
THE EAST AFRICAN COMMUNITY

ACT SUPPLEMENT

No. 2

7th September, 2007

to the Gazette of East Africa No. 003 Vol. AT. 1 dated 7th September, 2007.

Printed by the Government Printer, Dar es Salaam, by Order of the East African Community.

THE EAST AFRICAN COMMUNITY COMPETITION ACT, 2006

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THE EAST AFRICAN COMMUNITY



No. ... OF 2006

Date of assent 13th November, 2006*Date of commencement* See SECTION 1(2).

An Act of the Community to promote and protect fair competition in the Community, to provide for consumer welfare, to establish the East African Community Competition Authority and for related matters.

ENACTED by the East African Community and assented to by the President of the United Republic of Tanzania, the President of the Republic of Kenya and the President of the Republic of Uganda.

PART I
PRELIMINARY PROVISIONS

1. (1) This Act may be cited as the East African Community Competition Act, 2006. Short title and commencement
- (2) This Act shall come into force on such date as the Council may, by notice in the Gazette, appoint.
2. In this Act unless the context otherwise requires— Interpretation
- “acquisition” means any acquisition by an undertaking of direct or indirect control of the whole or part of one or more other undertakings, irrespective of whether the acquisition is effected by merger, consolidation, take-over, purchase of securities or assets, contract or by any other means;

- “agreement” means any agreement, arrangement or understanding between two or more persons, whether or not it is in writing or intended to be enforceable by legal proceedings;
- “Authority” means the East African Community Competition Authority established under section 37 of this Act;
- “bid-rigging” means a form of collusive tendering in procurement or project contracts which results, or has potential to result, in anti-competitive effects in the bidding process;
- “chairperson” means the Chairperson of the East African Community Competition Authority provided for under section 38 of this Act;
- “commissioner” means the Commissioner provided for under section 38 of this Act;
- “competitor” means the process whereby two or more persons—
- (a) supply or attempt to supply the same or substitutable goods or services to persons in the relevant market; or
 - (b) acquire or attempt to acquire the same or substitutable goods or services from persons in the relevant market.
- “competition” means actual or potential competitor;
- “concerted practice” means any agreement, arrangement or understanding, formal or informal, written or oral, open or clandestine, between competitors;
- “consumer” means any person who purchases goods or services from an undertaking for consumption and includes any person who uses such goods or services with the approval of the buyer irrespective of whether the purchase or use is for personal or commercial use;
- “council” means the Council of Ministers established by Article 9 of the Treaty;
- “court” means the East African Court of Justice established by Articles 9 of the Treaty;

- “cross subsidization” means the internal transfer within an undertaking of profits resulting from one line of business to less profitable line of business;
- “dollar” means the United States dollar and includes the equivalent in the currency of the Partner States;
- “dominant position” means a position of economic strength enjoyed by one undertaking individually or by more undertakings collectively which enables them to prevent effective competition being maintained in the relevant market by giving the undertaking or undertakings the power to behave to a material extent independently of its or their competitors, customers and consumers and in particular to foreclose other undertakings from competing in the relevant market;
- “East African Legislative Assembly” means the East African Legislative Assembly established by Article 9 of the Treaty;
- “*Gazette*” means the Official Gazette of the Community;
- “merger” means an amalgamation or joining of two or more firms into an existing firm or to form a new firm;
- “nationality” means the status of belonging to a particular nation by origin, birth or naturalization;
- “predatory pricing” means the setting of prices for goods or services below costs; prices below average variable costs are presumed to be predatory; prices below average total costs, but above average variable costs, are predatory;
- “price squeezing” means a pricing practice of an undertaking which is operating in an upstream market as well as in a downstream market, and charges its consumers in the upstream market prices, which do not allow such consumers to compete in the downstream market;
- “registrar” means the Registrar of the East African Competition Authority provided for under section 41 of this Act;

“relevant market” means the area of competition between undertakings determined in accordance with section 5(5) of this Act;

“residence” means the place of general abode, principal, actual residing place in fact without regard to intent;

“subsidy” has the meaning assigned thereto in the Protocol on the Establishment of the East African Community Customs Union;

“undertaking” means any private or public entity, including natural and legal persons and affiliated groups of companies under joint control, irrespective of their legal form carrying on any business.

Objectives
of
competition
policy and
practice

3. The objects of the competition policy and practice in the Community shall be to—

- (a) enhance the welfare of the people in the Community by—
 - (i) protecting all market participants' freedom to compete by prohibiting anti-competitive practices;
 - (ii) protecting the opening of Partner States' markets against the creation of barriers interstate trade and economic transactions by market participants;
 - (iii) guaranteeing equal opportunities in the Community to all market participants in the Community, and especially to small and medium-sized enterprises;
 - (iv) guaranteeing a level playing field for all market participants in the Community by eliminating any discrimination by Partner States on the basis of nationality or residence;
 - (v) providing consumers access to products and services within the Community at competitive prices and better quality;

- (vi) providing incentives to producers within the Community for the improvement of production and products through technical and organizational innovation;
- (vii) promoting economic integration and development in the Community;
- (b) enhance the competitiveness of Community enterprises in world markets by exposing them to competition within the Community;
- (c) create an environment which is conducive to investment in the Community;
- (d) bring the Community's competition policy and practice in line with international best practices;
- (e) strengthen the Partner States' role in relevant international organizations.

4. (1) This Act shall apply to all economic activities and sectors having cross-border effect.

Application of Act.

- (2) This Act shall not apply to—
 - (a) any conduct of persons acting in their capacity as consumers;
 - (b) collective industrial bargaining;
 - (c) sovereign acts of the Partner States:

Provided that this Act shall apply with respect to acts contemplated in Part V and VI of this Act.

(3) This Act shall not apply to restraints on competition imposed by and resulting from a Partner State's regulation of specific sectors or industries to the extent that the anti-competitive conduct is required by such regulation within their own jurisdictions.

PART II
RESTRAINTS BY ENTREPRISES

5. (1) Subject to section 6, a person shall not engage in concerted practice if that practice has, or is intended to have, an anti-competitive effect in the relevant market.

Prohibition of anti-competitive concerted practices.

(2) Without prejudice to the generality of subsection (1) a person shall not engage in the following practices—

- (a) collusion by competitors to fix prices;
- (b) collusive tendering and bid rigging;
- (c) collusive market or customer allocation;
- (d) quantitative restraints on investment, input, output or sales;
- (e) barring competitors from access to the market or from access to an association or arrangement which is essential for competition;
- (f) concerted practice restricting movement of goods within the Community.

(3) Any concerted practice by undertakings restricting exports to or imports from foreign countries is prohibited, if it is intended to have anticompetitive effects on the relevant market within the Community or on access of Community undertakings to exports or imports.

(4) A person who contravenes this section commits an offence and shall be liable to a fine of not more than one hundred thousand dollars.

(5) For the purpose of this Act, the area of the relevant market shall be determined by the substitutability of goods or services for consumers in light of their intended use, characteristics and prices as well as by the substitutability of different source of supply located in different regions.

Exemptions

6. (1) Section 5(2) (d) and (f) shall not apply to any concerted practice among competitors whose combined market share does not exceed ten per centum of the relevant market.

(2) Subject to subsection (4), section 5 shall not apply to—

- (a) joint research and development;
- (b) specialization of production or distribution;
- (c) standardization of products or services.

(3) The Authority may exempt any other category of concerted practice, provided the concerted practice is limited to objectives which lead to an improvement of production or distribution and whose beneficial effects, in the opinion of the Authority, outweigh its negative effects on competition.

(4) The exemptions under subsections (2) and (3) shall be applicable only, if the combined market share of the parties involved in the concerted practice does not exceed twenty per centum of the relevant market and the agreement relating to the concerted practice does not contain any of the restrictions listed in section 5(2).

7. (1) A person shall not engage in a concerted practice unless the Authority has issued to that person permission in that respect.

Authority to
issue
permission
for
concerted
practice

(2) A person intending to engage in a concerted practice shall apply to the Authority in accordance with the regulations.

(3) The Authority shall communicate its decision to the applicant within forty five days of the receipt of the application.

(4) A person who contravenes subsection (1) commits an offence and shall be liable to a fine of not more than ten thousands dollars.

(5) If the Authority has not communicated its decision in the period specified under subsection (3), then the permission for the concerted practice shall be deemed to have been granted.

PART III

ABUSE OF MARKET DOMINANCE

8. (1) An undertaking holding a dominant position in the relevant market shall not—

Consumer
exploitation

- (a) directly or indirectly impose unfairly high selling or unfairly low purchasing prices or other unfair trading conditions;
- (b) limit production or technical development and innovation to the prejudice of consumers;
- (c) discriminate between consumers or suppliers according to non-commercial criteria such as nationality or residence.

(2) Subsection (1) shall apply to any undertaking on which small or medium sized undertakings are dependent

(3) Any person who contravenes the provisions of this section commits an offence.

Exclusion
of
competitors

9. (1) An undertaking holding a dominant position in the relevant market shall not engage in any practice that excludes, or is intended to exclude, its competitors from the market by means of—

- (a) predatory pricing;
- (b) price squeezing;
- (c) cross subsidization.

(2) An undertaking holding a dominant position in the relevant market shall not engage in a practice that harms the competitive position of competitors on downstream markets by—

- (a) a refusal to deal;
- (b) a refusal of access to an essential facility;
- (c) tying arrangements;
- (d) unjustifiably discriminating among customers or suppliers.

(3) Subsection (2) shall be applicable to any undertakings of which small or medium sized undertakings are dependent.

(4) Any person contravening the provisions of this section commits an offence.

Vertical
distribution
agreements.

10. (1) An undertaking holding a dominant position in the relevant market shall not engage in a practice whereby—

- (a) the resale prices or conditions are directly or indirectly fixed;
- (b) customers or competitors are foreclosed from access to sources of supply or from access to outlets;
- (c) movement of goods or services between different geographical areas are restricted;

- (d) an intellectual property right is used in any way that goes beyond the limits of its legal protection.

(2) Any person who contravenes this section commits an offence.

PART IV
MERGERS AND ACQUISITIONS

11. (1) A person intending to execute a merger or an acquisition shall notify the Authority of such merger or acquisition.

Notification of mergers and acquisitions

(2) The notification referred to in subsection (1) shall be made promptly upon the conclusion of the agreement in respect of the merger or acquisition.

(3) The notification referred to in subsection (1) shall be made by the undertaking acquiring control through the merger or acquisition coming into effect of mergers and acquisitions.

12. (1) A merger or acquisition referred to in section 11 shall not come into effect before its notification to the Authority and the Authority has given its approval of the proposed merger or acquisition.

Coming into effect of mergers and acquisitions

(2) The Authority shall notify the person concerned under subsection (1) of its decision within forty five days.

(3) If the Authority has not communicated its decision within the period referred to under subsection (2), the merger or acquisition may be implemented.

(4) Any transaction carried out in contravention of subsection (1) shall be void.

(5) Any person who contravenes sub-section (1) commits an offence

13. (1) A merger or acquisition shall not be approved by the Authority if that merger or acquisition leads to the creation, or strengthening of an already subsisting dominant position, and thereby substantially lessening competition in the relevant market

Anti-competitive mergers and acquisitions

(2) In determining whether a merger or acquisition may lead to the creation or the strengthening of a dominant position in the relevant market and thereby substantially lessening competition in the relevant market, the Authority shall take into account all relevant competitive factors, and in particular shall consider—

- (a) the competitive structure of all markets affected by the merger or acquisition, including the potential competition from both inside and outside the Community in light of legal or other barriers to entry;
- (b) the undertakings in the markets affected, their control of essential facilities, their integration in upstream and downstream markets, and their financial resources;
- (c) the competitors and the alternatives available to suppliers and consumers;
- (d) any pro-competitive effects of the merger or acquisition which may outweigh the harmful effects on competition.

(3) Where the Authority objects to a merger or an acquisition the Council may, upon appeal by the undertaking or undertakings concerned, approve the merger or acquisition.

(4) The Council may approve a merger or acquisition under subsection (3) only if the Council is satisfied that the merger or acquisition is to fulfill an overriding public interest.

PART V

PARTNER STATE SUBSIDIES

Partner State may grant subsidy.

14. A Partner State may, subject to this Act, grant subsidy to any undertaking if it is of the opinion that it is in the public interest do so.

Notification and determination procedure.

15. (1) A Partner State shall, before granting any subsidy, notify the Authority.

(2) Where the Authority considers that the subsidy falls within section 16 or does not fall within Section 17, the Authority shall communicate its decision to the Partner State.

(3) If the Partner State is dissatisfied with the decision of the Authority, it may refer the matter to the Court.

(4) Upon determination by the Court that the subsidy is illegal, a Partner State shall recover the subsidy from its recipient.

16. (1) Subject to section 17, a Partner State shall not grant any subsidy which distorts or threatens to distort competition in the Community. Exemptions

(2) Without prejudice to the generally of subsection (1), a Partner State shall not grant—

- (a) any subsidy for the promotion of exports or imports between the Partner States;
- (b) any subsidy which is granted on the basis of the nationality or residence of persons or country of origin of goods or service.

17. (1) Section 16 shall not apply to subsidies granted— Prohibition of discrimination

- (a) to consumers of certain categories of products or services, to promote social services;
- (b) for the development of small and medium-sized enterprises;
- (c) for the restructuring, rationalizing and modernizing of specific sectors of the economy;
- (d) for less developed regions;
- (e) for research and development;
- (f) for the financing of a public sector;
- (g) for the promotion and protection of food security;
- (h) for the protection of the environment;
- (i) for the education and training of personnel;
- (j) for the conservation of the cultural heritage;
- (k) for the compensation of damages caused by natural disasters or by macroeconomic disturbances.

(2) The Council may, on the recommendation of the Authority, exempt other categories of subsidies.

(3) In granting any exemption under this section, the Council shall take into account—

- (a) the materiality of the subsidy for the achievement of its objective;
- (b) the compatibility of the subsidy with the objectives of the Community, including the opening of Partner States' markets; and
- (c) the establishment of a competitive environment in the Community.

(4) The Council shall determine the duration of every exemption of subsidy granted under this section.

PART VI
PUBLIC PROCUREMENT

Tendering
Procedures

18. (1) The Partner States including all its organs and institutions and any public authority in the Partner States shall with respect to any law, regulations, procedures or practice regarding public procurement, extend non-discriminatory treatment to all suppliers and to all products or services originating from or affiliated with other Partner States.

(2) Technical specifications laying down the characteristics of the products or services to be produced shall not be prepared, adopted or applied with a view to, or with the effect of, creating obstacles to trade between Partner States.

Awarding of
Tenders

19. (1) A Partner State or the Community shall apply transparent, accessible and non-discriminatory tendering procedures.

(2) Tenders shall be awarded on the basis of the criteria and requirements in the tender notice or documentation and in accordance with the Partner States' or the Community's legislation.

Aggrieved
bidder may
lodge
complaint
with
Authority

20. (1) A bidder aggrieved by any tendering procedure may lodge a complaint against that process to the Authority.

(2) Upon receipt of a complain regarding any tendering procedure the Authority may evaluate the compatibility of any tendering procedure with sections 18 and 19 of this Act.

(3) The Authority shall inform the Community and the Partner state concerned of its findings together with any recommendations regarding any improvements to the procedure, to make it compatible with sections 18 and 19 of this Act

PART VII
ENFORCEMENT PROCEDURE

21. (1) Upon application by an interested party or by a Partner State the Authority may at any time certify that there are no grounds for applying the prohibitions provided for under this Act. Non application of prohibitions

(2) The Authority may at any time carry out investigations where it is of the opinion that the facts upon which it made the decision referred to in subsection (1) are false or inaccurate.

22. Where the Authority is of the opinion that there is sufficient reason to believe that this Act has been or is about to be violated, it may after informing the parties or the Partner State involved, take the necessary measures to prevent or rectify such violation. Prevention of violation of the Act.

23. (1) A Partner State or an undertaking shall provide such information as the Authority may request. Authority to obtain information

(2) Where a request by the Authority under subsection (1) is not complied with within the time specified in the request, the Authority may require that the information be availed within such further period as the Authority may specify.

(3) Where a Partner State fails to comply with the request by the Authority under subsection (2), the Authority shall refer the matter to the Council.

24. (1) Any Partner State or person may file a complaint with the Authority against a Partner State or any person for a breach of the provisions of this Act. Complaints

(2) A Partner State or person dissatisfied with the decision of the Authority under subsection (1) may appeal to the Court.

25. (1) The Authority, its employees or agents shall not disclose any information acquired in the course of performing their functions under this Act. Confidentiality of documents etc

(2) Any employee or agent of the Community who contravenes this section commits an offence and shall be liable to a fine of not more than ten thousand dollars or to imprisonment for a term of not more than six months or both.

Remedies
and
sanctions

26. (1) Any contract or agreement in violation of this Act shall be void.

(2) Where a merger or acquisition has been implemented contrary to the provisions of this Act, the Authority shall order its divestiture.

Publication

27. Any decision of the Authority shall be published in the Gazette.

PART VIII
CONSUMER WELFARE

False
represent-
ations

28. An undertaking shall not, in connection with the supply or possible supply of goods or services or in connection with the promotion of goods or services—

- (a) falsely represent that goods are of a particular standard quality, value, grade, composition, style or model or has a particular history or particular previous use;
- (b) falsely represent that services are of a particular standard quality, value or grade;
- (c) falsely represent that goods are new;
- (d) falsely represent that a particular person has agreed to a particular goods or services;
- (e) falsely represent that goods or services have sponsor approval, performance characteristics, accessories, benefits;
- (f) falsely represent that the person has a sponsorship, approval, or affiliation;
- (g) make a false representation with respect to the price of goods or services;
- (h) make a false representation concerning the availability of facilities for the repair of goods or of spare parts for goods;
- (i) make a false representation concerning the place of origin of goods;

- (j) make a false representation concerning the need for goods or services; or
- (k) make a false representation concerning the existent exclusion or effect of any condition, warranty, guarantee, right or remedy.

29. (1) An undertaking shall not, in connection with the supply, possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.

Unconscionable
conduct in
consumer
transactions

(2) Without limiting the matters to which the Authority may have regard for the purpose of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person, the Authority may have regard to—

- (a) the relative strengths of the bargaining positions of the undertaking and the consumer;
- (b) whether, as a result of conduct engaged in by the undertaking, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the undertaking;
- (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer in relation to the supply or possible supply of the goods or services; and
- (e) the price at which, and the circumstances under which the consumer could have acquired identical or equivalent goods or services from another supplier.

(3) An undertaking shall not be taken for the purposes of this section to engage in conscionable conduct in connection with the supply or possible supply of goods or services to a person by reason only that the person institutes legal proceedings in relation to that supply or possible supply to arbitration.

(4) For the purpose of determining whether an undertaking has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person—

- (a) the Authority shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
- (b) the Authority may have regard to conduct engaged in or circumstances existing before the commencement of this Act.

(5) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use.

(6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.

Authority to
publish
dangerous
goods etc

30. (1) The Authority shall publish, in at least two newspapers of national circulation in each of the Partner States, a notice containing one or both of the following—

- (a) a statement that goods of a kind specified in the notice are under investigation to determine whether the goods may be injurious to public health;
- (b) a statement of possible risks involved in the use of goods of a kind specified in the notice.

(2) Where the investigation referred to in subsection (1) has been completed, the Authority shall as soon as practicable, in a notice published in at least two newspapers of national circulation in each of the Partner States announce the results of the investigation.

(3) The notice referred to in subsection (2) shall state what action if any, is proposed to be taken in relation to the goods.

(4) The Council may issue a notice of ban on any goods specified in the notice.

31. (1) An undertaking shall not supply goods that are intended to be used, or are of a kind likely to be used by a consumer, if the goods are of a kind—

Product safety standards and unsafe goods

- (a) in respect of which there is a prescribed consumer product safety standard, which do not comply with that standard;
- (b) in respect of which there is in force a notice under this section declaring the goods to be unsafe goods; or
- (c) in respect of which there is in force a notice under any other law imposing a ban on the goods.

(2) An undertaking shall not export goods, the supply in the Community of which is prohibited by subsection (1), unless the Council has approved the export of those goods.

(3) An undertaking intending to export goods under this section shall apply to the Council.

(4) A person who suffers damage by reason of a contravention of this section by an undertaking shall be deemed to have suffered the loss or damage by the supplying of the goods.

32. (1) An undertaking shall not supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed unless the person has complied with the consumer product information standard in relation to those goods.

Product information standards

(2) The Council may, by regulations prescribed, in respect of goods of a particular kind, a consumer product information standard consisting of requirements relating to—

- (a) the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
- (b) the form and manner in which that information is to be disclosed on or with the goods; as are reasonably necessary to give persons using the goods information as to the quantity, quality, nature or value of the goods.

(3) A person who suffers damage by reason of a contravention of this section by an undertaking shall be deemed for the purpose of this Act to have suffered the loss or damage by the supplying of the goods.

(4) Any person who contravenes any provision of this Part, without prejudice to any civil action that may lie, commits an offence and shall be liable to a fine not exceeding ten thousand dollars.

Compulsory
product
recall

33. (1) The Authority shall take the action set out in subsection (2), where—

- (a) a person supplies goods that are intended to be used, or are of a kind likely to be used, by a consumer; and
- (b) it appears to the Authority that the goods are of a kind—
 - (i) which may cause injury to any person; or
 - (ii) in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard; or
 - (iii) in relation to which there is in force a notice under section 31(1)(c) and
- (c) it appears to the Authority that the undertaking has not taken satisfactory action to prevent the goods from causing injury to any person.

(2) Where the Authority is of the view that subsection (1) applies, it shall require the undertaking concerned to do one or more of the following—

- (a) recall the goods within such period as the Authority may specify;
- (b) disclose to the public, or to such category of persons as may be specified, one or more of the following—

- (i) the nature of defect in, or dangerous characteristic of, the goods in question;
 - (ii) the circumstances under which the use of the goods is dangerous; or
 - (iii) procedures for disposing of the goods in question;
- (c) inform the public, or category of persons, within such period as the Authority may specify, that the undertaking undertakes to do the following as may be appropriate—
- (i) except where the notice identifies a dangerous characteristic of the goods, repair the goods;
 - (ii) replace the goods;
 - (iii) make a refund to any person to whom the goods were supplied the price at which the goods were sold.

34. (1) Where—

- (a) an undertaking supplies goods manufactured by that undertaking to another person who acquires the goods for re-supply;
- (b) a person (whether or not the person who acquired the goods from the undertaking) supplies the goods (otherwise than by way of sale by auction) to a consumer;
- (c) the goods are acquired by the consumer for a particular purpose that was expressly or by implication, made known to the undertaking, either directly, or through the person from whom the consumer acquired the goods or a person by whom any prior negotiations in connection with acquisition of the goods were conducted;
- (d) the goods are not reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied; and

Liability in respect of unsuitable goods

- (e) the consumer or a person who acquires the goods from, or derives a title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not reasonably fit for that purpose;

the undertaking shall be liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the undertaking in a court of competent jurisdiction.

(2) Subsection (1) does not apply—

- (a) if the goods are not reasonably fit for the purpose referred to in subsection (1) by reason not being an act or default of the undertaking;
- (b) where the circumstances show that the consumer did not rely, or that it was unreasonable for the consumer to rely on the skill or judgment of the undertaking.

Liability for defective goods causing injury or loss

35. Where an undertaking supplies goods manufactured by it and the goods have a defect which occasions injury or loss, then the undertaking shall be liable to compensate the individual for the loss suffered.

Unidentified manufacturer.

36. (1) Where a person who wishes to institute action does not know the manufacturer of the goods in question, the person may serve on the supplier of the goods a written request for the particulars relating to the manufacturer of the goods.

(2) Where the supplier has not given to the person requesting information under subsection (1), the information requested within thirty days, the person who supplied the goods shall be presumed to be the manufacturer thereof.

PART IX

THE EAST AFRICAN COMMUNITY COMPETITION AUTHORITY

Establishment of the Authority

37. (1) There is hereby established the East African Community Competition Authority.

(2) The Authority shall operate on an ad hoc basis for an initial and transitional period of not more than five years.

38. (1) The Authority shall consist of three Commissioners, one Commissioner from each Partner State.

Members of
the
Authority

(2) The Commissioners shall be appointed by the Council on the recommendations of the Partner States.

(3) Each Commissioner shall serve for a term of four years and shall be eligible for appointment for a further term of four years.

(4) The Commissioners shall, on a rotational basis, appoint from among themselves a chairperson who shall serve for one year.

(5) A person shall be qualified for appointment to the Authority as Commissioner if that person is a holder of an advanced degree in a field pertinent to trade and competition and has at least ten years experiences in the relevant area.

(6) The Commissioner shall be paid such remuneration as the Council may determine.

39. (1) A Commissioner may resign from his or her position by giving three months written notice of resignation to the Council. The Council shall, before the expiry of the said period of three months, fill such vacancy.

Vacation of
office by
member of
the
Authority

(2) The Council may remove a Commissioner, including the Chairperson from office at any time if—

- (a) the Commissioner is declared bankrupt, takes the benefit of any law for the relief of insolvent debtors or assign the Commissioner's remuneration for the benefit of creditors;
- (b) the Commissioner is convicted of a criminal offence;
- (c) the Council decides that the Commissioner is guilty of gross misconduct or is incapable of carrying out the Commissioner's duties because of ill health or physical or mental impairment;
- (d) the Commissioner fails to attend three consecutive meetings or at least two thirds of all meetings of the Authority in any period of twelve consecutive months;

- (e) the Commissioner has committed a material breach of a code of conduct to which the Authority is subject or a material breach of the provisions of this Act.
- Rules of procedure of the Authority
- 40.** The Authority shall prescribe rules for the conduct of its affairs.
- Registrar
- 41.** (1) There shall be a Registrar of the Authority.
- (2) The Registrar shall be appointed by the Council.
- (3) The terms and conditions of service of the Registrar shall be determined by the Council.
- (4) The Registrar shall hold an advanced degree in a field pertinent to trade and competition and possess such professional experience as the Council may specify.
- (5) The Registrar shall resign from any post or activity that is incompatible with the performance of this duties and he or she must refrain form accepting any gift, payment or anything of value form any interested party.
- (6) The registrar may, on three months written notice resign from his or her position. The Council shall before the expiry of the said period of three months fill the vacancy.
- (7) The Registrar shall not be removed from office except by the Council, for gross misconduct in the course of performing his or her duties or for inability to perform the functions of his or her office due to infirmity of body or mind.
- (8) The Council shall employ such other staff as may be required to enable the Authority to perform its functions.
- Powers of the Authority
- 42.** (1) The Authority shall have all powers, express and implied necessary for and conducive to the implementation and enforcement of the East African Community Competition Act.
- (2) In the performance of its functions under this Act, the Authority shall have powers to—
- (a) gather information;
- (a) investigate and to compel evidence, including the search and seizure of documents;

- (b) hold hearings;
- (c) issue legally binding decisions;
- (d) impose sanctions and remedies;
- (e) refer matters to the Court for adjudication;
- (f) recommend to the Council to make regulations;
- (g) develop appropriate procedures for public sensitization, consultation and participation;
- (h) develop appropriate procedures for consultation and involvement of the East African Community's Sectoral regulatory regimes for purposes of enhancing compatibility with the East African Community Competition Act;
- (i) formulate by-laws for the operation of the Authority;
- (j) collect data, undertake studies and publish reports;
- (k) co-operate with regional and international organizations and with foreign competition authorities.

(2) Any person who willfully fails to comply with an order of the Authority with respect to availing any information or production of any document or appearing before the Authority proceedings commits an offence and shall be liable to a fine not exceeding five thousand dollars or to imprisonment for a term of not more than six months or both.

(3) The Authority shall be authorized to reduce penalties for or grant amnesty to any one that co-operates with the Authority in the enforcement of the East African Community Competition Act by submitting full and correct information.

43. The Authority and the Partner States shall mutually co-operate in the implementation of the East African Community Competition Act. The Partner States shall support the activities of the Authority.

Implement-
ation of the
competition
Act

44. (1) The determination of any violation of this Act is within the exclusive original jurisdiction of the Authority.

Jurisdiction
of the Court

(2) Resolutions and decisions of the Authority shall be legally binding upon Partner States's authorities and sub ordinate courts.

(3) Where a case or legal dispute to be decided by a Partner States's competition authority or court is also pending before the Authority or the Court, the Partner State's competition authority or court shall stay such proceedings until the Authority has made a decision.

(4) Where a case or legal dispute within the scope of application of this Act is not yet under consideration by the Authority, Partner States' authorities or courts shall refer the case or the legal dispute to the Authority.

(5) Decisions made by the Authority shall be enforceable by Partner States' enforcement authorities. Partner States are under obligation to enforce decisions of the Authority.

(6) In case of disagreement between the Authority and Partner States' authorities or courts, the matter shall be referred to the Court.

Funding of
the
Authority

45. The Authority shall be funded from the budget of the Community.

Questions
against the
Authority

46. Any question with respect to any action of the Authority under this Act or anything done with respect to the Authority under this Act shall be determined by the Court.

Reporting

47. (1) The Authority shall, through the Secretary General, submit to the Council an annual report.

(2) The Council shall publish the report submitted to it in the Gazette and table it in the Assembly.

(3) The Authority may publish such other reports, as it considers necessary.

General
Penalty

48. (1) Any person who commits an offence under this Act for which no penalty has been prescribed shall be liable to a fine of not more than ten thousand dollars or imprisonment for a term of not more than two years or both.

(2) The national courts in Partner States shall have jurisdiction in relation to criminal offences under this Act.

Regulations

49. The Council may make regulations generally for the better carrying into effect of the provisions of this Act.

