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# **EAST AFRICAN COMMUNITY**

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## **AFRICA UNION/ AFCAC CAPACITY BUILDING WORKSHOP ON THE INSTITUTIONAL AND REGULATORY INSTRUMENTS OF THE YAMO USSOUKRO DECISION**

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# Legal structure of the EAC competition regulatory framework



The framework is governed by the following instruments:

- ❑ the East African Community Treaty, 1999 (EAC Treaty);
- ❑ Protocol of the Establishment of the East African Customs Union, 2004 (Customs Union Protocol);
- ❑ Protocol on the Establishment of the East African Community Common Market, 2009 (Common Market Protocol);
- ❑ the EAC Competition Act, 2006 (the Act), which came into force on 1st December 2014; and
- ❑ the East African Community Competition Regulations, 2010;

# OBJECTIVES



- 5 “objects of competition policy and practice in the Community”;
- ❖ to “enhance the welfare of the people of the Community” by “protecting the opening of Partner States’ markets against the creation of barriers to interstate trade and economic transactions by market participants,”.
- ❖ to “enhance the competitiveness of Community enterprises to world markets by exposing them to competition within the Community.”

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- ❖ to “create an environment which is conducive to investment in the Community.”
- ❖ to “bring the Community’s competition policy and practice in line with international best practices.”
- ❖ to “strengthen Partner States’ role in relevant international organizations.”

**Mandate:** promote and protect fair competition in the Community, to provide for consumer welfare

**Scope:** the Act applies “to all economic activities and sectors having cross-border effect.”



# RESTRAINTS BY ENTERPRISES

## Concerted and Unilateral Conduct

- ❑ concerted practises intended to have anti-competitive effects in the relevant market are prohibited e.g.
  - ❖ Collusion by competitors to fix prices;
  - ❖ Collusive tendering and bid rigging;
  - ❖ Collusive market and customer allocation;

# Abuse of Dominance



- ❑ prohibits an undertaking holding a dominant position from:
  - ❖ directly or indirectly impose unfairly high selling or unfairly low purchasing prices or other unfair trading conditions;
  - ❖ limit production or technical development and innovation to the prejudice of consumers;
  - ❖ discriminate between consumers or suppliers according to non-commercial criteria such as nationality or residence.

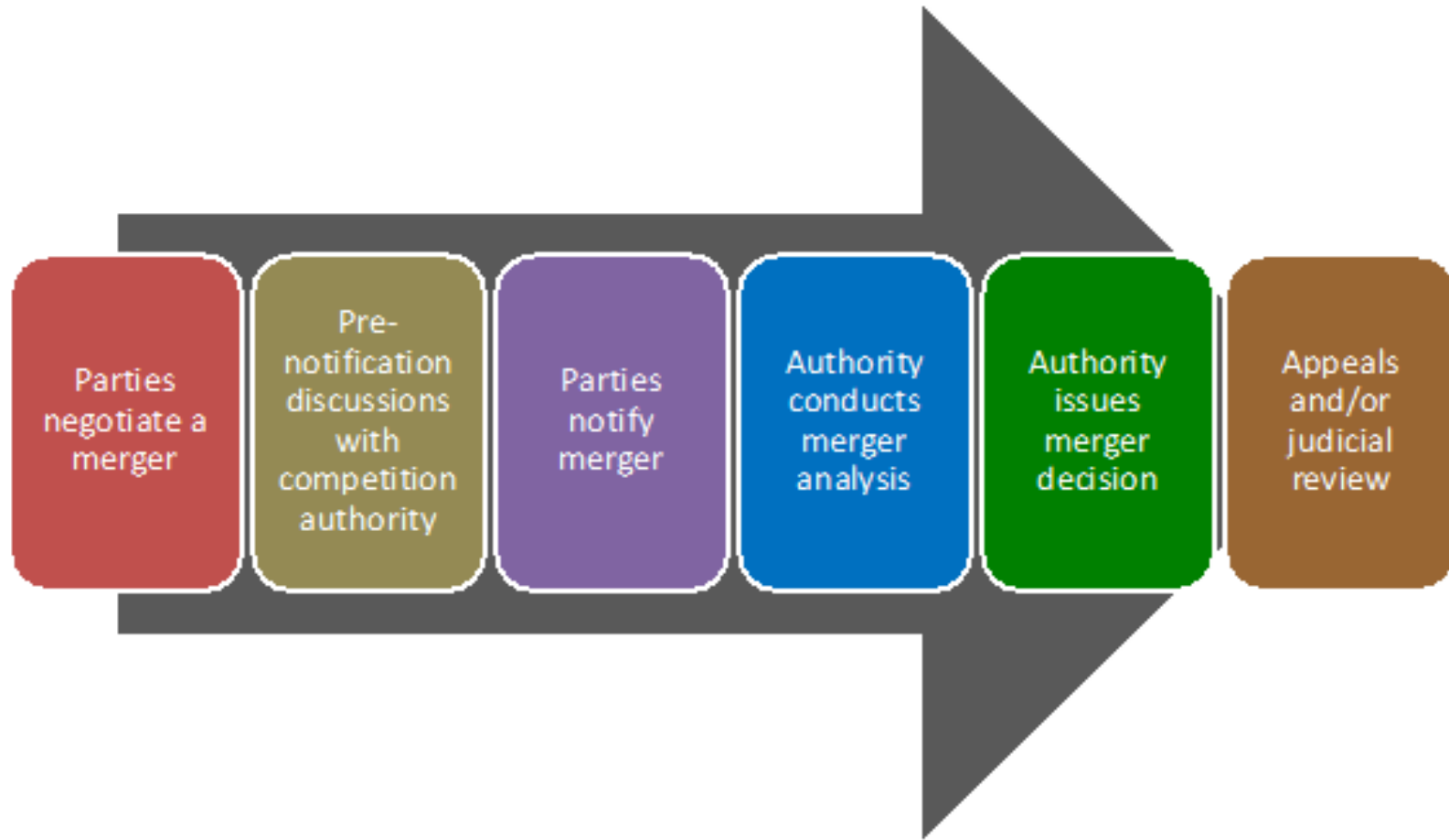


- ❑ engage in any practice that **excludes**, or is intended to exclude, its competitors from the market by means of: predatory pricing and other anticompetitive practices

## Exemption

- ❑ provides for exemptions-the Authority is mandated to issue permission for to engage in a concerted practise.
- ❑ practices beneficial effects, in the opinion of the Authority, outweigh its negative effects on competition

## PART IV- Mergers and Acquisitions



- ❑ mergers and acquisitions shall not come into effect before notification with the Authority





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### Criteria

- Competitive structure of all the markets affected (before and after merger analysis)
- Undertakings in the markets affected, control of essential facilities, integration in up stream and downstream markets
- Competitors and alternatives available to suppliers among others.

# Partner State subsidies



- ❑ Partner States are prohibited from granting subsidies which distort or threatens to distort competition in the Community
- ❑ provides exemptions to provide subsidies e.g for less developed regions, R&D, protection of the environment, conservation of cultural heritage, promotion and protection of food security among others.

# Public Procurement



- ❑ Non-discriminatory treatment to all suppliers and products or services originating from other Partner States.
- ❑ Partner States to apply transparent, accessible and non-discriminatory tendering procedures.

# Enforcement Procedure



- Partner State or person may file a complaint with the Authority in case the Act is breached.
- The Authority is mandated to **take necessary measures** to prevent or rectify any violation of the Act

## Enforcement (Remedies)

any contract or agreement in violation of the Act shall be void

# Enforcement(Remedies)



S.26.

S.26 (2) mergers and acquisitions implemented contrary to the Act, Authority shall order its divestiture

S.27 any decisions of the Authority shall be published in the Gazette.

# Institutional arrangements



The Act provides for three key institutions namely - :

- ❑ **East African Court of Justice:** Receives appeals against the decisions of the Commissioners.
- ❑ **Board of Commissioners:** consisting of five (5) Members appointed by Council from the Partner States, they determine cases received and investigated by the Authority (See S. 38).
- ❑ **EAC Competition Authority:** headed by the Registrar, responsible for the development of the regional competition policy and its responsibility extends to fact-finding, taking action against infringements of the law, imposing penalties and granting exemptions under the



# Yamoussoukro – competition regulations

- Prohibited Practices, Agreements and Decisions
- Abuse of Dominant Position
- Subsidies
- Exemptions and Safeguard Measures

***Example - Association of Travel Agents – made a recommendation of prices to members – airline ticketing - A desist Order was made by the competition agency and they withdrew the recommendation***

# PART VIII - Consumer protection



- ❑ Consumer challenges - inadequate information, low bargaining power, development of complex products and services and their delivery, issues payments; clear, accessible information and; data security and data protection

## 1.False representations

An undertaking shall not, in connection with the supply or possible supply of goods or services or in connection with the promotion of goods or services **falsely represent** that:

- ❖ goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;
- ❖ services are of a particular standard, quality, value or grade;



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## **2. Unconscionable conduct in consumer transactions**

Very unjust or overwhelmingly one sided in favour of the party who has the superior bargaining power

- ❖ the relative strengths of the bargaining positions of the undertaking and the consumer;
- ❖ whether, as a result of conduct engaged in by the undertaking, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the undertaking;
- ❖ whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;

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## 3. Authority to publish dangerous goods

- The Authority to publish, in at least two newspapers of national circulation in each of the Partner States, a notice containing one or both of the following:
  - ❖ statement that goods of a kind specified in the notice are under investigation to determine whether the goods may be **injurious to public health**;
  - ❖ a statement of **possible risks** involved in the use of goods of a kind specified in the notice.

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## 4. **Product safety standards and unsafe goods**

In respect of which there is:

- ❖ a prescribed consumer product safety standard, which do not comply with that standard;
- ❖ in force a notice under this section declaring the goods to be unsafe goods; or
- ❖ in force a notice under any other law imposing a ban on the goods

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## 5. Product information standards

- ❖ the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods.

## 6. Unidentified manufacturer

- ❖ Where a person who wishes to institute action does not know the manufacturer of the goods in question the person may serve on the supplier of the goods a written request for the particulars relating to the manufacturer of the goods.
- ❖ Where the supplier has not given to the person requesting information the information requested within 30 days, the person who supplied the goods shall be presumed to be the manufacturer thereof.

# Yamoussoukro Decision – Regulations on the protection of consumers of Air transport Services



- Misleading advertising
- Failure to disclose ticket conditions
- Abuse of free sitting
- Delayed flights
- Non discrimination
- information to consumer

# Example



## **Case of false representation –**

*complaint from passengers traveling from one airline. The passengers complained that they were denied boarding their connecting flight due to over booking by the airline. The affected passengers said that the airline offered to compensate them with a voucher equivalent to US\$200, redeemable at the destination. However, the affected passengers indicated that the airline did not fulfil its commitment as they were compensated 50% of the voucher amount.*

*a violation of consumer rights – case of false representation pursuant to Article 27 (1)(k) of the COMESA Competition Regulations and Section 28 (k) of EAC Competition Act which provides that:*

***“A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services; make false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.”***

*The relevant institution engaged the Airline and upon its admission, the consumers were fully compensated and the airline undertook measures to minimise the risk of similar occurrence in the future.*



***Thank you for listening***