

Single Brush Stroke Stops Paint Cartel in its Tracks

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Three years after an intricate East-African [antitrust saga](#) involving global European and Asian paint manufacturers, the industry is in the region's competition-law news again.

Upon receiving allegations of cartel-like practices between paint makers and undisclosed distributors in 2018, the Competition Authority of Kenya (CAK) launched an investigation into the suspected companies. The investigations later uncovered that four firms, namely: Crown Paints, Basco Products Limited, [Kansai Plascon](#) and Galaxy Paints (Companies) were guilty of collusion and price fixing which subjected the purchaser to unreasonably high prices for various paint brands. The CAK has since revealed this to Parliament and handed down its finding on the alleged ant-competitive behavior.

Crown Paints has a flagship brand called *DuraCoat*, which includes paint products for both interior and exterior finishing (painting and waterproofing). Dura Brands' exposed collusion with the other three companies sparked fears that consumers have been buying these products at largely inflated prices. This is particularly significant given that Crown Paints is listed on the Nairobi Securities Exchange and is a heavyweight in the local paints market, with subsidiaries in Uganda and Tanzania.

Ruth Mosoti, [Primerio Ltd.'s](#) Kenyan competition practitioner, notes that the "CAK ultimately found that all four companies were in direct contravention of section 31 of the *Competition Act*, which addresses restrictive trade practices that prohibit companies from colluding with one another in order to determine product prices, as well as control when and to whom they will offer pricing discounts. CAK alleges that



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these are all anti-competitive behaviors that are to the detriment of the consumer as well as other, outside competitors.”

“The authority making preliminary findings that the parties were involved in anti-competitive agreements on price fixing, discount structure and transport charges.” – Stated by the CAK in its latest report tabled before parliament.

In line with section 36(c) and (d) of the Act, the CAK is entitled to impose financial penalties *“to remedy or reverse the infringement or the effects thereof”* which may span *“up to ten percent of the immediately preceding year’s gross annual turnover in Kenya of the undertaking or undertakings in question”*.

Of the four Companies, Basco Products Limited was the only company that did not challenge the CAK’s preliminary ruling and paid the penalty amount of Sh20.799 million for the infringement. The company further agreed to abstain from committing any similar breach in the future. While the other companies initially appealed the decision handed down by the CAK, AAT staff have now learned that up to 3 of the accused firms have opted to settle, having withdrawn their appeals.

COMESA

It is also pivotal to note that on the 25th of February 2021, the [COMESA Competition Commission](#) (**Commission**) issued a cautionary note specifically pertaining to the consequences of forming barriers to trade.

The Commission made reference to Article 16 of the Regulations which prohibits *“all agreements between undertakings, decisions by associations of undertakings and concerted practices which: (a) may affect trade between Member States; and (b) have as their object or effect the prevention, restriction or distortion of competition within the Common Market”*.

The abovementioned contravention is evident in the case at hand, with the Commission going on to state that it *“...will work closely with the national competition authorities in the Member States to ensure that offenders are detected, investigated and punished”*. Furthermore, there is particular focus on *“hard enforcement through screening, detection, investigation and punishment of offenders”*.

The detrimental consequences arising from the conduct of these firms is not only prejudicial towards the customer due to the fact that price-fixing also excludes rival organizations that do not agree to the collusive setting of prices from competing in the same market. Therefore, the steps taken by the CAK and COMESA are paving the way to a healthy and competitive marketplace.

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