



# OECD PEER REVIEW OF COMPETITION LAW AND POLICY: KENYA 2025

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An OECD Peer Review was conducted to review Kenya’s competition law and policy framework, as implemented by the Competition Authority of Kenya (CAK). It highlights key achievements, identifies the main challenges ahead and provides recommendations to help Kenya strengthen its competition regime and institutions. **The full report is accessible at <https://doi.org/10.1787/8725ce19-en>.**

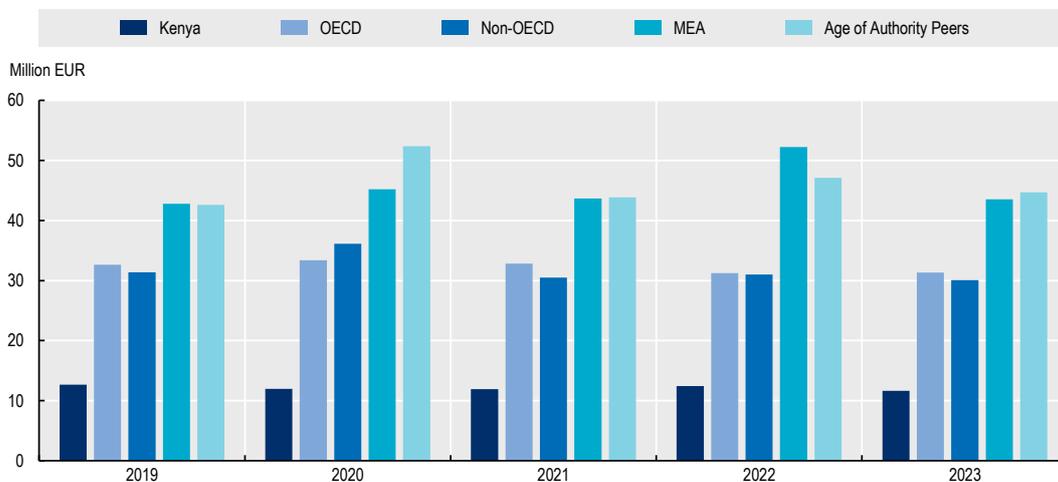
## Institutional and legal framework

Kenya was among the first countries in Africa to adopt a competition law in 1989. The current framework was adopted in 2010 and the CAK began operation in 2011. Kenya’s Competition Act establishes a modern regime whose core pillars align with international good practices, granting the CAK with a comprehensive mandate covering restrictive agreements, abuse of dominance, merger control, market studies, advocacy and consumer protection. The Act applies across all sectors of the economy, including public bodies engaged in trade. The CAK also serves as the consumer protection authority.

While the legal framework is robust, several structural and institutional challenges limit its effectiveness. Institutionally, the CAK’s governance arrangements may expose decision-making to political influence. Three of the nine Board members are direct government representatives, and there are no transparent procedures or eligibility criteria for appointments. During the peer review process, no independent members of the Board were in office, only the government appointed representatives. Similarly, the absence of clear objective rules for the dismissal of senior officials and staggered appointments limits the predictability and autonomy of the authority.

Resource constraints further affect institutional performance. The CAK’s budget remains considerably low for international and regional standards (Figure 1), and staffing levels dedicated to competition enforcement are significantly lower than in comparable authorities. The CAK also lacks a dedicated Chief Economist or economics unit, weakening its capacity to support complex investigations and policy work with rigorous economic analysis.

**Figure 1. Budget (in 2015 EUR) per 1 million GDP, 2019-2023**



Source: OECD CompStats, World Bank and CAK.

These constraints point to potential areas where the allocation of resources could be optimised, supporting the CAK in continuing to effectively deliver on its missions.



## Key recommendations

1. Implement a **transparent process** for selecting all members of the Board of Directors and the Director-General, introducing **clear eligibility criteria** to guarantee they have competition law or economics expertise to the extent possible.
2. Introduce **rules on staggered appointments** of Board members, ensuring partial renewals of the Board of Directors.
3. Ensure the CAK has **adequate resources** (both financial and staffing) for its core competition enforcement functions, separate from its consumer protection functions. CAK resources should at least be at the level of comparable jurisdictions.

## Competition law enforcement

Kenya's legal framework for competition enforcement aligns with international best practices, covering anticompetitive agreements, abuse of dominance, and merger control. The CAK is equipped with investigative powers and a complete sanctions regime. However, enforcement has remained limited in the past five years, reflecting practical constraints, procedural features and institutional challenges.

### Cartel and agreement enforcement

The CAK has the tools to investigate and sanction both horizontal and vertical agreements, but actual enforcement remains low. Settlements have become the primary enforcement mechanism and do not require an admission of liability. In practice, the heavy reliance on settlements, combined with unclear rules on settlement discounts and the limited publication of settlement details, weakens deterrence and prevents the development of case law.

Fines imposed in cartel cases remain significantly below international best practices and rarely exceed 1% of turnover, far from the statutory maximum of 10%.

Although the CAK introduced both leniency and whistle-blower programmes, neither has generated applications. Limited awareness, perceived risks for applicants and the absence of significant sanctions have discouraged their use.

The CAK also conducts very few unannounced inspections ("dawn raids") during its investigations which limits the ability to capture important evidence and minimise the risk of parties destroying evidence.

### Abuse of dominance

Kenya's rules on abuse of dominance are aligned with international standards, requiring the CAK to demonstrate both dominance and harmful effects on competition. However, enforcement has been extremely limited with no infringement decision issued in over a decade. Stakeholders expressed concerns about the CAK's approach to market definition, which tends to rely heavily on qualitative rather than quantitative analysis, and the lack of clarity around the concepts of dominance and market power contributes to legal uncertainty.

Difficulties in obtaining data and limited responsiveness to information requests further hamper the authority's ability to identify and substantiate abusive conduct.

### Merger control

The merger control system is well established, with clear notification thresholds, procedures and cooperation mechanisms with sector regulators. However, the CAK's substantive analysis tends to prioritise public interest considerations over competition effects. Remedies imposed are often behavioural and cases involving structural measures remain rare. The CAK has not prohibited any merger to date, and the number of cases subject to remedies is low. A lack of detailed economic analysis in merger assessment further limits the depth of the review.

A defining feature of Kenya's system is the coexistence of multiple cross-border competition frameworks. The CAK operates alongside the regional regimes of the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC), with a future layer expected under the African Continental Free Trade Area (AfCFTA). Both COMESA and the EAC now conduct merger enforcement that overlaps with the CAK's domestic remit. This unusually high number of concurrent regimes creates risks of duplication, legal uncertainty, and increased compliance costs for stakeholders in Kenya.

### Sanctions and deterrence

Although the CAK's fining guidelines generally follow international standards, the fines imposed in practice remain very low, and the settlement system often provides generous discounts without requiring recognition of wrongdoing. The absence of individual sanctions and the non-application of criminal penalties further reduce deterrence. As a result, companies face limited incentives to comply with the law or to seek leniency, and potential infringers may view the risks associated with engaging in anti-competitive behaviour as low.

Moreover, the CAK cannot directly enforce its own decisions or force firms to comply with the CAK's compulsory evidence gathering requests, relying instead on the Office of the Director of Public Prosecutions to pursue non-compliance. In practice, the Public Prosecutor has never brought an action to enforce a CAK decision or evidence request, which further reduces the perceived likelihood of detection and sanctions.

### Transparency and judicial review

Transparency in Kenya's enforcement system remains a major challenge. Only brief summaries of decisions are published, containing little reasoning or economic analysis, and public versions of full decisions are not available to stakeholders. This restricts the ability of businesses, practitioners and the judiciary to understand how the CAK interprets and applies the law and hampers the development of case law. The Competition Tribunal of Kenya, the specialist body responsible for reviewing CAK decisions, does not have relevant expertise or resources for training, limiting its ability to fulfil its mandate.



## Key recommendations

1. Establish **clear rules for the settlement procedure**, as well as the payment of a financial penalty. In addition, clarify settlement discounts, for instance by setting maximum reduction percentages and other guiding criteria. Require that liability is admitted in most enforcement cases. Avoid granting excessive discounts.
2. Ensure that **fines** serve as a deterrent by being **proportionate** to both the gravity of the infringement and the turnover of the fined undertakings. The CAK's Consolidated Administrative Remedies and Settlement Guidelines should be adjusted to ensure that the fine calculations better reflect aggravating factors.
3. **Increase the use of dawn raids**, leveraging the recently established forensics laboratory.
4. Empower the CAK to impose **sanctions for non-compliance** with requests for information, as well as failure to pay fines. The CAK should not be reliant on the Office of Director of Public Prosecutions to bring injunctive action.
5. Publish, including on the CAK's official website, **public versions of full decisions** in a timely manner, subject to the protection of confidential information. Decisions should be well reasoned and subject to sound economic analysis. This includes all decisions relating to anticompetitive conduct, market studies and merger reviews.

## Competition advocacy and institutional co-operation

The Competition Act grants a range of advocacy competences to the CAK, including issuing advocacy opinions on new or existing laws and policies that may be distorting or preventing competition, as well as organising actions to raise awareness of the competition law. Over the past five years, the CAK has delivered close to 150 opinions across sectors including retail, manufacturing, banking and telecommunications. Yet these opinions are not published, which limits their visibility and reduces opportunities for learning across government.

The CAK also conducts market studies. However, the CAK's lack of enforcement in relation to compulsory information gathering powers means that market studies often cannot adequately measure factors such as market concentration and must rely on general sector data gathered by the government. This lack of detailed evidence from the sectors under review meant that there was insufficient analysis to justify any policy recommendations made. In addition, the CAK focused on relatively niche topics for its market studies (e.g., 2024 market study into online food and grocery delivery) when, due to its limited resources, it should always be focused instead on high profile markets with immediate impact on large parts of the economy.

Stakeholders were broadly complementary of the CAK's efforts to make advocacy and awareness a cornerstone of their work. However, there was consensus that there was a need to rebalance CAK priorities to recognise that high profile enforcement cases also create opportunities for high impact advocacy.

Regarding co-operation with domestic authorities, the CAK has made efforts to improve co-operation and establish Memoranda of Understanding, which have been most effective in the context of merger review. However, substantive co-operation on competition law enforcement remains limited. In particular, there is no co-operation between the CAK and the Kenyan Public Procurement Regulatory Authority. Given the majority of CAK enforcement cases relate to bid rigging conduct, there is a need for both authorities to work together in the fight against public procurement corruption.



## Key recommendations

1. Make **advocacy opinions publicly available**.
2. Focus the **market study** work on **high profile markets with immediate impact on large parts of the economy**, not those perceived as being in vogue for competition authorities globally.
3. Significantly increase the amount of **co-operation between the CAK and PPRA**. The authorities should develop a work plan to significantly enhance co-operation on referring alleged bid rigging to each other and identify opportunities to collaborate on enhanced detection techniques.

## Peer Reviews of Competition Law and Policy

OECD peer reviews have proved to be a valuable tool for countries to reform and strengthen their competition frameworks. The mechanisms of peer reviews vary, but they are founded upon the willingness of a country to submit its laws and policies to substantive questioning by other peers. The process provides valuable insights into the country under study, getting to the heart of ways in which each country deals with competition and regulatory issues, from the soundness of its competition laws to the structure and effectiveness of its competition institutions.

Furthermore, these reviews incorporate recommendations for changes in government policy.

Argentina (2006)

Brazil (2005, 2010, 2019)

Chile (2004)

Colombia (2009)

Costa Rica (2014)

Czech Republic (2008)

Denmark (2015)

Dominican Republic (2024)

Ecuador (2021)

Eurasian Economic Union (2021)

El Salvador (2008, 2020)

European Union (2005)

Greece (2018)

Honduras (2011)

Kazakhstan (2016, 2025)

Latin America (2006, 2007, 2012)

Mexico (2004, 2020)

Panama (2010)

Peru (2004, 2018)

Romania (2014)

Russia (2004)

South Africa (2003)

Chinese Taipei (2006)

Thailand (2025)

Tunisia (2022)

Turkey (2005)

Ukraine (2008, 2016, 2025)

Vietnam (2018)

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