FEDERAL GOVERNMENT OF SOMALIA
THE MINISTRY OF COMMERCE AND INDUSTRY

TERMS OF REFERENCE

CONSULTANCY SERVICES TO SUPPORT FORMULATION OF A NATIONAL COMPETITION LAW FOR SOMALIA.

February 2025

A. Background

The Ministry of Commerce and Industries of Somalia is responsible for facilitating trade and improving the competitiveness of the country's businesses through three main categories: policy, legal framework, and management. The Ministry formulates, develops, and implements policies to strengthen commerce, promote domestic industries to promote exports and foreign investment in the country, and enhance the use of advanced technologies for increased productivity. In addition, it oversees the creation and enforcement of relevant investment laws and regulatory frameworks. Furthermore, the Ministry manages and collaborates on the collection, research, and sharing of commerce and industry information to attract investment, while also focusing on capacity development and advancement of skills within the country and ministry staff.

Under the Horn of Africa Initiative, the World Bank is funding the De-Risking, Inclusion and Value Enhancement of Pastoral Economies Project (DRIVE) and the Ministry of Commerce and Industries is one of the project beneficiaries. DRIVE Project aims to protect pastoralists against drought shocks, using a package of financial services including drought insurance, payment, savings, and provision of credit funding, and to connect the pastoralists better to markets by upgrading the livestock value chains and facilitating the regional livestock trade. This project is regional, and Djibouti, Ethiopia, Kenya, and Somalia are the participating countries. The development objective of the Project is to enhance de-risking, financial inclusion, and value addition of pastoral economies in the HoA.

One of the Ministry’s key endeavors involves creating a legal environment conducive to free and fair competition. Currently, Somalia lacks a national competition law. This gap presents a critical challenge as the country seeks to ratify and benefit from the African Continental Free Trade Area (AfCFTA) agreement, its recent entry into the East African Community (EAC), and its ongoing pursuit of full membership in the Common Market for Eastern and Southern Africa (COMESA).

Developing a robust national competition law is vital for Somalia for several reasons:

- **AfCFTA Compliance:** The AfCFTA calls for the establishment of a continental competition framework to regulate cross-border trade. This framework builds upon member states national competition laws and enforcement mechanisms. The AfCFTA Competition Protocol, envisioned as a comprehensive and enforceable instrument, mandates that it covers key substantive competition issues such as anti-competitive agreements, cartels, mergers, and abuse of dominance.
- **Harmonization with Regional Frameworks**: Both EAC and COMESA have existing competition regimes, with the EAC having established a Community Competition Authority and COMESA operating a Competition Commission. A national competition law for Somalia should be harmonized with these regional frameworks to ensure consistency and avoid jurisdictional conflicts.
- **Attracting Investment**: The presence of a clear and enforceable competition law will signal Somalia's commitment to a level playing field, attracting foreign direct investment and fostering a favorable business environment.
- **Promoting Efficiency and Consumer Welfare**: A national competition law will help prevent anti-competitive practices such as price-fixing, market sharing, and abuse of

dominance, leading to greater economic efficiency, lower prices, and wider consumer choice. This will enhance consumer welfare, a crucial consideration for competition policy.

- **Supporting SMEs**: The AfCFTA emphasizes the role of competition policy in promoting access to markets for small and medium-sized enterprises (SMEs). A well-designed national competition law can contribute to a more inclusive and competitive market for Somali SMEs. Ensuring access to finance for new and existing firms, particularly SMEs, is crucial for a competitive economy. Somalia can explore mechanisms that promote non-discriminatory access to finance for SMEs, particularly considering challenges related to venture capital availability.

While Somalia currently operates under Regional Economic Bodies' competition framework due to its membership, developing a national law will give the country greater control over its competition policy and tailor it to its specific needs particularly its federal governance system.

Objective

The objectives of this consultancy service are to develop a comprehensive and effective National Competition Law for Somalia. This law should be tailored to Somalia's specific context, taking into account its economic structure, institutional capacity, and the need for regional and continental integration. The consultancy service should aim to achieve the following objectives:

I. Develop a Comprehensive Legal and Regulatory Framework for Competition Law in Somalia:

- **Assess Existing Legal and Regulatory Frameworks:** Conduct a review of Somalia's current laws and regulations that are relevant to competition, including those related to trade, investment, consumer protection, and intellectual property rights. Identify potential overlaps, conflicts, or gaps that may arise with the introduction of a dedicated competition law.
- **Identify International Best Practices:** Review international best practices and frameworks for competition law, drawing on sources such as the UN Set of Principles and Rules on Competition, the OECD competition framework, and the World Bank's framework for competition law and policy, AfCFTA Competition Protocols, COMESA and EAC guidelines. Analyze their relevance and applicability to Somalia's context.
- **Propose a Dedicated Competition Law:** Draft a comprehensive and dedicated national competition law for Somalia, aligned with the assessed best practices and tailored to the country's specific needs and circumstances. This law should address key areas such as:
    - **Prohibition of Anti-Competitive Agreements:** Include provisions to prohibit anti-competitive agreements between undertakings, such as price-fixing, bid-rigging, market allocation, and other practices that restrict competition.
    - **Abuse of Dominant Position:** Formulate provisions to prevent undertakings with a dominant market position from engaging in abusive conduct, such as predatory pricing, exclusive dealing, tying, and refusal to deal.
    - **Merger Control:** Design a merger control regime that assesses the impact of mergers and acquisitions on competition. This regime should establish clear thresholds for mandatory notification, review procedures, and criteria for assessing the potential anti-competitive effects of mergers.

- **Define Institutional Framework:** Propose an institutional framework for competition law enforcement in Somalia. This includes recommending the establishment of an independent competition authority with a clear mandate, powers, and resources to effectively implement and enforce the law.

The law should align with international best practices, promote market efficiency, ensure a level playing filed and protect consumer interests.

II. Capacity Building and Stakeholder Engagement:

- **Assess Capacity Needs:** Conduct a comprehensive assessment of the capacity needs for implementing and enforcing the competition law in Somalia. This should include identifying gaps in technical expertise, legal skills, and institutional resources within relevant government agencies.
- **Develop Capacity Building Program:** Develop a tailored capacity building program for government officials, legal professionals, and other relevant stakeholders. This program should focus on building the necessary skills and knowledge to effectively implement and enforce the competition law.
- **Engage Key Stakeholders:** Facilitate stakeholder consultations throughout the development of the law, including government ministries, the private sector, civil society organizations, consumer groups, and academia. Ensure that the perspectives of all stakeholders are taken into account in the design and implementation of the competition law.

III. Implementation and Enforcement Mechanisms:

- **Develop Implementing Regulations:** Draft detailed implementing regulations and guidelines to operationalize the competition law. This should include specifying procedures for investigations, enforcement actions, penalties, and dispute resolution mechanisms.
- **Design Monitoring and Evaluation Framework:** Develop a framework for monitoring and evaluating the effectiveness of the competition law and its enforcement. This framework should establish clear indicators for measuring the impact of the law on competition, consumer welfare, and economic development.

IV. Advocacy and Outreach:

- **Develop Communication Strategy:** Design a comprehensive communication strategy to raise awareness about the competition law among businesses, consumers, and the general public. This strategy should aim to build a culture of competition and promote compliance with the law.

The consultancy service should ensure that the development of the National Competition Law is a participatory and transparent process, incorporating the perspectives of all relevant stakeholders. The ultimate goal is to create a competition regime that is not only aligned with international best practices but is also adapted to Somalia's unique context, contributing to a more competitive, efficient, and inclusive economy.

B. Scope of Services

This section outlines the detailed tasks and activities required to achieve the objectives of the consultancy service for developing a National Competition Law for Somalia. The consultant should adopt an approach informed by international best practices and tailored to Somalia's context. This involves a combination of desk research, data collection and analysis, legal drafting, and stakeholder consultations.

3.1. Initial Assessment and Benchmarking:

I. Existing Legal Framework Analysis:

- Conduct a comprehensive review of Somalia's current legal and regulatory landscape. This should encompass all areas relevant to competition, including trade, investment, consumer protection, intellectual property rights, and sectoral regulations.
- Identify gaps, overlaps, and potential conflicts between existing laws and the proposed competition law, ensuring harmonization and a cohesive legal framework.
- Assess the compatibility of existing laws with international competition law principles and identify necessary amendments or new legislation.

II. International Best Practice Review:

- Conduct a thorough analysis of international best practices and frameworks for competition law, drawing on sources such as:
    - The UN Set of Principles and Rules on Competition
    - The World Bank's Framework for Competition Law and Policy
    - The AfCFTA Competition Protocol
    - EAC and COMESA Competition Regimes
    - Experiences of other African countries in implementing competition laws
- Assess the relevance and applicability of these frameworks to Somalia’s specific context, considering factors such as economic structure, institutional capacity, and legal traditions.

3.2. Drafting the National Competition Law:

I. Substantive Provisions:

- Draft a comprehensive National Competition Law for Somalia, addressing key areas such as:
    - **Prohibition of Anti-Competitive Agreements:**
        - Define and prohibit horizontal agreements that have an anti-competitive object, such as price-fixing, bid-rigging, market division, output limitation/restrictions, had-core restriction, and market allocation.

        - Address vertical agreements, assessing their potential impact on competition and prohibiting those that substantially lessen competition. This will also include IP agreements and exploitative and exclusionary effects. The law should assess the agreements along the value chain including price and non-price restriccions such as resale price maintenance, tied selling and bundling, discount and rebate agreements, bundled discounts, fidelity rebates and discounts.
    - **Abuse of Dominant Position:**
        - Clearly define the concept of dominant position, considering market share thresholds and other relevant factors.
        - Prohibit abusive conduct by dominant firms, including predatory pricing, exclusive dealing, tying, and refusal to deal.
        - Provide for exemptions for conduct that is justified on efficiency or other legitimate grounds.
    - **Merger Control:**
        - Establish a merger control regime that assesses the impact of mergers and acquisitions on competition.
        - Determine thresholds for mandatory notification based on factors such as turnover, market share, and transaction value.
        - Develop clear procedures for merger review, including timelines, information requirements, and criteria for assessing potential anti-competitive effects.
- Ensure clarity, precision, and consistency in the language and definitions used in the law.
- Include provisions to regulate anti-trust activities and protect consumer welfare.

II. Institutional Framework:

- **Competition Authority:**
    - Propose the establishment of an independent competition authority responsible for implementing and enforcing the competition law.
    - Clearly define the authority's mandate, powers (including investigation, enforcement, and advocacy), and resources.
    - Outline the organizational structure, staffing requirements, and budgetary needs of the authority.
    - Ensure the independence and accountability of the authority, safeguarding it from political interference.
- **Enforcement Mechanisms:**
    - Develop clear and effective procedures for the investigation and prosecution of anti-competitive conduct.
    - Specify penalties for violations of the competition law, including fines, injunctions, and structural remedies.
    - Establish a transparent and accessible system for dispute resolution, including avenues for appeal.

3.3. Capacity Building and Stakeholder Engagement:

- **Capacity Needs Assessment:**
  - Conduct a thorough assessment of the capacity needs for implementing and enforcing the competition law.
  - Identify gaps in technical expertise, legal skills, institutional resources, and data collection and analysis capabilities within relevant government agencies.
- **Capacity Building Program:**
  - Develop a tailored capacity building program to address the identified gaps.
  - Focus on building the necessary skills and knowledge for:
    - Investigating anti-competitive conduct
    - Analyzing market dynamics and competitive effects
    - Applying economic principles to competition law enforcement
    - Conducting merger reviews
    - Advocating for competition and educating stakeholders
  - Utilize a variety of training methods, including workshops, seminars, online courses.
- **Stakeholder Engagement:**
  - Facilitate ongoing stakeholder consultations throughout the entire process of developing and implementing the competition law.
  - Engage a wide range of stakeholders, including:
    - Government ministries and agencies
    - The private sector, including businesses of all sizes and sectors
    - Civil society organizations, consumer groups, and academia
  - Ensure that the perspectives of all stakeholders are taken into account in the design and implementation of the competition law.

3.4. Implementation and Monitoring:

- **Implementation Roadmap:**
  - Develop a detailed implementation roadmap outlining the key steps, timelines, and responsible actors for operationalizing the competition law.
  - Address key implementation challenges, including resource allocation, institutional coordination, and public awareness.
- **Implementing Regulations:**
  - Draft detailed implementing regulations and guidelines to operationalize the competition law.
  - Provide clear guidance on procedural aspects, such as:
    - Filing complaints
    - Conducting investigations
    - Issuing enforcement decisions
    - Imposing penalties
    - Resolving disputes
- **Monitoring and Evaluation Framework:**
  - Develop a framework for monitoring and evaluating the effectiveness of the competition law and its enforcement.
  - Establish clear indicators for measuring the impact of the law on competition, consumer welfare, and economic development.

- Develop mechanisms for collecting data, analyzing results, and reporting on progress.

3.5. Knowledge Management and Dissemination:

- Prepare a comprehensive final report documenting the entire process of developing the competition law, including:
  - Findings from the initial assessment and benchmarking
  - The draft National Competition Law
  - Implementing regulations and guidelines
  - Capacity building program and materials
  - Stakeholder consultation reports
  - Implementation roadmap
  - Monitoring and evaluation framework
- Develop a communication strategy to raise awareness and understanding of the competition law among businesses, consumers, and the general public.

C. Deliverables, Timeline, and Payment Schedule

Based on the objectives and scope of services for developing a national competition law for Somalia, the following deliverables and timeline are proposed, taking into consideration the overall assignment timeline of six months. This timeline is structured to ensure a logical flow of activities, with each deliverable building upon the previous ones.

No.	Deliverable Title	Details	Timeline (Weeks from Contract Signature)	Payment
1	Inception Report	Outlines the consultant's understanding of the assignment, the methodology to be employed, and the proposed work plan for the entire duration of the assignment. It should include: ▪ A detailed analysis of the current legal framework in Somalia (including an assessment of gaps, conflicts, and compatibility with	4	10%

		international competition law principles) ▪ Key insights from the review of international best practices, tailored to Somalia's context ▪ A preliminary outline of the proposed National Competition Law ▪ A stakeholder engagement plan	
2	Draft National Competition Law	A complete draft of the National Competition Law, incorporating provisions on: ▪ Prohibition of anti-competitive agreements (horizontal and vertical) ▪ Abuse of dominant position (with provisions for exemptions) ▪ Merger control (including thresholds for notification and review procedures) ▪ Institutional framework for the competition authority (mandate, powers, resources, organizational structure) ▪ Enforcement mechanisms (investigation procedures, penalties, dispute resolution)	12 10%
3	Report on Capacity Building and Stakeholder Engagement	Documents the findings of the capacity needs assessment for implementing and enforcing the competition law. ▪ Outlines a detailed capacity building program tailored to address the identified gaps.	15 10%

		▪ Summarizes the feedback and recommendations from stakeholders gathered through consultations.		
4	Draft Implementing Regulations and Guidelines	Provides a comprehensive set of implementing regulations and guidelines to operationalize the National Competition Law, covering: ▪ Procedural aspects such as filing complaints, conducting investigations, issuing enforcement decisions, imposing penalties, and resolving disputes. ▪ Specific guidance on the application of substantive provisions of the law.	19	10%
5	Implementation Roadmap and Monitoring & Evaluation Framework	A detailed roadmap outlining the steps for operationalizing the National Competition Law, including timelines, responsible actors, and resource allocation. A framework for monitoring and evaluating the effectiveness of the competition law and its enforcement, including indicators and data collection mechanisms.	21	10%
6	Stakeholder Validation	Present all draft documents at stakeholder validation workshop for final input and adoption	23	10%
7	Submission of Final Report	Compiles all the deliverables into a comprehensive document that serves as a guide for the implementation of the National Competition Law. It includes:	25	40%

	▪ The final version of the National Competition Law. ▪ Finalized implementing regulations and guidelines. ▪ The capacity building program and materials. - Stakeholder consultation reports. ▪ The implementation roadmap. ▪ The monitoring and evaluation framework. ▪ A communication strategy for disseminating the competition law.	

D. Ideal Firm(s) Profile and Key Experts

To successfully undertake the formulation of a national competition law for Somalia, the ideal firm(s) should possess a strong profile and a team of experts with a proven track record in similar projects. The selection criteria will prioritize firms and experts with a deep understanding of competition law principles, experience in developing legal frameworks, and sensitivity to the unique challenges and opportunities in fragile and conflict-affected states like Somalia.

Firm Profile

- **Core Business:** The ideal firm should specialize in economic development consulting with a demonstrable focus on legal and regulatory frameworks, particularly in the area of competition law and policy. Their core business should encompass:
    - Design and drafting of competition law and related regulations
    - Designing institutional frameworks for competition authorities
    - Conducting economic analyses related to market competition.
    - Delivering capacity-building programs for competition law enforcement
    - Facilitating stakeholder engagement and consensus-building processes
- **Years in Operation:** The firm should have a minimum of 10 years of experience in providing consulting services related to competition law and policy.
- **Specific Experience:** The firm should have proven experience in:
    - Working with governments and international organizations on competition law and policy reforms

- Designing and delivering capacity building programs for competition authorities and other stakeholders
- Conducting stakeholder consultations and consensus-building processes
- Supporting regional cooperation on competition policy
- Assisting in the drafting of competition laws and implementation guidelines
- Strengthening institutional capacity and improving skills of those working on the subject, particularly in the area of competition law enforcement
- Undertaking similar assignments in developing countries, preferably in Africa or fragile contexts
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Key Experts

The firm should propose a team of key experts with the necessary expertise to cover all aspects of the assignment. The aim is to have a lean team of four key experts who collectively possess the critical skills required. The key experts should include::

- **KE1: Lead Competition Law Expert (TEAM LEADER):** This expert should have:
  - Minimum of a master's degree in law, with specialization in Competition Law, Economic Law, or a related field.
  - At least 10 years of professional experience in the field of competition law.
  - Demonstrated experience in drafting competition laws and regulations in developing countries, preferably within Africa
  - Proven expertise in advising governments on competition policy and legal reforms.
  - Knowledge of international best practices in competition law, including familiarity with frameworks such as:
    - UNCTAD Model Law on Competition.
    - Regional competition laws in Africa (e.g., COMESA, EAC).
  - Experience in adapting competition laws to countries with limited institutional capacity and unique economic contexts.
  - Strong analytical and legal drafting skills, with the ability to produce clear and enforceable legal texts.
  - Relevant Certifications; Membership in a recognized Bar Association or Law Society
- **KE2: Competition Economist:** This expert should have:
  - Minimum of a Master's degree in Economics, specializing in Industrial Organization, Competition Economics, or a related field.
  - At least 10 years of professional experience in economic analysis related to competition policy
  - Expertise in conducting market analyses and assessing anti-competitive practices.
  - Proficiency in economic tools used in competition law enforcement, such as:
    - Market definition and assessment of market power.
    - Analysis of horizontal and vertical agreements
    - Evaluation of mergers and acquisitions.
  - Familiarity with economic challenges in developing countries, including informal markets and data limitations.

    - Ability to integrate economic analysis into legal frameworks collaboratively with legal experts.
- **KE3: Legal Draftsperson:** This expert should have:
    - Minimum of a Bachelor's degree in Law;
    - An advanced degree or certification in legal drafting or legislative processes
    - At least 8 years of experience in legal drafting, particularly in economic or commercial law
    - Proven experience in drafting legislation and regulations in developing countries.
    - Ability to translate complex legal and economic concepts into clear, accessible legal language.
    - Familiarity with legislative processes and legal systems in developing contexts.
    - Experience working with policy experts to reflect policy objectives accurately in legal texts.
- **KE4: Capacity Building and Stakeholder Engagement Specialist:** This specialist should have:
    - Degree in Law, Public Policy, Economics, Education, or a related field
    - At least 8 years of professional experience in designing and delivering capacity-building programs and facilitating stakeholder engagement
    - Experience in capacity building related to competition law and policy.
    - Ability to develop training materials and manuals tailored to government officials, legal professionals, and other stakeholders.
    - Experience in engaging with a wide range of stakeholders, including:
        - Government agencies.
        - Private sector entities.
        - Civil society organizations.
        - Consumer groups
        - Consumer groups
    - Proficiency in the local language is required.

E. Reporting Arrangements

The selected consultancy firm(s) will operate under the direct supervision of the Director General of the Ministry of Commerce and Industry. Regular reporting is essential for maintaining transparency and alignment with the project's objectives. The firm is required to provide bi-weekly progress reports, highlighting achievements, challenges, and any critical issues needing attention. Coordination with the Project Implementation Unit (PIU) of the DRIVE project and the World Bank is essential, while ensuring inputs from relevant ministries and agencies are integrated.