

COMPETITION AUTHORITY OF KENYA



# **GUIDELINES ON ENGAGING WITH CONSUMER ORGANIZATIONS**

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**THE COMPETITION AUTHORITY OF KENYA**

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## **1.0 Introduction**

Co-operation between competition authorities and consumer organizations are mutually beneficial. To be effective, this requires action to remove the obstacles faced by consumer organizations in representing their constituency on competition issues and to ensure that business practices are assessed in relation to their effect in enhancing or diminishing consumer welfare. This means:

- Ensuring that legislation and regulation refers appropriately to achieving consumer benefits.
- Establishing formal rights for consumer organizations to participate in developing and applying competition policy.
- Enabling them to be effective in this role through training and practical support.
- Improving the mechanisms by which individual consumers and consumer organizations can seek redress for loss resulting from anti-competitive behavior.
- Supporting programs to improve individual consumers' awareness and understanding of competition issues and their avenues for redress where rules are broken.

### **1.1 Objectives of the Guidelines**

- a) To promote the rights and responsibilities of consumers through liaison with consumer bodies
- b) To provide independent representation and an informed choice for consumers in policy development and implementation
- c) To provide an avenue for development of relationship and partnership with other stakeholders with a view to achieving the best possible outcome for consumers
- d) To develop the capacity of consumer bodies

The role of consumer organizations is expressly referred to as follows:

**1.2 Functions of CAK under section 9 include:**

- a) Receive and investigate complaints from legal or natural persons and *consumer bodies*;
- b) Promote the creation of *consumer bodies* and the establishment of good and proper standards and rules to be followed by such bodies in protecting competition and consumer welfare;
- c) Recognize *consumer bodies* duly registered under the appropriate national laws as the proper bodies, in their areas of operation, to represent consumers before the Authority.

**1.3 Functions of Consumer bodies**

- a) To build and sustain consumer wide membership.
- b) Capacity building of consumer representatives.
- c) To provide general resource information and advocacy for consumers.
- d) To represent consumers in policy making forums.
- e) Collecting, receiving and disseminating information concerning goods and services.
- f) Receiving and examining complaints and giving advice to consumers of goods and services.
- g) In regard to complaints, taking such actions as it deems justified by information in its possession.

From the aforementioned it is clear that there is a nexus between the functions of the Authority and Consumer bodies in regard to consumer protection.

## 2.0 Guiding principles for effective engagement

The engagement between the Authority and the Consumer bodies will be guided by the following principles:

- Mutual benefit– all partners gain from the relationship and all contribute to it.
- Independence -all partners retain control over their own governance, policies, practices and decision making there is not an expectation that one partner will promote the products or interests of the other nor is preferential treatment expected consumer organizations retain the right to express independent views about a partner company or its products if this is in the best interest of their consumer constituents each party maintains the right to have an opinion that is different to that of the other partner.
- Integrity - the relationship is based on sound moral principles, trust, and honesty the partnership is able to withstand public and professional scrutiny.
- Transparency and openness - the objectives, roles, responsibilities and rules of the relationship are clear to everyone at the outset the nature and extent of the relationship is made known to constituents and the outside world.
- Accountability- the consumer bodies shall be accountable to the Authority for the receipt and use of any funds provided.
- Building sustainability – the partnership may build the long term capacity and strength of all partners.
- Equitable relationship- there is mutual respect between the partners resources may be provided to allow small organizations to confidently contribute to and maintain an effective partnership partner’s give on-going attention to building the relationship.
- Acknowledgement - the contributions that all parties make are specified and acknowledged.

## 2.1 Responsibilities of each party

### Responsibilities of CAK

- a) Assist in education and technical training of their staff in solving consumer protection issues.
- b) Develop mechanisms of sharing information and sensitization of consumer bodies on consumer protection issues and best practices.
- c) Invitation to function of consumer protection organized by the Authority.

### Responsibilities of consumer body

- a) Share market data and information with the Authority.
- b) Receive and resolve complaints and escalate the ones that they are unable to resolve.
- c) Create awareness of consumer protection matters using their available networks.

While this report is written in respect of consumer groups because CAK has identified them as a key stakeholder group, the approach taken below is relevant in respect of key stakeholders generally.

In addition to the functional requirements noted above there are other important benefits that might be expected from engagement with consumer organizations as key stakeholders, including:

- Increasing organizational effectiveness by leveraging the geographic and social diversity and resources of consumer organizations. These resources may include direct links to consumers and practical and contemporary knowledge of consumer attitudes, perceptions and market place behavior.
- Co-operation on relevant policy development and operational activities that will promote greater community confidence in and support for the CAK
- Creating more consumer friendly and consumer targeted policies and operations
- Reducing future costs because operations will be more effectively planned, developed and delivered

- Developing a CAK culture of learning by building into CAK decisions and practices the knowledge and experience of consumer organizations.
- Better identification and evaluation of emerging issues
- Reducing the incidence or intensity of negative media coverage by engaging continually and constructively with consumers through their organizations
- Better managing any misunderstandings or differences as to priorities or appropriate action through a build-up of trust and a clear articulation of what areas of difference.
- Building strong popular support for both the CAK and the *Competition Act* including its competition provisions, as the pro-consumer benefits of competitive markets is accepted by consumer organizations and through them, consumers generally.

## 2.2 Identifying key Consumer Bodies

The criteria for identification of consumer bodies include:

- They must be duly registered by the relevant government agencies;
- They must be recognized by their relevant sector players;
- They must provide their memorandum and articles and/or their constitutions;
- Must adhere to Corporate Governance principles;
- They must provide proof of engagement of consumer protection activities.

### **2.3 The Budget**

The Authority will not be responsible for funding the activities of consumer bodies. However, the Authority will fund and/or take part in funding joint activities organized by the Authority.( what about those organized by the Consumer Bodies?

### **2.4 Appropriate working arrangements**

Appropriate working arrangements will make the engagement process progress predictably smoothly. Important components of predicable arrangements will be:

- Preparing engagement frameworks
- Nomination of contact officers
- Branding
- Regular meetings

Agreed regular meeting, say monthly or quarterly will engender practical commitment and expectations. Regular meetings should not be postponed or cancelled without significant reason and due notice because that will be interpreted by consumer organizations as an indication that the meetings are of secondary importance to CA's other activities.

Ad hoc meetings should only be called when there is a matter that cannot be communicated in regular meeting or dealt with by direct communication. Inappropriate ad hoc meetings will be disruptive to the organizations' planning and operations, and may be interpreted a slack of organization and planning.

### ***2.5 Circulation of most documents prior to meetings***

Setting agendas allows participants to plan ahead and prepare their own presentations or responses. Encouraging consumer organization participants to nominate agenda items will give them a sense of ownership and empowerment.

Often proper consideration of agenda items will require knowledge of information in documents prepared by CAK or others. Circulation of most

documents prior to meeting with sufficient time for them to be read and considered will facilitate informed discussion

### ***2.6 Proper meeting procedures including agreed agendas and a degree of formality agreed by participants.***

Adoption of proper meeting procedures, agreed by participants, will facilitate ordered discussion and reduce the risk that some representatives feeling disenfranchised by stronger personalities and ensure that representatives are confident about what had been discussed and agreed to when they report back to their respective organizations.

A degree of formality will make it easier for the Chair to maintain control over the meeting without inhibiting full and frank discussion. This will be very helpful when emotions are running high, representatives 'pet' issues are in debate or the meeting is running over time. How formal procedures should be is a matter for the participants, with due consideration to any established norms.

### ***2.7 Taking, circulating and settling meeting minutes***

Taking, circulating and settling minutes is a time honoured way for creating an agreed record of who attended particular meetings, what matters were discussed and what was agreed at meetings. As with all minutes, care must be exercised when deciding how detailed the minutes should be. If discussion or information is considered confidential that should be noted in the minutes.

#### ***Action items***

Designating and assigning 'action items' and including them as a standard agenda item can be a useful way of prompting participants to follow-up on meetings and prepare for future meetings.

### ***2.8 Appropriate direct communications***

Direct communications with individual organizations or representatives outside of regular Committee meetings have an important role to play in:

- Urgent matters that need to be actioned before the next meeting

- Matters relevant to only one or just a few of the consumer organizations
- Discussions involving a level of detail not appropriate for regular multi party meetings, for example the administrative arrangements for co-operative activities or the provisions of case specific information.

### 3.0 Confidentiality

The Authority may require retention of confidentiality of certain matters due to the sensitivity and importance of the matters. For example

- Prior to certain enforcement action can give people time to dispose of evidence
- Prior to the launch of educational and information campaigns can reduce the success of campaigns because the messages are no longer 'news'
- That might be detrimental to individuals or their businesses can leave the CAK open to legal action or negative publicity such as allegations of 'trial by media' or 'guilt without proof'.
- Concerning enforcement or educational/information strategies prior to their launch can provide opponents of such strategies with advanced lead times for pre-emptive counter attacks such as influencing other stakeholders or by going public with self serving public statements that CAK may not be in a position to effectively respond to at that time.

Consumer organizations may sometimes require information to remain out of the public area for similar reasons. Additionally the office holders of such organizations will not have the same protections from legal suit as does CAK staff.

While most matters discussed between CAK and consumer organization stakeholders will not involve confidential information that may not always be the case. Consequently the confidentiality procedure for CAK will apply.