



PRESS RELEASE

THE COMPETITION AUTHORITY OF KENYA ADVISORY REGARDING SETTING OF MINIMUM PRICES BY PROFESSIONAL ASSOCIATIONS

FOR IMMEDIATE RELEASE

NAIROBI: Tuesday, October 5th, 2021

It has come to the attention of the Competition Authority of Kenya ('the Authority') of a renewed momentum by various **Professional Associations** seeking to **set minimum chargeable prices/fees** for their members, without observing the requisite provisions of the Competition Act No. 12 of 2010 (The Act).

Members of the said Professional Associations and Members of the Public are advised that: -

1. **Section 21(1)** of the Act prohibits **any undertaking**, or associations of undertakings, from entering into agreements or making decisions which "...*have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya... unless they are exempt in accordance with the provisions of Section D of this Part*"; and
2. **Section 21(3)** outlaws **any undertaking**, or associations of undertakings, from making decisions or engaging in concerted practices which directly or indirectly fix purchase or selling prices or any other trading conditions in relation to provision of goods and services, as well as minimum resale price maintenance.

Any Person who infringes the Act exposes themselves to a penalty of up to 10% of their preceding year's gross annual turnover in Kenya. They may also face criminal prosecutions, and be liable to a fine of Ksh10 Million and imprisonment for a maximum of five (5) years, or both.

Notwithstanding the aforementioned provisions of the Act, the Authority would like to remind professional service associations that Section 29 of the Act provides that "*a professional association whose rules*



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contain a restriction that has the effect of preventing, distorting, or lessening competition in a market shall apply in writing or in the prescribed manner to the Authority for an exemption..."

When considering exemption applications, through a **public participation process**, the Authority reviews whether the proposed practice will facilitate **maintenance of professional standards or the ordinary function of the profession**.

It is important to note that "the envisaged arrangements of setting minimum rates/fees, highlighted in the Media recently, are only meant to extinguish competition among members of the professional associations to the detriment of clients/consumers," said Mr. Wang'ombe Kariuki, the Authority's Director-General.

Further, Article 227 of the Constitution of Kenya, 2010 provides that the Government should procure goods and services through a system which is, among others, cost effective. Floor pricing defeats this Constitutional requirement.

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