

REPUBLIC OF KENYA



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REPORT

OF

THE AUDITOR-GENERAL

ON

COMPETITION TRIBUNAL

**FOR THE YEAR ENDED
30 JUNE, 2025**

REPUBLIC OF KENYA

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REPORT OF THE AUDITOR-GENERAL ON COMPETITION TRIBUNAL FOR THE YEAR ENDED 30 JUNE, 2025

PREAMBLE

I draw your attention to the contents of my report which is in three parts:

- A. Report on Financial Statements that considers whether the financial statements are fairly presented in accordance with the applicable financial reporting framework, accounting standards and the relevant laws and regulations that have a direct effect on the financial statements:
- B. Report on Lawfulness and Effectiveness in the Use of Public Resources which considers compliance with applicable laws, regulations, policies, gazette notices, circulars, guidelines and manuals and whether public resources are applied in a prudent, efficient, economic, transparent and accountable manner to ensure the Government achieves value for money and that such funds are applied for the intended purpose: and
- C. Report on Effectiveness of Internal Controls, Risk Management and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, risk management environment and internal controls, developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

An Unmodified Opinion is issued when the Auditor-General concludes that, the financial statements are fairly presented in accordance with the applicable financial reporting framework. The Report on Financial Statements should be read together with the Report on Lawfulness and Effectiveness in the Use of Public Resources, and the Report on Effectiveness of Internal Controls, Risk Management and Governance.

The three parts of the report are aimed at addressing the statutory roles and responsibilities of the Auditor-General as provided by Article 229 of the Constitution, the Public Finance Management Act, 2012, and the Public Audit Act, 2015. The three parts of the report when read together constitute the report of the Auditor-General.

REPORT ON THE FINANCIAL STATEMENTS

Opinion

I have audited the accompanying financial statements of Competition Tribunal set out on pages 1 to 24, which comprise of the statement of financial position as at 30 June, 2025 and the statement of financial performance, statement of changes in net assets,

statement of cash flows and statement of comparison of budget and actual amounts for the year then ended and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, the financial statements present fairly, in all material respects, the financial position of Competition Tribunal at 30 June, 2025 and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with the Competition Act No. 12 of 2010 and the Public Finance Management Act, 2012.

Basis for Opinion

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Competition Tribunal Management in accordance with ISSAI 130 on the Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgement, are of most significance in the audit of the financial statements. I have determined that there are no other key audit matters to communicate in my report.

Other Information

The Management is responsible for the Other Information set out on page iii to xxiv which comprise Key Entity Information and Management, Members of the Tribunal, Management Team, Chairman's Statement, Report of the Tribunal Secretary, Corporate Governance Statement, Management Discussion and Analysis, Environmental and Sustainability Reporting, Statement of Tribunal Members Responsibilities and Statement of Performance Against Predetermined Objectives. The Other Information does not include the financial statements and my audit report thereon.

In connection with my audit on the Tribunal's financial statements, my responsibility is to read the Other Information and in doing so, consider whether the Other Information is materially inconsistent with the financial statements or my knowledge obtained in the audit or otherwise appears to be materially misstated. If based on the work I have performed, I conclude that there is a material misstatement of this Other Information, I am required to report that fact. I have nothing to report in this regard.

My opinion on the financial statements does not cover the Other Information and accordingly, I do not express an audit opinion or any form of assurance thereon.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN THE USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, except for the effect of the matters described in the Basis for Conclusion on Lawfulness and Effectiveness in the Use of Public Resources section of my report, I confirm that nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1.Non – Submission of Procurement Implementation Reports and Non-Publication of Contract Awards

Review of the approved procurement plan for the Tribunal indicates that a total of 48 procurements estimated at Kshs.16,978,270 were planned for during the financial year 2024/2025. However, no evidence was provided that quarterly reports on the implementation status of the annual procurement plan had been prepared and submitted to the governing body. In addition, the Tribunal had not published details of awarded contracts on the Public Procurement Regulatory Authority (PPRA) portal or its own notice boards, as required by section 138 of the Public Procurement and Asset Disposal Act, 2015 which requires an entity to report award of contracts to PPRA and; publish and publicize all contract awards on the entity's notice boards, in conspicuous places, and on its website within the prescribed period. Although Management indicated that, through a transfer deed dated 5 June, 2024, the Tribunal transferred its procurement functions to The National Treasury they retained a Procurement Officer. No justification was provided for the continued retention of the Officer or the duplication of roles arising from the transfer of procurement responsibilities, casting doubt on the efficiency and effectiveness of resource utilization within the Tribunal.

In the circumstances, the Management was in breach of the law.

2.Non-Compliance with Public Sector Accounting Standards Board Reporting Guidelines

Review of financial statements submitted for audit revealed that reports section does not include a report by the Tribunal Members while the corporate governance disclosures do not include key details like appointment and removal of Tribunal members, diversity and demographics, existence of a Tribunal charter, induction and training, Tribunal and members' performance, number and attendance of Tribunal meetings, succession planning, Tribunal remuneration, ethics and conduct, governance audit, communication policy, committees' terms.

In the circumstances, Management is in breach of the PSASB reporting guidelines.

The audit was conducted in accordance with ISSAI 3000 and ISSAI 4000. The standards require that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements comply in all material respects, with the authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

As required by Section 7(1)(a) of the Public Audit Act, 2015, based on the audit procedures performed, except for the effect of the matters described in the Basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance section of my report, I confirm that nothing else has come to my attention to cause me to believe that internal controls, risk management and governance were not effective.

Basis for Conclusion

1. Lack of an Internal Audit Function and Audit Committee

As previously reported, the Tribunal had not constituted an Audit Committee and an internal audit unit as required by Section 73(1)(a) of the Public Finance Management Act, 2012 and Regulation 174(1) of the Public Finance Management (National Government) Regulations, 2015. Further, no appropriate arrangements for conducting internal audits had been put in place.

In the circumstances, the Tribunal did not benefit from the oversight role and advice from the audit committee and the internal audit function.

2. Delays in Development of Organization Structure, Staff Establishment and Risk Management Policy

As previously reported, review of the Tribunal's internal controls and risk management framework revealed that the organization structure, staff establishment and risk management policy have remained in draft form for over six years since the Tribunal's was formed. Further, the Tribunal currently had twelve (12) staff members seconded from The National Treasury and the Judiciary. Management attributed the delays to prolonged approval processes for the staff establishment by The National Treasury. However, the protracted delay of over six years has significantly hindered the formalization and operationalization of these critical institutional instruments.

In the circumstances, the effectiveness of Management's execution of the Tribunal's mandate and governance could not be confirmed.

3. Vacancy of the Chairperson of Tribunal

Records indicate that the term of Chairperson of the Tribunal lapsed in September 2025. As at the time of audit in October 2025, no replacement or renewal of appointment had been made. As a result, the Tribunal was been operating without substantive leadership at its judicial functions. This situation has created uncertainty in decision-making and hindered effective management of the Tribunal's affairs.

In the circumstances, the effectiveness of Management to support the Tribunal in implementing its mandate could not be confirmed.

The audit was conducted in accordance with ISSAI 2315 and ISSAI 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal controls, risk Management and overall governance were operating effectively in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of Management and those Charged with Governance

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Accrual Basis) and for maintaining effective internal controls as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal controls, risk management and governance.

In preparing the financial statements, Management is responsible for assessing the Tribunal's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless Management is aware of the intention to cease operations.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

In addition to the responsibility for the preparation and presentation of the financial statements described above, Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements comply with the authorities which govern them and that public resources are applied in an effective way.

Those charged with governance are responsible for overseeing the Tribunal financial reporting process, reviewing the effectiveness of how Management monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes

and systems are in place to address key roles and responsibilities in relation to governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

My responsibility is to conduct an audit of the financial statements in accordance with Article 229(4) of the Constitution, Section 35 of the Public Audit Act, 2015 and the International Standards of Supreme Audit Institutions (ISSAIs). The standards require that, in conducting the audit, I obtain reasonable assurance about whether the financial statements as a whole are free from material misstatements, whether due to fraud or error and to issue an auditor's report that includes my opinion in accordance with Section 48 of the Public Audit Act, 2015. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In conducting the audit, Article 229(6) of the Constitution also requires that I express a conclusion on whether or not in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way. In addition, I consider the entity's control environment in order to give an assurance on the effectiveness of internal controls, risk management and governance processes and systems in accordance with the provisions of Section 7 (1) (a) of the Public Audit Act, 2015.

Further, I am required to submit the audit report in accordance with Article 229(7) of the Constitution.

Detailed description of my responsibilities for the audit is located at the Office of the Auditor-General's website at: <https://www.oagkenya.go.ke/auditor-generals-responsibilities-for-audit/>. This description forms part of my auditor's report.


FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

19 November, 2025