

## **Enforcement of the EAC competition law in Kenya: reasserting the principle of subsidiarity.**

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This research investigates the dynamics of enforcing the EAC Competition law from the Kenyan perspective. It argues in principle that the centralised enforcement mechanism of the EAC competition law is inconsistent with the principle of subsidiarity as enshrined in the Treaty establishing the Community. As an operational principle, subsidiarity was deliberately included to secure decision-making at the lowest levels of the community competent to make the decision. As an operational principle, it was intended to steer the community from the dangers of the past, where the community's decision-making process was highly centralized. In addressing the issue of subsidiarity in the enforcement of EAC competition law, the research looks at the jurisdiction of the EAC Competition Authority. The study asserts that because the jurisdiction of the EAC Competition Authority is circumscribed by the phrase "cross border effect", it was imperative that the phrase is defined for two main reasons. First, as a means of demarcating the areas of shared competence between the EAC Competition Authority and the National Competition Authorities. Secondly, as a measure of assessing the scope of the EAC Competition law. Defining the phrase therefore resolves the question of what, in the context of community law, is the scope of the EAC competition law. In terms of enforcement, the research argues that the National Competition Authorities are better funded than the EAC Competition Authority and they are therefore capable of enforcing the community law much more effectively. In conclusion this study recommends decentralization of the role of enforcing the EAC Competition law.