COMPETITION AUTHORITY OF KENYA

KNOWLEDGE HUB

November 2026

Issue 18



This issue of the Knowledge Hub features Mr. Benson Nyagol. He has served at the Authority since the year 2011 where he has worked in the Mergers & Acquisitions Department and the Enforcement & Compliance Department.

Take us through your career path, when you joined the Ministry of Finance, Monopolies, and finally the Authority.

My first job was in 1993, when I joined the Department of Monopolies and Prices at the National Treasury. When the Authority was established in 2011, we were initially seconded by the National Treasury to set up the systems. I was formally absorbed in 2012. The first department I worked in at the Authority was Mergers and Acquisitions, after which I moved to Enforcement and Compliance Department.

Before it was established, the Enforcement Department was implementing the Buyer Power provisions. Consumer Protection Department was also not yet established when the law took effect in 2011, so consumer complaints were referred to the Enforcement Department. I, therefore, gained some experience in consumer protection, but I have spent most of my time in the Enforcement and Compliance Department.

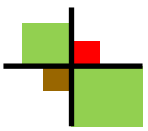
My main area of expertise is the evaluation of restrictive trade practices. My second area is the assessment of mergers and acquisitions, where I have experience from my earlier work in the Mergers and Acquisitions Department.

From your long-standing career in public service and having witnessed the transition of the Authority from a department in the Ministry of Finance, what would you say is the impact of this change in terms of mandate delivery and organizational management?

Under the earlier arrangement, the Minister administered the then Anti-monopoly law alongside many other responsibilities, including the National Treasury's core responsibilities. The Department's work was not a core Treasury mandate, so it received less priority. Decision making became faster with the transition to the Authority. The law dealt with horizontal mergers between companies supplying substantially similar goods or services. On the other hand, the Competition Act also addresses vertical and conglomerate mergers, and it explicitly prohibits abuse of dominance. The earlier law addressed unwarranted concentration of economic power but did not explicitly provide for abuse of dominance. The earlier law had weaknesses and administering it within a Ministry caused delays. Political dynamics could also affect the independence of decision-making in some cases.

Under the earlier law, the maximum penalty for many violations was KES 100,000.00, and a court could impose less. The current system allows penalties of up to 10% of the previous year's turnover. In my opinion, KES 100,000 penalty was not deterrent for large companies.

The earlier process treated cases as criminal matters that had to be referred to Court for prosecution. The Authority now has an in-house Legal Department, resourced with competent Advocates, who understand competition law and policy, provide timely advice and work with investigators from evidence extraction through preparation of notices and decisions. This has ensured that legal advice is given within the required time and is more accurate. There was limited legal capacity, both before and immediately after the Authority began. In meetings involving lawyers, I sometimes found it difficult to address legal issues because my contribution focused mainly on economics. In merger matters, companies sometimes supplied their own interpretations of the law and asked us to confirm them, while the Authority lacked in-house legal expertise.



The transition also brought a cultural challenge. After the suitability test, I estimated that almost 70% of staff went back to be tested, and new people joined. We had to build a new workplace culture among colleagues who were not used to working together. This was a cultural issue rather than a challenge to the work itself.

What has your experience been in developing and reviewing the competition laws and policies? And what areas of improvement should we take into consideration?

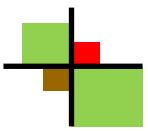
Efforts to review the law and make the departments independent involved preparing memoranda and seeking senior-level support. Progress could be delayed when officials changed, requiring the process to restart. The experience taught me that a successful policy or law needs support from senior leaders. Officials also need to understand the purpose of the proposal before they can support it. Internal champions can help explain and promote the policy, while international support, especially from UNCTAD, helped engage government offices and support the development of the Competition Act. Staff participation is also important when developing laws and policies. In my view, limited internal participation during the development of the Competition Act may have contributed to gaps and later reviews. Staff should take part, so they own the final document and help improve it, in my opinion.

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

I believe the Competition Act and its regulations have matured. Further amendments may be needed as implementation experience reveals gaps or as circumstances change. The key need is an effective competition policy to guide competition law. The National Treasury and the Ministry of Trade should harmonize their work and develop one policy document, with political goodwill supporting that process.

What is your opinion on the recently implemented forensic lab, and what impact do you think it will have on the Authority's decisions?

forensic laboratory came at the right time and was long overdue. Investigative evidence is increasingly digital, so physical searches alone are no longer enough. Without forensic equipment, it would be difficult to obtain evidence of competition-law violations, particularly cartels. Before the establishment of the laboratory, a private service provider and another government agency were engaged for forensic evidence extraction. For example, the evidence obtained in the steel sector was stronger than evidence from earlier investigations. I recommend making searches routine rather than conducting them only once every four years, compared to the EU, where four or five searches take place each year. Effective use of the laboratory, together with stronger penalties, could increase the likelihood of detecting cartels and encourage companies to apply for leniency.



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

A lack of awareness about the Authority's mandate meant that staff sometimes had to spend time explaining who they were and why information was requested. Some organizations suspected that data requests were connected to KRA or anti-counterfeit enforcement, which made information gathering difficult. Overlapping mandates created difficulties with other regulators, whose law also contains competition-regulation provisions. Memoranda of understanding helped clarify responsibilities and manage concurrent jurisdictions.

Access to data remains a challenge. Some sector regulators do not collect data, so the Authority sometimes conducts surveys, to gather administrative and trade data. I understand the concern that disclosure could undermine companies' trust and lead them to withhold or provide false information. MOUs with other government institutions have helped address some data-sharing difficulties, to some extent, but more still remains to be done.

What interested you most in remaining in the competition regulation field?

I have enjoyed applying what I learned in school. I use data to assess whether markets are competitive, whether there is a monopoly or duopoly, and how many players are present. The field is also dynamic and continues to grow, so I have had to grow with it.

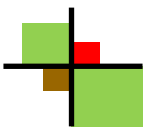
What advice would you give the young people joining the Authority on how best to progress in the field of competition and consumer protection?

Competition is a growing field in Kenya and other developing countries. Opportunities may arise within the Authority, other government agencies, research institutions, regional bodies and academia. People interested in research should develop specialist knowledge of competition policy and connect with researchers in other jurisdictions, while applying local knowledge to work in Kenya.

There are regional opportunities in the East African Community, COMESA, and the AfCFTA. Further study could lead to academic and research roles, including teaching competition-related subjects.

What has been your greatest achievement so far?

My greatest achievement is participating in establishing and entrenching competition policy and law in Kenya. I joined when the field was not well known, and I am leaving after the Authority, and the field has become more established. I also represented Kenya in regional competition-regulation work, including the EACCA and COMESA Competition and Consumer Commission Regulations and was part of the development of the AfCFTA Competition Protocol. I contributed to early work on mergers, consumer matters and buyer power.



Which training would you recommend to your successor to enable them to succeed in this role?

I recommend training in the principles and practice of investigations, including how to initiate investigations, carry them out and analyze data. Investigators need to understand competition policy and law, sector dynamics, and the red flags that may indicate a competition concern.

Before starting an investigation, staff should check whether the matter falls within the Competition Act. I make jurisdiction the first consideration, because an investigation may otherwise proceed for months before anyone realizes it is outside the law. Investigators should also act with integrity and keep their skills current, especially in areas such as big data, artificial intelligence and algorithmic coordination.

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

I recommend OECD materials for detailed research because they cite cases and direct readers to other sources. ICN materials are also useful. In addition, I recommend looking at UK and European Union competition laws and cases, which I consider relevant because of their similarity to Kenya's law. US cases can also be useful, but readers should be careful when applying them because the legal system differs.

Is there any critical information or insights you would like to share to help your successor?

Stay up to date, remain flexible and read cases from other jurisdictions that relate to the sector involved. Every case is different. Work with officers and recognize that they can contribute to the success of a case; do not simply impose your own ideas.

Before delegating a complicated case, understand it and agree on its broad direction with the officer handling it. This helps prevent different interpretations, wasted time, and unnecessary rework. Simple cases should also be assessed before delegation.

Do you have any advice for those of us continuing at CAK?

The Authority's departments depend on one another, like cogs in a wheel. Every department is important, and delays or weaknesses in one department can delay the work of others. You should work together to keep the Authority moving in the right direction.

What are your plans after retirement?

I am considering consultancy and remain open to different opportunities. I do not want to leave competition policy and law. I am still knowledgeable and strong enough to contribute, and, God willing, I will continue participating in the field.

