



**BACK-TO-OFFICE REPORT**

	<p><b>Date submitted:</b> 18/12/2025</p> <hr/> <p><b>Activity date(s):</b> 10<sup>th</sup> – 12<sup>th</sup> December, 2025</p> <hr/>
<p><b>Activity details</b> <i>(name, participants, venue)</i>  <i>AfCFTA-OECD Capacity Building Workshop on Cartel Detection and Investigations Tools-Accra, Ghana</i></p> <p><i>Tabitha Wathuti – Investigation Officer, Enforcement &amp; Compliance</i></p>	<p><b>Department/Division:</b>                  Enforcement &amp; Compliance</p>
<p><b>Brief descriptions of the activity</b> <i>(overview of the activity)</i></p> <p>The workshop represented a critical step in building the capacity of competition authorities in Africa to effectively combat cartels and promote fair competition. By equipping personnel with the necessary skills and fostering collaboration, it aimed to enhance the overall effectiveness of competition enforcement across the continent.</p> <p>Participants were drawn from the African Continental Free Trade Area (AfCFTA) and OECD states alongside academics and practitioners who had the chance to discuss various areas of competition law, in a mutual exchange of good practices and ideas. These participants were from countries such as Angola, Algeria, South Africa, Tanzania, Mozambique, Namibia, Zambia, Zimbabwe, Rwanda, Egypt, Tunisia, Somalia, Eswatini, Kenya, Mauritius, Gambia, Ghana, Nigeria, Sierra Leone, Guinea Bissau, Niger, Gabon, Burundi, Madagascar, the Democratic Republic of Congo and Malawi.</p>	





The resource persons were also drawn from various institutions such as the AFCFTA, OECD, the Competition and Markets Authority, the French Competition Authority, among others. (see below)



**Purpose/objective of the activity**

The main objectives of the workshop were to: • Enhance Understanding: Increase awareness and understanding of cartel dynamics and their impact on competition. • Build Investigative Skills: Equip participants with the necessary skills and methodologies for effective cartel investigations. • Facilitate Knowledge Sharing: Foster collaboration and knowledge exchange among competition authorities across Africa. • Develop Best Practices: Identify and promote best practices in cartel investigation and enforcement.

**Highlights of the activity** (Summary of topics covered, key presentations and discussions)

**I. APPLICATION OF THE AfCFTA PROTOCOL ON COMPETITION POLICY**

The African Continental Free Trade Area (AfCFTA) is a landmark agreement by the African Union which aims to create the world's largest free trade area, uniting 55 countries to form a single market for goods and services, aiming to boost intra-African trade, industrialization, and





economic integration by eliminating tariffs and barriers, fostering value chains, and increasing Africa's global trade position.

The AfCFTA Competition Protocol on the other hand creates a unified African rulebook against anti-competitive practices (like cartels, monopolies) to ensure the continent's free trade benefits aren't lost, promoting fair markets, inclusive growth, and consumer welfare through a new AfCFTA Competition Authority and Tribunal for enforcement and appeals, while harmonizing national and regional laws. It aims for better market efficiency, industrialization, and provides a platform for cooperation, data sharing, and capacity building among member states. The Protocol covers Agreements, practices or mergers by/between public and private persons.

The AfCFTA Competition Protocol was adopted in February 2023 but isn't yet in force; it requires ratification by member states and the development of accompanying regulations by the Competition Policy Committee (CPC), with significant progress being made in 2025, including the first Heads of Authorities meeting and national ratification steps by countries like South Africa, paving the way for a continent-wide fair trade environment.

#### Key Objectives of the Protocol include:

- **Unified Framework:** Establish a single, integrated competition regime for Africa.
- **Support Trade Liberalization:** Prevent anti-competitive behavior from undermining AfCFTA gains.
- **Promote Fair Markets:** Foster inclusive growth, innovation, and structural economic transformation.
- **Build Capacity:** Strengthen state parties' ability to handle anti-competitive issues.

Article 5 prohibits Agreements and decisions by associations of undertakings or concerted practices by undertakings engaged in the Market as competitors or potential competitors which have, as their object or effect, the prevention, restriction or distortion of competition in the Market. This encompasses both horizontal and vertical cartels. Narrow exemptions are available only for legitimate public-interest goals as provided in Article 8. Examples include R&D cooperation, joint ventures for development, sustainability, etc.



The Protocol is to be enforced by a multi-layered governance structure to ensure effective and fair enforcement of cartel rules. Such as the;

- *Investigative Body*: Led by Executive Director; conducts investigations and prepares cases
- *Board of the Authority*: 15 members (3 from each AU region); decides on findings and sanctions
- *Competition Tribunal*: 7-member independent body; hears appeals on law and procedure.

The AfCFTA Authority will have various investigative powers such as *Information requests*-compulsory submissions from undertakings and associations

- *On-site inspections and dawn raids* - access to premises, records and electronic data
- *Seizure and sealing* - preservation of evidence and business premises
- *Staff interrogation*-questioning of representatives and employees and
- *Market studies and inquiries*-sector-wide studies and inquiries to identify cartel risk factors.

Remedies to be issued by the Authority following finding of a contravention include *Prohibition orders*: Cessation of the cartel and removal of harmful effects

- *Financial penalties*: Up to 10% of continental or worldwide turnover; Up to 1% of turnover for administrative or procedural violations (non-compliance, obstruction, or incorrect information
- *Increased sanctions on repeat offences*: Aggravated penalties for recidivism and
- *Structural remedies*: Divestiture in severe cases affecting market structure.

Other tools available to aid in cartel investigations will include the Leniency Programme (Article 14); Administrative Settlements (Article 12) and Commitments (Article 13).

There will also be an independent Tribunal where parties may appeal Board decisions within sixty (60) days on points of law, jurisdiction or procedure. Tribunal decisions are to be final and state courts are required to enforce them.

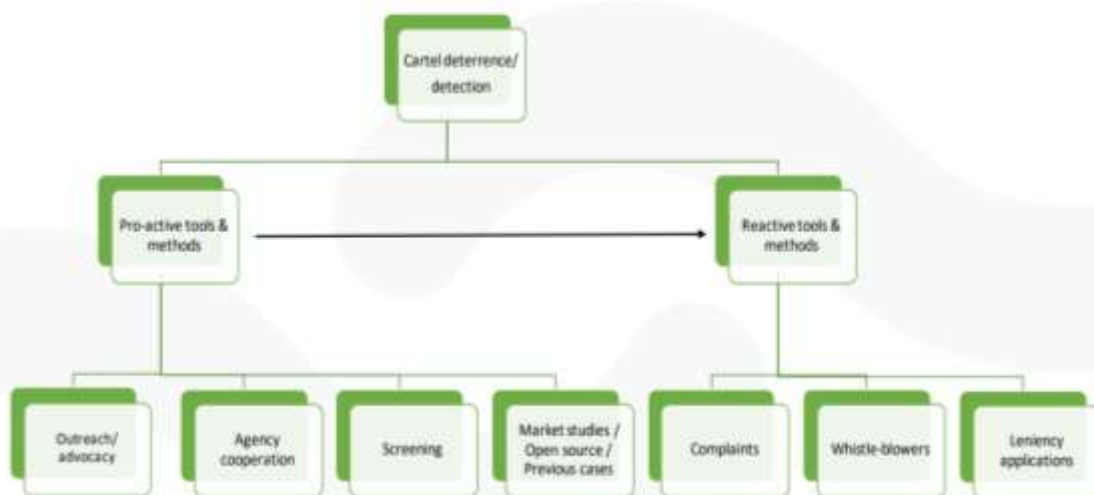
Further, there is provision of an AfCFTA Competition Network (AfCNET) which establishes a formal cooperation network for cooperating in the enforcement of the Protocol. The Network will comprise national, regional and continental competition authorities for the purposes of information sharing and capacity building.



The Secretariat welcomes State Party ratification of the Protocol on Competition Policy as the catalyst for entry into force and the activation of this enforcement regime.

**II. CARTEL DETECTION TOOLS**

There are various methods by which a competition agency might detect signs of cartel conduct. A distinction can be made between methods of cartel detection that are agency generated, or proactive methods, and those methods where an external event, such as receipt of a complaint or leniency application, would trigger cartel detection by an agency commonly known as the reactive methods as shown below;



In practice the two methods of detection generally complement each other. For instance, a leniency programme that would typically be described as reactive, would be most effective where a proactive awareness campaign or education programme is launched. Agencies need to have a variety of effective investigative tools and approaches at their disposal to detect cartels and cannot rely on one single tool or approach alone.

Reactive methods of detection typically rely on some external event to take place before the agency becomes aware of an issue and can launch an investigation. Reactive methods of detection often include receiving a leniency application or the presence of a whistleblower or informant.





There is always some risk of detection. The losers in cartelised industries are the buyers of the cartelised goods, their customers and ultimately consumers. Any of these wronged groups may become aware of the cartel activity and report it to the agency by way of a complaint. Alternatively, a disgruntled employee (or ex-employee) of a cartel participant may choose to act as a whistleblower and report the cartel activity to the agency. These risks affect the 'probability of detection' assessments made by cartel participants. A cartel participant may conclude that the risk of detection is uncomfortably high and may therefore decide to apply for leniency and report the cartel before anyone else reports the conduct.

Competition authorities mainly rely on the following reactive tools:

**a) Direct Complaints**

An agency can firstly become aware of cartel activity through a complaint, typically from a direct or indirect purchaser of the cartelised goods, or from a competitor who may be excluded from the cartel arrangements. Alternatively, complaints may originate from any member of the general public who may become aware of an issue or be suspicious of cartel activities.

**b) External Information**

The external information mainly refers to whistleblowing that is the act of informing the public authorities that the organization the informant is working for, or dealing with, has adopted illegal actions. Agencies may therefore, become aware of cartel activity through information received from either an informant or a whistleblower.

**c) Leniency programs.**

Many agencies throughout the world have introduced leniency programs as an incentive for cartelists to report their behaviour in exchange for partial or total exoneration from, or a substantial reduction in, fines or imprisonment. However, the operationalization of leniency programme in most countries has been a challenge. Participants were taken through ways in which could help leniency coming through as follows:

- ✓ **Transparency, predictability, incentives**
  - Transparent procedure and predictable results
  - Clear benefits of the program and end result



<ul style="list-style-type: none"> <li>• Clear rules on which infringements are covered</li> <li>• Clear burdens on the applicant</li> </ul>
<ul style="list-style-type: none"> <li>✓ <b>Protection for applicants</b> – confirmation of position in the queue, protection from criminal sanction etc.</li> <li>✓ <b>Advocacy/outreach program</b> – agency track record and advocacy with private sector/bar-achieving user/adviser confidence and trust in program.</li> <li>✓ <b>Base your leniency program design/procedure on the major global regime/best practices</b> – international/regional convergence increases leniency likelihood and waivers.</li> <li>✓ <b>Review your policy as you go based on experience.</b></li> </ul>
<p>Pro-Active Tools include;</p> <p><b>i. Advocacy, Education and Outreach</b></p> <p>Advocacy, Education and Outreach is one of the pro-active cartel detection method. It is crucial to raise awareness for deterrence and detection. ICN- <i>“the importance of competition education and outreach in raising awareness about the illegality of cartel conduct, the harm it causes and how to detect it should not be underestimated as a tool to generate significant leads.”</i></p> <p><b>ii. Structural Screen</b></p> <p>Screens are proactive method that looks at the risk of cartelisation based on various industry characteristics that may facilitate collusion, such as the number or concentration of sellers, the degree of product differentiation, excess capacity, entry barriers, demand stability and pricing transparency. However, the extent to which these factors facilitate collusion depend on individual industry circumstances. Variables such as the measure of profits and indications of previous cartel existence may help to identify markets with potential concerns, but can also be misleading due to problems of interpretation.</p> <p><b>iii. Behavioural Screens</b></p> <p>As opposed to structural screens, behavioural screens can be useful in determining whether a suspicious behaviour is more consistent with competition or with collusion. Since it is not possible to study all markets of potential concern, behavioural screens are more likely to be useful when investigating a complaint by customers or by rival firms. If the behaviour is</p>



deemed suspicious thanks to the screen, then a more detailed investigation may be warranted which may lead to a possible leniency application. This way screens can complement leniency programs.

### **III. DAWN RAIDS - SUCCESSFUL PREPARATION AND EXECUTION**

#### **a. Planning/Preparations**

Making the right preparations for such a raid can be of immense value. This can ensure everyone knows what they need to do, remove much of the stress from the situation and prevent the possibility of the agency conducting the raid acting in excess of its powers. This, in turn, can shape the course of an investigation and minimize the disruption and damage to the business that is raided.

#### **b. Briefing Meeting**

Briefings should set the style and tone for an operation. Briefing provides the information needed to direct deployed resources. Case team to be briefed about the case, what evidence to look for, the practicalities of the inspection. There is need to make practical arrangements necessary: reconnaissance, the warranty, transport of equipment and the team and the start of operation.

#### **c. Briefing Package**

These are briefing note, keyword list, contact list (other teams/central command), travel documents among others.

#### **d. Inspection Team**

The inspection team comprises of: Team leader, Two or more inspectors (including from case team), NUIX operator (installs and operates NUIX search engine, indexes data), Forensic IT expert (responsible for copying data from devices onto or NUIX server) and a police officer(s) (to offer/ensure security).



**e. Before the Inspection**

Before inspection the team should travel to the location (where necessary) – one should not read briefing note or discuss the case in the plane/train. Scout the ground and on the day of inspection get some drinks and food for the team.

**f. Entry to the Business Premises**

Team leader (TL) should take charge and should ensure smooth and fast entry (go in with small team while the rest wait at agreed place nearby and TL immediately should ask to see company representatives).

Organization of inspection: Team leader gives explanation, controls internal communication, calls the rest of the case team in, asks for meeting rooms, organograms, office maps, its contact person and allocates inspectors to their places.

**g. Legal Powers**

Authority’s/ Commissions powers are:

- Enter premises of the company
- Examine books or company’s records and copy data including digital data
- Seal business premises
- Ask for explanations
- The Authority may call the police or use force to overcome obstruction under national law to seize the document –break open a cupboard-deal with the “shadows” who disturb the inspectors.

**h. Duties of the company**

Undertaking has to:

- Answer questions necessary to execute the raid: explain who does what (organigram), show where relevant staff or documents can be found etc.
- Provide access to the requested employees and premises including to its IT expert.





- Provide support (e.g. room where the team can install their FIT (forensic equipment) equipment.
- Lock over mobile devices for inspection
- Allow Authority’s forensic inspectors to make electronic copies of email accounts, shared drives and content of mobile devices for inspection.

**i. Rights of the company**

Company has:

- The right to call external lawyer.
- Right to protection of their data.
- Right to see what the inspectors do.
- Rights to get a copy of all documents which are copied.
- No right to evade the investigation on the ground that the results thereof might provide evidence of an infringement.
- If undertaking does not submit, it obstructs the inspection partly or entirely.

**IV. BID RIGGING**

Bid rigging is an illegal, secret agreement between competitors to manipulate a bidding process, ensuring a predetermined winner and leading to higher prices or lower quality for the buyer, often in public procurement. The common forms of bid rigging include **bid suppression** (competitors agree not to bid), **bid rotation** (taking turns winning), **cover bidding** (submitting fake high bids), and **market allocation** (dividing customers or territories). It harms taxpayers, consumers, and fair competition, resulting in wasted public funds.

The OECD has developed various guidelines to aid in detection of bid rigging. The 2025 Guidelines provide a big rigging checklist as described below;

The Detection check list is as follows;

- Warning signs and patterns when businesses are submitting bids ➤ Bid rigging strategies (same bidder always wins, rotation of tenders...etc.)
- Warning signs in bid documents ➤ Identical mistakes, file data or metadata (submission by same person, identical format...etc.)





- Warning signs and patterns related to pricing ➤ Identical pricing, sudden increases/ decreases (e.g., repeated price differences)
- Suspicious statements ➤ References to agreements, standard prices, market allocation ➤ Knowledge, same terminology
- Suspicious behaviour ➤ Suppliers meet and socialize, similar enquiries, etc.

The CMA has digital filters (software) that flags suspicious patterns. Data collection should be standardized, comprehensive and have wide coverage and teams include data & computer scientists.

Other screenings include *structural screens* which look for markets conducive to collusion based on their structure, such as market concentration and product homogeneity and *behavioural screens* which look for patterns of unusual and unexplained conduct that may point to a cartel.

Remedies by CMA where parties engage in big rigging include penalties, director disqualification, criminal prosecution and public contract exclusion and debarment.

## V. INTERNATIONAL COOPERATION

### • Competition Enforcement Practice in the European Union

DG Competition attaches a great deal of importance to international cooperation, cooperates with other agencies in various forms such as;

- *At multilateral level*, in international fora (e.g. International Competition Network, Organisation for Economic Cooperation and Development).
- Through *bilateral*, formal agreements with third countries; most recently, they are investing heavily in so-called second-generation agreements.
- Through *informal means* such as the exchange information generated by the agencies.
- *Special provisions* to cooperate and exchange information with the National Competition Authorities of the EU Member States, which along with the Commission make up the European Competition Network.

In order to have effective international cooperation there is need for:

- i. Mutual recognition of the importance of an effective competition enforcement for consumers' welfare and efficient markets;
- ii. Competition policy and enforcement based on similar principles and rules (e.g. rule of law, procedural rights and privileges);



- iii. Trust among competition enforcers, enhanced over time through informal cooperation; and
- iv. Reciprocity among jurisdictions.

**Art 3. Regulation 1/2003** establishes the relationship between national and EU Competition legislations. This Regulation sets out the procedural framework for the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Cooperation between the EU and the NCAs is through;

- i. *Direct effect and primacy principle*: NCAs and national jurisdictions have to apply Art. 101 and 102 TFEU and cannot deviate from EU Law when they investigate agreements susceptible to affect trade between Member States.
- ii. *Convergence rules*: agreements susceptible to affect trade between Member States and authorized by EU Competition Law cannot be forbidden under National Competition Law.

Some of the cooperation frameworks include; ICN, OECD, UNCTAD and other regional fora; ICN Cartel Working Group: OECD; EU-Swiss Cooperation Agreement amongst others.

In order to ensure consistency between the EC and the NCAs, NCAs have to inform European Commission of all decisions and remedies they intend to take, before they are adopted and NCAs may consult European Commission anytime. Further, both NCAs and the European Commission may share information and use it as evidence, including confidential information during an investigation.

The EC has conducted various coordinated raids such as the *Marine Hoses cartel* - raids coordinated between the US, EU and UK authorities on both an administrative and criminal basis and the cooperation in the *extensive car parts cases* with dawn raids being coordinated between the EU, US and Japanese authorities. This cooperation is a learning point for Africa which has various competition regional bodies and NCAs.



**VI. INSIGHTS/LESSONS LEARNED** *(brief description of how the lessons learned can be applied at the Authority)*



- i. The Authority can consider use of variety of techniques and methods in detecting cartels—including a mix of both reactive and proactive methods—which will increase the opportunity for detecting cartels.
- ii. The Authority needs to enhance its cooperation with other regional competition agencies like AfCFTA and other NCAs in Africa and across the globe. The need for ratification of the AfCFTA competition protocol is thus paramount for Kenya.
- iii. To increase the uptake of leniency programme: Ensure Transparency, predictability and incentives in the programme; Protection for applicants; Advocacy/outreach programme and base the leniency programme design/procedure on the major global regime/best practices.
- iv. Balance speed and safeguards when conducting raids: While quick action and surprise are useful, agencies must still respect proper process (due process, rights of defense, correct scope) to avoid legal challenge and ensure enforceability.
- v. Data Protection: Privacy and Data Protection is paramount during raid.
- vi. The Authority can consider use of technology in big rigging like the CMA which has digital filters (software) that flag suspicious patterns. Data collection should be standardized, comprehensive and have wide coverage and teams include data & computer scientists.
- vii. The Authority can also consider inclusion of remedies such as director disqualification and public contract exclusion and debarment in bid rigging cases.

**VII. RECOMMENDATIONS/ACTION POINTS** *(What actions is the Authority required to take, by when, by whom)*

- Need for the Authority to balance speed and safeguards when conducting raids: While quick action and surprise are useful, agencies must still respect proper process (due process, rights of defense, correct scope) to avoid legal challenge and ensure enforceability.





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<p><b>Prepared by:</b> <b>Tabitha Wathuti</b></p>  <p><b>Date: 18<sup>TH</sup> December, 2025</b></p> <hr/>	<p><b>Approved by:</b> <b>Benard Ayieko</b></p> <hr/> <p><b>Signed:</b></p>  <p><b>18<sup>th</sup> December 2025</b></p> <hr/>
<p><b>Appendix;</b> <b>Copy of Certificate</b></p>	



Appendix 1 – Copy of certificate

