

COMPETITION AUTHORITY OF KENYA

KNOWLEDGE HUB

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EXIT INTERVIEW

In this third issue of the Knowledge Hub, Ms. Nancy Otori and Mr. Linus Kipng'etich Melly share on their experiences at the Authority as they exit having been with the Authority for 6 years and 5 years respectively.



Ms. Nancy Ateng'e Otori holds 11 years of professional experience. She served the Authority for a period of 6 years and 10 months. She joined the Authority as an Analyst 1 at the Consumer Protection department and later transitioned to the Buyer Power Department as a Principal Investigations Officer where she served for a period of 10 months, until the time of her exit. She holds a Bachelor's degree in Education (Arts) with a specialization in Economics and Mathematics, a Master of Business Administration-strategic management and a Graduate diploma in global competition and consumer law. Her areas of expertise is in competition and consumer law, complaints handling and investigations, customer care and performance monitoring.



Mr. Linus Kipng'etich Melly served at the Authority's Mergers and Acquisition Department for a period of 5 years and 6 months. He joined the Authority as an Analyst and at the time of his exit he had progressed to become a Senior Analyst. His educational background is in Economics with a bias in macro-economics and finance. He holds a Bachelor's degree in Economics and Finance and a Leadership certificate from Nairobi University and is currently pursuing a Master's degree in Public Policy.



NANCY ATEN'GE OTORI

What were your assignments on a normal working day 8.00 am to 5.00 pm?

My assignments entailed supervision of case investigations, including receipt of complaints, analysis, correspondence with parties and preparation of reports. Other assignments were coordination of advocacy initiatives, mediation and dispute resolution between undertakings.

Which Knowledge or information gaps did you encounter during your work processes?

Buyer Power being a new area under Competition Law, there is a gap in terms of case precedence to rely on when analyzing cases. In some instances, we lacked information for defining the markets, which is necessary in the analysis of Buyer Power cases, especially where even the complainants were not conversant with the nature of the market they operated in.

Which recommendations would you give to address these gaps?

The Authority can undertake plenary

sessions to discuss cases with other jurisdictions that enforce Buyer Power Law to learn more on how they undertake their investigations, and analysis of cases. Where applicable, training the officers to build capacity in Buyer Power law would also help.

Which information or knowledge resources did you find most relevant during your work processes?

When I joined Buyer Power, I relied a lot on my colleagues and Manager who had experience in the area as my main resource of information. Online resources such as the e-journal came in handy when gathering information from other jurisdictions such as the EU, the FTC, on cases handled and determinations made on competition law cases, and which could subsequently be applied to the department's work.

What alternative steps would you take if you didn't get access to these resources?

Going out to the field to undertake interviews of relevant parties to the case.

Which areas of training did you receive and how were these impactful in your assignments?

I attended several courses on carrying out investigations that greatly assisted me in my duties; how

to gather information, how to interview and deal with informants and also how to handle information from parties, among others. I also did customer care and negotiation skills trainings which helped me in handling stakeholders. In addition, I did supervisory skills and senior management courses and these were useful when it came to my supervisory role in the department and helped me to work well with my team members.

Which key areas of training would you recommend for the team member (s) who will take up your position at the Buyer Power Department?

Training in analysis/investigation of cases, management courses, as well as customer care.

What kind of technical skills are most important to enable one take up your previous assignments effectively?

Analytical skills, communication skills, and investigative skills

Give two recommendations on how the Buyer Power Department can maintain or improve its working engagement with the other departments.

Staff plenaries to present and get views from other departments on cases currently being investigated within the department. Also when carrying out market surveillance, field work, advocacy initiatives, the department can involve officers from the other departments to take part.



Give two recommendations on how the Buyer Power Department can maintain or improve its working engagement with external stakeholders.

Doing work diligently and efficiently will create good rapport with the external stakeholders. For example when investigating complaints, ensuring that procedures are followed and exercising zero biasness against any party involved. Openness and transparency is also another way of improving the working engagements especially regarding information that may be requested from the Authority on Buyer Power matters by other agencies, as long as it is not confidential information.

Using a specific example, briefly take us through investigative process of abuse of buyer power

Once a complaint is received, the department will acknowledge receipt and analyze the information given to determine whether all the necessary information has been provided and whether the matter lies within the Authority's mandate. An analysis report is thereafter prepared highlighting recommendations on whether to proceed with investigations by writing a notice of investigation to the accused party to give them an opportunity to respond to the allegations, or terminating the matter due to lack of sufficient evidence or because the Authority has no jurisdiction. Once all the necessary information has been received and analyzed, the Authority then comes up with a proposed decision, which could either be to terminate the matter

at that point or impose remedies in accordance with the Competition Act.

You may have handled a task that didn't turn out as planned. Which task was this, what was the challenge and how did you mitigate it?

One of the challenges faced when handling complaints is lack of cooperation from the parties, be it the complainant or the accused party when they do not provide required information on time. This ends up delaying the cases. To mitigate against this, it is good to spell out the expectation of the parties from the word go. Awareness creation on the law will educate the stakeholders on the importance of Buyer Power law and make them more willing to cooperate.

What percentage of your assignment was done collaboratively? Briefly describe the work and those you collaborated with.

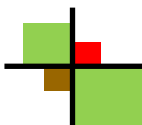
I would say over 90% of my assignments required collaboration. Investigation of cases required us to work together with the parties to the case (complainant and the accused), as well as other government agencies such as IRA, PPRA, KEBS among others. Advocacy initiatives also called for working together with the groups being sensitized and in some cases other agencies we undertook the event together with, not forgetting the service providers. Stakeholders, both internal and external also worked together with the department on review of guidelines.

Which assignments were you involved in that you propose needed to be documented?

The department has in place tools which document the assignments being undertaken, which is a case status report updated on a weekly basis. The case management system also keeps records of all the department's documents.

Which tools and resources did you have at your disposal that might help explain the processes of what you did?

We had the Competition Act which spelt out the department's mandate and investigation procedure; the investigation of complaints procedure for Buyer Power cases gave a step by step guide on how to handle cases from beginning to end as well as the timelines, and the Authority's service charter from which the expectation of the public regarding our services was given.



In the years you have served at the Authority what were your most memorable moments?

The team building activities were always something I always looked forward to, especially the one where all staff members went to Mombasa, that was quite fun.

ing most public offices, regarding inefficiency, processes take too long, employees are not always ready and willing to help etc. With the Authority, I got to see a completely different side because staff work hard and are accountable for any work delegated to them. Most of the external stakeholders I



What 3 key pieces of advice would you give with regard to your work processes/assignments?

Team work is very crucial for success in your work. Value your team members and work well with them because you achieve better results as a team;

Procedures are there for a good reason to ensure work runs smoothly and consistently and therefore follow them at all times; and

Every staff member plays a role in fulfilling the overall objective of the Authority, so work hard and give your very best because it counts.

What ONE lesson are you taking with you from the Authority?

That not all government agencies are the same. There is this perception that the public has regard-

dealt with had good reviews regarding the service they have received from the Authority.

Parting Shot

My experience at the Authority was one that I will forever cherish. I have grown tremendously both at a personal and a professional level, and I am thankful for the opportunity that I had. May the Authority continue to positively impact the society and provide a forum for the common man to raise their grievances.



LINUS KING'ETICH MELLY

What were your assignments on a normal working day 8.00 am to 5.00 pm?

On a normal working day I would assist in the regulation of market structure by handling mergers and acquisitions activities. This included reviewing, tools and guidelines and helping stakeholders in the filing process.

Which Knowledge or information gaps did you encounter during your work processes?

The Mergers department basically relies on information submitted by the parties concerned hence whenever there was a competition concern, we were forced to go out and verify this information from the necessary parties. The merger notification form was not sufficient in collecting information that was required by a case handler to process the merger, hence there is a lot of work required to be done on the merger notification form.

Which recommendations would you give to address these gaps?

A review of the merger notification form is required and I'm glad to mention that this is already factored in the departments work plan for this financial year. In this

digital space there is need to see how data can be used in reviewing this form hence this is very crucial. A second recommendation would be not only for the department but for the Authority where there is need to bridge the gap and capacity build on data handling.

This will provide adequate capacity in understanding algorithms, data and much more and it will go a long way to ease handling mergers and acquisitions in the digital space.

Which information or knowledge resources did you find most relevant during your work processes?

Consolidated guidelines on merger assessment were well done and were very comprehensive and proved to be very useful. It is a tool I would encourage all new staff to make reference to during their assignments. The ICN Merger assessment tools; ICN have various documents on their website that are essential for market definition and merger assessment. I also made reference to literature on game theory in economics particularly bertrand Nash Equilibrium that helps one understand why pricing is important in a merger review.

Mr. James Mutisya was quite resourceful as he has a lot of information about merger analysis and review and he provided very insightful direction on the same. The Manager Mergers and Acquisitions Mr. Raphael Mburu was also very resourceful and provided adequate guidance and direction.

What alternative steps would you take if you didn't get access to these resources?

With the tools that I have mentioned, I never fell short majorly because, the merger process is very predictable.

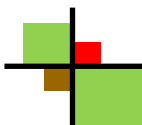
You would be looking at a horizontal merger, a vertical merger and so the effects that you would be looking out for are very direct with regards to, concentration, unilateral conduct or coordinated conduct. If the merger you are looking at is special, then we would go to the field to collect further information.

Which areas of training did you receive and how were these impactful in your assignments?

The trainings I received were very impactful. I attended an ICN Merger workshop, which is a good training for anyone who wants to begin merger analysis at that level. I also attended a training by CCRED but the focus areas were based on the theme identified for that particular training. The Japan/CAK MoU on training programs was also good program that was very impactful in many aspects especially including time management.

Which key areas of training would you recommend for the team members who will take up your previous position at the Mergers and Acquisition department?

The key training that, I would recommend would be one that gives skills on the technical bit of merger assessment as this will enable one understand the competition effects of a merger that is a horizontal merger, a vertical merger and how to mitigate against this. The ICN Merger training workshop forums are very impactful and are also low budget hence would be worth considering.



What kind of technical skills are most important to enable one to take up your previous assignments effectively?

You need to have good presentation skills, reporting skills since you will be writing board papers, skills on data collection and analysis. Good negotiation skills are quite necessary because one will be expected to be carrying out negotiations on penalties and dealing with favourable or unfavourable transactions. Good communication skills are also quite necessary as one will be having frequent contact with external parties and will need to communicate in a precise and effective manner.

Give two recommendations on how the Mergers and Acquisitions department can maintain or improve its working engagement with the other departments.

The department can adopt a practice learned from a training attended by one of the members in South Africa where before a transaction is recommended to the, to the Director General for approval, a presentation to a pool of staff from the technical department to elicit discussions is done. There can be high level discussions where the case handler presents the main elements of the transaction. This will give a wholesome view of a transaction and the same time promote a good working relationship amongst the departments. Secondly, is to have departments weighing in on reports amongst themselves for example having the legal and the policy team providing further input. I believe the staff rotations recently implemented will strongly weigh in on this and in the end enhance the working relationships amongst departments.

Give two recommendations on how the Mergers and Acquisitions department can maintain or improve its working engagement with external

stakeholders.

The department has a very good working relationship with its external stakeholders so I would only mention on how to improve on this. It is important to carry out timely transactions from the moment a new case is received. I would ensure that I contacted the stakeholder within three days to inform them I am handling the case. The second recommendation is on granting confidentiality. This gives a lot of comfort to the stakeholder that their information is secure and is being worked on. It is therefore important to always contact stakeholders, to give them that comfort, that their matter is received and is being handled, it will give some more satisfaction and create trust to the stakeholders. Informing stakeholders of the remedies and taking through the need of the remedies before a transaction is approved can also go a long way in maintaining the good relationship the department has with its external stakeholders

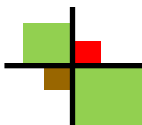
Using a specific example, briefly take us through a merger review process.



The process begins by reviewing a case, this entails reading through the materials to ensure that it is owned by the parties and is relevant to the transaction. The case handler has five days to review these materials and grant confidentiality where it has been requested according to Section 20 subsection 6 of the Competition Act. In the

case of a confidentiality request, a letter is prepared to grant the same. Any pending information and documents from the parties if needed is requested. Next, the case handler then embarks on report writing after which the next step is to carry out a competition analysis which includes identifying the relevant market, relevant product, and the relevant geographical market this is done with reference to the market definition guidelines. Once the products market is identified, the next step is to identify the players in the market and the size of these players. Next you determine the size of the merged entity if the transaction is approved after which you conclude if the merger will or will not affect competition. The next step is on entry and exit. If the transaction can lead to strengthening a dominant position but entry barriers are low, then a recommendation to approve the transaction is given. If entry barriers are prohibitive then the case handler needs to look for mitigations. The next step is looking at public interest where you factor in employment and the ability of SMEs to compete upon the approval of the transaction. Also looked into is how the transaction will affect government operations, efficiencies

of the transaction and how this affects the consumers. The process is then concluded with an indication of whether the transaction is likely to affect competition or not. The findings are then forwarded to the Manager and Director General for review and if approved, a board paper is prepared that indicates the theories of harm and recommendations. This paper is then presented to the board for approval. After the board sitting, a determination letter is prepared and dispatched to the parties to allow the implementation of the transaction.



You may have handled a task that didn't turn out as planned. Which task was this, what was the challenge and how did you mitigate it?

This was a task that was being handled collectively where after an approval, the party went ahead and fired some employees and there was a public outcry on this. The team had to review the submitted documents and reach out to the parties and a remedy had to be found. The parties were contacted and provided additional information which we used to analyse the case further. This was a unique case and a learning event for the department where we learnt that the acquiring party can also be affected in a transaction which in many instances is not the case. Communication was sent to the parties and a penalty process was initiated for providing misleading information and the transaction was closed. The task was an eye-opener to the team that there is need to look at a transaction from both angles of the target and the acquirer and the importance of initiating mitigations for transactions being handled. Further, advice would be to always seek consultation from colleagues and also to have plenaries where these transactions are discussed before being forwarded for approvals.

Which assignments were you involved in that you propose needed to be documented (i.e. collect the who, what, where info) so that others have background, status, awareness?

The CAK merger processes are well documented and the processes were reviewed whenever the need arose. Probably just to mention is that the department has already began a review of the information collecting tool that is the merger notification form which is being improved to capture information with regard to the digital economy

Which tools and resources did you have at your

disposal that might help explain the processes of what you did?

I used a tool called bluestacks, which I installed on my machine that enabled me do a live presentation. It enables one install an android OS on your laptop and so what you do from your phone, you are able to do from your laptop. The Authority can consider getting a license for the same and this would come in useful when doing live stakeholder sensitizations especially for the mobile app.

Which books or resources did you find useful and would recommend?

Macroeconomics Theory by Chunk. It is a very extensive book with regards to market structure and has a very good explanation on game theory.

In the years you have served at the Authority what were your most memorable moments?

One of my most memorable moment was when the, joint venture guidelines were published, it was such an honor being a part of the team that worked on the document. Another moment is when we had the first sports day I got to know the different out of office capabilities of my colleagues. Although it's still painful that, the technical team lost badly, I think we really enjoyed ourselves.

What 3 key pieces of advice would you give with regard to your work processes/assignments?

My key advice is on the CAK core values; we should always ensure that every time we have an assignment, the core values take precedence. Secondly, is diligence; whenever one is diligent, then there is no cause for getting worried when called upon unexpectedly. Then lastly, networking it is important to keep networks and connections.

Finally, you chaired the sports and team building committee, how have you ensured its succession and sustainability in your absence?

The Committee is still intact and has been carrying out its activities diligently and the management is currently in the processes of identifying the next chairperson.

What ONE lesson are you taking with you from the Authority?

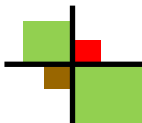
Hard work, I have had the privilege of working in other organizations and I can confidently say that staff at the Authority work hard. This I can say gives me the confidence that I'm still going to perform well at my next assignment because of how I've learnt to work hard.

Parting Shot

I'd like to thank everyone because I have learned from each and every one of us and I will always cherish the moments we shared at the Authority. Let us continue with the same spirit and also increase our efforts in staff welfare issues by as much as we can try to engage and check upon our colleagues. I will be working closely with CAK in my new assignment and in the future if an opportunity for growth arises at the Authority I will definitely consider coming back



THANK YOU!



Access more resources from this link

<http://resourcecenter.cak.go.ke:8000/cgi-bin/koha/opac-main.pl>

