



## EXEMPTION APPLICATION FOR THE PROPOSED FRANCHISE AGREEMENT BETWEEN KUMON EDUCATION SA (SA) AND ITS FRANCHISEES

1. The Competition Authority of Kenya (CAK) granted an exemption to the agreement between Kumon Education (SA) and its Franchisees for both Mathematics and English programmes for a period of three (3) years.
2. Kumon Education SA, the franchisor, is private supplementary education programme with over 200 franchisees across the world and 18 in Kenya. Kumon has been franchised in South Africa since 1992.
3. Kumon Education SA has been granted the rights from the Kumon Institute of Education Co. Ltd to use and grant sub-licenses within the Republic of South Africa and other African countries in respect of the Kumon method of learning Mathematics and English.
4. Kumon in February 2014 applied to the Authority for an exemption on the Franchise Agreement for Mathematics and English programmes for a period of three (3) years in regard to sixteen (16) Franchisees.
5. This application was premised on Section 28 of the Competition Act No. 12 of 2010 when empowers the Authority to grant exemptions in respect to **intellectual property rights** such as copyrights, patents, and trademarks.

6. Further, Section 26(2) of the Competition Act provides that the Authority may grant an exemption if it will;
  - i. Maintain or promote exports.
  - ii. Improve, or prevent decline in the production or distribution of goods or the provision of services.
  - iii. Promote technical or economic progress or stability in any industry.
  - iv. Obtain a benefit for the public which outweighs or would outweigh the lessening in competition that would result or likely to result from the agreement, decision or concerted practice or the category of agreements, decisions or concerted practices.
  
7. The Authority, in a previous decision on 26th February, 2015, granted Kumon exemption to engage in exclusive agreements with its franchisees. However, this exemption lapsed on 26<sup>th</sup> February, 2018, prompting the fresh application.
  
8. The benefits generated from the exemption granted in 2015 include an increase in the number of students enrolled from 1,032 in 2015 to 1,533 in 2018. Additionally, the number of Centers increased from 15 to 19 over the same period.
  
9. The broad market was defined as education which aims at imparting knowledge, skills attitude and values to learners. This was further broken down into mainstream curriculum which included the 8.4.4 system and the British curriculum which are examinable and the prevalent form of education in Kenya.
  
10. Supplementary education is the formal and informal learning and development opportunities provided to students beyond the regular school day, calendar and precinct. This form of education is not formally examinable since its object is to equip learners with skills and knowledge that supplement the mainstream curriculum.
  
11. Premised on this, the **relevant product market** in which the proposed agreement was analyzed is supplementary education in Mathematics and English,

specifically the Kumon system of instruction in English and Mathematics. The **geographic market** is national.

12. The restrictive elements contained in the proposed Agreement were;

- i. The franchisees commit to not changing the location where they teach the Kumon Method without the written approval of Kumon Education SA.
- ii. Kumon Education SA undertakes not to license other businesses to teach the Kumon Method within a radius of 1 (one) kilometer of the franchisees' place of business.
- iii. Franchisees commit that, upon termination of the agreement for any reason whatsoever, they would not, for a period of 1 (one) year, directly or indirectly, carry out a business the same or similar business within a radius of 1 (one) kilometer of where the franchisee conducted business.

13. The parties provided the following justifications for the transaction;

- a. Since Kumon has the intellectual property rights to the Kumon Method of learning, it is impossible for the franchisees to use the Kumon method without contracting with Kumon and paying royalties.
- b. Through offering the Kumon Method, the franchisees contribute to the economic progress of the education industry by providing alternative education solutions to students, who either require supplementary education or who are not in the mainstream education sector.
- c. It is necessary for Kumon to have the above mentioned anti-competitive clauses in its Agreement in order to maintain the reputation of the Kumon Method of learning and to incentivize franchisees.

- d. The restrictions are necessary for the promotion of Kumon’s unique education model and the maintenance of the set standards throughout the centers.
14. The parties further submitted that there has been an increase in the number of enrollments at its centers which have also increased from 15 to 18, an indication that the system of instruction is gaining acceptance in the country.
15. Kumon argued that the performance of its students had also greatly improved across the country.
16. The Authority’s analysis of the Franchise Agreement noted that the Kumon system is complementary to the mainstream curriculum owing to the fact that:
- i. The Kumon system of instruction is unique, supplementary and not examinable therefore doesn’t compete with the mainstream curriculum.
  - ii. The learning instructions are limited to English and Maths.
  - iii. The system is exclusive in nature, targeting the middle and high income cadre of society.
  - iv. Although the system is patented and, therefore, deploys a different method of instruction, the outcome is similar to available alternatives as they all supplement the mainstream education system.
  - v. Most of students who study the Kumon curriculum of Maths and English are two grades above the formal school curriculum at any grade or level.
  - vi. The rise in the number of Centers, increase in enrollment over the years and high performance rating of the students is a clear indication of the benefits of the Kumon method of education and alternative education solutions.
17. Further, it is the Authority’s view that the transaction is likely to lead to:
- i. Maintenance of standards by eliminating free-riding of the patented Kumon system of instruction.

- ii. Economic progress and stability in the industry by ensuring critical mass to motivate investments into centers.
- iii. Ensuring progress in the education system through supplementing the mainstream curriculum.
- iv. Increased demand for alternative education solutions and specifically the Kumon method of instruction.

18. Based on these grounds, the Authority granted an exemption to the Kumon Franchise Agreements for the Mathematics and English programmes for a period of **three (3) years**.

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