

KENYA			
COMPETITION FRAMEWORK			
Competition Law	The Competition Act of 2009 was enacted on December 31, 2010.		
Competition Authority	The Competition Authority of Kenya started functioning on August 1, 2011. Website: <a href="http://www.cak.go.ke">http://www.cak.go.ke</a>		
STATUS OF THE COMPETITION AUTHORITY			
Accountability			
Does the Competition Authority have obligations before the executive?	Yes	X	Obligations to report to the executive on on-going investigations upon request.
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.
		√	The Competition Authority has to report on an annual basis to the executive.
		<b>Other obligations/comments:</b> The Competition Authority only has to report to the executive on on-going investigations, upon request, for courtesy cases.	
Does the Competition Authority have obligations before the legislature?	Yes	√	Obligation to publish an annual report on its activities.
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.
		X	Its activities are monitored by an independent auditor or by oversight committees.
Does the Competition Authority have obligations before the judiciary?	Yes	√	Decisions of the Competition Authority are subject to judicial review.
Independence			
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes	<i>See</i> Competition Act, Schedule 2(1)(b).	
Does the executive have powers to decide on specific cases based on public interest?	No		
Does the executive retain decision-making powers over the Competition Authority?	No		
Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency?	Yes	<i>See</i> Competition Act, section 39.	
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes	<b>Current fiscal year budget:</b> US\$ 3 million. <i>See</i> Competition Act, section 78(1)(b).	
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	No	<i>See</i> Competition Act, section 78(1).	
GOVERNANCE OF THE COMPETITION AUTHORITY			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Chairman		
Does a minister appoint the heads?	Yes	<i>See</i> Competition Act, section 10(a).	
Do representatives of more than one government branch appoint the heads?	No		
Is there a fixed period during which removal is prohibited?	No		
Is the tenure of the heads renewable?	Yes	Only once. <i>See</i> Competition Act, Schedule 1.	
Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)?	No		
ARCHITECTURE			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister?	Stand-alone agency	Bima House, 9th Floor, Harambee Avenue. P.O. Box 36265-00200 Nairobi, Kenya.	
POLICY-MAKING AGENTS -DIVERSIFICATION-			
How many agencies are responsible for competition enforcement?	One agency.		
Do sector regulators have competition policy enforcement mandate?	Yes		
	Communications Commission of Kenya	Horizontal agreements, vertical restraints, abuse of dominant position and merger control (Kenya Information Communications Act, section 84S).	
Have the Competition Authority and other	No		

agencies signed protocols or memoranda of understanding?	Telecommunications regulator	No	
	Energy regulator	No	
	Transport regulator	No	
	Other	According to section 5(3) of the Competition Act, the Competition Commission of Kenya is mandated to cooperate with other sector regulators but no memoranda of understandings have been signed to date.	
<b>POLICY DUTIES</b>			
Does the Competition Authority have exclusive mandate on competition or multiple mandates?	Multiple mandates	√	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		<b>Other mandates:</b> None but note that with reference to consumer protection, the Competition Authority has concurrent jurisdiction with the Kenya Bureau of Standards, Weights and Measures.	
<b>PORTFOLIO INSTRUMENTS</b>			
<b>Law Enforcement</b>			
Does the Competition Authority have powers to investigate cartels?	Yes	See Competition Act, section 21.	
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	See Competition Act, section 32.	
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	See Competition Act, section 31(1)(b).	
Does the Competition Authority have powers to accept leniency applications?	No		
Does the Competition Authority have powers to seek criminal punishment?	Yes	See Competition Act, section 91.	
<b>Advocacy</b>			
Can the Competition Authority issue opinions on draft legislation?	Yes	See Competition Act, section 9(h). The opinions are not binding.	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No		
<b>Rulemaking</b>			
Can the Competition Authority issue guidelines or other type of secondary legislation?	Yes	X	Guidelines on the calculation of fines.
		X	Guidelines on merger control.
		√	Guidelines on the economic analysis of abuse of dominance cases.
<b>Research &amp; Reporting</b>			
Can the Competition Authority carry out market studies?	Yes	See Competition Act, section 18(1).	
Can the Competition Authority report to the legislature on the results of market studies?	Yes		
<b>DECISION-MAKING FUNCTIONS</b>			
<b>Aggregated Functions</b>			
Does the Competition Authority make the decision to investigate and to prosecute cases?	Yes	See Competition Act, section 34.	
Does the Competition Authority make guilty findings?	Yes		
Does the Competition Authority impose punishments?	Yes	See Competition Act, section 36(d).	
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	Yes		
Can the Competition Authority's decisions be appealed to a court?	Yes	See Competition Act, section 77.	
<b>Disaggregated Functions—Prosecutorial Model</b>			
Are there different authorities that make the decision to investigate and to prosecute cases?	No		
Are disputes presented for decision to a separate entity/tribunal?	No		