

# **Competition Scenario in Uganda**

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## 1.0 OVERVIEW

Uganda remains one of the poorest countries in the world, with low per capita income and high rural poverty. A series of household expenditure surveys during the 1990s show that the percentage of Ugandans living below the poverty line of approximately \$1/day has declined markedly, from 56 percent in 1992 to 35 percent in 2000 but recently increased to 38 percent. The significant decline in poverty has been linked to considerable economic growth and expansion of the economy for most of the 1990s.

Sovereign trade and investment liberalisation has been a key to Uganda's economic performance since the mid -1980s. Along the path of this development was the realisation that anticipated transformations would require attraction of foreign donors and investors and creation of conditions for rapid economic recovery.

Uganda's recent performance testifies to what liberalization and economic reforms can achieve in a poor, devastated economy. It is vital to note that continuation and consolidation of the process is crucial in the rebuilding of the economic structure; trade policy, in particular, the creation of a domestic trading environment devoid of traditional command-economy era biases.

Enhanced international integration, based on commitments under the East African Community (EAC), the World Trade Organisation (WTO) and the Common Market for Eastern and Southern Africa (COMESA), in spite of several teething and fundamental concerns, are helping to ensure that the momentum of reform, spurs resource efficiency, provides market potential for emerging industries, and encourages long-term development of trade and investment.

Virtually all restrictions have gone since the introduction in 1991 of automatic licensing under far reaching trade reforms in both the export and import trade sub-sectors. The restrictions, policy remnants from the pre-1987 economic liberalization drive, were largely crafted to protect local industries that were predominantly state owned. Now the private sector dominates and there is considerable competition in all spheres of economic activities.

Laissez faire policy developments like those governing privatization and investment led to a huge influx of foreign capital and rapid expansion of the private sector amidst debate as to the right extent of state regulation of conduct in private sector spheres.

However, since the adoption of market-oriented economic policy entailed the withdrawal of the state from the industrial and service sectors so as to make way for private initiative, the environment required fresh examination. This was because the customary efficiency of private capital does not necessarily translate into an improved economy, as a market made up of private actors will not necessarily be competitive.

As was predictably established in several recent studies, including "The state of competition in Uganda," carried out by CONSENT with support from CUTS-International, the local market is replete with considerable anti-competitive practices. The growth of foreign direct investment, trade, regional and sub-regional economic integration and co-operation have led to practices such as restrictive business practices including price cartels, market sharing,

among some of the undesirable and deleterious practices. These practices, if not checked, could adversely impact upon competition and therefore are inimical to consumer welfare.

Anti-competitive practices may constitute an obstacle to the achievement of optimal economic growth, trade liberalisation and economic efficiency within the country and in the immediate region or beyond.

It is well established that even if all other structures are in place to support a market-oriented system, it can not be assumed that the private sector will operate independently of each other in the marketplace, or that the interaction of market forces will automatically maximize consumer welfare. Therefore, it is pertinent that the state intervenes to protect competition by prohibiting agreements and activities that undermine the same. This intervention takes the form of competition policy.

However, in Uganda, the need for such intervention has been met with considerable debate, and in some respect, resistance. This is part of broader debate about the desirable balance to be kept between regulation alongside deregulation under the framework of economic liberalization. In many countries, competition policy and law expressly incorporates economic and social policies that are different from, if not antithetical to, the protection of competition.

In this respect, stakeholders have spoken at length about policies that include: promotion of economic efficiency; promoting production or distribution of goods/or technical or economic progress; protection of consumers; promotion or strengthening of exports; protection of economic freedom; and protection of the 'public interest'.

Against that backdrop, the need for stakeholder awareness, advocacy, and consensus building can not be overstated. This is underscored by developments like the twin processes of developing competition laws within the EAC and COMESA that have reached an advanced stage. This is buttressed by similar developments on the local scene, involving the drafting of a law to regulate competition.

This Country Research Report is in respect of a two-year study project 'Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa' codenamed 7Up3. The project undertaken under the aegis of Consumer Unity and Trust Society (CUTS) International's Centre for Competition, Investment and Economic Regulation (CUTS C-CIER), is being implemented in seven countries: Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda, with support from the Norwegian Agency for Development Cooperation (NORAD), Norway and the Department for International Development (DFID), United Kingdom.

CONSENT is the implementing partner in Uganda (for both Research and Advocacy). As part of the study, a survey was carried out in Uganda; findings are detailed in later chapters of this report. It is envisaged that the above and other activities to follow should go a long way in enabling the realization of the project aim: to develop the capacity of national stakeholders, including the policy makers, regulators, civil society organisations, academicians and the media in each of the project countries, through a participatory process, to understand and appreciate prevailing competition concerns from the national, regional and international perspectives, and enable them to play their respective and expected roles.

## 1.1 Vital National Information, Statistics

<b>POLITICS &amp; GEOGRAPHY</b>	
<b>Geographical location</b>	East Africa, astride the Equator, land locked.
<b>Geographical neighbours</b>	Kenya, Tanzania, Sudan, DRC, Rwanda
<b>Administrative system, structure</b>	Decentralised system with central government retaining role of policymaking, supervision and admin. Units - 76 districts
<b>Area</b>	241,038 sq km (93,072 sq miles)
<b>Life expectancy</b>	45 years (men), 47 years (women) – UN
<b>Population distribution</b>	82% rural, 18% urban
<b>System of government</b>	'No party' movement system, transiting to multiparty democracy after 2006 elections.
<b>SOCIAL &amp; HISTORICAL POINTERS</b>	
<b>Historical background</b>	Former British protectorate, stable before independence but chaotic afterwards (turmoil, unrest, economic decline)
<b>Major languages</b>	English (official), Kiswahili, Ganda
<b>Major religions</b>	Christianity, Islam
<b>Number of phone lines</b>	1,500,127 mobile, 100,056 fixed (5% penetration) – MoFPED, June 2006
<b>Access to electricity</b>	5% of population (250,000 connections - ERA)
<b>Access to clean water</b>	60% (national), 55% rural – 2004 (DWD)
<b>Literacy rate</b>	69.9%
<b>Adult HIV prevalence</b>	7% (MoH, 2005)
<b>No of radio sets (per 1000pple)</b>	130 (unicef, 2002)
<b>No of television sets (per 1000pple)</b>	16 (unicef, 2002)
<b>Prevalence of poverty</b>	38% (MoFPED, 2004)
<b>Available HEP capacity</b>	315mw (April 2005- ERA); reduced to 200mw at of 2005 and to a crisis 170mw in January 2006
<b>Population / population density</b>	27 million / 126 persons per Km <sup>2</sup> (MoFPED, 2005)
<b>Population growth / fertility rate</b>	3.4% PA / 6.8 children per woman
<b>ECONOMICS &amp; TRADE</b>	
<b>Main exports</b>	Coffee, Fish and fish products, tea, tobacco, cotton, maize (corn), beans (MoFPED)
<b>Monetary unit</b>	Uganda shilling
<b>Exchange rate</b>	\$1=sh1,800; €1=2,200; £1=3,200
<b>GDP per Capita</b>	US \$240 (MoFPED, 2005)
<b>Integration, trade arrangement</b>	Member of EAC, COMESA, WTO, OIC, ESA, IGAD
<b>Major taxes</b>	Income tax (including corporate tax), withholding tax and rental income tax; value added tax (VAT); excise duty on certain products and sales tax. Imported goods attract import duty and import commission. (Source: MoFPED)
<b>Total External debt stock</b>	US\$ 4.3billion [10% GDP] (2003/04 – MoFPED)
<b>Inflation</b>	7.0% (March 2004 – MoFPED)
<b>Tax revenue</b>	12% of GDP (MoFPED)

*Table 1: Vital socio-economic statistics on Uganda*

## **2.0 SOCIAL AND ECONOMIC POLICIES AFFECTING COMPETITION**

### **2.1 Development policy: Poverty Eradication Action Plan (PEAP)**

It is also the country's Poverty Reduction Strategy Paper (PRSP). PEAP provides an over-arching framework to guide public action to eradicate poverty. It has been prepared through a consultative process involving central and local Government, Parliament, donors and civil society. Under the plan, Government should ensure the provision of public goods to support both agriculture and industry. In order to reverse the recent marked increase in inequality, Government aims to increase the ability of the poorer households to participate in economic growth through self-employment inside and outside agriculture and wage employment. The PEAP provides the foundation for a vibrant and competitive economy with forward and backward linkages amongst the component sectors.

Four core challenges for the PEAP include:

The restoration of security, dealing with the consequences of conflict and improving regional equity; Restoring sustainable growth in the incomes of the poor; Human development and Using public resources transparently and efficiently to eradicate poverty.

The PEAP grounded on five 'pillars' or components: Economic management; Production, competitiveness and incomes; Security, conflict-resolution and disaster-management; Governance and Human development. Considered together, the five pillars provide a framework for improved distribution of resources, engagement in economic production and improved welfare of citizens (consumers) albeit laced with elements of competition.

However, the first and second pillars to wit: economic management and improved production, competitiveness and incomes have direct inference and reference to market competition. In theory and practice, the authorities have ensured the adherence to the pillars through liberalisation of the country's economy, regardless of the prevailing shortcomings, deficiencies and consequences.

Also, government has formulated and implemented the Medium Term Competitive Strategy (MCTC), conceived as a means to remove obstacles to businesses, in a bid to deepen liberalisation and competition in the marketplace. The MCTC is an off-shoot of the PEAP, as it is the over-arching framework for formulation of public policy. And unlike the overall PEAP, it is relatively easier to track implementation of the MCTC, particularly in the short run as budgetary allocations are normally set aside for the purpose. Preliminary reports indicate some success in implementation of the MCTC, although there remains a long way before most of the major obstacles (that also include legal and policy reforms), could be in place.

### **2.2 Industrial Policy**

The country's industrial sector is still small but growing steadily and is now completely dominated by the private sector (both local and foreign). The sector is dominated by processing industries using agricultural produce (Coffee, textiles, sugar, beer, leather and tobacco among the major ones).

The sector is steadily transforming from import-substitution to an integral part of the economy with forward and backward linkages aimed at contribution to the country's pursuit for improved production, competitiveness of its products and improvement of incomes for poverty eradication. However, a comprehensive policy on industry is not yet in place; only scattered provisions exist.

Nevertheless, considered together, the scattered provisions provide for a competitive environment with hardly any impediments, save for provisions over the environment and land rights as provided for in environment and land laws. Licensing requirements in place do not constitute barriers to competition but rather are part of regulatory requirements aimed at consumer protection, technical regulation, generally, to ensure adherence to relevant laws, rules and regulations.

With deep privatisation that started in the '90s, there are hardly any national champions left. Even with the few that have been in existence, protection has been in the form of short-term fiscal rather than direct legal instruments or provisions in relevant policies or laws.

### **2.3 Trade policy**

Uganda does not have a modern, comprehensive trade policy but a series of scattered provisions in other policies. Considered together, they seek to facilitate the full and effective integration of Uganda into regional and global markets, and to facilitate the economic and social transformation of Uganda into a competitive, flexible and outward-oriented economy for the benefit of all Ugandans. The policy is anchored in principles of liberalisation and strong elements of competition set on an outward looking framework.

Uganda extends tariff preferences only to countries in the COMESA group and to Kenya and Tanzania under the East African Community Treaty. Nearly 800 products are covered by these preferences.

Trade Agreements: Largely spurred by globalisation and the need to reactivate regional integration efforts that broke down in the 1970s, Uganda has signed several trade agreements and is playing an active role in multilateral and regional trade negotiations. The country is a member of the following regional and multi-lateral trade agreements:

- I. The World Trade Organization (WTO);
- II. The ACP-EU Cotonou Agreement;
- III. New Economic Partnership for Africa's Development (NEPAD).
- IV. Common Market for Eastern and Southern Africa (COMESA);
- V. The East African Community (EAC);
- VI. Inter-Governmental Authority on Development (IGAD);

In addition to the above, Uganda as a Least Developed Country (LDC), is a beneficiary to a number of market access initiatives. Prominent among these initiatives are:

- The *Africa Growth and Opportunity Act (AGOA)* of the USA and
- *Everything-But-Arms (EBA)* of the European Union (EU).

The net effect and objective of the country's involvement in the various trade and economic groupings is a drive towards an outward looking economic dispensation in which there is free entry and exit of capital; where market forces determine demand and supply of goods and services. So far, the country has a *laissez faire* trade policy that guarantees more than minimal levels of competition in all spheres of trade (the market).

### **2.4 Regulatory Policy**

Liberalisation and privatisation in the early 1990s led to restructuring of the economy informed by shifting of the means of production and changing roles of the state. Deregulation was instituted in sectors considered crucial to the economy to check anti-competitive activities and take charge of firms and persons whose actions could be injurious to the economy and to individual consumers. It was also due to the need to put in place a rigorous regulatory regime following withdrawal of government from business.

This would be particularly a danger in areas where one, two or three firms may be operating raising the prospect of price-fixing, attempts to run competition out of the market through hostile takeovers, and creation of virtual monopolies etc. Through bodies like the Uganda Communications Commission (UCC), the law has prescribed safeguards. The framework covers licensing, supervision, regulation and surveillance. The agencies have investigative powers as well as powers to discipline, handle consumer

complaints and to arbitrate in disputes involving firms. The bodies enjoy a large measure of operational and financial autonomy, although they are still under the oversight of a Minister responsible to Cabinet and have ultimately to account to Parliament through the relevant Minister.

In addition, there are intra-sectoral councils and associations like the Pharmaceuticals Council and Association, Law Society and Council, Medical and Dental Practitioners' Council and the Broadcasting Council with powers to set or advise on operational and ethical standards and a code of conduct; powers to investigate member (individuals or companies) and either directly take or recommend disciplinary action. In this respect, this voluntary sector association may act on its own or at the request of or in concert with the sector agency or government.

However, the case of recent action by the Media Council delegating its powers to the Media Centre (including powers to revoke licences of practising journalists), a non-statutory body created by government raises questions of concern over independence of regulatory bodies and their capacity of oversight as well as limitations over industry players. Therefore, while regulatory policy has had significant success in elimination of structural bottlenecks, remnants from the days of the command economy, and to ensure order in the marketplace, shortcomings remain, underlined by several cases (at least as reported in the media) where the authority of regulatory bodies has been undermined or interfered with.

## **2.5 Investment policy**

Government created the *Uganda Investment Authority (UIA)* in 1991 partly to effect emphasis on investment as the engine of growth. The UIA was formed to promote and facilitate investments in Uganda, advise the Government on policies conducive to investment and provide information on investment issues, among others. One of the core functions of the UIA is attracting foreign direct investment (FDI) into the country, as well as promoting investments by Ugandans.

Following failure to realise its original mission, the UIA's role was later changed to a one-stop centre for prospective investors. Along with the creation of the UIA, Government put in place a law to govern foreign investments – the Investment Code of 1991. However, the Code has been reviewed and the flagship 'carrot', a package of investment incentives, including tax holidays to investors has since been scrapped. All tax benefits under the new incentives regime have been harmonized so that eligible investors enjoy the benefits directly without need for a certificate of incentives as long as they make investments of a capital nature.

The above development, in a classical view of the prevailing investment policy framework, 'levelled' the ground for investors, local and foreign. Before the scrapping, it had been observed that the country's investment sector had suffered a reversal with foreign investors getting a preference package at the expense of their local counterparts, a practice deemed outright anti-competitive. Although elements of 'anti-competitiveness' (like insistence on sourcing a portion of raw materials locally, regardless of cost as well as limitation of players in certain sectors like telecommunications) still exist, the sector generally remains liberal and competitive.

## **2.6 Government procurement policy**

The need for transparency has resulted into tightening of the regulatory noose around public procurement. It's now governed by a separate policy and law in Uganda and is under the regulatory oversight of an independent body; the Public Procurement and Disposal of Assets Authority (PPDA). Consequently, it has had the double effect (benefit) of helping to improve transparency as well as upping competition as new rules explicitly call for 'competitive bidding' for services/ goods whose value exceeds US\$ 5000. This has dealt a blow to tendencies by departments and public servants to use arbitrary powers, many times unfairly or corruptly, to procure goods and services ostensibly in public interest.

Before the above reforms, public procurement was largely a den of corruption with public servants taking bribes before awarding contracts or out rightly awarding contracts to firms in which they had visible interests. Well as such cases have not completely been up rooted; there is a marked decrease of corruption in public procurement (at least according to perceptions and anecdotal evidence). What remains to be done is to improve the regulatory capacity of the authority, especially its investigative capacity in a bid to identify and counter anti-competitive practices like bid rigging that are 'white collar' in nature and therefore hard to deal with under the status quo. (In our view, the last paragraph, in nutshell, reflects on the "effectiveness" of procurement policy, as requested by the CRR advisor, unless we wrongly understood his comment).

## **2.7 Labour policy**

Policy is liberal and conducive, allowing free movement of labour and, in theory, rights of workers must be protected as enshrined in the various international laws, treaties and regulations to which Uganda is signatory.

However, until recently, the main drawback was failure to enact modern labour laws and review of existing ones, a shortcoming blamed for prevalence of abuse of workers by unethical employers. Several media reports have also pointed towards the existence of sweatshops (work places where workers' rights are abused and/or, are exploited) in the country at the hands of mainly foreign investors.

The labour sector received a big shot in the arm with revitalisation of the labour movement from the 1990s at a time when government was carrying out restructuring of the economy legal/policy reforms. Complementary efforts from private sector bodies like the Federation of Uganda Employers (FUE) have channelled consequential synergies into a push for broader ownership of the policy and law reform process.

Also, the long awaited modern labour framework was enacted (March 2006), aimed at addressing contemporary issues in the increasingly dynamic marketplace. In this respect the laws included: the Employment Bill 2005, consolidating and revising the law relating to employment; and the Occupational Safety and Health Bill 2005, to reform the law relating to safety at the workplace. Others are the Labour Disputes Bill 2005, to address arbitration and disputes settlement and the Labour Unions Bill 2005 to provide for issues pertaining to workers' rights and the need to consolidate interests.

Even with the laws being in place, local businesses is sometimes seen by sections of their foreign counterparts as employing 'cost cutting' measures that violate labour rights, for instance - payment of comparatively low wages, longer hours of work, and denial or exclusion of benefits like insurance, etc. Such measures help local companies save on their cost of production, which foreign companies claim give local companies upper hand with regards price competition in similar products. Foreign companies assert that such practices constitute elements of unethical behaviour that hinders competition.

It is envisaged that when fully implemented, the new framework should make the country's labour policy sufficiently flexible so as to encourage investments as labour-related issues wouldn't constitute an impediment to free entry and exit from markets.

## **2.8 SMEs Policy**

Importance is being attached to Small and Medium Enterprises (SMEs) although there is lack of a comprehensive policy to address the enterprises holistically.



SMEs provide about 12% of employment in rural areas and 40% in urban areas. Government plans to develop a cost effective way of delivering services to them, particularly for business development skills, and has indicated that it intends to review the method of taxation used for this sub-sector. As a gain, bureaucratic obstacles to their operations are expected to be reduced by the systematic and consultative scrutiny of proposed new regulations and review of existing ones. In practice, SMEs in Uganda have been faced with several obstacles (access to credit, poor infrastructure, inaccessibility to utilities etc) that have rendered them uncompetitive, contrary to expectations that they enjoyed privileges – essentially on paper – that protected them against external threats.

However, the long-term interests and concerns of SMEs can only be addressed under a relevant policy and institutional framework established through a participatory approach in which industry players are involved. Well as the prevailing dispensation is wrought with relative disorganisation, the overall environment guarantees competition in the marketplace but falls short of precepts required to regulate conduct with a view to checking malpractices (anti-competitive practices). Affairs of SMEs are not governed by a comprehensive policy and institutional framework; there is sufficient competition by default, owing to the nature of the environment (many players due to liberal entry and exit 'rules'). However, this *laissez faire* dispensation falls short of guaranteeing consumer protection and economic efficiency like would be expected from a situation where competition is regulated).

## 2.9 Consumer Policy

Scattered provisions on consumer protection and welfare exist in sectoral policies (water, telecommunications, electricity, etc). However, a comprehensive consumer protection policy is not in place yet, although a draft to the effect is expected to be originated by cabinet at the same time when it would be considering the draft proposed Consumer Protection Bill.

The absence of consumer protection policy and supportive legislation in the country means that consumer perspectives are seldom taken into account in formulation of public policy. In case they are considered, it is haphazardly done. Therefore, enactment of policy to this effect will go a long way in refocusing the attention of authorities and stakeholders on the market practices that may be detrimental to the interests of both consumers and businesses alike.

However, on the whole, the strength of the country's scattered consumer policy is in the reality that it is anchored in principles of liberalisation and free-market approaches that guarantee more than minimum competition in the marketplace.

## 3.0 NATURE OF MARKET COMPETITION

### 3.1 Overview

The market economy is still in its infancy, characterised by absence of enabling laws/ institutions in some sectors (and industries) or the existence of inadequate and/, or archaic policies and laws (Cases: sale of goods, consumer protection, food safety, Intellectual property etc). The emergence of competition in the marketplace has largely been as a result of government direct involvement in attraction of investments for purposes of import substitution or enhancement of capacity for provision of goods and services where none existed or where their existence was inadequate.

Consequently, except in retail trade, the level of competition locally is relatively low given the infant nature of the country's industrial and service sectors. In other areas of the services sector, there is relative competition, although high market concentration remains a barrier to attainment of desirable levels of competition in the marketplace. In areas involving huge capital investments, a *de facto* oligopolistic setup has emerged. This includes the utilities sector.

There is market concentration in several sectors of the economy, particularly in financial services (insurance), manufacturing (mainly food processing) and beverages among others. Under this setup, dominant entities normally set the pace in form of *de facto* leadership on all fundamental aspects of their respective sectors thereby hurting competition.

A monopolistic competitive dispensation prevails in several sectors, i.e. very many buyers, many sellers, minimum difference in nature of products and number of barriers to entry or exit. The effect of this all is that there are many cases of anti-competitive behaviour in the marketplace that is/ or, could be deleterious to both market competition (and related consequences) as well as consumer welfare.

Alongside this, involvement of the state in business still exists to some extent (telecom, power, milk processing, etc). Also, policy options that hurt competition like ill-enforced public procurement and selective and inequitable provision of subsidies to some businesses and industry (Cases: BHS Limited, GBK Limited and generally, urban formal businesses as opposed to rural and small scale businesses) provide cases to examine and enforce competition in the country.

However, multinationals are making in-roads into the major production sectors of the economy as well as provision of basic services. With the opening up of borders under the East African Community Customs Union, COMESA and the WTO, the need for competition regulation has never been timelier.

### 3.2 Institutional Framework

Uganda's economy until very recently has been highly regulated. When competition<sup>1</sup> was not deliberately and negatively interfered with, it was "encouraged" rather haphazardly. Competition was dealt with usually in the context of other legislations and not directly. Therefore, one can hardly speak of an institutional framework<sup>2</sup>, rather of a series of sectoral arrangements. In addition, and perhaps to be fair to the authorities of the day, the majority of firms in Uganda are small family controlled entities, making the need for an enforceable competition regime hard to implement.

Due to the nature of the country's economy, such phenomena as mergers, takeovers, monopolies and price cartels were either rare or when they did occur, their possible harmful effects were not considered to be serious by the authorities. Following the deregulation of recent years, the government has, mostly by default, taken the sectoral approach but curiously only for those sectors where control<sup>3</sup> by government or its agents are still considered of paramount importance. This led to formation of authorities and commissions, like the National Drug Authority (NDA), Uganda Communications Commission (UCC) and Uganda Insurance Commission (UIC) among other sectoral regulatory agencies.

### 3.3 Competition Regulation

As far as can be established, there is currently no law or set of laws in Uganda that address the exclusive subject of competition in business. Private monopolies are not normally subjected to any restrictions or control, but in certain sectors such as finance (insurance) there are certain rules at least on mergers and similar phenomena. In general it would be safe to say that any regulations to prohibit or sanction restrictive practices and enhance competition are largely, part of other legislations.

In Uganda, many basic services like water and electricity are still only available largely from public enterprises with total monopoly positions. Although power generation and distribution was recently privatised but earlier liberalised, the existing enterprises enjoy monopolistic positions in the marketplace. These enterprises are allowed to set their prices subject only to regulatory authority approval.

The majority and by far the most important firms in Uganda are registered under the Companies Act, a complex piece of legislation first introduced during the colonial era and which does not concern itself with competition in any direct way.

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<sup>1</sup> Competition may be defined as an effort by two or more parties to ensure the custom of a third party by offering the most favourable terms. A competitive market is one in which a large number of sellers and buyers vie or compete for identical products or commodities, deal with each other freely, and retain the right of entry into and of exit from the market.

<sup>2</sup> Under an ongoing law review process in Uganda, an institutional framework has been mooted that would cover business-related laws including competition law in a more comprehensive manner. The Ministry of Tourism, Trade and Industry (MTTI) has drafted a competition law which was scheduled to be tabled before Parliament in 2005. However, the term of the 7<sup>th</sup> Parliament ended before this and other related laws (commercial) could be debated. The draft has since been sent back to the Ministry responsible for trade for onward transmission (back to Parliament) via cabinet.

<sup>3</sup> Sectors like arms manufacturing and importation, trade in drugs and the utilities sectors are still considered a responsibility of the state and therefore should not be left entirely to the private sector. Semi-autonomous publicly funded bodies oversee these sectors.

## 4.0 COMPETITION LAW

### 4.1 Competition law: Evolution, foundation, legislative history, and philosophy

Uganda neither has a law nor a policy on competition regulation. However, drafts are in place and could be tabled in Parliament for enactment soon. The draft law, to be known as the Competition Act, seeks to create, encourage and protect competition, encourage investments, strengthen the efficiency of production and distribution of goods and services and protect and promote social welfare of consumers in Uganda.

Architects of competition law through the existing consultative process were at first attuned to pursuing static and dynamic economic efficiency, which are the principal reasons for introducing competition. However, developments in the COMESA region (following enactment of a regional policy and law on competition), later the East African Community (EAC) as well as from civil society (particularly consumer organizations) led to consideration of consumer welfare in the consultative process.

Market failures to deal with “excesses” occasioned by the inbuilt safeguards and assumptions led to the conviction that competition regulation could produce significant benefits, and motivation to, in as many sectors as possible. Authorities and lay stakeholders alike, were not familiar with what constitutes a competitive market and what threatens it and were resigned to reliance on structural remedies which would probably prove to be a better instrument for developing competition than dependence on a set of behavioural prescriptions.

Government’s unwritten policy was to wind down both access and economic regulations as and when competition becomes sufficiently strong. The point of departure; at which formal and broader (comprehensive) regulation should come, as instituted elsewhere has been to consider the fraction of resources devoted to such regulation of a specific sector. Sectoral regulatory bodies were largely instituted to perform their traditional ‘policing’ roles in a bid to persuade the private sector, i.e. prospective investors, that the government was committed to making the transition.

It was envisaged that competition agencies (authorities) have important expertise in identifying and helping to eradicate market power, which if left unchecked, would greatly reduce the benefits of regulatory reform. This is especially necessary because firms that are used to operating as monopolies or being co-ordinated by regulators may find it “normal” and highly attractive to continue in their pre-regulatory reform modes of doing business. Uganda was especially a ripe case in the aftermath of the massive privatization process that saw the divestiture of tens of formerly state-owned enterprises, some with immense powers in the marketplace and therefore a threat to smaller competitors as well as consumer welfare.

It was borne in mind that in practice, regulatory reform has rarely consisted simply of abolishing regulations and leaving everything up to market forces operating within general framework competition law. In a great number of situations, the thinking entailed policy makers adopting the view that competition must be fostered by a new kind of regulation, which may or may not be strictly transitory. Some new or existing sector-specific regulators were being mandated to promote competition and sometimes being charged with formulating and/or applying sector-specific competition rules.

What has been in contention is the optimal level of involvement; competition agencies elsewhere have been assigned tasks that had previously been performed by government departments or by sector-specific or general regulators. In practice, there are few, if any, countries where that division can be regarded as finally settled, especially since the transition to greater competition is far from complete. Debate of this and other substantive issues on competition with regard to policy and law is expected to continue in cabinet and in Parliament. With the deferral to debate the draft law, it is expected that

there could be some more stakeholder consultations before it is re-submitted to cabinet before going to Parliament. But a timetable for the same is not clear. Nevertheless, the draft had been considerably well discussed by stakeholders while still under the aegis of the Uganda Law Reform Commission (ULRC). Given the procedure of Parliamentary debate, still, more stakeholders would be requested to make their submissions (when the law is at 'committee stage'). Therefore stakeholders who may still wish to make their submissions would be availed an opportunity to do so then.

### **Objectives, scope and coverage of competition policy/law**

It is appreciated locally that introducing competition in sectors previously dominated by state owned or heavily regulated vertically integrated firms and protecting consumers from supra-competitive pricing are difficult tasks requiring a very broad range of expertise and experience.

In addition to dealing with structural, stranded cost and universal service issues, there are four tasks typically needing careful attention during and after the transition from government ownership or heavy regulation to much greater reliance on market forces. The fifth area, embraced by an increasing number of countries, is consumer protection:

1. Competition protection - controlling anti-competitive conduct and mergers;
2. Access regulation - ensuring non-discriminatory access to necessary inputs, especially network infrastructures;
3. Economic regulation - adopting cost-based measures to control monopoly pricing; and
4. Technical regulation - setting and monitoring standards so as to assure compatibility and to address privacy, safety, and environmental protection concerns.
5. Consumer Protection – though partly the focus in technical regulation, stakeholders are of the view that consumer protection requires special focus. It involves setting and monitoring standards and benchmarks against which consumers would be protected against economic and safety fallout from unconscionable conduct of competing businesses.

Against that background, the Ugandan law, to be referred to as the Competition Act, is aimed at fostering and sustaining competition in the Ugandan market so as to protect consumer interests while safeguarding the freedom of economic action of various market participants and to prevent practices which limit access to markets or otherwise unduly restrain competition, affecting domestic or international trade or economic development and to establish regulatory body, the Uganda Competition Commission.

**Powers of the Commission:** The jurisdiction, power and authority of the proposed commission shall be exercised through benches, whose members shall be appointed by the Chairperson of the Commission. Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of the Civil Procedure Act and the Commission shall be deemed to be a civil court for the purposes of that Act.

Any person aggrieved by an order of the Commission from which an appeal is allowed by this Act but no appeal has been preferred, may within thirty days after the date of the order, apply to the bench which made the order for a review of the order and the bench may make such order on the application as it thinks fit. The law provides for establishment of a principle bench, on which the chairperson sits, as well as subsidiary benches. Each bench shall have a judicial officer appointed as member.

### **Dealing with horizontal restraints**

Part VI of the draft law on the broad area of "Prohibition of certain agreements" deals with the exclusive subject of vertical and horizontal restraints, specifically referred to in Section 43 of the draft law as anti-competitive agreements. Sub-section (1) of the specified section states: "An enterprise or association of enterprises shall not enter into any agreement or take any decision or engage in any

concerted action, in respect of production, supply, distribution, acquisition or control of goods, or the provision of services, which causes or is likely to cause an appreciable adverse effect on competition.” Sub-section (2) further stating: “An agreement reached or decision taken or concerted action engaged in, in contravention of sub-section (1) is void.”

Sub-section (3) deals exclusively with horizontal restraints thus: “An agreement entered into between enterprises or a decision taken by an association of enterprises, including cartels, or concerted practices between enterprises, involved in the same or similar manufacturing or trading of goods or provision of services, which:

- directly or indirectly fixes purchase or selling prices;
- limits or controls production, supply, markets, technical development or investment;
- shares markets or sources of production supply by territory, type, size of customer or in any other way;
- directly or indirectly results in bid rigging or collusive tendering, is presumed to have an adverse effect on competition.”

### **Dealing with vertical restraints**

Sub-section (4) of section 43 of the draft law deals exclusively with vertical restraints thus: “An agreement or concerted practice between enterprises at different stages or levels of the production chain in different markets, in respect of production, distribution, sale or price of or trade in goods or provision of services including: tie – in arrangement; exclusive supply agreement; exclusive distribution agreement; refusal to deal; resale price maintenance, is an agreement or practice in contravention of sub-section (1) if the agreement or concerted practice causes or is likely to cause an appreciable adverse effect on competition.”

However, the law includes more provisions to guide determination of restraints as defined in sub-section (4). This is for purposes of determining whether there is an adverse effect on competition. The draft law lists a number of factors that may be taken into account by the Commission. The commission is expected to consider whether the agreements or concerted practices-

- result in creation of barriers to new entry, or,
- result in forcing existing competitors out of the market, or,
- result in foreclosing competition by hindering entry into a market;
- result in any consumer benefit or pro-competitive impact ;
- contribute to the improvement of production and distribution and promote technical and economic progress, while allowing consumers a fair share of the benefits.

Nevertheless, Part VI of the draft law does not apply to any agreement, decision or concerted action leading to any combination (mergers and acquisitions), even if no notice is required to be given to the Commission under section 45 (it focuses on combinations or mergers and acquisitions).

Also, provisions do not restrict the right of any person to restrain any infringement of intellectual property rights granted in Uganda or to impose such reasonable conditions as may be necessary for the purposes of protecting or exploiting such intellectual property rights; and

The provisions of the law in Part VI do not restrict the right of any person to export goods from Uganda, to the extent to which the agreement, decision or concerted action relates exclusively to the production, supply, distribution or control of goods or provision of services for the export.

## **Dealing with dominant market position**

Part VII of the proposed draft law covers the broad area of “Prohibition against abuse of dominant position.” Section 44, sub-section (1) of the draft law prohibits enterprises from abusing their dominant positions.

In the proposed law, dominant position is defined to mean a position in the market which materially restrains or reduces competition in the market for a significant period of time; and where shares by that person or enterprise of the relevant market exceeds 35 percent.

According to draft law, for the purposes of determining whether an enterprise enjoys a dominant position, or otherwise, one or more of the following factors may be taken into account:

- market share of over 33 percent;
- size and resources of the enterprise;
- size and importance of the competitors;
- economic power of the enterprise including commercial advantages over competitors, which may be measured by reference, among other factors, to product range, established trade marks, customer loyalty, vertical integration of the firm, sales or service network;
- technical advantages enjoyed by the firm, which may be judged with reference, among other factors, to patents, know-how and copyright;
- dependence of consumers;
- monopoly status or dominance acquired as a result of any Act, or by virtue of being an undertaking of the Government, Government company or a public sector undertaking ;
- entry barriers if any, which may be judged by reference, among other factors, to regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high switching costs for customers;
- countervailing buying power;
- market structure and size of market.
- any other factor which the Commission considers relevant.

The proposed law states that abuse of a dominant position having an adverse effect on competition, competitors or consumers occurs when an enterprise:

- directly or indirectly imposes unfair or discriminatory purchase or selling prices or conditions, including predatory prices;
- limits production, markets or technical development to the prejudice of consumers;
- indulges in actions resulting in denial of market access;
- makes the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of those contracts;
- uses dominance in one market to move into or protect another markets.

## **Dealing with mergers and acquisitions (M&As)**

Part VIII of the draft law covers regulation of “combinations” or Mergers and acquisitions. Like competition law in other jurisdictions, the Ugandan draft law provides that it is an obligations to give notice of combinations in certain cases.

The law provides that “Any person who proposes to enter into an agreement or combination ...shall give notice to the Commission in the prescribed form, specifying the details of the proposed agreement or combination, within seven days after the occurrence of any of the following events-

- the Board of Directors of respective companies accepting a proposal of merger or amalgamation;
- the conclusion of negotiations of an agreement for acquisition or acquiring of control;
- the execution of a joint venture agreement, shareholder agreement or technology agreement, in relation to any joint venture.

Only the Commission (competition authority/agency) has powers to grant an exemption from filing the notice required under the law. This should be in respect of an acquisition by a public financial institution, foreign institutional investor, bank or venture capital fund under any covenant of a loan, share subscription or investment agreement or financing facility. The enterprise concerned should apply for exemption in the prescribed form for exemption, specifying the extent and terms of control, the circumstances for exercise of such control, the consequences of default and control of the enterprise.

However, a public financial institution, foreign institutional investor, bank or venture capital fund is not exempted from filing a notice under the law, in relation to any inter-related or controlled enterprise at the time of acquisition or establishing a combination.

### **Powers to investigate into acquisitions, mergers and joint ventures**

The draft law gives the competition authority powers to enquire into every combination referred to for satisfying itself that the combination does not cause or is not likely to cause any adverse effect on competition within the relevant market in Uganda.

The law empowers the authority to carry out enquiries into any acquisitions where the parties to the proposed combination namely, the acquirer and the company whose shares, voting rights or assets are being acquired, jointly would have assets worldwide, exceeding five hundred currency points (Ush 10,000,000/ US\$5,600) or turnover worldwide, exceeding one thousand five hundred currency points (Ush30,000,000/ US\$16,800).

Alternatively, the group to which the entity in which the shares, assets or voting rights, as the case may be, would have been acquired will belong, would have assets in Uganda in excess of two thousand currency points (Ush40,000,000/ US\$22,400) or a turnover exceeding six thousand currency points (Ush120,000,000/ US\$67,200); or worldwide, assets in excess of one billion United States dollars or a turnover in excess of half a billion United States dollars. (In our view, unless otherwise construed, the above would constitute thresholds that the CRR advisor could have referred to in his comments. However, as regards to their possible effects on the business community or the planned regulatory body, we can not ascertain that for now. Nevertheless, this could be subject to further debate in the meantime while awaiting the tabling of the draft law before Parliament).

Also to be overseen, is a combination involving control by a person over an enterprise where that person has already direct or indirect control over another enterprise engaged in production, distribution or trading of the same or substitutable goods or provision of the same or substitutable service.

### **Dealing with cross-boarder abuses**

The law provides for regulation of acts taking place outside Uganda but having an effect on competition in Uganda. The competition regulatory authority, the Uganda Competition Commission is given powers under the draft law to regulate cross boarder acts.

Where any practice of an enterprise, as provided for under the law, is carried on outside Uganda, but has and is likely to have an appreciable adverse effect on competition in Uganda,



the Commission has jurisdiction to make such orders as may be necessary to combat the effect of the practice.

Also, the commission is given powers to vet combinations (mergers and acquisitions), including in situations when one of the parties is from outside the territory of Uganda. The powers are conferred to the commission to carryout enquiries with a view to satisfying itself whether that combination causes or is likely to cause an appreciable adverse effect on competition within the relevant market in Uganda.

### **Extra-territorial jurisdiction and its effectiveness**

Extra-territorial jurisdiction of would only be effective when considered under the broader bilateral or regional cooperation arrangement of agreement with counterpart agencies in neighbouring territories.

Because Uganda doesn't have a functional competition framework, the effectiveness of the envisaged arrangement cannot be ascertained at this stage.

### **Checks and balances**

In Uganda, regulatory reform as well as process of establishment of a framework on competition regulation, has induced important debates about the degree to which sectors being opened up to greater competition should also be subject to general competition laws enforced by the same competition agency responsible for protecting competition in other sectors of the economy.

In practice, regulatory reform has rarely consisted simply of abolishing regulations and leaving everything up to market forces that would later be operating within general framework competition law. It is expected, like in a number of situations elsewhere, policymakers would adopt the view that competition must be fostered by a new kind of regulation which may or may not be intended to be strictly transitory.

There are some examples of new regulators being given mandates to promote competition and even being charged with formulating of competition rules. The status quo, with regard to division of labour, is that regulatory agencies by default are supposed to ensure that competition takes place in the sectors under their respective jurisdiction. However, the draft law gives the competition agency the ultimate authority with regard to competition regulation. The law provides that: "where in the course of a proceeding before any statutory authority entrusted with the responsibility of regulating any utility or service, an issue is raised by any party that any decision that the statutory authority has taken or proposes to take, is or would be, as the case may be, contrary to the provisions of this Act, then the statutory authority shall make a reference to the Commission".

### **Any other characteristics of the competition law:**

#### **Exclusion of jurisdiction of civil courts**

The law provides that no civil court would have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under the proposed law to determine and no injunction would be granted by any court or any authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this law. However, the Constitution of Uganda provides that the High Court has jurisdiction in all matters. In light of this, therefore, the proposed law would have to be revisited. The would-be conflict of the law and the constitutional provision should be addressed during debate in Parliament and it is expected that it would be taken care of as several stakeholders have already raised it.

### **Competition advocacy**

Mechanisms on adversely have been built in the proposed law. Particularly, in formulating a law or policy, the Minister responsible for trade or whose docket the proposed changes fall, may make a reference to the Commission for its opinion on possible effect of such law or policy on competition and on receipt of such a reference, the Commission is mandated to, within sixty days, give its opinion to the Minister.

### **Establishment of competition fund**

The law provides that the minister responsible for trade should establish a fund to be called the Competition Fund. The fund, among other sources, would be credited with fees received from any person for filing a complaint or any application under this Act; the money received as costs, if so directed by the Commission, from parties to proceedings before the Commission; grants and donations given to the Fund by the Government, companies or any other institutions for the purposes of the Fund; the interest accrued on the money paid to the fund; and the interest or other income received out of the investments made from the Fund.

The Fund would to utilised for promotion of competition advocacy, creating awareness about competition issues, and training, in accordance with such rules as may be prescribed.

The Fund would be administered by a committee of members of the Commission as would be determined by the Chairperson. (the deleted statement was inserted inadvertently and, indeed as the CRR advisor pointed out, it did not make sense).

## 5.0 SECTORAL APPROACHES

In Uganda, the deregulation policy was instituted as part of other measures considered crucial to the economy as a means of checking anti-competitive activities and actions of unethical firms and persons that could be injurious to the economy (and to small extent individual consumers). It was also due to the need to put in place a rigorous regulatory regime following withdrawal of government from business.

It was envisaged that possible unrest could emerge in areas where one or more firms may be operating, raising the prospect of price-fixing, attempts to run competition out of the market through hostile takeovers, and creation of virtual monopolies etc. Through agencies like the Uganda Communications Commission (UCC) the regulatory body in the communications sector, government has prescribed safeguards. The framework covers licensing, supervision, regulation and surveillance. The agencies have investigative powers as well as powers to discipline, handle consumer complaints and to arbitrate in disputes involving firms. The agencies enjoy a large measure of operational and financial autonomy, although they are still under the oversight of a Minister responsible to Cabinet and have ultimately to account to Parliament through the relevant Minister.

In addition, there are intra-sectoral councils and associations like the Pharmaceuticals Council and Association, Law Society and Council, Medical and Dental Practitioners' Council and the Broadcasting Council with powers to set or advise on operational and ethical standards and a code of conduct; powers to investigate member (individuals or companies) and either directly take or recommend disciplinary action. In this respect, this voluntary sector association may act on its own or at the request of or in concert with the sector agency or government.

Nevertheless, while competition regulation has been instituted in some sectors that have recently been restructured, anti-competitive practices (ACPs) or unfair trade practices are not broadly defined under the established frameworks and therefore are not *per se* illegal. Nevertheless, a fair level of competition has been encouraged which could act as a foundation for establishing a culture of competition that could require considerably less effort to enforce.

### **Utilities Sector: Power**

Before enactment of the Electricity Act 1999, the Uganda Electricity Board (UEB) a Corporation established as a body corporate by the Uganda Electricity Act, Cap 135 was in charge of generation, transmission, distribution and supply of electricity. UEB would in addition make and recover charges for electricity, construct, evict and maintain power lines, acquire land and set tariffs for electricity.

This scenario was changed with the enactment of the Electricity Act, 1999. The Act established the Electricity Regulatory Authority (ERA) whose main functions are to issue licences for generation, transmission, distribution, sale of electricity and consumer complaints handling. The ERA also ensures that companies issued with licences do abide by the conditions of their licences, which may be revoked in case of continued non-compliance.

Under section 126 of the Act, the Minister is empowered to form successor companies to assume all the duties and functions of the Uganda Electricity Board, which would eventually be dissolved.

Consequently, three companies have been formed to take over the functions of UEB and these are Uganda Electricity Generation Company Ltd, Uganda Electricity Transmission Company Ltd, and Uganda Electricity Distribution Company Ltd. According to the new power policy, power generation and distribution are to be open to competition but transmission would be the preserve of the state.

Accordingly, functions of the UEDCL have been concessioned to Umeme Limited a consortium made up of South Africa-based powerhouse Eskom and Globeleq, a subsidiary of the Commonwealth Development Corporation (CDC). UEGCL has gone to Eskom and UETCL remains in the hands of government. Umeme Limited and Eskom, in theory, are open to competition, as new players have been licensed to start business. However, the newly licensed entities are very small in nature that they cannot be construed to pose any threat to Umeme and Eskom. It is envisaged that this would eventually create competition, which may result into better services for the consumers.

**Generation** – The main power generation facilities in the country (hydro-electric power) are in the hands of the private sector. The two power generation facilities; Kiira and Nalubaale Power Stations are currently being run under a 20-year concession to South Africa-based Eskom. However, thermal generation plants in Northern Uganda are being run by government under Uganda Electricity Board (UEB). A new 50mw thermal power plant has been established in Kampala (Lugogo), under a special lease arrangement between government and Aggreko International Power Company.

West Nile power Limited, another small power plant currently serving the major towns of Arua and Nebbi is another player that emerged most recently. Smaller hydroelectric power generation plants exist at Kilembe Mines (Kasese), Maziba (Kabaale) and Uganda Cobalt Company (Kasese).

**Transmission** – The function as well as the power transmission entity are in the hand of the state and are to remain that way unless the law is changed. According to the Electricity Act 1999, the national power grid (high voltage) and the entire function of electricity transmission shall be overseen and undertaken by the state. UETCL undertakes the above functions.

**Distribution** – Restructuring and privatisation of the country's power sector received new impetus in 2005 when Umeme, a consortium made of Eskom and Globeleq, a subsidiary of the Common Wealth Development Corporation (CDC) took over UEDCL. Umeme emerged as the first private sector company to distribute power in the country.

In spite of the recent developments, the power sector in the country is dominated by South Africa-based power giant Eskom by way of its acquisition of a 20-year concession to run largest power generation plants in the country and its stake in the Umeme Consortium.

## **PHARMACEUTICALS SECTOR**

Before 1993, trading in drugs was unduly highly restricted for reasons related to public safety and national security.

In Uganda there is generally no restriction on what one may engage in subject to obtaining the relevant licences, and fulfilling other requirements on health, premises and their location and where availability of the relevant expertise may be a prerequisite, for example to operate a dispensing pharmacy. Even in some of these cases, lax supervision and application of the law could result in unfair competition.

Since the 1960s, the External Trade Act was the central regulating statute for import and export operations. Following the enactment of the National Drug Authority (NDA) Statute in 1993, the situation has changed. The law among other things gives the Minister responsible for health powers to require that a licence be obtained to export or import certain goods. However, the powers over licensing importers of pharmaceutical products have now been transferred to the autonomous NDA.

The NDA statute lays out the National drug policy and contains a provision for the authority to ensure the provision and use of essential and efficacious drugs. The statute covers government control on the manufacturing, exportation, marketing and use of drugs. The National drug policy is supposed to cover both the private and public sector.

Although one of the functions deals with “ensuring that drug needs are met as economically as possible”, the law does not have an explicit provision that empowers the drug authority to enforce competition in the marketplace.

According to available data, economic liberalisation in the last 10 years as well as establishment of the NDA have not only helped bridge the demand of pharmaceuticals in the country, they have largely precipitated competition in the sector. Due to the open regime related to licensing and importation of drugs in the country, competition now prevails relative to the 1980s and early 1990s although by default.

For instance, there are concerns that centralised procurement by government through a state-run company, the National Medical Stores (NMS) continues to lockout many would-be suppliers and may in the process mean consumers are paying higher prices for drugs they would otherwise get at lower prices.

Government had indicated that the NMS would have been privatised by 2005, a development that could open state procurement of pharmaceutical products to competition and lead to price reduction and, it was anticipated, availability of variety of competing products in the market.

## 6.0 INTERFACE BETWEEN COMPETITION AND ECONOMIC REGULATION

### 6.1 Utilities: Communications Sector

After years of slow growth and inefficient management, Uganda's communications sector experienced a growth spurt in the late 1990s, a period in which the sector was liberalised and opened to competition for the first time. Although in principle the country's economy was liberalised in 1993, the communications sector did not adjust in response until the late 1990s when a new legal and institutional framework was put in place.

The passage of the Communications Act 1997 by Uganda's 6<sup>th</sup> Parliament set into motion a new era in the country's communications sector with wide-ranging implications to the whole economy. First, the law broke the monopoly of the state-run Uganda Posts and Telecommunications Corporation (UPTC), hitherto the only player in the local communications sector. UPTC was for long the sole telecommunications company, courier service provider in addition to offering money transfer services and banking (savings accounts) services.

Most importantly, the law put in place the Uganda Communications Commission (UCC), the sector regulatory body. UPTC was split into the Uganda Telecommunications Limited (UTL), Uganda Posts Limited (UPL) and Post Bank Uganda Limited.

UCC issues licences to prospective operators of all services in the communications sector in line with regulations laid down in the communications Act 1997. The Act also gives the Commission powers to ensure competition prevails in the market.

Several companies have since emerged in the private sector offering services that include: VSAT business services, mobile trunked radio services, cellular services but mostly valued added services like: payphones, fax bureau, call boxes, internet cafes among others.

The courier market has expanded tremendously to include globally renowned companies like: DHL, TNT, FedEx, Yellow Pages and Skynet. Local and regional companies include: Daks Couriers, ACME

#### **Box1: Case Study: Competition Regime under test**

UCC's role as a regulator faced its first test when competitors emerged in the country's mobile telephony service market leading to price wars with the new operators reducing call tariffs significantly in a development that bore the hallmarks of predatory pricing. When the privatised state-run UTL started cellular telephony services in 2001, call rates further dropped. MTN Uganda had started the first downward trend in prices. However, without direct intervention in the setting of prices, the phone tariffs have remained stable since mid 2002. The stability is linked to government fiscal policy, which involved introduction of taxes on phone call credit (airtime) for mobile phone that took effect in 2001. Consequently, companies were, indirectly through a fiscal policy restrained from making further cuts in phone tariffs.

#### **Internet Services**

Price wars also broke out among Internet service providers between 2001 and 2002 leading to the collapse of several Internet cafes in Kampala. However, the matter was resolved by the Association of Internet Cafes that resolved that net-time (per-minute charges) should not be reduced below Ush 25 (US\$ 0.013).

In 2002, the UCC waived licence fees to Internet cafes as a way of encouraging proliferation of communication services. However, the waiver had other effects like increasing the number of businesses offering Internet services. The move also removed some financial pressure off Internet cafes, which could have contributed towards stability of prices and dumpen the price wars.

Cargo Limited, Elma Express Delivery, Trans Africa Air Express Couriers Limited in addition to UPL's EMS Speed Post. As a result of liberalisation, the telecommunications sector has since attracted: South African Mobile Telephone Network (MTN) that holds the second national network operator licence. UTL was privatised in 2000 with a controlling stake (49 percent shares) sold to the UCOM consortium made of Egypt's Orascom, Germany's Detecon and Telecel. CelTel Uganda, the pioneer mobile phone company in the country holds only a mobile telephony license.

As a result of competition in the marketplace, telephone fixed lines have jumped from 45,000 in 1997 to 71,000 in 2004; mobile phone lines shot up from 3,000 in 1996 to close to 1,100,000 in 2005; call offices increased from 992 in 1997 to over 5000 in 2002 and internet subscriptions from 1,000 in 1996 to over 6,000 in 2000 and 15,000 (2003).

## **ENERGY (ELECTRICITY POWER) SECTOR**

Uganda's electricity grid serves 200,000 households and 5% of the country's 24 million people. Consumption is growing steadily due to the booming construction and manufacturing sectors.

The country's hydro-electricity power sub-sector dates back to the 1950s when the Owen Falls Dam (renamed Nalubaale in 2000) was constructed. A second power station, Kiira was commissioned in 2000. UEGCL owns both power stations.

### **The case for competition in Uganda's power sector**

Until 1999, the state-owned Uganda Electricity Board (UEB) was in charge of power generation, transmission and distribution. In effect, UEB comprised the entire power sector of the country.

However, following passage of the Electricity Act 1999, UEB was split into three companies: Uganda Electricity Distribution Company Limited (UEDCL), Uganda Electricity Generation Company Limited (UEGCL) and Uganda Electricity Transmission Company (UETCL).

The law also provides for the Electricity Regulatory Authority (ERA), the sector regulatory agency. ERA was established in 2001 when its administration was constituted. Most of its structures have since been put in place.

The resultant effect is that the law put into force a new legal and regulatory framework premised on the need for privatisation and liberalisation of the sector leading to competition (at least for power generation, and to some extent for concessions for distribution) and therefore, with the outcomes of improved service delivery and efficiency.

In line with the new framework, UEGCL was privatised early in 2003 under a 20-year concession to South Africa-based Eskom Africa, one of the leading hydropower utility companies in Africa. UEDCL was privatised in 2005.

Earlier, government licensed two private companies to develop hydro-electricity power facilities along River Nile. The two companies are the American AES - Nile Independent Power and Norwegian Norpak. However, due to policy bottlenecks and financial difficulties faced by the Norwegian and American companies respectively, construction of the power plants has not taken off. Instead, government has licensed a new investor to develop a 300mw power generation facility at Bujagali, the location formerly to be developed by the American AES-Nile Independent Power.

In line with the Electricity Act, several companies have applied and been granted power generation licenses. The companies have subsequently signed supply agreements with the UETCL. The companies include: the state-owned Kilembe Mines Limited that operates a 2mw power station.

Kasese Cobalt Company Limited, a Canadian cobalt mining concern and Kakira Sugar Works Limited. Two other small hydropower power generation companies are in the process of setting up facilities along the Nile in West Nile, to the Northwest of Uganda.

**Box 2: Case study: Failure of privatisation and liberalisation?**

The prevailing drought conditions in the region, unprecedented since independence of Uganda in 1962, have exposed the vulnerabilities in the country's power sector. The water level in Lake Victoria from which River Nile originates, has sank by 3metres as at January 2006. The situation has been exacerbated by reliance on hydroelectric power that, as the drought has indicated, is vulnerable to the vagaries of nature. Power generation capacity at Kiira and Nalubale dams combined, formerly at 340mw, has since dropped to 170mw. A 50mw thermal plant located in Kampala has done little to nothing to alleviate the prevailing power shortages.

Secondly, it has been widely observed that power generation was not given sufficient attention by government, resulting in power demand outstripping supply by a significant proportion. It had been expected that at least two power generation plants would be operational in the country shortly after 2004. The first one, Bujagali, is expected to come online after 2010. Consequently, the power sector has become the single sector blamed for undermining production in the country, particularly to the largely infant manufacturing sector.

By January 2006, the whole country came under a painful power-rationing regime that almost brought the manufacturing sector on its knees. It is feared that the on-going power woes could adversely affect the economy of the country, whose growth recently lost some of its previously high progression impetus.

Government is considering setting up more thermal generation plants, to produce up to 150mw of power, to ease on the power crisis. However, the interventions are not commercially viable and are not expected to attract bidders with a long-term view in the power sector. The high cost of fuel, in addition to competition from the more efficient hydropower facilities, in the long-term, mean that thermal generation plants cannot survive at all in the power sector without state support.

Also, the search is on for alternative power sources. However, the options are expensive to exploit, making most of them commercially unviable, unless they are subsidised by the state. Solar facilities remain out of reach to most Ugandans, 38% of whom live below the poverty line. Also, the high costs of production in the country, including power, make other power sources other than hydro only feasible as a stopgap alternative in the short-run.

All the above developments have come on the heels of phenomenal increments in power tariffs much to the discomfort of most consumers. The ERA has given notice that the cost of power would go up once more during the first quarter of 2006.

## **FINANCIAL SECTOR**

Uganda's financial sector is increasingly becoming more competitive following the establishment of new legal and institutional frameworks. Banks and banking services are now regulated under the Financial Institutions Statute 1993, while the insurance industry is under a new framework following enactment of the Insurance Statute 1996. The Financial Institutions Bill that is intended to replace the Financial Institutions Statute is aimed at enhancing prudential regulations governing banks and non-bank financial institutions. Another proposed law, governing micro-credit institutions has been



enacted, expected to lend some order to a sub-sector that has grown in breadth and influence over the last 5 years.

However, the country's financial system remains small, in terms of value and the volume of transactions undertaken, and undiversified in terms of the type of transactions that it undertakes. By the end of 2000 there were 16 commercial banks, 8 credit institutions, 2 development banks, 15 insurance companies, 28 insurance brokers, 18 micro-finance institutions and 62 foreign exchange bureaux.

## Banking

Commercial banks dominate the financial sector and account for over 90 percent of the assets of the banking system.

Before and after independence, several commercial banks operated in the country, notably from India and the United Kingdom (UK). However, the nationalisation drive of the late 1960s resulted in state acquisition of majority shares in the banks. Apart from the state-owned Uganda Commercial Bank, the state acquired shares in Barclays Bank, Bank of Baroda and Tropical Africa Bank (formerly Libyan Arab Bank).

Despite the liberalisation and divestiture of state stake in commercial banks in the country under the privatisation programme, most local banks are weak with many sticking to retail banking and generally shying away from lending. However, two banks remained dominant: the recently divested former state-owned Uganda Commercial Bank Limited (UCBL) that dominated the so-called indigenous banks and Standard Chartered Bank that tops among the foreign ones. UCBL was recently bought by Standard Bank International (Stanbic) of South Africa

### Box 3: Banking: In spite of privatisation, changes are slow

The Financial Institutions Statute 1993 was enacted to put into place a new framework to deal with financial institutions extensively, including cooperative societies, credit institutions and building societies. The law was aimed at strengthening and regulation of financial institutions by the central bank as a precursor to opening up the sector to competition and therefore more efficient service delivery.

Enforcement of the new law resulted into the closure of 4 local banks, partly for non-compliance with the capital adequacy requirement stipulated in the law. The law also sought to break the practice of family ownership of banking institutions blamed for mismanagement and closure of at least two of the 4 banks whose operations were halted.

After the bank closures, competition increased in the commercial banking sector leading to improvement in service delivery, slight lowering of interest rates, "exotic" credit schemes and proliferation of new services like automatic teller machines and electronic money transfer among others.

The situation, in terms of competition has changed following the sale of UCBL to Stanbic. Its obvious that the acquisition of UCBL with its extensive branch network, makes Stanbic the dominant commercial bank in the country. In 2002, Standard Bank International of South Africa bought 80 Percent shares in UCBL thus emerging the dominant entity. UCBL was the largest commercial bank in the country overall.

The development has once again adjusted the market share of the various banks in the commercial banking sub-sector although it's not clear yet, what effects the divestiture would have on competition in the long-run.

The development banking subsector is under the monopoly of the state-owned Uganda Development bank. The bank is slated for privatisation with 30 percent stake offered to a multinational financial investor, 30 percent to strategic investors with the rest going to the general public through the stock exchange. At regional level Uganda is host to the East Africa Development Bank. Merchant banking is completely non-existent in the local banking sector.

## **Insurance**

Although the local insurance industry was liberalised in 1990 when the state-owned Uganda Insurance Corporation (NIC) was opened to competition to the private sector, the industry is still largely under-developed and therefore does not adequately meet the needs of the market. The insurance industry is licensed, regulated and streamlined by the Uganda Insurance Commission (UIC) in line with the Insurance Statute of 1996.

The industry, valued at Ush 40billion in 2002, has limited coverage: most insurance companies are in general insurance and Life assurance. Engineering and liability insurance is underdeveloped; the insurance market does not provide aviation, marine hull, agriculture, livestock and crop insurance. Social insurance for instance education and health expenses are totally lacking.

### ***Elusive competition in insurance sector?***

By 2001, there were 15 insurance operators categorised: 11 covering non-life insurance only and 4 covering non-life and life insurance. There were 28 licensed insurance brokers categorised as: 4 for non-life insurance only, 19 for non-life and life insurance, 2 for loss assessment, and 3 for insurance surveyors and loss assessors. The industry's expansion is largely stymied by low level of awareness about insurance services, partly caused by relatively high illiteracy rates.

As a consequence, competition in the sector remains relatively low or lacking with regard to certain products. According to a 2000 report on the industry, 70 per cent of the insurance market is under the control of 4 insurance companies and close to 60 per cent of insurance brokers' business is under control of one broker.

The Insurance Statute of 1993 sought to strengthen the industry as well as make it more competitive so as to attract new players, particularly foreign investors. The American Insurance Group (AIG) joined the industry, which together with the recently privatised National Insurance Corporation (NIC) control the bulk of the business. It had earlier been envisaged that privatisation of NIC would serve as a major boon that would spur competition in the industry.

However, lack of competition mainly arises from weaknesses on the part of "indigenous" companies. When the UIC enforced a provision in the law that sets minimum capital requirements, over 6 local companies were locked out – some had less than Ush 10million as working capital. The law sets Ush 500m for local companies and Ush 1 billion for foreign ones as minimum working capital.

### **Anti-competitive practices in bus services affecting consumers**

To become a bus operator in Uganda all that is required is a vehicle irrespective of its conditions and age. This will cost on average US\$3,000 and a PSV licence, which is delivered after a basic visual inspection of the vehicle and without reference to any transport plan or strategy. The current organisation of transport services does not allow efficient use of the vehicle fleet. The transport market is not competitive, and is controlled entirely by one Association, which encourages admission of new members who operate used and non-roadworthy vehicles.

The Directorate of Transport is under-staffed and not equipped to carry out the planning, regulation and monitoring functions.

The Association therefore not only sets fares, but also allocates routes and carries out self-enforcement on their operations, regardless of transport needs and efficiency. The Association encourages the enrolment of new members since payment of membership fees is the sole condition for their admission. Since collecting revenue for local authorities has become its main activity, the Association has diverted from its initial objectives and has been neglecting the interests of its members.

Operating bus services that offers obvious prospects for profitability, attract many unskilled operators/drivers to enter the transport business, which has led to an oversupply of vehicles of high average age (15 years, or more), high queuing time at bus stations (1 hour), which in turn leads to low vehicle availability and utilisation and to high vehicle operating costs, thereby affecting lay consumers/users of the service.

*(Source – 'Urban transport services in Sub-Saharan Africa: Recommendations for reforms in Uganda', M Benmaamar, 2001)*

## **7.0 REGIONAL INTEGRATION**

### **COMESA competition policy and law**

In a bid to ensure equity and fairness through a predictable and level playing field, COMESA has instituted measures to improve the business environment under which economic operators in the regional economic bloc undertake their work. In addition to elaborating the trade remedies and safeguards, COMESA has worked towards raising awareness, understanding and appreciation of competition law and policy at national, regional and multilateral levels as member states integrate more deeply regionally and multilaterally.

Accordingly, COMESA prepared and ratified a Regional Policy to deal with anti-competitive behaviour and restrictive business practices. Article 55 of the COMESA treaty provides for a regional policy on competition and was used as a starting point for developing a regional competition policy.

Also, COMESA has urged member states to enact Competition Laws and to establish competent enforcement authorities. Currently, only 4 countries (Kenya, Zambia, Zimbabwe and Tanzania) have a law and an enforcement agency. One country (Malawi) has a law but

no enforcement agency. Five countries (Egypt, Mauritius, Namibia, Uganda and Swaziland) are at different stages of development of national laws.

The objectives of the regional competition law include: Dealing with anti-competitive practices of a regional (cross-border) nature; Institute formal co-operation regionally among competition authorities; Enhance inter-agency co-operation, as well as getting more involved as a region in multilateral discussions and policy dialogue on competition policy.

The law contains specific provisions on merger control - types of mergers, the need for pre-merger notification, and implications for investment in the regional economy. With regard to consumer protection, the proposed law and policy contains provisions on misleading and deceptive conduct, unconscionable conduct and for unsafe goods. Both policy and law are in the process of enforcement.

### **East Africa Community Competition Policy and law**

Spurred by inadequacies incidental to the practice that national competition authorities do not normally protect competition outside their own jurisdictions, the EAC moved to put in place a regional competition framework, complete with a competition policy and law. When fully enforceable, this would create a framework with powers of checking cross boarder restraints to competition.

EAC competition policy takes precedence over partner states' national competition policies. Within, its jurisdiction, the EAC competition policy will take precedence of over other regional policies on competition. The policy deals with cross-border restraints of competition and international dimensions of competition, affecting trade and competition between the EAC and third countries. The law provides for a regional competition authority independent from Partner States' governments as well as from any other EAC organ or institution. However, the decisions of the authority shall be subject to judicial review by the East African Court of Justice. The EAC policy and law contain specific provisions on merger control modelled on the COMESA framework.

## 8.0 CONSUMER PROTECTION LAW (MECHANISMS)

Scattered provisions on consumer protection and welfare exist in sectoral policies (water, telecommunications, electricity, etc). However, a comprehensive consumer protection policy is not in place yet, although a draft to the effect is expected to be originated by cabinet when it's considering the draft proposed Consumer Protection Bill.

The absence of consumer protection policy and supportive legislation in the country means that consumer perspectives in trade are not taken into account. In case they are considered, it is haphazard done. Therefore, enactment of policy to this effect will go a long way in refocusing the attention of authorities and stakeholders on the market practices that may be injurious to the interests of both consumers and businesses alike.

Elements of consumer policy exist in other policies, particularly in sectors that have been recently restructured with additional regulatory oversight e.g. power, telecommunications, financial services (insurance).

### **Envisaged consumer protection policy**

The Constitution of Uganda seeks to ensure for its citizens—social, economic and political justice. However, the status quo is to the contrary of that ideal situation envisaged in the supreme law of the land. Consumers face imbalances in economic terms, education/awareness levels and bargaining power.

Currently, neither is there an overall consumer protection policy nor a law to protect consumers in Uganda. A draft proposed bill was produced in 1997 and presented to the ULRC during the review of commercial laws.

With regard to consumer issues, it is envisaged by the local consumer movement that the National Consumer Policy should promote and protect consumer rights for just, equitable and sustainable economic and social development.

The Movement has suggested that , taking into account the needs of and priorities for consumers, the objectives of the National Consumer Policy thus should be to:

- Strengthen production and distribution patterns which are responsive to the needs of consumers, and with the goal of promoting sustainable consumption on an equitable basis;
- Advocate and promote ethical conduct, transparency, consumer participation and responsiveness in the choice of appropriate technology and environmental responsibility in providing goods, services and technology to consumers at all levels;
- Promote the development of market conditions which provide consumers with appropriate choices at fair prices and right quality, and lesser burden on the environment;
- Promote assessment of consumer impact in every area of governance where consumer interests are affected;
- Promote participation of consumers in every area of governance
- Promote adoption of Citizens' Charters for greater accountability and transparency in governance;
- Encourage policies and programmes to enable sustainable production and consumption patterns; and
- Promote regional and international co-operation in the field of consumer protection, sustainable consumption and production patterns.

The policy should be designed to:

- Empower consumers to have access to the basic needs of life;

- Protect consumers from hazards to their life and safety;
- Enhance the access of consumers to adequate information to enable them to make informed and environmentally benign choices according to individual as well as societal needs;
- Promote consumer education through formal as well as non-formal education systems so as to help consumers in their decision making;
- Promote accountability and transparency through adoption of Citizens' Charters;
- Provide expeditious and inexpensive system of delivery of justice;
- Promote an independent consumer movement in the country by providing assistance to consumer and other relevant groups to form their organisations and giving them the opportunity to present their views in the decision-making process.
- Initiate and implement appropriate mechanisms for exchange of information on measures of consumer protection, nationally, regionally and internationally.

### **Draft consumer law:**

A major process of law reform has been underway in Uganda since 2000 when the statutory Uganda Law Reform Commission (ULRC) was formed. The reform is underway in the context of other legal and economic reforms. One of the prominent issues that have arisen since the onset of the law reform process started is consumer protection. Spearheaded by the local consumer movement, the process of enactment of a consumer protection law has been protracted but with apparently low interest on the part of government.

In addition there is increasing anxiety in the country regarding the impact of trade liberalisation on consumer welfare and how it can be addressed in broader to government for consideration as part of the organisation's bid to ensure that a law to protect consumers was enacted. Contents of the draft have been considered and are included in the government draft produced by the ULRC. The draft awaits cabinet approval before it commences to Parliament.

The proposed draft Consumer Protection Bill recognises the following six rights of consumers: the rights to Safety, to be informed, Choice, Representation, Redressal, Consumer education. Furthermore, from the U.N. Guidelines for Consumer Protection, 1985, two other rights of consumers are inferred: the right to: Basic needs and the right to a Healthy environment.

The draft also addresses the following broad areas:

- Safety requirements: Defines what safe consumer goods are as well as provides for general safety requirements that consumer goods should comply with. It stipulates illegal acts that are punishable under the law.
- Advertising: It covers and defines what is permissible and otherwise in the process of advertising. It identifies acts that are punishable in the event of breach of law.
- Guarantees: Sets principles and guidelines for guarantees. Clearly states that its an offence to circumvent the law with regard to offering guarantees to consumers.

Measures for consumer redress and mechanisms: Gives a broad set of options for defence, promotion, enforcement of consumer rights including individual, collective, mediation, negotiation, arbitration or litigation.

## 9.0 COMPETITION PERCEPTION SURVEY IN UGANDA - DECEMBER 2005

### Overview:

The survey was a follow-up to the earlier one carried out to gauge the baseline status of Uganda on market competition. The survey took place in November-December 2005 and covered public-private sector and civil society organisations as well individual customers.

A total of 100 institutions (80%) and individual consumers (20%) were sampled and their respective responses logged. From the survey findings, it was established that the vast majority of respondents averred that consumers are moderately affected by the practices, mainly bid rigging, unfair trading practices, price discrimination and market sharing.

Identifying trade, manufacturing and the services sectors as most affected, the respondents also contended that rules and regulations to check ACPs were inexistent. Some couldn't tell and were not aware of the existence of the rules and regulations.

The majority called for enactment of a comprehensive law to check ACPs whose objectives would focus on economic efficiency and consumer welfare. Details of the survey findings are available later in this chapter.

### Methodology

The survey was based on questionnaire interviews conducted under the direction of the 7Up3 Project team leader, CONSENT. The samples for the survey were, save for consumers, pre-selected samples of respondents selected from five stakeholder categories to wit: Consumers (COs); businesses/business support organisations (BUSO); Research and Academic Institutions (RAI); Law, Policymakers and Regulatory bodies (LPR) and Civil Society Organisations (CSOs).

The pre-selection aspect of the sample was used to avoid respondents without any idea of issues at hand. Non-response in questionnaire interviews produces some known biases in survey-derived estimates because participation tends to vary for different subgroups of the population, and these subgroups are likely to vary also on questions of substantive interest.

### Sample size and survey area

A sample size of 100 was administered, 80 percent of which were targeted at institutional respondents. This was aimed at gauging the knowledge of key stakeholders by category in a bid to ascertain their ability to meaningfully get engaged in the capacity building and advocacy elements of the project.

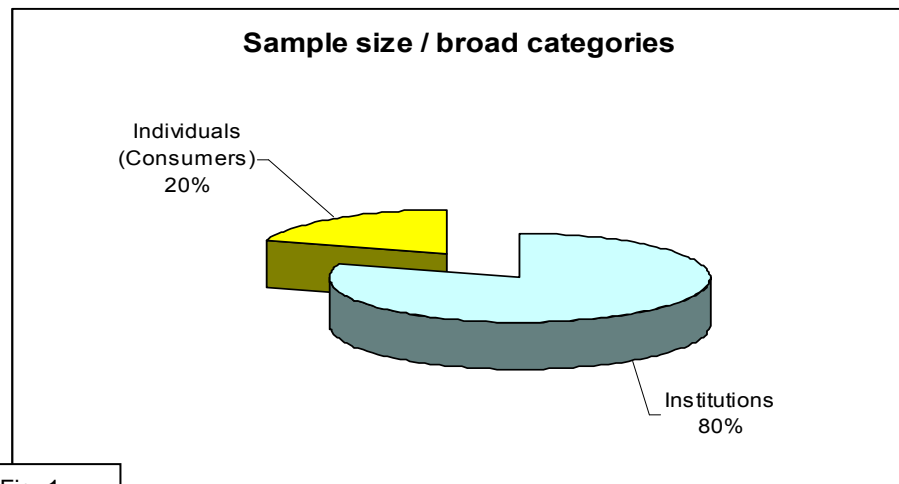


Fig. 1

advocacy elements of the project.

### Choice and nature of respondents

Given the selection of respondents as well as limited sample, the geographical coverage of the survey was limited, although in terms of respondents who would be expected to actively participate in future project activities, the samples were meaningfully representative.

## SURVEY FINDINGS

### Awareness and impact

Close to half of the respondents interviewed on average (Consumers-40%; businesses/business support organisations (BUSO) -40%; Academic and Research institutions (ARI) – 50%; Civil society (CSOs) - 42%; Policy/law makers & Regulatory bodies (LPRs) - 40%) admitted that they had knowledge about the ACPs in the Ugandan market.

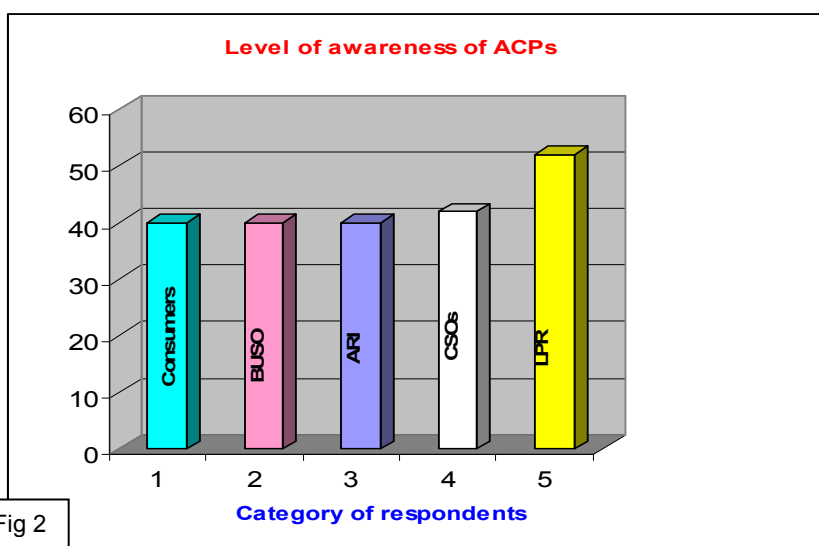


Fig 2

The results reflect that knowledge about competition issues is relatively appallingly low, even among the elite and educated. Given that significant efforts were channelled into sensitising respondents before the interviews, the responses were an indictment of low business and economic literacy in the country.

A substantial proportion of the respondents stated that they were significantly affected. The breakdown was: Consumers-50%; BUSO-45%; ARI – 50%; CSOs - 40%; and LPRs -35%.

The results were consistent with responses on awareness about competition. Still, this reflects that since few (half) of the respondents had knowledge about competition issues, a similar figure would be in position to appreciate its impact.

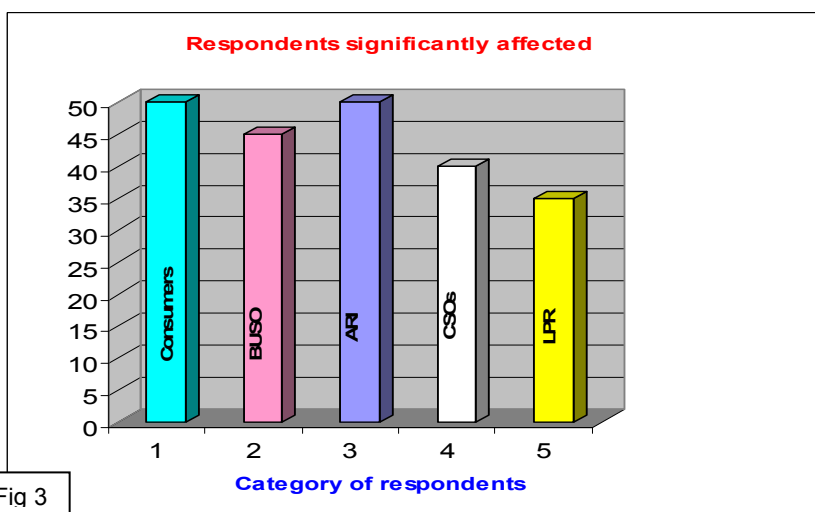
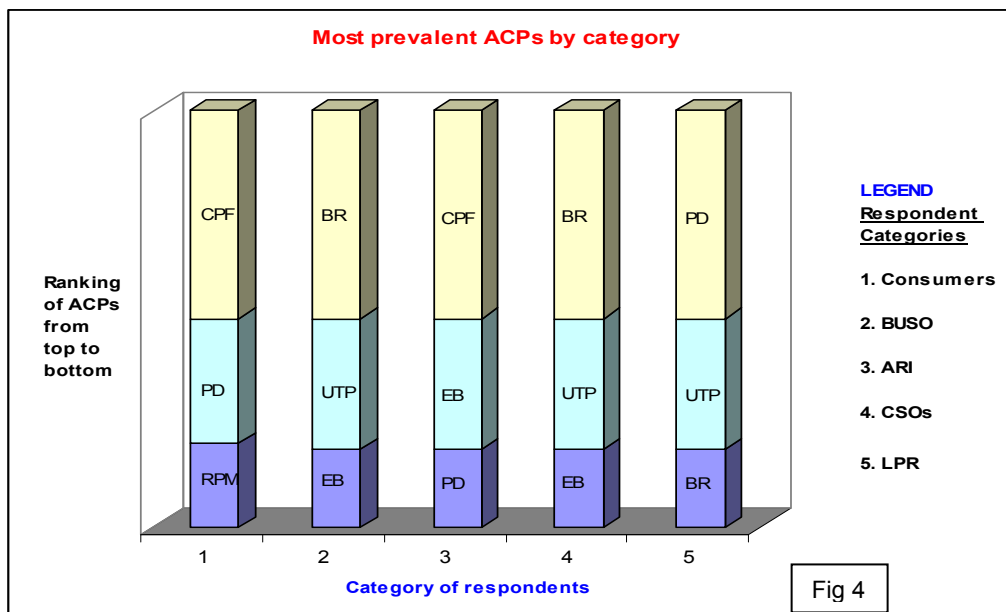


Fig 3



## Most prevalent ACPs

The most prevalent ACPs as perceived by respondents in the respective categories, in order of ranking – from most to least important are: Consumers (collective price fixing, price discrimination and resale price maintenance); business/business support organisations (bid rigging, unfair trade practices, Entry barrier) and Academic and Research Institutions (Collective price fixing, price discrimination, entry barrier). Other responses were: Civil society (Bid rigging, unfair trade practices and entry barrier); and law/policy makers & regulatory bodies (price discrimination, unfair trade practices and bid rigging).



Considered against perceptions on knowledge and impact, the responses on most prevalent ACPs are a reflection of a common characteristic in the country – behaviour symptomatic of but not necessary due to collusion. Also, price

discrimination affects many consumers largely due to a common practice by traders who do not display retail prices. Consequently, buyers are charged through a discretionary approach using often undeclared and unknown criteria as basis for charges. A law (revised Sale of Goods Act) has been mooted that would provide for compulsory display of prices by retailers in the country.

“Recommended prices,” viewed in the context of RPM, are ubiquitous in the marketplace, pushed by the manufacturers as part of their brand wars, in what is a clear manifestation of vertical restraints. Respondents from Academic and research institutions had similar responses ...

To businesses, that ranked bid rigging first, it was a reflection of both common sentiment and the reality that public procurement remains contentious. Frequent media reports and commissions of inquiry in the country provide a perfect background to the survey responses.

In fact, formation of the Public Procurement and Disposal of Assets Authority (PPDA), under the broader legal framework of the PPDA Act, was in response to a dire need as well as a mechanism to restore confidence and protect competition in the public procurement arena. However, concern over UTPs and EBs reflects both frustration and powerlessness over practices normally a preserve of the ‘rich club,’ condemning the small enterprises to the cold.

For instance, misleading advertising that indirectly maligns competing products of smaller enterprises that devote relatively less spend on advertising. Entry barriers are not a common phenomenon (few cases have been reported over time and scope). However, the survey wasn't qualitative to investigate details of the various dimensions of the responses.

Civil society had similar responses and rankings to the business community. Perhaps this reflected the level of awareness (mainly through research) and regular interface with and about the business community.

Law/policy makers and regulatory bodies were a cross section between business (UTPs and BR) and research and academic institutions (PD). Perhaps given the assumption that the LPR stakeholder category has more custom of business-related data and information than any other stakeholder group of respondents, their views should be given additional focus, their limited knowledge of ACPs (10%) notwithstanding.

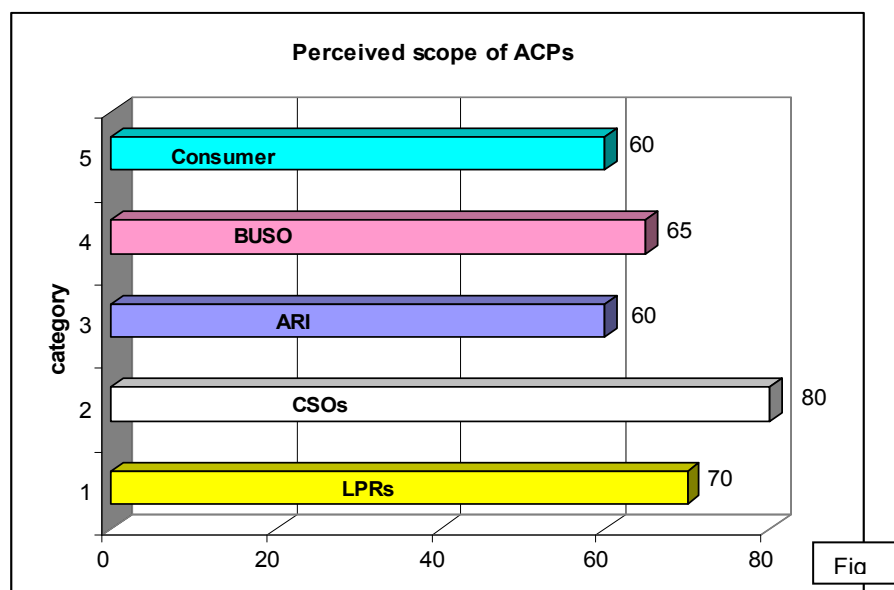
**Effects on economy**

Agriculture, Trade and Services sectors were listed as the most affected economic sectors by the whole spectrum of respondents. The responses: Consumers (agriculture, trade, services); business/business support organisations (trade, manufacturing and services) and Academic and Research Institutions (trade, manufacturing and services). Other responses were: Civil society (trade, manufacturing and services); and law/policy makers & regulatory bodies (trade, manufacturing and services).

All categories of respondents were of the view that the trade and services sectors were affected most by ACPs. Only consumers listed the agriculture sector as affected. However, it could have been based on the fact that as final consumers, they had additional knowledge, particular on trade in goods (transport-marketing chain) that the other categories either did not have access to or considered anecdotal or inconsequential in the context of market competition.

**Extent of ACPs**

The overwhelming percentage of respondents (70%) was of the view that some of the ACPs originate from outside the country as well. The responses were thus: (Consumers-70%; businesses/business support organisations-80%; Academic and Research institutions – 60%; Civil society- 65%; and Policy/law makers & Regulatory bodies-60%).



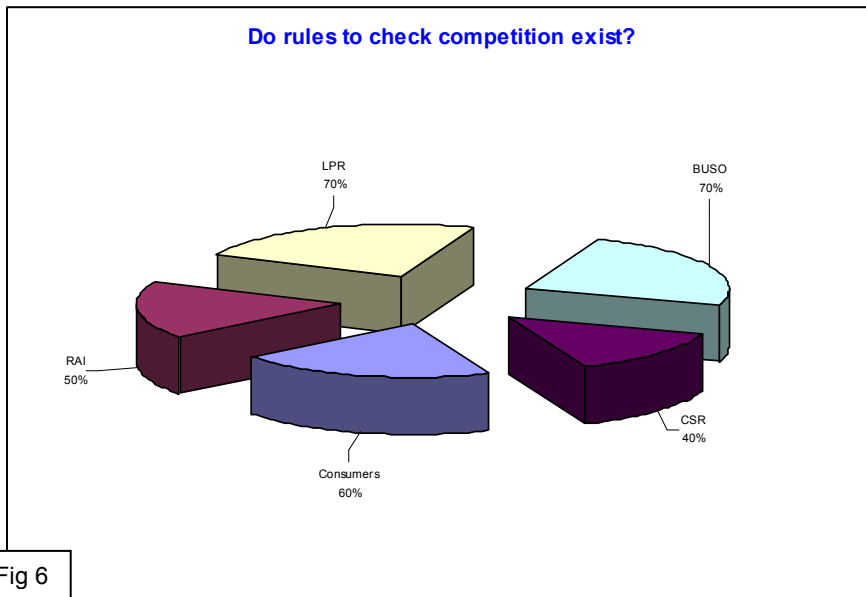
This reflects the structure of the country's trade and manufacturing sectors, activities in which formed basis for responses got in the survey. With domination of the trade and manufacturing

sectors by companies of foreign origin or joint ventures with local partners, the responses were therefore premised on current realities.

**Rules to check ACPs**

There were mixed reactions on the question of rules to check ACPs with 60% of consumers surveyed saying they existed and an almost similar figure (50%) of respondents from the RAI concurring and LPR (70%) sharing the same view. Out of the rest, 70% of the respondents from the business sector said they did not know or weren't sure. The majority (40%) from civil society weren't sure as well with the rest either asserting in the affirmative or in opposition.

On average, the majority of respondents indicated that some rules existed to check ACPs.



However, a significant number of respondents weren't sure about the rules. This question required knowledge about technical detail on the prevailing policy and legal framework, which to the majority wasn't clear.

Asked to substantiate their responses, most respondents couldn't name any or named laws and regulations that completely address other business/industry or behaviour / practices.

Fig 6

However, some responses indicated some knowledge about laws that to some extent address competition in general but not specifically ACPs. These include: UNBS Act, CMA act, UCC Act, among others.

Prompted on action taken by the authorities to combat ACPs, respondents were split down the middle, with half saying sometimes action is taken and the rest stating in the negative.

**Consumer protection and justice**

Uganda National Bureau of Standards (UNBS) emerged as the most popular institution perceived to be offering protection to consumers and require competition in the marketplace. The respondents (Consumers-50%; businesses/business support organisations-45%; Academic and Research institutions – 20%; Civil society- 50%; and Policy/law makers & Regulatory bodies-50%). This wasn't surprising given the enduring media coverage of the quality certification body's activities in enforcement of standards. UNBS doesn't have mandate in law to regulate competition. Neither is consumer protection its primary role.

## Competition policy and law framework

All categories of respondents averred that regulations in place to check ACPs were not enough. Less than half of the respondents gave their views on this question, understandably, if considered against respondents' knowledge and impact of CP.

Are regulations in place enough to ensure minimum competition?			
STAKEHOLDER CATEGORY	Percent		
	YES	NO	CANT SAY / DON'T KNOW
Consumers	10%	30%	10%
BUSO	5%	15%	10%
RAI	10%	60%	30%
CSOs	5%	30%	10%
LPR	-	100%	-

*Table 2: Views of stakeholders on effectiveness of existing framework*

The views reflected the perceptions of an unregulated market. Nevertheless, on the question that followed, an overwhelming majority endorsed the need to enact a comprehensive law on

Should competition law be enacted?			
STAKEHOLDER CATEGORY	Percent		
	YES	NO	CANT SAY / DON'T KNOW
Consumers	90%	10%	-
BUSO	100%	-	-
RAI	70%	20%	10%
CSOs	95%	-	5%
LPR	100	-	-

*Table 3: Views of stakeholders on enactment of general law on competition*

competition regulation. At least 70% and above across all stakeholder categories (with 100% apiece for consumers and law, policy and regulatory sector) calling for enactment of a specific policy and law to address competition regulation.

## Scope and safeguards

Still, the majority of respondents were of the view that the law should not only cover competition as an avenue to ensure economic efficiency but consumer welfare as well. As a logical next step, most respondents gave their mode to a law that should cover all types of enterprises and persons and all areas of commercial activity.

However, the respective stakeholder groups suggested activities and sectors that ought to be exempted from the proposed competition regulation framework thus: Majority of consumers (35% - with the rest either not giving responses or responding otherwise) and civil society (50%) wanted small and medium enterprises (SMEs) exempted. So did 90% of respondents from the policy/law and regulatory bodies. The majority of businesses wanted public utilities off the hook, while research and academic institutions wanted state-owned enterprises. The common denominator in the responses was that competition law shouldn't extend to the public domain as well as to enterprises that benefit the poor (SMEs). Coming from consumers and civil society, the responses were a consequence of individual or group experience (consumers) and direct interaction with affected communities/ groups (civil society and law/policymakers and regulatory bodies).

For businesses, the responses could be linked to the relatively high cost of doing business in Uganda that is widely understood to be exacerbated by the cost of utilities. Competition, it is feared by some, could worsen the status quo. When respondents from the research and academic community opted for exemption of state-owned enterprises, perhaps, given the knowledge base of the group, was premised on the philosophy that public resources or interests should be protected from laissez-faire competition and as far as can be established, adverse conditions since they are normally not primarily profit-making but were set up to achieve social ends.

### **Institutional design/structure**

The overwhelming majority of respondents were of the view that the proposed CA should be at the centre of competition regulation in the country. The apparently homogeneous response was linked to the practice in regulatory reform in the country. Reform has normally taken the form of setting up specific sector regulatory (SSR) bodies to oversee all aspects of regulation. Endorsement of the CA should be seen in this light.

### **Powers and roles**

On the crucial question of powers of the proposed CA, consumers were split down middle in the proposal of a CA with both investigative and adjudicative, and one with investigative powers only with adjudicative powers vested with a separate authority. Both responses accounted for 35%. The choice of consumers could be appreciated when the prevailing frameworks are considered. Consumers normally prefer services on a 'one-stop-centre' principle, rather than a stratified institutional set-up, a structure that is normally linked to bureaucratic red tape.

Respondents from businesses and business support organisations were also split down the middle: some 40% of the responses endorsed a CA with both investigative and adjudicative powers, with a smaller percentage opting for one with investigative powers only, while adjudicative powers are vested with courts of law. On the era of state-owned monopolies, courts of law were the last resort in case businesses sought justice in the marketplace. The views, therefore, could have been formed in this respect other than out of informed pragmatism. Respondents from research and academic bodies wanted a separate body, a decision construed as based on the desire for separation of roles (investigative and adjudicative) to ensure independence in the process of hearings.

The majority of responses from all respective stakeholder categories endorsed the view that the CA should deal with UTPs and consumer protection issues as well. This was a logical outcome that corroborated the earlier positions, for instance that the CA should be a body whose roles would cover economic efficiency and consumer welfare as well as establishment of a law that would cover all enterprises, persons and business activities.

Also, the majority of respondents from businesses, civil society and research/academic bodies wanted specialised sector regulators (SSRs) given overall powers to handle competition regulation issues. Consumers wanted the CA to retain a coordinating role, while LPRs opined that that well as SSRs should be involved, the CA should coordinate with them. Views of CS, businesses and RAI were in line with the traditional institutional design of most SSRs. Consumers' and LPRs' views were tinged with 'checks and balances', in a bid to provide a locked-in mechanism that would ensure fairness and separation of roles/responsibilities.

### **Corporate/ personal liability and alternative mechanisms**

The majority of responses from the RAI, CS and LPR were equally split. Those of the view that violations of the competition law should be criminalized in some cases were equal to those who said, in all cases, contraventions should be criminalized. Consumers endorsed personal criminal liability in some cases, well as RAI went for liability limited in all cases. In all, it worthy noting that all stakeholder groups opted personal criminal liability, underscoring their desire to put in place to regulate climate that deters personal impunity.

Should transgressions in competition law be criminalised?				
STAKEHOLDER CATEGORY	Percent			
	Yes in some cases	Yes in all cases	No	Cant say/ Don't know
Consumers	65%	35%	-	-
BUSO	35%	50%	15%	-
RAI	40%	40%	-	20%
CSOs	45%	45%	-	10%
LPR	40%	40%	-	20%

*Table 4: Views of stakeholders on criminal liability*

COs, Businesses and civil society were of the opinion that the proposed law should have provisions to ensure right to private action. LPRs were equally split with those for and against right to personal equal. Only responses from RAI

had a majority rejecting the right to private action. The views reflect the structure and nature of the traditional commercial justice system that contains flexibilities, including the right to private action.

### Competition advocacy

All stakeholder categories were of the view that the proposed CA should involve different stakeholders in its functioning, especially advocacy and publicity. In view of the era of private-public partnerships, this was expected. Also, all the stakeholder categories were of the opinion that businesses should try to balance their profit motives with consumer welfare.

However, on the important question of how respondents would react if they encountered any ACP, all but consumers were of the view that they would seek help from consumer organisations. For their part, majority of consumers said they would do nothing about it. The apparent irony is based on the reality that consumers know better that COs do not have powers and mandate to redress market mal-practices, well as others simply assumed that they could get justice from COs.

Broken down, the “others” response included amicable settlement with goods / service provider or by approaching the relevant sectoral umbrella body or regulator, among the main responses.

Who would you report to in case you were victim of an ACP?						
STAKEHOLDER CATEGORY	Percent					
	Local Council	Police	Court	Consumer organisation	Other	Nothing
Consumers	5%	10%	20%	25%	40%	-
BUSO	5%	15%	10%	35%	30%	5%
RAI	-	-	20%	50%	30%	-
CSOs	-	-	5%	40%	30%	25%
LPR	-	-	25%	30%	20%	25%

*Table 5: Views of stakeholders on who would be competition ‘police’ under status quo*

## 10.0 RECOMMENDATIONS AND CONCLUSIONS

Recommendations and conclusions have been stratified to map out the obligations and challenges that exist, or that need to be addressed in order to have a functional and effective competition regulation regime in the country.

### General Conclusions:

- i. Competition policy and law can have a role to play in ensuring that trade liberalisation is not undermined by anti-competitive behaviour.  
Scoped and implemented appropriately, competition regulation should play a considerable role in checking adverse effects caused by malpractices and structural weaknesses in the emerging free market in Uganda. In the long-run, such interventions should protect the process of liberalisation from a host of threats, including political backlash by a polarised populace at variance in terms of benefits from the prevailing system.
- ii. Ugandan competition law and policy could encounter major challenges when it comes to emerging international phenomena like cartels and mergers. This calls for additional safeguard measures or mechanisms to check the external threats.  
Foreign investments are increasingly finding their way into the economy through non-traditional channels like mergers and acquisitions. Well as it represents a faster way to setup and operate businesses, when unregulated, it may hurt competition through possible collapse of some of the 'losing' competitors, with adverse consequences to the state (loss of taxes, jobs, etc) and consumers (welfare reversals occasioned by reduced options or increased prices).
- iii. The crafting and ratification of the COMESA competition framework should provide the necessary linkages and support to address competition-related cross-border concerns in Uganda and the immediate region.  
With ever-deepening economic integration COMESA (mainly Kenya) is the country's second largest trading partner); this presents challenges related to conduct of companies that trade across borders of the 20-member states of COMESA. Therefore, linkages across common borders in the economic bloc should be established or strengthened to address competition-related concerns.
- iv. Uganda has no specific legislation on competition, although there are policies used to influence the local markets e.g. trade policy, investment and licensing regulations, company and partnership laws, labour and environment laws.  
Systematic and effective competition regulation within the country and between the country and its trading partners would require the enactment of a competition law. Yet well as most countries in COMESA have enacted appropriate laws or amended deficient ones, Uganda doesn't have one in place. This would undermine efforts, internal or joint, to check ACPs.
- v. Enactment of Competition policy and law and setting up an enabling institutional framework need to be expedited and implemented to enable the setting up of benchmarks for proper conduct, mechanisms for monitoring, sanctions and redress mechanisms.  
Proper sequencing and coherence in competition regulation would require specificity, fairness and transparency, an aspiration possible through a clear framework on competition policy and law.

## **Challenges Government Has To Address:**

- i. *Low stakeholder awareness.*  
Results from the survey, shared in above chapter, indicated that relatively few stakeholders were aware of the practices broadly defined as anti-competitive or unfair as well as possible effects of the same on the respective category of stakeholders. This portends serious consequences to victims and unjustifiable reward to businesses involved in the malpractices. In view of the foregoing therefore, the need for awareness creation is paramount.
- ii. *Harmonisation of sectoral and general competition regulation regimes.*  
Sectoral regulation, put in place shortly before and, in some sectors, after privatisation, was informed by frameworks with a wide array of provisions, including the facilitation of competitive markets. However, competition regulation per se is not adequately provided for, for sectors where it was recognised (energy/power, communications etc). Also, with the imminent enactment of competition policy and law, a clear mechanism on how the two regimes (sectoral regulation and competition regulation) will interface should thoroughly need to be examined.
- iii. *Further adjustment of the economy to attract quality investments.*  
Macro-economic re-alignment of close to two decades has led to considerable transformation of the country's economy. However, in order to deepen the gains, particularly, to have long lasting impact on the socio-economic spheres (through increased investment, etc), there is need, where necessary, to regulate activities of the dominant private sector. This should dispel fears and lower risks as perceived by prospective investors (mainly from overseas).
- iv. *Absence of or a weak auxiliary policy and legislation.*  
Given the reality that competition policy and law cannot be expected to be a panacea for market imperfections or shortcomings, the need for enactment and enforcement of auxiliary policy and legislation cannot be overstated. These should include laws related to: consumer protection, sale of goods, contracts, customs management, and product standards, among others.
- v. *Harmonising economic and trade policies within the EAC and COMESA region.*  
With further economic integration, Uganda will increasingly need to harmonise her policies and laws with sister countries in the EAC and COMESA. This should forestall major difficulties, and possible gridlock cross border implementation of law or honouring of obligations, or enjoyment of rights and other entitlements.

## **Expected Government Action:**

To realise effective fair trade regime and consumer welfare, especially since the competition law might not be passed very soon in the country, it is pertinent that the following are put in to place:

- i. Stakeholder awareness and education programmes should be stepped up throughout the country in a bid to facilitate understanding and subsequently, general support for a market-driven competition regulation and consumer protection dispensation.  
Focus should be directed on supporting stakeholder awareness initiatives, as well-informed stakeholders are expected to drive effective implementation and enforcement of the soon-to-be-enacted competition policy and law as well as the establishment of a competition culture in the country.
- ii. In a bid to enhance competition, developments like mergers and takeovers need to be governed by enforceable rules so as to protect small businesses, consumers and promote fair trade in general. At the moment some rules, in the realms of privatisation exist. However, comprehensive rules to govern all sectors and enterprises need to be put in place as well as monitoring mechanisms.



Cases exist from the privatisation process and, generally, liberalisation of the economy where takeovers and mergers resulted into restructuring of markets (market share) leading to difficulties and, or collapse of small businesses. This, theory and reality, would have a deleterious effect on consumer rights and welfare, which calls for mitigating measures to be put in place most effectively through competition law, but also by amending some of the existing laws.

- iii. The expected competition framework should be coherent with national development strategies for poverty eradication, sustainable socio-economic development, other sectoral regulatory regimes as well as regional and multilateral initiatives.  
There is evidence, particularly in the commodity sector onto which the country still depends significantly, that ill-regulation of competition could lead to severe consequences. It follows therefore, that competition regulation should be examined beyond the narrow confines of checking adverse effects on firms to potential of ruining livelihoods of millions of predominantly poor people.
- iv. Functional consumer protection regimes should be established and promoted to ensure efficiency, economic growth, best practice, quality assurance and fair trade.  
The public sector (government) should be advised that it will require more than enactment of relevant policy and law but establishment of an effective framework requires professional enforcement backed by sufficient resources, This should be planned for in advance.
- v. It's commendable that significant ground has been covered in the process of enactment of a competition framework (policy and law) for the EAC economic bloc. However, there is need to expeditiously enact and enforce the framework, particularly in view of real and potential challenges related to the emergence of the EAC Customs Union.
- vi. Establishment of a competent authority manned by professional and experienced manpower to address the increasingly complex challenges in the economy.  
Countries that have recently embarked on regulation (through law and policy) have encountered problems related to manpower gaps as professionals with relevant skills and experience are hard to come by. Institutional, readiness and training interventions are needed.
- vii. Enactment or review of auxiliary policy and legislation to ensure general readiness of the country's trade sector to anticipated changes. These include trade policy, investment, privatisation, policy on SMEs and labour and among others.
- viii. Strengthening sectoral regulatory bodies to build their capacity play their expected roles in competition regulation.  
Sectoral regulatory bodies by their very nature, will play a pivotal role in competition regulation. However, they require capacity building to elevate their readiness in a bid to play their expected roles.
- ix. Government should lend the requisite political support for the anticipated market dispensation by way of enactment of supportive legislation, followed by their enforcement.  
The public sector (political leadership) will need to use advocacy measures to help support mechanisms aimed at bringing about a competition culture for socio-economic growth and development.
- x. In light of the existence of sectoral competition regulation (in some sectors), establishment of a comprehensive competition regime could encounter barriers at implementation stage. There is

therefore need for harmonisation of sectoral and general competition regulation regimes to avoid anticipated conflict.

Where specific sector regulators (SSRs) are mandated to enforce competition in the marketplace, care should be taken, through provisions in the proposed competition policy and law, that clearly assign roles, responsibilities and obligations but avoid fomenting possible conflicts between the envisaged competition authority and SSRs.

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## **Annex A: Acronyms and abbreviations**

UN	United Nations
ULRC	Uganda Law Reform Commission
EAC	East Africa Community
COMESA	Common Market for Eastern and Southern Africa
MoFPED	Ministry of Finance, Planning and Economic Development
UCC	Uganda Communications Commission
UNBS	Uganda National Bureau of Standards
CMA	Capital Markets Authority
PPDA	Public Procurement and Disposal of Assets Authority
PPDA Act	Law providing for the PPDA
OIC	Organisation of Islamic Conferences
IGADD	Inter Governmental Agency on Drought and Development
ESA	Eastern and Southern Africa
UNICEF	United Nations Children and Educational Fund
PRSP	Poverty Reduction Strategy Paper
PEAP	Poverty Eradication Action Plan
NEPAD	New Plan for Africa Development
ACP-EU	Africa Caribbean Pacific – European Union
EBA	Everything But Arms
AGOA	Africa Growth Opportunity Act
UIA	Uganda Investment Authority
MTTI	Ministry of Tourism, Trade and Industry
UIC	Uganda Insurance Commission
NDA	National Drug Authority
M&A	Mergers and Acquisitions
UEB	Uganda Electricity Authority
ERA	Electricity Regulatory Authority
UEDCL	Uganda Electricity Distribution Company Limited
UEGCL	Uganda Electricity Generation Company Limited
UETCL	Uganda Electricity Transmission Company Limited
CDC	Commonwealth Development Corporation
UPTC	Uganda Posts and Telecommunications Limited
UTL	Uganda Telecommunications Limited
MTN	Mobile Telephone Network
EMS	Expedited Mail Services
AES	Applied Energy Services
UCBL	Uganda Commercial Bank Limited
NIC	National Insurance Corporation
AIG	America Insurance Group
LPRs	Law, Policymakers and Regulatory Bodies
COs	Consumer Organisations
SOEs	State-Owned Enterprises
SMEs	Small and Medium Enterprises
Pus	Public Utilities
WTO	World Trade Organisation
RAI	Research and Academic Institutions
PAC	Public Accounts Community

IGG	Inspector General of Government
UCPA	Uganda Consumers Protection Association
CONSENT	Consumer Education Trust
UTP	Unfair Trade Practices
PD	Price Discrimination
BR	Bid Rigging
RPM	Resale Price Maintenance
CPF	Collective Price Fixing
EB	Entry Barrier
ED	Exclusive Dealing
ACP	Anti Competitive Practices