



COMESA Competition Commission

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Common Market for Eastern
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DETERMINATION IN THE MATTER INVOLVING INVESTIGATION ON POSSIBLE MISLEADING AND UNCONSCIONABLE CONDUCT BY JUMIA GROUP.

The COMESA Competition Commission (the “**Commission**”) launched investigation into the conduct of **Jumia Group** (“**Jumia**”), on 10 September 2021, following a review of its platforms in different countries along with its terms and conditions, to determine if they were in compliance with the COMESA Competition Regulations (the “**Regulations**”).

The Commission observed the following in Jumia’s platforms, and terms and conditions:

- a) Jumia on its platforms and in its terms and conditions did not indicate the registered company and business that owned the platform, and who their actual legal representative was. The Commission was concerned that this would make it difficult for consumers and authorities wishing to initiate action against Jumia to identify the party to pursue.
- b) Under section 12 of its terms and conditions, Jumia did not warrant that: the information on their website is complete or accurate; the material on the website was up to date; the website/platform would operate without fault; and that it would remain available. The Commission was concerned that this disclaimer opened a window for Jumia to give inaccurate information on its website including on products it sells via this platform. It was also not clear what would happen to consumers for transactions that are still in process at the time the marketplace gets discontinued.
- c) The platform also did not provide buyers with a preview of the order before making payment, making it impossible for the buyer to get evidence of what they had ordered.
- d) Under section 12, Jumia excluded itself from being party to the contract for sale or purchase, claiming that it was not involved in the transaction, was not an agent of any buyer or seller and therefore did not have liability in connection with a transaction under the contract. The Commission’s observation was that Jumia was dissociating itself from the transaction when in an actual transaction the consumer deals only with Jumia, in that it is the one who receives the orders, payments and delivers on behalf of the seller. It was further noted that in some cases Jumia does not provide to the consumer any documents that connect the transaction to the third-party as the seller.

d) Jumia did not provide a dispute resolution mechanism online. Other than the email and complaint form, the complainant was not provided with an opportunity to interact with Jumia, present and defend their complaint, keep track of the progress of the handling of their case and get final redress.

e) Jumia's return policy allowed consumers only 15 days for Jumia Mall platform, and 7 days for Jumia Express and Global platforms to return defective goods, which the Commission considered as unfavourable, especially for defective products which may manifest after the period provided.

The Commission was of the opinion that Jumia's platform and its terms and conditions appeared to amount to false and misleading representation which is prohibited by Article 27(1)(d) and (f) of the Regulations, which provides that:

27(1) "A person shall not in trade or commerce person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services..(d) falsely represent that a particular person has agreed to acquire goods or services and (f) represent that the person has a sponsorship, approval or affiliation it does not have".

Further, Jumia's conduct was possibly unconscionable, which is prohibited by Article 28(1) as read together with Article 28(a) and (b) of the Regulations which provides:

28(1) "A person shall not, in trade or commerce, in connection with the supply or possible supply of goods and services to a person, engage in conduct that is, in all the circumstances unconscionable".

Article 28(2)(a) and (b) "In determining unconscionable conduct, the Commission will have regard to (a) The relative strengths of the bargaining positions of the person and the consumer; and (b) Whether as a result of the conduct engaged by the person, the consumer was required to comply with conditions that were not necessary for the protection of the legitimate interests of the person.

The Commission further noted that Jumia is one of Africa's leading online ecommerce platforms with a presence in 23 countries and a network of over half a million sellers. Jumia is also the leading e-commerce platform operating across more than one COMESA Member State, that is in Kenya, Uganda, Egypt and Tunisia. The Commission noted that there are several products traded on the platform either by third party sellers or by Jumia itself which are obtained from different Member States and some are imported from outside the Common Market and distributed to various countries. Given the magnitude of its operations, Jumia's conduct could have an appreciable effect on trade in the Common Market.

In this regard, the Commission engaged Jumia on the matter regarding incompatibility of their terms and conditions with the Regulations and required them to make necessary amendments as follows:

- i. Jumia includes a specific provision in its terms and conditions that highlights the entity to be served for legal purposes with its full details including the name, location, post office address, telephone and email contact.
- ii. Jumia guarantees the authenticity of such information, to the extent that where the seller cannot be traced in the case of a dispute, Jumia shall be liable as there is

legitimate expectation by consumers that Jumia should have adequate terms and conditions for engaging the sellers.

- iii. Clause 12.1.3 of Jumia's terms and conditions be amended to reflect that where Jumia is the seller, they are a party to the contract of sale and therefore liable if the product is not fit for the purpose.
- iv. In cases where products are sold by a third-party seller, Jumia should provide access to the contract of sale between a named and clearly identified seller on the platform to enable the buyer to review and accept terms before purchase. Jumia also to ensure that, to the extent possible, the information posted on the platform is accurate.
- v. Clause 12.1.4 of Jumia's terms and conditions be amended and the statement that Jumia was not party to the transactions be removed.
- vi. Clause 12.1.5 of the terms and conditions be amended to include the entity that was liable in case of any disputes in transactions, as well as where the information on the persons liable could be found, so that consumers know on whom to initiate legal action if need be and the full details should be given. If this cannot be established, then Jumia shall be liable as it is party to the transaction.
- vii. Clause 12.2.1 be amended to reflect that Jumia commits to ensure completeness or accuracy of the information published on their marketplace.
- viii. Clause 12.2.2 be amended to reflect that Jumia commits to ensure that the material on the marketplace is up to date. Any person affected by the inaccuracy of the information published on the platform can return the product to the extent that it is affected by the inaccurate information that was bought through the platform.
- ix. Clause 12.2.4 be amended to reflect that the marketplace or any service on the marketplace will remain available during the occurrence of events beyond Jumia's control.
- x. Clause 12.2.5 be amended to include a provision that demonstrates the factors that can constitute force majeure.
- xi. Clause 12.2.6 be amended to reflect that the discontinuation of the marketplace shall be done without prejudice of the consumer's rights in respect of any unfulfilled orders or other existing liabilities of Jumia.
- xii. Clause 12.2.7 be amended to reflect that in circumstances not relating to force majeure, Jumia shall, before shutting down the marketplace, provide prior notice of not less than 15 days to the general public with clear guidance on the way forward for consumers with pending transactions on the platform or other existing liabilities of Jumia.
- xiii. it was also recommended that Jumia introduces more dedicated channels of communication for complaints, and these include:
 - a) Phone numbers dedicated to resolving complaints.
 - b) Email address dedicated to resolving complaints.
- xiv. Jumia should also consider having a transparent dispute resolution that is known to consumers and users of the website.

- xv. The point of exhaustion of Jumia's dispute mechanism should be clear for the consumer to determine when to seek further redress.

Jumia was cooperative and in compliance with the Commission's recommendations, reviewed its the terms and conditions to the Commission's satisfaction. Subsequently the matter was closed. Further, the Commission commends Jumia for its cooperation and being a responsible corporate citizen in terms of amending its terms and conditions in the interest of the consumer.

Should any consumer have a similar complaint on any online platform, or require further information regarding the Commission's investigation, you may contact the Commission through Email: compcom@comesa.int or our Mr. Steven Kamukama, Manager Consumer Welfare and Advocacy Division on Tel: +265 (0) 1 772 466 or Email: skamukama@comesa.int.



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