



**CODE OF CONDUCT FOR MEMBERS AND**

**STAFF OF THE COMPETITION AUTHORITY OF KENYA**

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THE COMPETITION ACT

**Act No. 12 of 2010**

CODE OF CONDUCT

{Made under Section 5(1) of the schedule}

**CODE OF CONDUCT FOR MEMBERS AND**

**STAFF OF THE COMPETITION AUTHORITY OF KENYA**

**PART 1.0: STATEMENT OF INTENT**

(1) By establishing this Code of Conduct, the Competition Authority of Kenya fulfills its statutory obligation under the Competition Act, No12 of 2010 and demonstrates its commitment to serve the public. In accordance with its Vision and Mission Statement, the Authority is committed to carry out its mandate with honesty, integrity, accountability, impartiality and professionalism.

(2) This Code of Conduct is intended to ensure that all Members and Staff perform, and from the perspective of the public, are seen to perform, their official duties professionally, impartially and solely and consistently in the public interest. It elaborates standards of conduct and responsibility.

(3) Every Member and Staff shall have the general obligation to comply with all applicable laws, rules and regulations, both in letter and in spirit while discharging duties, performing functions or exercising powers conferred or vested in the Competition Authority of Kenya by such laws, rules or regulations.

**PART 2.0: PRELIMINARY PROVISIONS**

**2.1 Citation**

This Code may be cited as the Code of Conduct for Members and Staff of the Competition Authority.

## **2.2 Application**

This Code shall apply to Members and Staff of the Competition Authority of Kenya during, and in some part after their respective tenures of office. For avoidance of doubt upon the expiration of their respective tenures, each Member or Staff shall continue to observe a conduct that complies with provisions on separation from the Authority provided in this Code of Conduct.

## **2.3 Interpretation**

In this Code, unless the context requires otherwise:

“Act” means the Competition Act, Act No. 12 of 2010, laws of Kenya;

“Authority” means the Competition Authority of Kenya established under section 7 of the Act;

“Business activity” means the purchase, sale or rental of goods, works, services or real estate, or any interests therein;

“Cabinet Secretary” means the Cabinet Secretary responsible for Finance;

“Conflict of interest” means a situation or a circumstance in which a member or Staff, has a private or personal interest sufficient to appear to influence the objective and impartial exercise of his or her official duties.

“Director-General” means the Director-General appointed under section 12 of the Act;

“Member” means a member of the Authority as per section 10 of the Act;

“Pecuniary interest” means direct or beneficial ownership of any of the following financial interests: shares, securities, debt obligations, and proprietary or partnership interests; royalties, income, compensation or any other payments or any kind;

“Person” means an individual or a corporation, a partnership, a trust, an unincorporated organization, a government or any agency or political subdivision thereof;

“Primary party of interest” means a person subject to the jurisdiction of the Authority or a person that realizes significant portion of its business activity from making transactions with, or furnishing goods or services to a person subject to the jurisdiction of the Authority;

“Relative” means -

- a) a spouse, child, parent, brother or sister;
- b) a child, parent, brother or sister of a spouse; or
- c) any other prescribed relative.

“Secondary party of interest” means a person other than a primary party of interest, materially affected, directly or indirectly, by a matter that is, or is expected to be, pending before the Authority;

“Leaving the Authority” means termination of membership to the Authority by a Member or termination by the Authority of a Staff or vice versa;

“Staff” means any person employed by the Authority, including the Director-General, Divisional Directors, other officers and members of Staff, and consultants/experts who may be engaged to assist the Authority perform its functions and exercise its powers;

“Substantial” means the ability to materially influence the policy of an undertaking.

“Trickery means” means the use of practice of tricks or ploy to deceive;

## **PART 3.0: GENERAL STANDARDS**

### **3.1 Internal matters**

(1) A relative of a Member or a relative of a member of Staff shall not be employed by the Authority save in a situation where the Authority has waived the prohibition upon determining that, in the case of a Member/Staff, neither Member/Staff would be in a position administratively or managerially subordinate to the other person.

(2) Where a member of Staff becomes a relative of another Staff while both are employed by Authority, any of such Staff shall not be administratively or managerially subordinate to the other.

### **3.2 Professionalism**

Members and Staff shall:

- (a) Perform their official duties in a way that enhances public confidence in the Authority;
- (b) Strive continually to improve their professional competence and their ability to serve the public;
- (c) offer professional service to all stakeholders and the public of the public and treat all persons making information requests with dignity, respect and with the intent to provide helpful information;
- d) conduct themselves and their official duties with fairness, objectivity and integrity;
- (e) not engage in any form of discrimination, bias or harassment either within or outside the Authority;
- (f) refrain from taking part in any activity of public service duty or transaction where they have, or may appear to have, a conflict of interest and;
- (g) dress in respectable attire and observe office etiquette as provided for in various Authority circulars.

### **3.3 Service Quality Standards**

Members and Staff shall deliver service that is timely, accessible, efficient, confidential and respectful of all persons involved.

### **3.4 Protection of Assets**

The Members and Staff shall not use, for personal gain or otherwise, the assets of the Authority, including tangible assets such as equipment and machinery, systems, facilities, materials, resources as well as intangible assets such as proprietary information, relationships with primary or secondary party of interest and shall employ them for the purposes of conducting the business for which they are duly authorized.

### **3.5 Proscribed activity**

No Member or Staff shall:

- (a) engage in fraudulent, wasteful, abusive or corrupt activities or practices;

- (b) use his or her position to obtain unwarranted privileges or personal benefits for which he or she would otherwise be ineligible;
- (c) solicit or accept, directly or indirectly, bribes and favours from any person;
- (d) make any decision based upon any hope or expectation of future employment with any primary or secondary party of interest;
- (e) acquire any direct financial interest, in any primary or secondary party of interest; or
- (f) solicit, request, suggest or recommend, directly or indirectly, to any primary or secondary party of interest the commencement or continuation of a business activity with any person that is subject to jurisdiction of the Authority.

### **3.6 Reporting of Unethical Conduct**

Members and Staff shall report suspected incidents of illegal, unethical, or unprofessional conduct through the channels of communication described in this Code.

### **3.7 Channels of Communication**

(1) Members and Staff shall employ the following channels of communication when reporting incidents of illegal, unethical or unprofessional conduct as described in paragraph 3.6;

- (a) Where the incident involves two or more Members or between members of Staff and the Director-General, communication shall be to the Chairman;
- (b) Where the incident involves a Member and a Staff, communication shall be to the Director-General;
- (c) Where the incident involves a Member and/or with the Chairman, communication shall be to the Cabinet Secretary;
- (d) Where the incident involves two or more Staff communication shall be to the Director-General; and
- (e) Staff shall communicate with their immediate supervisors or the Director-General.

(2) When considering communications related to unethical behavior, the Cabinet Secretary, the Chairman or the Director-General as appropriate shall fairly and expeditiously address or investigate and determine all matters brought to its attention.

## **PART 4.0: CONFLICT OF INTEREST**

### **4.1 Conflict of Interest**

1. Members and staff are free to take part in any activity provided that such activity does not-

- (a) Interfere with the performance of their duties at the Authority;
- (b) Constitute a competitive advantage accruing to their position at the Authority; or
- (c) Negatively affect the carrying out of their duties at the Authority.

2. Conflicts of interest while serving as a Member or Staff of the Authority comprise, among others, the following matters;

- (a) A substantial financial interest in a primary party of interest or secondary party of interest;
  - (b) Employment by a primary party of interest or secondary party of interest;
  - (c) The conduct of a business activity with a primary party of interest or secondary party of interest.
- (3) No Member/ member of Staff shall acquire interest that conflicts, or may conflict, with the performance of his or her duties at the Authority;

### **4.2 Declaration of Interest**

(1) Every Member and member of Staff shall declare any conflict of interest regarding any matter which he or she is dealing with at the Authority;

(2) A Member/member of Staff who fails to declare a conflict of interest or who knowingly makes a false or misleading declaration regarding a material fact of a conflict of interest, shall be in breach of this Code.

3) In the event that a member of Staff identifies a conflict of interest regarding any matter that is before or may come before the Authority, such Staff shall disclose it and thereafter refrain from taking part in its consideration or determination.

(4) Where a member/member of Staff is required by this Code to report a matter in regard to this section of the Code, such member of Staff shall submit a written report to his supervisor or to the Secretary of the Authority who shall retain a permanent record of the report.



(5) Upon receipt of the report under sub-paragraph (4), the supervisor or Secretary to the Authority shall refer the matter to the Director-General for a resolution.

(6) When a matter has been referred to the Director-General for resolution pursuant to sub-paragraph (5), the Director-General shall either-

(a) Dispose of the matter; or

(b) Refer the matter to the Authority for resolution where no resolution was reached.

(7) In the event that the Director-General, or upon his or her referral under sub-paragraph (6), the Authority finds that a matter requires remedial action, the Director-General or the Authority (as the case may be) may require the Staff:

(a) To divest the conflicting interest; or

(b) To assign those duties that are in conflict to another Staff where appropriate, either temporarily or permanently.

(8) In the event that a member of Staff refuses or is unable to divest the interest identified in sub-paragraph (7), the Authority shall, after determining that no other remedial action will be consistent with the Act and the requirements of this Code take appropriate action against such Staff.

#### **4.3 Register of conflicts of interest including gifts and hospitality as per part 6**

(1) The Authority shall establish a Register of conflicts of interest to be maintained by the Secretary of the Authority;

(2) The Register of conflicts of interest shall be comprised of;

(a) Declarations of conflicts of interest; and

(b) Acceptances of gifts and hospitalities.

### **PART 5.0: CONFIDENTIAL INFORMATION**

#### **5.1 Security of Information**

Members and members of Staff shall ensure the security of all information (printed and electronic) in their possession.

## **5.2 Confidential information**

(1) Members and Staff are bound by Section 84 of the Act in respect of confidential information.

(2) Confidential Information is any information in the Authority's possession that:

- (a) has been declared confidential by the Authority;
- (b) is technically or commercially sensitive and not already lawfully in the public domain;
- (c) the disclosure of which might adversely affect the competitive position of any person; or
- (d) is determined to be confidential under any applicable law.

(3) Any Member or member of Staff who discloses confidential information otherwise than authorized under the Act shall be in breach of this Code and the following action will be taken against him or her;

- (a) In respect of a member of Staff take appropriate action such member of Staff; and
- (b) In respect of a Member, require the Member to resign and where such Member refuses or fails to resign advise the appointing authority to take appropriate action against such Member.

## **5.3 Separation from the Authority**

(1) No Member or Staff, during a period of six months, unless with the approval of the Authority after leaving the Authority, shall -

- (a) Become a Staff of, conduct a business activity directly or indirectly linked with the matter before the Authority, or acquire a pecuniary interest in any primary party of interest that the Member or Staff has participated in decision making, worked, advised a Member/Authority, or supervised other members or Staff who worked on such matter while serving in the Authority within a period of two years before such Member or Staff separated from the Authority; or
- (b) Disclose any confidential information acquired during membership or employment with the Authority or use such information for personal gain.

(2) No Member or Staff, during a period of twelve (12) months after leaving the Authority, shall represent any person before the Authority on any matter on which such Member or Staff -

(a) Participated in decision making;

(b) Worked;

(c) Advised a Member/Authority; or

(d) Supervised other members or Staff who worked on such matter while serving in the Authority.

#### **5.4 Prohibition**

No member or Staff shall take advantage of or personally benefit from information obtained in the course of his or her official duties and responsibilities that is not generally available to the public.

### **PART 6.0: GIFTS AND HOSPITALITY**

#### **6.1 Acceptance of Gifts and Hospitality**

(1) In order to avoid compromising the Authority's corporate values and etiquette, Members and Staff shall exercise due care and diligence in accepting gifts, hospitality or other benefit from any party of interest or from contractors or any supplier of any goods or services to the Authority.

### **PART 7.0: PUBLIC INTERFACE**

#### **7.1 Conduct of Investigations**

(1) While discharging their respective duties the Staff shall conduct investigations in such a way that all matters are investigated diligently, fairly, honestly and appropriately.

(2) No Staff shall obtain any information by way of coercion, collusion, deceit, intimidation or trickery.

(3) During the course of investigations, the Authority's officers or appointees shall seek the information required to make an informed decision regarding the matter in question.

#### **7.2 Media Relations**

(1) The Authority shall communicate with the public on any issue relating to it through:

(a) the Chairman;

- (b) the Director-General; or
- (c) any person duly authorized by the Director-General.

(2) Members and Staff shall not be held liable by the Authority in respect of any statement made to the media by member or Staff, provided that such member or Staff acted with the authority of the Authority and in good faith and within the scope of his or her duties.

**7.3 Attendance at Conferences and Stakeholder Events**

Any invitation to a Member of Staff to attend or speak at a conference or stakeholder event shall be communicated to the Director-General who shall:

- (a) Notify the respective Member about such attendance or speaking; and
- (b) Give the authorization (where applicable) in writing for such attendance or speaking.

**PART 8.0: MISCELLANEOUS**

**8.1 Contravention of the Code**

This Code of Conduct will be implemented in line with the Public Officer Ethics Act.

Where a Member or a Staff member contravenes this Code, appropriate action will be taken as provided for in both the Public Officer Ethics Act, Chapter 183 of the Laws of Kenya.

- (a) In respect of a Staff, take appropriate action such Staff; and
- (b) In respect of a Member, require the Member to resign and where such Member refuses or fails to resign advise the appointing authority to take appropriate action such Member.

**8.2 Amendments**

The provisions of this Code may be amended and modified by the Authority from time to time and all such amendments and modifications shall take effect from the date stated therein.

**Chairman of the Authority** .....

**Dated** ....., 2013