

Bowmans' new heavy hitter, Francis Wang'ombe Kariuki, on the future of African competition law

The changemaker who helped shape Kenya's modern competition law and enforcement policies Francis Wang'ombe Kariuki, MBS, has been appointed as a senior consultant in Bowmans' Nairobi Competition Practice.

 By [Shan Raddcliffe](#) 30 May 2023



Francis Wang'ombe Kariuki, MBS, Bowmans' new senior consultant in its Kenyan Competition Practice

An economist specialising in industrial organisation, Kariuki joined Bowmans this month, having stepped down from his post as the first director-general of the Competition Authority of Kenya (CAK) in January, after 10 years of leadership.

Kariuki has 30 years' experience in the public service in Kenya; more than 20 of those with its National Treasury that saw his work result in the enactment of the country's Competition Act and CAK's establishment in 2013. His accolades include awards from the President of Kenya for exemplary public service, specifically in developing and enforcing competition law and policy.

Kariuki played a critical regional role in the development of the Comesa Competition Commission's regulatory capacity, through the facilitation of training as well as guiding the formation of the requisite regulations. He was a founding member and the first chairman of the African Competition Forum, which has guided various cross-border research initiatives on competition policy, facilitated capacity building programmes, and developed and effected various cooperation frameworks. Considered a global thought-leader in emerging competition regulation issues, Kariuki acted as a policy advisor to the World Bank Group in the compilation of the World Development Report 2021 - *Data for Better Lives*.

This Africa Month, we chat to Kariuki about his new role, his legacy and predictions for competition law in Africa.

■ *Congratulations on your new role - what brings you to Bowmans and what does your new position entail?*

Bowmans is a well-established law firm, with a dedicated skilled Competition Practice spanning across the African continent. My role is to complement this team in our purposeful journey of providing legal solutions and strategies to our clients. I believe my knowledge and experience in industrial organisation economics coupled with many years as a competition enforcer are an asset, especially as African competition agencies expand their regulatory precincts.

■ *You've been trailblazer for competition law in Kenya and have left some very large shoes to fill. What advice do you have for your successor as director-general of the CAK?*

There is no need to re-invent the wheel. The Authority has a credible regulatory infrastructure and human capital premised on the utmost objective of improving the investment climate in Kenya through efficient markets. I left a dedicated and cohesive team which was always guided by CAK's core values of customer focus, integrity, professionalism, impartiality, teamwork, innovation and creativity. The shoe size is measured by these values and the positive impact of your enforcement actions to Kenyans.

■ *Give us some insight into the impact the AfCFTA is having on competition in Kenya and Africa as a whole...*

The operationalisation of the AfCFTA aims at extinguishing the regulatory obstacles and other non-tariff barriers for the Kenyan firms to invest, through movement of goods and services, mergers or green field investments within the free trade area. On the other hand, investors from the other member states will enjoy the same, with their initiatives to enter the Kenyan markets. I envisage firms employing strategies to retain and expand their market shares either through innovation or other cost reduction measures coupled with increased marketing, which will enhance consumer choice. Unfortunately, other firms may enter into concerted agreements aimed at allocating themselves territories, fixing prices or quantity to produce within the free trade area.

It is incumbent upon the competition agencies in Africa, the existing ones and the proposed African Continental Competition Authority to develop mechanisms of cooperating and collaborating in enforcement to ensure that the aspirations of the AfCFTA are unfettered. The enforcement initiatives should not only be directed towards market players but also advocacy initiatives should target governments' actions which may hinder free movement of goods and services.

■ *What are some of the challenges African business is still experiencing in terms of competition law and how should we look to overcome them?*

The concept of competition law in Africa is relatively new because most of the African economies are still in the process of fully liberalising their economies. That said and done, where the laws have been promulgated and agencies operationalised, enforcement capacity has been curtailed due to budgetary constraints. It is important to note that this enforcement capacity entails developing effective subsidiary legislation to ensure predictability, transparency and accountability. Also, it includes developing a skilled team to interpret the law consistently and judiciously. This unfortunate scenario is exacerbated by lack of developed jurisprudence.

Fortunately, most competition agencies are at hand to engage and offer advice to market players prior to them engaging in agreements that may infringe the competition law. Also, market players should endeavor to enlist credible competition law firms/experts.

▣ ***What are your predictions for the future of competition law in Kenya and the continent?***

My expectation is to see more bilateral, regional and continental cooperation not only due to the increased continental trade, with the commencement of the AfCFTA but also informed by the indispensable need to harmonise analysis and build critical mass to deal with the competition challenges presented by the new economy. This may be accompanied by revamping of the existing laws to attend to the emerging challenges such as superior bargaining position, self-preferencing, among others.

Due to the growing importance of data in firms market positioning, I posit that agencies will prioritise cooperation with offices of data protectors to develop mechanisms for data sharing and portability especially in the financial services sector.

Lastly, I envisage enforcement interventions aimed at facilitating free movement of goods and services across the region and the continent. This may be through focus on a regional haulage and trucking sector and, competition issues in the agriculture sector especially maize and soya beans aggregation. This will facilitate competition agencies to position themselves in their governments' core programmes of ensuring access to food for their citizens.

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