An undertaking which”.
6. Section 8(3) of the principal Act is amended by substituting the words “person who” with the words “undertaking which”.
- Amendment
of section
8 of the
principal
Act.
7. Section 9 of the principal Act is amended—
- Amendment
of section
9 of the
principal Ac
- (a) by substituting subsection (1), with the following—
 - “(1) An undertaking holding a dominant position in the relevant market shall not engage in any practice that excludes, or is intended to exclude, its competitors from the market by:
 - (a) predatory practice;
 - (b) cross subsidization; or
 - (c) any other practice determined by the Authority.”;
 - (b) in subsection (2) by substituting the opening phrase with the following—
 - “An undertaking holding a dominant position in the relevant market shall not engage in a practice that prevents or is intended to prevent, distort or restrict competition by - “;

- (c) in subsection (4) by substituting the word “person” with the word “undertaking”.

Amendment of section 10 of the principal Act.

- 8.** Section 10 of the principal Act is amended in subsection (2) by substituting the word “person” with the word “undertaking”.

Replacement of Part IV of the principal Act.

- 9.** PART IV of the principal Act is substituted with the following—

**“PART IV
MERGERS**

Notification of mergers.

- 11.** (1) An undertaking intending to execute a merger that is within the thresholds prescribed by the Council under subsection (4), shall notify the Authority of the merger.

(2) The notification referred to in subsection (1) shall be made upon the conclusion of the agreement in respect of the merger, by the undertaking acquiring control through the merger.

(3) A merger for which notification is required by this section shall not come into effect before its notification to the Authority and without the approval of the Authority.

(4) The Council shall, on the recommendation of the Authority, by notice in the Gazette, prescribe the thresholds generally or in relation to specific industries for which an undertaking is required to notify the Authority.

Authority
not to
approve anti-
competitive
mergers.

12. (1) The Authority shall not approve a merger that leads to the substantial lessening of competition in the relevant market.

(2) In determining whether a merger may lead to the substantial lessening of competition in the relevant market, the Authority may take into account all relevant competitive factors, and in particular shall consider—

- (a) the competitive structure of all markets affected by the merger, including the potential competition from both inside and outside the Community in light of legal or other barriers to entry;
- (b) the undertakings in the markets affected, their control of essential facilities, their integration in upstream and downstream markets, and their financial resources;
- (c) the competitors and the alternatives available to suppliers and consumers;
- (d) any pro-competitive effects of the merger which may outweigh the harmful effects on competition, including—
 - (i) contributing to greater efficiency in production or distribution;
 - (ii) promoting technical or economic progress;
 - (iii) contributing to greater efficiency in the allocation of resources;

- (iv) contributing to the protection of the environment; or
 - (v) whether the merger fulfills an overriding public interest;
- (e) the likelihood that the merger may lead to the creation or strengthening of a position of dominance in the relevant market.

(3) The Council may make representations to the Authority on any intended merger, specifying to the Authority the overriding public interest that the merger fulfills for the Community, which shall be taken into account by the Authority when considering the intended merger.

(4) Notwithstanding subsection (1) the Authority shall subject to Regulations made under section 49, have the power to approve a merger that leads to the substantial lessening of competition in the relevant market.

Decision of the Authority on intended merger.

13. (1) The Authority may after considering the intended merger—

- (a) approve the merger, with or without conditions; or
- (b) reject the merger.

(2) The Authority shall notify the undertaking concerned under subsection (1) of its decision within one hundred and twenty days.

(3) If the Authority has not communicated its decision within the time specified under subsection (2), the merger may be implemented.

Revocation
of approval.

13A. The Authority may revoke any approval given under this Part if—

- (a) the approval was based on incorrect, false or misleading information for which a party to the merger is responsible;
- (b) the approval was obtained by deceit;
- (c) the undertaking concerned has breached an obligation attached to the approval.”

10. Section 25 of the principal Act is amended by inserting immediately after subsection (1), the following—

Amendment
of section
25 of the
principal Act

“(1a) Notwithstanding subsection (1) the Authority may disclose information where—

- (a) the parties consent to its disclosure;
- (b) the disclosure is required by law;
- (c) the disclosure is made to a Partner State or Partner State’s competition authority.”.

11. Section 26 of the principal Act is amended—

Amendment
of section
26 of the
principal
Act.

(a) by substituting subsection (2) with the following—

“(2) Where a merger has been implemented contrary to the provisions of this Act, the Authority shall—

- (a) impose a financial penalty in accordance with this Act and require the undertaking to comply with the requirements of this Act;

- (b) order a divestiture of the undertaking;
or
- (c) make any other appropriate order.”.

Amendment
of section
37 of the
principal
Act.

12. Section 37 of the principal Act is amended by substituting subsection (2) with the following—

“(2) The Authority shall have the capacity of a body corporate with—

- (a) perpetual succession;
- (b) a common seal;
- (c) capacity to acquire, hold, manage and dispose of moveable and immovable property;
- (d) capacity to sue and be sued in its own name; and
- (e) power to do all other things a body corporate may do.”.

Amendment
of section
38 of the
principal
Act.

13. Section 38 of the principal Act is amended —

- (a) by substituting subsection (1) with the following—

“(1) Each Partner State shall nominate one Commissioner to the Authority and the Authority shall be constituted by all the Commissioners from the Partner States.”

- (b) by substituting subsection (5) with the following—

“(5) A person shall be qualified for appointment to the Authority as a Commissioner if that person is a holder of an

advanced degree in the field of economics, business, trade, competition, law or any other relevant field from a university recognised by a competent Authority in a Partner State and has at least five years experience in the relevant area.”

14. Section 41 of the principal Act is amended—

Amendment
of section
41 of the
principal
Act.

- (a) by inserting immediately after subsection (3) the following—

“(3a) The Registrar shall—

- (a) be the chief executive officer and accounting officer of the Authority;
- (b) be the secretary to the Authority;
- (c) subject to the direction of the Authority be responsible for the day to day management of the affairs of the Authority;
- (d) carry out such other functions as are conferred on him or her under this Act or as directed by the Authority.”

- (b) by substituting subsection (4) with the following—

“(4) A person shall be qualified for appointment as a Registrar if that person is a holder of an advanced degree in the field of economics, business, trade, competition, law or any other relevant field from a university recognised by a competent Authority in a Partner State and has at least five years experience in the relevant area.”

Amendment
of section
42 of the
principal
Act.

15. Section 42 of the principal Act is amended—

(a) in subsection (2)—

(i) by substituting for paragraph (e) the following—

“(e) impose financial penalties in accordance with section 42A;”;

(ii) by substituting for paragraph (j), the following—

“(j) issue guidelines on the processes or procedures of the Authority;”

(b) by substituting for subsection (3) the following—

“(3) The Council shall on the recommendation of the Authority, by regulations, prescribe fees for filing and other activities required by this Act or regulations made under the Act.”

Insertion of
new section
42A.

16. The principal Act is amended by inserting immediately after section 42 the following—

Financial
Penalties.

“42A. (1) The Authority may impose on an undertaking, a financial penalty not exceeding 10% of the undertaking’s annual turnover within the Community for the preceding financial year, for contravening Part II, III or IV of this Act.

(2) The Authority shall collect all financial penalties imposed by the Authority under this section.

(3) The Authority may reduce or waive any financial penalty imposed or which may be imposed by the Authority on an undertaking that voluntarily discloses the existence of an agreement or practice prohibited under this Act and cooperates with the Authority in the investigation of that agreement or practice.”

17. Section 44 of the principal Act is amended—

Amendment of section 44 of the principal Act.

(a) in subsection (2) by repealing the words “and subordinate courts”;

(b) by substituting for subsection (3), the following—

“(3) Where a matter before a Partner State’s competition authority is found to have cross border effect, the Partner State’s competition authority shall immediately refer such proceedings to the Authority for determination.”

18. Section 46 of the principal Act is substituted with the following—

Replacement of section 46 of the principal Act.

Appeal from decisions and action of Authority.

“**46.** Any person or undertaking dissatisfied with a decision or action of the Authority made under this Act may appeal to the Court.”

19. Section 47 of the principal Act is substituted with the following—

Replacement of section 47 of the principal Act.

Reporting.

“**47.** (1) The Authority shall at the end of each financial year, prepare and submit to the Council an Annual Report in respect of that financial year

containing the report on the operations of the Authority, annual financial accounts and any other information the Council may deem appropriate.

(2) The Council shall cause the Annual Report of the Authority to be laid before the East African Legislative Assembly for the consideration of the Assembly.

(3) The Authority may prepare and publish reports on matters within the mandate of the Authority.

(4) The Authority shall send copies of all reports published under this section to the competition authorities of the Partner States.”