



LEGAL NOTICE NO.....

THE KENYA INFORMATION AND COMMUNICATIONS ACT

(Cap. 411A)

**THE KENYA INFORMATION AND COMMUNICATIONS (FAIR
COMPETITION AND EQUAL TREATMENT) REGULATIONS,
2026**

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THE KENYA INFORMATION AND COMMUNICATIONS ACT

(Cap411A)

IN EXERCISE of the powers conferred by sections 84R (3), 84W (1) and (2) of the Kenya Information and Communications Act, the Cabinet Secretary for Information Communication and the Digital Economy in consultation with the Communications Authority of Kenya makes the following Regulations—

THE KENYA INFORMATION AND COMMUNICATIONS (FAIR COMPETITION AND EQUAL TREATMENT) REGULATIONS, 2026

Citation.

1. These Regulations may be cited as the Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations, 2026.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

Cap. 411A.

“Act” means the Kenya Information and Communications Act;

“communications services” means telecommunications services, broadcasting services,

postal or courier services, and such other services regulated under the Act;

“dominant licensee” means a licensee in a dominant market position as contemplated under regulation 8;

“geographical area” means an area in which conditions of competition are sufficiently homogeneous and within which communications services are substitutable;

“market” means a relevant market for communications services within Kenya or a substantial part of Kenya, determined by reference to substitutability in demand and supply;

“market segments” means a distinct subdivision of a broader relevant market within the communications sector, characterized by specific competitive conditions;

“significant market power” has the meaning assigned to it under the Act; and

“undertaking” means any person engaged in the provision of communications services.

Purpose and
object.

3. The purpose of these Regulations is to—

- (a) provide a regulatory framework for the promotion of fair competition and equal treatment in the communications sector;
- (b) prevent the abuse of dominance and other anti-competitive conduct within the communications sector;
- (c) promote consumer markets which offer choice, quality and affordability; and
- (d) promote investor confidence in the communications sector.

Application and
scope.

4. These Regulations apply to —

- (a) the determination of relevant markets in the communications sector;

- (b) designation of dominant licensees in relevant markets;
- (c) imposition of ex-ante and ex-post competition obligations on licensees; and
- (d) investigation and enforcement of anti-competitive agreements, conduct or practices in the communications sector.

Coordination with
the Competition
Authority.
Cap. 504.

5. In the exercise of its functions under these Regulations, the Authority may, where appropriate, cooperate and coordinate with the Competition Authority of Kenya established under the Competition Act.

Determination of
breach.

6. (1) The Authority shall, in determining whether an agreement, conduct, or practice contravenes these Regulations, assess the effect of such agreement, conduct or practice on competition in the relevant market.

(2) Without prejudice to sub-regulation (1), the Authority shall—

- (a) define the relevant market in accordance with regulation 7;
- (b) determine the level of competition in the relevant market;
- (c) assess whether the licensee has significant market power or has been designated as a dominant licensee;
- (d) evaluate the actual or likely effect of the agreement, conduct or practice on competition, including whether it has the object or effect of preventing, restricting or distorting competition; and
- (e) consider any objective justification or efficiency gains arising from the agreement, conduct or practice.

(3) In carrying out an assessment under this regulation, the Authority may consider—

- (a) the structure of the market and the degree of market concentration;
- (b) barriers to entry or expansion;

(c) the conduct of the licensee and its competitors; or

(d) the impact on consumers, including price, quality, choice and innovation;

(4) The Authority may conduct investigations on its own motion or upon receipt of a complaint.

(5) Where the Authority determines that a breach has occurred, it may impose appropriate remedies in accordance with the Act and these Regulations.

Determination of
relevant markets.

7. (1) The Authority shall, for the purposes of these Regulations, define and identify relevant markets in the communications sector.

(2) In defining a relevant market, the Authority shall consider—

(a) the product or service substitutability, including the extent to which consumers are able to substitute one communications service for another;

(b) the geographic scope of the relevant market, being the area in which conditions of competition are sufficiently homogeneous; and

(c) supply-side substitutability, including the ability of suppliers to switch production or provision to alternative services in response to changes in demand or price.

(3) In assessing substitutability under sub-regulation (2), the Authority may take into account—

(a) the characteristics, intended use and pricing of the services;

(b) consumer preferences and switching behaviour;

(c) barriers to substitution, including technological, regulatory or economic constraints; and

(d) any other factor relevant to competitive conditions.

(4) The Authority may, where appropriate, apply recognised economic and analytical tools, including hypothetical market tests, to determine the boundaries of a relevant market.

(5) The Authority shall publish determinations of relevant markets in such manner as it considers appropriate.

(6) The Authority may review and revise a relevant market determination where there are material changes in market conditions.

Dominant market position.

8. (1) The Authority may, following a market analysis conducted in accordance with regulation 7, determine that a licensee has a dominant position in a relevant market.

(2) A licensee shall be considered to have a dominant position where it possesses significant market power in a relevant market.

(3) In determining whether a licensee has significant market power in a relevant market, the Authority may consider the following—

- (a) ability to materially raise and sustain prices without suffering a commensurate loss in service demand to other licensees;
- (b) the degree of market concentration or the market share of the licensee;
- (c) control of infrastructure not easily duplicated;
- (d) barriers to entry or expansion;
- (e) absence of or low countervailing bargaining power;
- (f) easy or privileged access to capital markets or financial resources;
- (g) product diversification such as bundled products or services;
- (h) economies of scale and scope;

(i) network effects;

(j) vertical integration;

(k) absence of potential competition;

(l) barriers to entry and expansion; or

(m) a related factor relevant to the determination.

(4) A market share of fifty percent or more may constitute prima facie evidence of dominance, but shall not, of itself, be determinative.

(5) Prior to making a determination under sub-regulation (1), the Authority shall—

(a) publish a draft market analysis and proposed designation;

(b) invite representations from affected licensees and stakeholders within a specified period; and

(c) consider such representations before making a final determination.

(6) The Authority shall publish its final determination, including the reasons for its decision.

(7) The Authority may, on its own motion or pursuant to an application by a licensee, review the determination of dominance where there is a material change in market conditions.

Ex-ante
obligation.

9. (1) The Authority may, where necessary to promote effective competition, impose ex-ante obligations on a licensee designated as dominant in a relevant market if—

- (a) competition in that market is not effective; and
- (b) ex-post enforcement would not adequately address the identified competition concerns.

(2) Without prejudice to sub-regulation (1), the Authority may impose one or more of the following obligations—

- (a) transparency obligations, including publication of tariffs, terms and conditions;
- (b) non-discrimination obligations in respect of equivalent transactions;

- (c) accounting separation between specified services or business units;
- (d) access or interconnection obligations on fair, reasonable and non-discriminatory terms;
- (e) price control or cost-orientation obligations; and
- (f) any other obligation necessary to promote effective competition.

(3) The Authority may, where appropriate, impose obligations by reference to or in conjunction with other regulations made under the Act relating to tariffs, interconnection, infrastructure sharing or access.

(4) Any obligation imposed under this regulation shall be proportionate, transparent, non-discriminatory and limited to what is necessary to address the competition concern identified.

(5) The Authority shall publish any obligation imposed under this regulation together with the reasons for its imposition.

Abuse of
dominance.

10.(1) A dominant licensee shall not engage in conduct which amounts to abuse of its dominant position.

(2) Conduct by a dominant licensee shall constitute abuse of dominance where it has the object or effect of preventing, restricting or distorting competition in a relevant market, or exploiting consumers and includes—

- (a) charging excessively high prices or imposing unfair trading conditions;
- (b) supplying services or products below cost for a sustained period so as to eliminate or deter competitors;
- (c) engaging in a margin squeeze between upstream and downstream services;
- (d) refusing to supply, or supplying on unreasonable terms, an essential facility or service which cannot be reasonably duplicated;
- (e) impeding switching or movement of customers through contractual, financial or technical barriers;

- (f) imposing exclusive arrangements or other conduct that forecloses competition;
- (g) applying dissimilar conditions to equivalent transactions;
- (h) leveraging market power from one market to another;
- (i) conduct constituting abuse of dominance within the meaning of section 24 of the Competition Act; and
- (j) any other conduct that the Authority determines to constitute abuse of dominance.

(3) A licensee who contravenes this regulation shall be subject to action by the Authority in accordance with regulation 11.

Ex-post
enforcement.

11.(1) A licensee shall not engage in any conduct, agreement or practice which has the object or effect of preventing, restricting or distorting competition in a relevant market in the communications sector.

(2) Without limiting the generality of sub regulation (1), prohibited conduct includes—

- (a) an abuse of dominance as provided under regulation 10;
- (b) entering into any agreement or engaging in any concerted practice with any other party which unfairly prevents, restricts or distorts competition;
- (c) directly or indirectly fixing purchase or selling prices or any other trading conditions;
- (d) limiting or controlling production, markets, technical development or investment;
- (e) sharing markets or sources of supply;
- (f) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
and
- (g) making the conclusion of a contracts subject to acceptance of supplementary obligations

which have no connection with the subject of such contract.

(4) Where the Authority determines that a licensee has contravened this regulation, it may issue such orders or directions as it considers necessary to—

- (a) require the licensee to cease or refrain from the conduct;
- (b) require the modification or termination of any agreement, practice or arrangement found to be in contravention of this regulation;
- (c) remedy the effects of the conduct and prevent its recurrence; and
- (d) impose such proportionate measures as may be necessary to restore or promote effective competition.

Notification to
Authority.

12.(1) A licensee may notify the Authority of any proposed agreement, conduct or practice which may raise concerns under these Regulations.

(2) A notification under sub-regulation (1) shall be made in writing and shall contain sufficient information to enable the Authority to assess the proposed agreement, conduct or practice.

(3) Upon receipt of a notification under sub-regulation (1), the Authority may—

(a) issue a written opinion on whether the proposed agreement, conduct or practice is likely to contravene these Regulations; or

(b) require the licensee to provide additional information for purposes of its assessment.

(4) An opinion issued under sub-regulation (3) shall not be binding on the Authority and shall not preclude the Authority from taking action under these Regulations where a contravention is subsequently established.

Regulatory
sanctions.

13. A licensee who contravenes any provision of these Regulations shall be subject to enforcement action by the Authority in accordance with the Act, including the imposition of administrative sanctions under section 83A.

Revocation.

14.The Kenya Information and Communications
(Fair Competition and Equality of Treatment)
Regulations, 2010 are hereby revoked.

*L. N. No. 29 of
2010.*

Made on the, 2026.

William Kabogo Gitau,

Cabinet Secretary,

Ministry of Information, Communications and the Digital Economy.