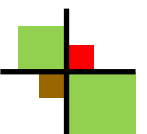




This issue of the Knowledge Hub features Dr. Priscillah Njako. Dr. Njako serve at the Authority for a period of 7 years where she has been the Manager in-charge of the Buyer Power Department. Dr. Njako holds a Doctorate in Competition law from the University of Pretoria, a Master of laws (LLM) degree from the University of South Africa , a Bachelor of laws (LLB) Degree from the University of Nairobi and a Diploma in Law from the Kenya School of Law. In this issue, Dr. Njako shares her work experiences, lessons learnt and knowledge acquired over the past 7 years she has served at the Authority.



What motivated you to make a career move and join the Authority?

At the beginning of my career, I set out to focus on Corporate Law. It was during my journey around Corporate Law, that I came across mergers. As I studied mergers, I realized a more practical element of Corporate Law, that is, how corporations run, how they engage in business, how they better themselves, how they leverage, how they scale up, and this is basically through mergers. I have always had an interest in how businesses run, how entrepreneurship is applied, the factors of production, capital, labor, how they're just mixed, how the mix is done to produce a running enterprise. Based on this, competition became a more interesting thing to pursue than just Corporate Law. I found Competition Law more practical than Corporate Law, and I decided to venture into it.

I joined the Authority because I wanted to give my contribution from my area of expertise, which was from my research and my interpretation of the law. I equally had a firm belief that Competition Law and its enforcement are critical, for the economy and for posterity. I was also motivated to join the public service to do my part for the country. You know, apply my skills, apply my expertise. I wanted to do something that would benefit the public and the country at large. The motivation was to join and serve in the public service.

Has your vision and aspirations, personal and professional, as you joined the Authority been realized?

On a scale of 1 to 10, I would rank the realization of my visions and aspirations at 10. I know that seems outrageous, but this is what I set out to do.

I set out to establish an area of Competition Law, have it running, and have it recognized as part of the mix that we enforce. Have a department that can run without me; I achieved that. The department runs very well even in my absence, and I am glad that I have been able to equip the department members, and I'm very proud of that. I established the theory of law, where now buyer power is mentioned along the same lines as the other areas of enforcement, both within the Authority and outside of the Authority. And then number three, when I came into the Authority in 2019, and I met the former Director General, Mr. Wangombe Kariuki, he asked me "what brings you here? What do you want to see when you're leaving?" And I told him, I plan to establish, a department which other countries, other African countries would use as a reference point.

I wanted a situation where when other African countries are establishing their enforcement or expanding their enforcement, that they would ask, what is that thing Kenya does called buyer power. I can confidently say we achieved that since South Africa, Zambia and Malawi engage our team. In summary, I would say my visions and aspirations have been achieved in three as-

pects, number one the Buyer Power Department can survive without me, number two, buyer power has been incorporated and enforced and the Authority is aware of it. And number three, we are a reference point for other Agencies and Countries.

You were instrumental in setting up the Buyer Power Department. Tell us about the journey.

The journey as all journeys of beginnings was difficult especially since it has been literally starting from the ground up. One of the greatest challenges was acceptance to change. The Authority had it on paper that it wants a buyer power department but humans struggle with change. There was the need to incorporate buyer power into the Authority's systems and that at times was an issue in the sense that the authority was already established in a certain format, hence recognition of the area, and giving it the space it deserved, was not easy.

In terms of infrastructure, it took a while as it was not a priority and very often it would be forgotten in the plans. There was also another challenge which continues to this day, that is an inadequate budget for the department.

Number three, we started off with a small team and have remained a small team to this day. The team ideally should have about 16 people but continues to operate until very recently without senior officers. The team overstretched but has been able to still work with the resources, but my encouragement would be to prioritize the department in terms of recruiting more personnel especially as the department moves towards enforcing abuse of superior bargaining position.



As we set up the department, I was very clear and on what we needed to do. Whenever there was a lack of clarity, I was able to interpret very clearly to my colleagues and there was a lot of cooperation, and we worked well as a team.

Highlight a major case/decision made during your tenure as the Manager BP that stood out for you.

The case that stood out for me was the Unilever investigation that wound up in a settlement, and we were able to obtain a certain undertaking from Unilever. The key one was to have Unilever incrementally increase localization of procurement spent by KES 400 Million and for it to undertake supplier development training for its SME suppliers for a period of 3 years dedicating an annual budget of KES 75 Million for the same. Third, was for Unilever to shorten payment periods for MSEs from 90 days to 60 days, and then progressively to 30 days. This case for me was big since it has long-term effect on the economy and it's not a short-term solution. It's not a penalty where the benefit does not quite return to the market. This was a direct benefit to MSMEs and given the contribution of MSEs to our economy, I felt that was my greatest achievement. We were able to directly give back to the economy, and the settlement was amicably arrived at. The whole idea is not about penalization; enforcement should be about facilitation to a party to amend, a wrong that they may have done, and ensure that there isn't a repetition.

During your tenure as Manager Buyer Power you have been part of a team that has developed and reviewed several policies and legal instruments. Select one and share with us the

processes involved.

I'll pick the Fining and Settlement Guidelines. Upon arrival at the Authority, we realized that there was a gap in the sense that these Fining and Settlement Guidelines did not consider buyer power, since they were prepared before the department was established. There was need to bring in the angle as it relates to fining and settlement in relation to buyer power, and especially because up to 90% of all buyer power cases are closed by way of settlement.

The Finings and Settlement Guidelines were not broad in the sense that they were not detailed as to the process of the settlement, steps to be followed and the various outcomes possible. We started the review process at the departmental level by drafting the section that would consider settlement in the buyer power process. Secondly, the Finings and Settlement Guidelines had an element of penalty based on the gross annual turnover. The Guidelines were not considering the gross and we were contradicting the law by not using gross annual turnover. Those are the two things that I had noticed and they became my main contributions to the Finings and Settlement Guidelines. This is what now led to the Carrefour penalty because we applied on gross annual turnover. Beyond Management we did not engage internal stakeholders to give us feedback on the buyer power guidelines.

External stakeholders were further engaged through the Legal Department. A way of improving our engagement with external stakeholders I would recommend to provide them with feedback. The buyer power department is currently reviewing the Buyer Power Guidelines and the team has a clear record of who gave us what input and what we did with it. The department intends to reach out and send a letter or an email

telling them, this is the input you gave us, this is what we did with it, we took it up, or we did not take it up for this reason.

Which policies and regulations do you propose need further review/amendments going forward?

I cannot quite think of any because currently in Buyer Power Department we are working on Buyer Power Guidelines. But I would say that once the Act gets amended there will be a need to look at the policies of all the technical departments across the board to incorporate them into the new guidelines. There may be need to give regulations, especially those that cover the new areas and especially abuse of a superior bargaining position because of the uniqueness and the breadth of it.

Which challenges have you noted in competition regulation in Kenya, and which mitigation measures can be adopted?

I think innovativeness is required in terms of enforcement. We tend to remain very predictable, in terms of what we are looking to enforce. We tend to, and this came out in the OECD reports, be conservative. We have not wanted to go beyond looking at new possible offenses that market players may be engaged in and this shows even in our penalties.

Our enforcement tends to be within Nairobi, and stakeholders have minimal information of our existence. We need to expand our scope and take a study even up to the ward levels.



The Authority should engage in analysis and in data collection from the manufacturers and also to find out what they feel the challenges to competitiveness are.

The Authority's work is not just to investigate infractions; it is to support market competitiveness, and hence can consider going out of Nairobi, to manufacturing towns and finding out the challenges and how government can support.

What challenges did you face when engaging with external stakeholders, both Government agencies and the public, when carrying out your responsibilities and how did you overcome the same?

One of the challenges I faced was limited engagement from other government agencies. At times this would be because of a silo mentality. There is need to get more common ground to amplify our mandate to other government agencies. This was, however, not across the board because we got to work very well with, certain government agencies like Micro and Small, Enterprises Authority, KEBS among others. Number two, suspicious market players who suspected that all you want is just information. Collecting data in such an instance is a problem as they do not trust. Market players required evidence of what you were engaging in and would thereafter collaborate. Other government agencies also do not know about the Authority's mandate. The Authority needs to

work harder in sensitizing other government agencies so that we develop a good synergy.

What advice would you give the young people joining the Authority on how best to progress in the field of competition and consumer protection?

Ask questions, the way things have been done is not necessarily correct because it's how it's been done. Sometimes things have been done that way, but there's a better way of doing them. So, ask questions to understand, ask questions for two things, one to understand, and two, to contribute. I would say number two, read, read, read. Do not limit yourself in the sense of academia only, read news about competition enforcement, subscribe to newsletters and interact with them. There are various channels to which you can subscribe to for information such as Competition Policy International among others. Just stay engaged and listen to international news on competition issues. Stay curious and seek out self-development courses for continuous learning to enable you to stay sharp and ahead of the path.

Give a brief description of a time you made a wrong work decision and how you dealt with the situation?

I may not think of any, however to avoid pitfalls plan and always stay two days ahead. As a leader, always work with your team, this is majorly the reason why I may not think of a wrong work decision. Work with your team, let them think, let

them craft, let them create. When they do that, you benefit from the wisdom of a large pool. However, because not everything can be mitigated, some incidents may occur. If it's within the department as manager, it is your mistake. It is your responsibility. There should never be a time when your officer is answering, since once it leaves your officer's space, it's your responsibility. So, number one, take ownership of where the gap is, and if you're an officer, again, take ownership. Secondly, be quick about correction since time is of essence. Be quick with your decision on how to correct the situation, and number three, once you have corrected it, please do an evaluation to ensure no repetition.

Which key areas of training would you recommend that would equip officers in competition matters and more specifically, your predecessor?

Training is required to understand digital markets, especially how they operate. There is superficial knowledge of how these markets operate across the country. There is also a need to understand the role of AI in markets.



Which information/knowledge resources do you find most relevant during your work processes?

I make a lot of reference to the GCR journal. I also especially use Concurrences, which I prefer because they have free webinars. Both resources have been very useful and quite informative.

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

I would say it's professionalism. Be a professional. Do the right job. Do your job. Do it right. Do it well. That's what I have learned at the Authority and be consistent in doing a good job, applying all your faculties, all your skills, and giving your work a big shot. And when it's all over you can look back and say, yes, I'm proud of that legacy. That's it.

THE END

