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COMPETITION LAW ALERT

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Consumer Protection Enforcement: Competition Authority of Kenya issues remedial orders to bread manufacturers

On 24 May 2021, the Competition Authority of Kenya (CAK) issued a press notice indicating that it has completed its investigations into bread manufacturers in Kenya and has noted that various bread manufacturers are in breach of the provisions of the Competition Act, Chapter 504 of the Laws of Kenya (Act).

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KENYA

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Part IV of the Act outlaws certain actions, such as false or misleading representations, and unconscionable conduct by undertakings and also provides grounds for compensation in the event that consumers in Kenya suffer losses due to a lack of information regarding particular goods; and the supply of unsafe, unsuitable or defective goods. The Act also mandates the CAK to investigate and sanction persons in breach of the consumer protection provisions.

The CAK's notice cites the following actions currently being undertaken by bread manufacturers in breach of sections 55(a)(i) and 60(1) of the Act:

- (i) failing to indicate the manufacture date/month on their bread wrappers in the prescribed format;
- (ii) printing the manufacture date/month illegibly on the seals of the bread wrappers;
- (iii) failing to provide the weight and ingredients of the bread products;
- (iv) indicating that the bread products had been 'fortified' but failing to indicate the nutrients or vitamins used;

- (v) misleading consumers as to the contents of bread products i.e. with respect to milk or butter; and
- (vi) failing to adhere to product standards prescribed by the Kenya Bureau of Standards (KEBS) in accordance with the Standards Act, Chapter 496 of the Laws of Kenya.

Section 55(a) (i) of the Act provides that a person commits an offence *if he falsely represents that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use*. The actions of the bread manufacturers in (i) – (v) amount to false or misleading representations as to the standard, quality and composition of the bread products.

On the other hand, section 60 (1) of the Act provides that it is an *offence for a person to supply goods to consumers for which a consumer product standard has been prescribed, which do not conform to the consumer product standard*. The CAK noted that KEBS had issued various standards with respect to the packaging of bread products that the bread manufacturers had failed to adhere to.

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It will be interesting to see what other actions and orders the CAK will issue as it seeks to strike a balance between protecting consumers and ensuring a fair and competitive market for players in the sector.

The CAK issued various remedial orders that apply to all bread manufacturers and the CAK will monitor the compliance of its directives by industry players. Failure by the bread manufacturers to adhere to the orders could result in the CAK meting out more punitive punishments on the bread manufacturers. The Act provides the CAK with the power to impose a financial penalty of up to 10% of the immediately preceding year's gross annual turnover in Kenya of an offending bread manufacturer. In addition, the Act also provides that a person convicted of a breach of any provision of Part IV of the Act is liable to imprisonment for a term not exceeding five years, or to a fine not exceeding KES 10 million, or both.

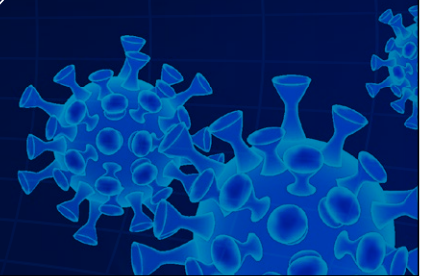
It will be interesting to see what other actions and orders the CAK will issue as it seeks to strike a balance between protecting consumers and ensuring a fair and competitive market for players in the sector.

Njeri Wagacha and Brian Muchiri

The above alert is meant for general information and does not constitute legal advice. In case of any inquiries or if you require any further information or advice on how the amendments could affect your business, please feel free to contact Njeri Wagacha and Brian Muchiri.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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