



MEMORANDUM OF UNDERSTANDING ON BILATERAL COOPERATION BETWEEN THE COMPETITION COMMISSION OF SOUTH AFRICA AND THE COMPETITION AUTHORITY OF KENYA

The Competition Commission of South Africa, a statutory body established under the Competition Act no. 89 of 1998

and

The Competition Authority of Kenya, a State Corporation established under the Competition Act, Cap 504 , Laws of Kenya

hereinafter referred to as "the Parties", have agreed on the following on cooperation in the field of competition law and enforcement:

Purpose

1. The purpose of this Memorandum of Understanding is to improve and strengthen the relationship between the Parties in order to foster cooperation in the enforcement of competition policy and law, based on the principles of equality and mutual benefit. Both Parties recognise the benefit of cooperation.
2. The Parties will promote and strengthen cooperation in competition policy and competition law enforcement subject to their respective national laws and regulations.

Cooperation

3. Cooperation between the Parties will be subject to the respective laws governing the conduct of the Parties and will include:

3.1. Exchange of non-confidential information, ideas and views regarding :

3.1.1. Developments in competition policy and regulation in their respective jurisdictions;

3.1.2. Market research conducted in identified sectors;

3.1.3. Investigations of competition law infringements and enforcement priority sectors or areas;

3.1.4. Mergers reviews and in particular cross-border mergers;

3.2. The development and use of legal or technical tools and best practices by the Parties to achieve better outcomes or efficiencies in respect of the fulfillment of each Party's mandate in terms of the applicable competition laws, taking into consideration the relevant experience of the Parties;

3.3. With regard to cross-border mergers concerning both Parties, the Parties will endeavour to coordinate their activities to the extent possible and consistent with their respective laws and responsibilities. Cooperation in reviewing cross-border mergers may increase the efficiency of the respective investigations, and increase the overall transparency of the merger review process;

3.4. With regard to similar or the same anticompetitive practices investigated or prosecuted by both Parties, the Parties will endeavour to cooperate and coordinate investigations where this is possible;

3.5. Technical skills development in terms of establishing training programs, conferences/workshops, symposiums, study visits and internships.

Instruments of Cooperation

4. Within the limit of available funds and subject to the mutual agreement of the Parties, the main instruments of cooperation shall comprise the following:

- 4.1. Exchange of experts for participation in the Parties' activities and/or for assistance on enforcement and for improvement of decision-making processes, if necessary, at the request of one of the Parties;
- 4.2. Meetings between officials of the Parties for exchanging information on developments in their respective competition law and policy;
- 4.3. Exchange of non-confidential documents, studies, and publications on competition issues;
- 4.4. Any other form of cooperation that may be jointly decided upon by the Parties subject to the respective laws governing the conduct of the Parties.

Information exchange

- 5. The transfer of information between the Parties will be made in the English language through designated general contact persons or on the occasion of meetings attended by the representatives of the Parties.
- 6. Any information exchanges between the Parties will be made subject to the respective laws governing the conduct of the Parties and in particular the provisions protecting confidential information and business secrets of firms or individuals under the relevant competition laws of the Parties.
- 7. It is understood that neither Party intends to communicate information to the other

existing laws of the countries of the respective Parties, nor will anything in this Memorandum require any changes to those laws.

13. The Memorandum of Understanding is not legally binding and the Parties have no intention of creating any legal commitments. It will therefore not infringe and/or affect the rights and obligations of the Parties relating to other bilateral or international agreements which they are signatories to.

14. Each Party will bear its own expenses with regard to the implementation of this Memorandum of Understanding and any activities arising from it unless otherwise agreed upon by the Parties.

Amendment or Revision

15. The present Memorandum of Understanding can be revised in writing by the Parties, after prior consultations and by agreement.

Effect, Duration and termination

16. This Memorandum of Understanding shall take effect on the date of signature by both Parties and continue to be in force unless terminated or modified in writing by the parties. Each of the Parties has the right to withdraw from the Memorandum upon thirty days (30) written notice in advance to the other Party.

Party if such communication is prohibited by the laws governing the Party possessing the information, or would lead to conflict of interest. Subject to complying with any relevant legal requirements and unless otherwise agreed by the other Party in advance, each Party is obliged to keep the information provided by the other according to this Memorandum of Understanding confidential.

Meetings and Engagements

8. In order to meet the objectives of the present Memorandum of Understanding, each Party shall designate contact persons.
9. The Parties will develop the agenda of events, dates, venues and any other matter by common agreement, and if necessary develop an Annual Working Plan for specific cooperation activities under the Memorandum of Understanding each year and update such a working plan as necessary.

Avoidance of Conflicts

10. The disputes resulting from the interpretation and implementation of the Memorandum of Understanding will be resolved by the Parties harmoniously through consultation.

International Law and Legal Obligations

11. Nothing in this Memorandum of Understanding will limit the discretion of the respective Parties to decide whether or not to undertake enforcement activities or to make any decisions in respect of merger regulation or review.
12. Nothing in this Memorandum of Understanding will require any Party to take any actions, or to refrain from acting, in a manner which would be inconsistent with the

Notice and Address

17. Any and all notice and or correspondence made under this MoU shall be in writing signed by the Party originating the said notice or correspondence and delivered to the addresses set forth herein below or at such other address as subsequently notified.

Competition Authority of Kenya

Kenya Railways Staff Retirement

Benefit Scheme Block 'D', 1st Floor, Haile Selassie Avenue.

P.O. Box 36265-00200

Nairobi, Kenya

Tel: +254 20 2628233 / 254 20 2779000

Email: info@cak.go.ke

Contact Person: Mr Wang'ombe Kariuki

The Competition Commission of South Africa

The DTI Campus, Mulayo (Block C),

77 Meintjies Street, Sunnyside,

P.O Box Private Bag x23, Lynwood Ridge,

0040


Pretoria, South Africa

Tel :+27 (012) 394-3200 / 3320


Email: ccsa@compcom.co.za

Contact person: Tembinkosi Bonakele

IN WITNESS WHEREOF, the undersigned being duly authorized have signed this Memorandum of Understanding in Cape Town, ____ October 2016 in duplicate in the English language, both texts being equally authentic.



Competition Commission of South Africa
Mr. Tembinkosi Bonakele
Commissioner



Competition Authority of Kenya
Mr. Wang'ombe Kariuki
Director General