Competition and Consumer Protection Scenario in Uganda

Consent

Consumer Education Trust

#0313

कट्स CUTS
Twenty Years of
Social Change
1984 to 2003

Competition and Consumer Protection Scenario in Uganda

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CUTS Centre for Competition, Investment & Economic Regulation

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General Background

1.1 UGANDA'S MACRO-ECONOMIC AND TRADE FRAMEWORK

Country profile

Uganda is an independent landlocked East-African country that lies astride the equator neighbouring the Dominican Republic of Congo (formerly Zaire), Rwanda, Tanzania, Kenya and Sudan. Kampala is the capital city of the country.

Uganda's population stands at 24.5 million people, 90 percent of whom are peasants with the rest scattered in Kampala and other main urban centers. The country's economy, heavily dependent on agriculture and related activities, has been stable and progressive over the last ten years with the highest economic growth figure recorded at 10.5 percent in 1994-95.

Uganda is a member of several regional and global economic groupings like the Common Market for Eastern and Southern Africa (COMESA), East African Cooperation (EAC), Cotonou Agreement (ACP/EU) and the World Trade Organization (WTO).

1.2 STRUCTURE AND PERFORMANCE OF THE ECONOMY

1.2.1 Agriculture sector

Uganda's economy is dominated by the agricultural sector accounting for 42.4 percent of GDP and over 90 percent of the country's foreign exchange earnings in 2000-01. The sector provides, directly or indirectly, employment to about 87 percent of the country's 22 million people.

A break-up of agricultural output in 2000-01 shows that food crop production accounted for 27.4 percent, fishing 2.1 percent, cash crops 3.8 percent, livestock 7.3 percent and forestry 1.8 percent.

1.2.2 Exports

Traditional exports

Coffee continues to be the major foreign exchange earner, accounting for about 60 percent of earnings in the 1998-99 financial year, but plunging to 50 percent in 2001-02 due to a fall in world coffee prices.

Tea is another major export commodity for the country that during 2001-02 earned the country some $27.63mn. However, production of the crop has been picking up following decades of neglect. Tea is mainly grown on privately run estates and offers employment to some 100,000 people.

The cotton sub-sector contributes significantly to the country's economy, although production constraints and the El Nino weather scourge in late 1990s have combined to adversely affect production. However, production is expected to pick up. Cotton lint exports in 2001-022 brought into the coffers some $14.08mn.

Non-traditional exports

The non-traditional agricultural export sector has been increasingly becoming important to the country since the late 1980s. Exports of products like fish, maize, fruit, vegetables and cut flowers during 2001-02 fetched $360.1mn. However, the ban on fish by the EU in 1998 dealt a blow to the $40mn-plus industry, which has, since the lifting of the ban in 2000, rebounded to hit a record turnover of $87.45mn in 2001-02.

1.2.3 Foreign exchange

Uganda runs a market-based system of foreign exchange management. This came into force in the early 1990s after the discontinuation of the managed system. It has now been replaced with a unified inter-bank foreign exchange regime. The Forex Bureau runs alongside the inter-bank market.

1.2.4 Balance of payments

Deteriorating trade and current account balances have in the recent past had a negative effect on Uganda's balance-of-payments position. However, overall performance improved in 1999-2000 due to higher levels of budget support and debt relief under the HIPC (highly-indebted poor countries) programme. Import growth remains at over 10 percent, but against a decline in exports that started after 1996-97, a trend that is not likely to be reversed until coffee prices recover in the world market.

1.2.5 Inflation and interest rates

Inflation in Uganda has largely remained under control in the last 8 years, remaining below 10 percent. In 1998-99 it remained low, breaking into the negatives for the first months of the period under review. But by February 1999, the point-to-point inflation rate reached 5.4 percent, mostly due to the depreciation of the shilling.

The cost of domestic borrowing in Uganda remains high on the whole due to high interest rates. Average lending rates are significantly higher than the rate of inflation in Uganda, a phenomenon linked to the high risk of lending. Although some local banks during 1998-99 lowered their prime lending rates from an average of 22-28 percent to 19-22 percent, these are still higher than treasury-bill rates that range between 9 and 13 percent.

1.2.6 Savings

Although the level of personal savings is generally low in Uganda, as a proportion of GDP and money supply, it has continued to grow steadily. Gross national savings stood at 23.1 percent in 2001.

The level of personal savings in Uganda is low partly due to the unattractive interest rates on bank deposits, but more due to the existence of a big non-monetised economy, which is mainly a result of absence of effective financial institutions in the country.

1.2.7 Investment

There are signs of increased investment activity as indicated by an increase in leasing activity. The Development Finance Company of Uganda (DFCU) and East African Development Bank (EADB), the two leading development banks, have funded several projects. In December 2001, the portfolio of DFCU Leasing, the market leader in leasing and a subsidiary of DFCU group of companies, was USh23.5bn up from under Ush15bn two years earlier.

Between 1991 and 2000, some 2,400 investment projects were registered by the Uganda Investment Authority (UIA). Although planned investments in the registered projects were worth $4.9bn and could create 100,000 new jobs, only $1.5bn has been committed to the projects and 80, 000 jobs created.

The investment sector has been hit by a sharp fall in foreign direct investment (FDI) in the last few years, a development largely linked to insecurity in the region, changes in investment incentives and regional competition for investors.

1.2.8 Trade relations

Uganda is party to several trade agreements that include the WTO, COMESA, EAC, Lome Convention and the GSP. However, the country’s participation in most of these trading blocs is limited.

Being an LDC, it has considerable flexibility in meeting the rules of the multilateral trade system and the WTO agreements.

Uganda is most closely associated with the Cotonou Agreement that replaced the Lome Convention in 2000. Under the Convention, signed between the EU and ACP countries, exports from ACP to EU countries are exempted from most tariff and non-tariff barriers. The preferences apply to industrial, processed and agricultural exports and are non-reciprocal. Specifically, four protocols on beef, sugar, rum and bananas are in place.

Uganda is a member of COMESA, a regional economic bloc established in 1994 and notified to the WTO as a regional trade agreement. Member states to the agreement plan to establish a free trade area amongst them. A common external tariff is also expected to be in place by 2004.

Uganda has more prospects in the EAC owing to the historical interests among the member states. However, the economic bloc is still in its infancy and limited to a few fields of interest that include trade, transport, communication, finance, investment, regional integration and security.

Uganda's involvement in regional and global trade is limited to a narrow range of products, mostly primary products or semi-processed agricultural products. However, there are prospects for its manufactures in regional markets following the recent growth of the country's manufacturing capacity.

1.3 TRADE POLICY OVERVIEW

Uganda operates in a relatively free-market environment after the pursuance of an economic reform agenda in the late 1980s through the 1990s to date aimed at generally boosting the national economy, reducing government involvement in business and encouraging private sector development. Further, to correct the imbalances in the factor allocation system, the reform agenda aims to encourage export diversification and restore the credibility of the fiscal and monetary policies. Trade and foreign exchange liberalisation has played a major part in this context, with the dismantling of market monopolies of parastatal bodies being a significantly bold step. Further to this, the easing of restrictive regulatory measures has consolidated the liberalisation process. As a result, there has been increased economic activity and broadening of the tax base.

The government levies the following major taxes on business entities in addition to customs duty and a 2 percent import commission which apply only to imported goods: income tax including corporate tax, withholding tax and rental income tax; value added tax (VAT); excise duty on certain products and sales tax.

Although tax collection and administration has certainly improved since the formation of the Uganda Revenue Authority (URA), there is a perception that there is still too much discretion with the authorities leading to corruption that can only serve to undermine competition by making law-abiding behaviour unattractive.

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 arrangements. Uganda has been on the fast track in regard to intra-COMESA trade tariff reduction. In a clear sign that the country may not be ready to face competition from imports, a scheduled zero-level tariff regime on qualifying COMESA goods by 2000 was met by resistance and protests from local manufacturers who asked the government to go slow on tariff reductions. The local business community argued that their counterparts in the COMESA region would not reciprocate, which would have a negative impact on the country's tax revenue.

Tax exemptions that are given at the discretion of the Minister of Finance have in the past been a major source of distortion. Government has come under pressure to stop giving tax waivers. Although the practice is relatively uncommon, it is possible to obtain a waiver. In order to minimise misuse of the waiver, even government departments have to pay taxes and provisions for such taxes are made in their departmental budgets.

The Ugandan Government has been very active as a shareholder and manager in many service and manufacturing enterprises ever since the creation of the Uganda Development Corporation in 1952. By the time serious divestiture started in the early 1990s, it had at least 40 parastatal bodies involved in processing and manufacturing alone. In the majority of these cases, the managers were government agents often indirectly appointed by the government. Government has today divested its stake from all facets of business where it was previously involved.

The Uganda government with its economic policy reform agenda divorced itself from business and concentrated on policy formulation and monitoring. The Ministry of Tourism, Trade and Industry is mainly involved with policy formulation and monitoring, while the Uganda Investment Authority deals with registration of applicants for major investments in manufacturing and other sectors and general investment promotion.

The industrial sector of Uganda is still small but growing steadily and is now almost 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 being the major ones.

1.4 COMPETITION POLICY IN UGANDA

1.4.1 Institutional framework

Uganda's economy until very recently has been highly regulated. When competition[1] was not deliberately and negatively interfered with, it was "encouraged" rather haphazardly. Competition was dealt with usually in the context of other legislation and not directly. Therefore, one can hardly talk of an institutional framework for competition.[2] Rather, it is more meaningful to call it 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 perhaps less obvious.

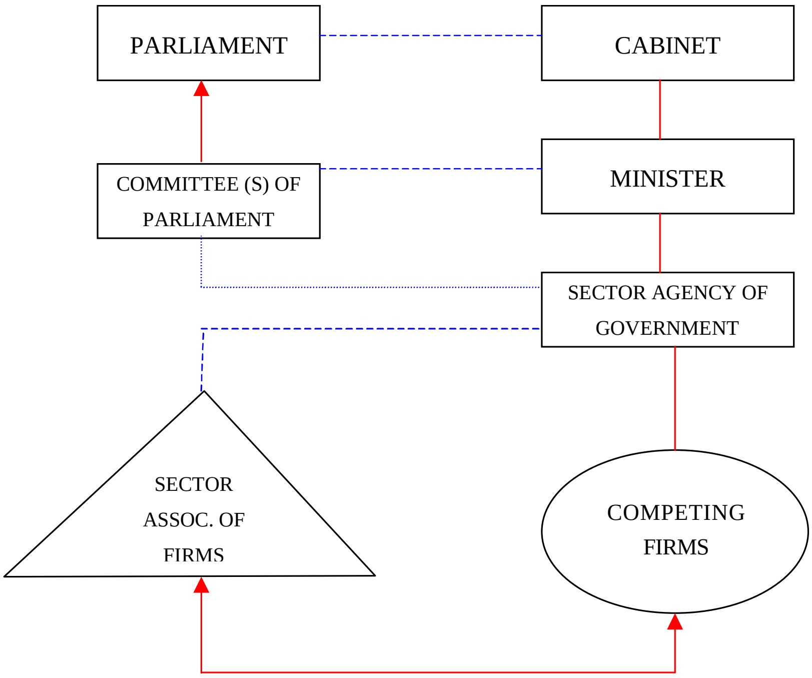
In the past, phenomena such as mergers, takeovers, monopolies and price cartels were rare and, even when they did occur, their possible harmful effects were not considered to be serious by the authorities. Following deregulation in recent years, the government has, mostly by default, taken the sectoral approach, but curiously only for those sectors where control[3] by government or its agents is still considered of paramount importance. This led to the formation of various sectoral authorities and commissions, like the National Drug Authority (NDA), Uganda Communications Commission (UCC) and Uganda Insurance Commission (UIC) among other sectoral regulatory agencies.

1.4.2 Sectoral set-up

As noted above, sectors where deregulation was instituted are those considered important in regard to anticompetitive activities and actions of unscrupulous firms and persons that could be injurious to the economy and to individual consumers. This would be particularly dangerous in areas where one, two or three firms may be operating, raising the prospect of price-fixing, attempts to undermine competition through hostile takeovers and creation of virtual monopolies etc. Through agencies like the UCC, the government has prescribed safeguards and some infrastructure. 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 Doctors Council and Association and the Broadcasting Council with powers to set or advise on operational and ethical standards and a code of conduct; powers to investigate members (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.

Institutional Framework – sectoral



1.4.3 Competition regulation

As far as can be established, there is currently no law or set of laws in Uganda that addresses the exclusive subject of competition in business. Private monopolies are not normally subjected to any restrictions or control, but in certain sectors such as financial and 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, for the most part, part of other legislation. A case in point is the Patent Statute, 1991, that explicitly prohibits patent owners from making licensing conditional.

In general, government has eliminated price controls in the domestic market. Price setting for petroleum products was discontinued in 1994, although informal pricing cartels are understood to exist in the marketplace. The only major exception is the Uganda Coffee Development Authority. Under its statute, the UCDA may issue price guidelines to ensure that no agreement to export coffee sets a price lower than a particular level.

In Uganda, many basic services like water and electricity are still only available largely from public enterprises with total monopoly positions. These enterprises are allowed to set their prices subject only to ministerial approval.

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

To the extent that the Companies Act sets uniform rules for registration, reporting and the requirements for annual audits, it contributes in some way to ensuring a level playing field, as the returns annually filed with the Registrar of Companies are open and available for public scrutiny. The registrar is empowered to strike off the persistent flouters of its requirements, but there is evidence that this power is used sparingly, selectively or not at all.

From the above, it is evident that there is selective application of the basic precepts of competition. This requires a holistic and proactive approach putting into consideration the economic realities and market needs. In sectors where considerable competition exists, like telecommunications, transport, broadcasting and several service sub-sectors, consumer interests are largely catered for.

2

Competition Policy and Law in Uganda

Competition has been defined as a situation where anybody who wants to buy or sell has a choice of possible suppliers and customers[4]. Competition has also been defined as a market situation in which companies or sellers strive freely and independently and in their own interests to attract customers with a view to achieving specific economic goals, e.g. sales, profit or market shares.

Competition policy, on the other hand, is designed to prevent actions that are not ethical-performance related and which therefore offer no benefits to consumers. These actions include agreements between two actors or obstacles that prevent other actors from participating in the market or use of coercion.

In spite of the many market-oriented reforms that have taken place in Uganda, the country does not have a policy on competition. Nor does it have a comprehensive law to regulate competition. Yet market-oriented reforms can be sustained in the long run only if competition, which would result from these reforms, is protected and consolidated by legislation and suitable policies.

There is no general regulatory body or authority or Government agency in place to regulate anticompetitive practices. There are, however, a number of sectoral regulatory agencies established to protect consumers from and to prevent anticompetitive practices in certain sectors as we shall see in the following paragraphs.

2.1 POWER SECTOR

Before the enactment of the Electricity Act, 1999, the Uganda Electricity Board (UEB), a body corporate established by the Uganda Electricity Act, 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 prices for electricity.

This scenario changed with the enactment of the Electricity Act, 1999. This Act established the Electricity Regulatory Authority (ERA) whose main functions are to issue licences for generation, transmission, distribution, sale of electricity and consumer complaint 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 this Act, the Minister is empowered to form successor companies that may assume all the duties and functions of the Uganda Electricity Board, which will eventually be dissolved.

Consequently, three companies have been formed to take over the functions of UEB. These are Uganda Electricity Generation Company Ltd, Uganda Electricity Transmission Company Ltd, and Uganda Electricity Distribution Company Ltd. These companies have no competitors yet but plans are underway to totally divert them to private operators. This will eventually create competition, which may result in better services for the consumers.

2.2 TELECOM

The Communications Act, 1997, provides for the restructuring of the communications industry in Uganda. The Act establishes the Uganda Communications Commission and provides for its functions. It also provides for the incorporation of Uganda Telecom Ltd and Uganda Post Limited. The Act also liberalises and introduces competition in the industry. Competition has been introduced in the telecom sector[5] through regulating and licensing competitive operators to achieve rapid network expansion, standardisation as well as operation of competitively priced quality services. Under section 57 of the Act, the Commission is mandated to encourage fair competition. Anticompetitive activities are prohibited.

Under the Act, the Commission may, of its own accord, investigate any activities which may breach fair competition, or the Commission can be alerted by any person by lodging a complaint which may constitute grounds for investigation. As a result of liberalisation of the communications sector, there are a number of players in the market and hence greater competition, which has resulted into better services to consumers. Currently, there are three major telephone companies offering both mobile and fixed lines. These include Uganda Telecom Ltd, Mobile Telephone Network (MTN) and Celtel Uganda Ltd. There are also many Radio stations licensed by the Commission, which offer a wide range of radio services to the consumers. There are also many firms offering postal services.

Consumers are protected where the operators are not allowed to deny access or service to a customer except for delinquency of payment of dues or for any just cause. Operators are required to provide equal opportunity for access to the same type of services to all customers in a given area at more or less the same tariff, limiting variations to available or appropriate technologies required to serve specific subscribers.

2.3 TRANSPORT

There are a number of laws under this sector; Airport Services Charges Act 6, 1965, Ferries Act, Cap 350, Inland Water Transport (control) Act, Cap 348, Motor Vehicles Insurance (Third Party Risks) Statute No 5, 1991, Passports Act, No.6, 1982, Roads Act, Cap 345, Traffic and Road Safety Statute No.1, 1992, Uganda Air Cargo Corporation Statute No. 18, 1994, Uganda Railways Corporation Statute No. 13, 1992 and Vessels (Registration) Act Cap 349. The sector was liberalised in some aspects, for example, the Uganda Transport Company was privatised and many individuals now own buses and minibuses and vehicle owners and the drivers are now organised in an association called Uganda Tax Operators and Drivers Association (UTODA), which regulates their activities, sets fares and enforces discipline among the members. Government monopoly in air transport was liberalised and now there are a number of operators that include the East African Airline, Kenya Airways, Eagle Aviation, Africa One, etc. Government monopoly is still maintained as far as railway transport is concerned.

2.4 FINANCIAL SERVICES

There are two major statutes that regulate the banking institutions. These are the Bank of Uganda Statute, 1993 and the Financial Institutions Statute, 1993. Fair competition can exist in the area of financial services as long as the actors acquire a licence and abide by the laws regulating the running of financial institutions. The Bank of Uganda Statute, 1993, makes provisions for regulating the issuing of legal tenders and maintaining a sound financial structure. The Central bank is established under the same statute to supervise, regulate, control and discipline all financial institutions, insurance companies and pension funds, as stipulated in section 5(j) of the statute. In its dealings with financial institutions, the central bank controls unfair trade practices by seeking their cooperation in order to maintain adequate and reasonable banking services for the public. There is fair competition in the financial sector as long as one fulfils the entry requirements and runs the institution according to the set regulations.

In Uganda, the role of the central bank has been felt by the public in the form of closure and liquidation of banks that have failed to meet the required standards.

In some cases the directors of defunct institutions have been prosecuted[6] and personal property attached[7] to pay for mishandling customers' finances. The standards set by the central bank are uniform, whereby there is no discrimination between one financial institution and another. This ensures a level ground that is necessary to motivate new entrants into the market.

The Financial Institutions Statute, 1993[8], (FIS) deals with financial institutions extensively and includes cooperative societies, credit institutions and building societies. The regulation of financial institutions by the central bank is provided for in broader terms in the FIS.

The FIS is currently under review. The review is intended to increase capital requirements for a company to operate as a financial institution. The proposed amendment also intends to make it illegal for close relatives of owners to own more than a certain percentage of shares in a financial institution.

The central bank issues a licence to a company proposing to transact banking, building societies, or credit institutions business. There are stringent conditions[9] to be satisfied before a licence can be issued and these relate to the capacity to carry on business, and the competence and integrity of the proposed management .The central bank may revoke[10] the licence where the institution is carrying on business in a manner that is detrimental to the interests of consumers.

The role played by micro-finance institutions in promoting competition cannot be ignored. There are a number of such institutions operating in Uganda registered as non-governmental organisations. The beneficiaries of these services are usually poor people who are organised in small groups registered as members with various micro-finance institutions. There is no law in place yet to licence or regulate the running of these institutions. As a result, some of them charge very high interest rates on their loans. However, now there is a bill before Parliament to regulate the licensing and running of micro-finance institutions.

2.5 HEALTH SERVICES

In Uganda, health services are provided by both government and private entities and persons through government-owned hospitals and dispensaries and the private sector through private hospitals, clinics, nursing homes and maternity homes respectively. The provision of drugs is mainly done by private pharmacies and drug shops, which are scattered all over the country, but mostly concentrated in urban centres.

There are a number of statutes in place to regulate practitioners, namely Medical and Dental Practitioners Statute, 1996, Allied Health professional Statute, 1996, Nurses and Midwives Act, 1996, Pharmacy and Drugs Act, 1970, National Medical Stores Statute, 1993 and the National Drug Policy and Authority Statute, 1983. The main objective of these laws is to protect consumers of health services from unscrupulous or unqualified medical personnel. For instance, the Medical and Dental Practitioners Statute governs the activities of medical and dental Practitioners. It has established a Medical and Dental Practitioners Council which has the duty[11] of monitoring and exercising general supervision, controlling medical and dental standards and enforcing medical and dental ethics. The Statute allows medical and dental practitioners to engage in private practice on fulfilment of certain conditions. Practitioners employed in government health facilities are not barred from running private clinics. Therefore, there is fair competition as far as provision of health services is concerned.

2.6 CIVIC AMENITIES

Preservation of Amenities Act Cap 31 requires a local authority to serve a notice on owner or occupier of any premises, requiring him at his own expense to paint the walls or roof, which, in the opinion of the local authority are unsightly. The local council may order an occupier of premises to remove temporary structures which disfigure the neighbourhood. An occupier who refuses to abide by the notice can be taken to court and the court may order him or her to abide.

3

Anticompetitive Practices in Uganda

Anticompetitive practices (ACPs) that prevail in Uganda include cartelisation, abuse of dominance and various other restrictive trade practices as well as a host of unfair trade practices.

ACPs cover agreements involving implicit or explicit arrangements between firms competing in identical or similar product categories in the same market. Such arrangements are mostly between producers or between wholesalers or between retailers dealing in identical or similar kinds of products.

In this arrangement, the parties who enter into this type of agreement will, for example, agree amongst themselves to fix prices, reduce output or allocate customers to particular suppliers in a market. These arrangements are widely condemned by most competition authorities, as they serve no purpose other than to shift benefits from consumers to producers, the upshot being organisational inefficiencies and the making of excess profits.

3.1 COLLECTIVE PRICE FIXING

3.1.1 Prevalence of the practice

Price fixing is the most obvious violation of competition law to the extent that in all jurisdictions that enforce competition law, it is *per se* illegal.

In Uganda, government has in theory eliminated price controls in the domestic market through the consistent pursuit of free-market trade and economic policies. However, the absence of an autonomous and competent competition authority undermines adherence to the quest for market-determined pricing structures.

The petroleum industry

Price setting for petroleum products was officially discontinued in 1994 through a deregulation policy. The role of the government is now to monitor the activities of the industry to ensure quality standards and safety as well as compliance with environmental requirements and also to license new investors. Before this, it was government policy to determine prices of petroleum products with pronouncements on the same being subjects of much public interest at the time of the presentation of the government budget every year.

Uganda imports all its petroleum products. Six major companies handle the procurement and distribution of oil products in the country. The country's petroleum industry is dominated by the local subsidiary of the Anglo-Dutch Oil conglomerate, Shell Uganda that accounts for close to half of the country's market share.

The rise to dominance of the Anglo-Dutch company is replete what would result from the absence of a competition authority and thereby the consequences businesses and consumers would face. Shell acquired the state-owned Uganda Petroleum (UPET) in the early 1990s and later Italian oil concern Agip Petroli in 2000. UPET had earlier replaced Mobil. The acquisitions raised Shell's market share from 34.2 percent to over 40 percent, further widening the gap with its competitors like the French company Total Uganda (25 percent), Caltex (20 percent) and Gapco (10 percent). The rest of the market is shared out between recently registered upstarts Petro, Kobil, Jovena, Galana, Gelp, Gaz, Pearl and Delta among others.

Hence, there is compelling evidence, though only circumstantial, that price fixing is prevalent in the local petroleum industry. Price leadership has been observed by the market leaders Shell and Total with other companies following suit. Evidence is in the form of pump price structures, characterised by uniform prices of products at retail outlets differing only with regard to location rather than with the company involved.

The coffee sector

Until unofficial remittances from Ugandans working and living overseas overtook it at the close of the last century, Uganda's coffee sub-sector was the largest single foreign-exchange earner for the country since the 1970s. Given the importance of the sector predominantly run by small farmers and the general world market environment characterised by fluctuations in the commodity prices, government has often devised policies aimed at protecting the local exporters.

Further, the Uganda Coffee Development Authority (UCDA) Statute has provisions for price fixing, which are obviously not in tandem with fair competition. The law permits the UCDA, the semi-autonomous regulatory body in the country's coffee sector, to "monitor the price of coffee in order to ensure that no export contract for sale of coffee is concluded at below the minimum price."

Air transport/civil aviation sector

Uganda's airline industry has been fully liberalised since the formation of the Civil Aviation Authority (CAA) in the early 1990s. Prior to this, Uganda Airlines Corporation (UAC) held quasi-monopoly powers over civil aviation in the country. However, several airline companies have since emerged, mostly serving on domestic routes following the collapse of the state-run enterprise They include Eagle Aviation and Mission Aviation Fellowship. Two new companies, Africa One Airlines and East African Airways, have emerged recently to operate on international routes. Besides, several regionally and globally renowned airline companies fly to Uganda including British Airways, Air France, SN Brussels (the successor to Sabena), Gulf Air, South African Airways, Emirates Airlines, Ethiopian Airlines, Kenya Airways and Dairo Air, among others.

However, according to the CAA statute, the authority is given powers to determine prices in the sector. Accordingly, airline companies have to apply to the authority before they can start charging prices. The law gives the authority powers to set ceiling and floor airfares. A case in point is the authority's threats to intervene in the market following the emergence of apparent price wars between Kenya Airways and the newly registered East African Airways (EAA), a Ugandan entity. CAA called on the EAA to revert to higher airfare citing "failure to consult" the authority before instituting the promotional airfare.

Public transport

Uganda's public transport sector has for long been liberalised. However, from the 1960s up to the early 1990s, it was dominated by state-run bus companies, namely Uganda Transport Corporation (UTC) and People's Transport Company (PTC). The two companies collapsed in the early 1990s and ever since several privately run companies have sprouted to fill the vacuum left by the withdrawal of the state from public transport services. Alongside the bus companies are omni-bus taxis (*Matatus*) that mainly ply the urban circuits and upcountry destinations. Another segment of the public transport system is made up of "special-hire" taxis that are available in urban centres for shorter distances and longer distances under exceptional arrangements. *Boda Boda* (bicycle and motorcycle) taxis are available for short distances and are available throughout the country. Of late, self-drive car rental companies have emerged led by the globally renowned Hertz.

However, the country's public transport sector is not adequately regulated much to the possible detriment of consumers. While there is free entry and exit as well as pricing in the public transport sector, most business decisions are taken through collusive action. For instance, vehicle owners under associations that are normally contracted by local government authorities to run bus and taxi terminals collude to fix bus and taxi fares. Taxi fares are based on a semblance of a band system, which works on the basis of distance from a central point in urban areas. In the case of special hire and *boda boda* taxis, fares are determined on discretionary terms, mainly depending on the bargaining skills of the parties involved and is therefore not sustainable.

Miscellaneous ministerial powers

Although not invoked in recent times, the Distribution and Price of Goods Act, 1964, legalises the anticompetitive practice of price fixing and is still on the country's statute books. The law gives the minister in charge of commerce powers to set prices of given products and compel those selling the product in question to comply with the directive.

The law was used in the past to set maximum prices for certain goods (essential commodities). The fact that it has not yet been repealed provides grounds for the potential existence of legalised price fixing in the country.

3.1.2 Measure(s) to check the practice

The oil companies have denied their reported involvement in price fixing. However, the Energy ministry has been quoted in the media as saying that investigations would be carried out. Nevertheless the Ministry has maintained that it is not aware of the prevalence of price fixing in the local market. Government has also indicated it would enforce provisions of the Petroleum Act to check any market malpractices while further opening the market to competition to curb price fixing.

With regard to the coffee sector, the need to comply with conventions and agreements under economic arrangements like the WTO could see the law amended. Possible abolition of price fixing measures by multilateral arrangements like the International Coffee Organisation (ICO) could also be a precursor to replication of the same at national level.

In the case of the public transport sector where there is free entry and exit, the challenge has been to put in place regulations to guide the operators in the day to day running of the transport system. However, the regulations are not homogenous as the various local government authorities under the country's decentralisation programme are free to put in place mechanisms that suit their needs. The Ministry of Transport has not taken measures to contain fare fixing, as the practice is not illegal. Occasional interventions by the associated administrative units only provide a case for a managed system of pricing which is out of tandem with free-market practices encouraged elsewhere in the economy.

The law reform process in the country is expected to result in the repealing of all laws that do not comply with the contemporary trade arrangements. The Distribution and Price of Goods Act, 1964, is one of a series of laws earmarked for repeal.

3.1.3 Perceived gaps

In the wake of economic liberalisation, the central government as well as local governments have lost direct control and regulatory powers over virtually all sectors of the economy. Consequently, business/trade malpractices have emerged that continue to affect consumers and businesses. The establishment of semi-autonomous regulatory bodies in most economic sectors was naturally desirable. However, in sectors where regulatory bodies exist, they lack sufficient capacity to police the marketplace.

Also, the fact that most anticompetitive and restrictive trade practices are not illegal may, after adequate consultations, require legislative and legal reforms to change the status quo. There is a need for efficient competition mechanisms within the existing regulatory framework through crafting appropriate regulations to guide the regulators. Most effectively, enactment and enforcement of the proposed competition policy and law is seen as a long-term solution to check the alleged anticompetitive practices in not only the petroleum and other sectors but in the other facets of the economy as well.

3.2 MARKET SHARING, CUSTOMER ALLOCATION AND ALLOCATION OF TERRITORIES

3.2.1 Prevalence of the practice

Beverages sector

Recent developments in the beverages sector, notably in carbonated soft drinks (soda) and bottled water sub-sectors, lay bare the anticompetitive practice of market sharing.

The two biggest soft drink producers, franchises of big international companies Pepsi Cola and Coca-Cola, recently bought into the leading water-bottling companies. Pepsi bought into NC Beverages, bottlers of Highland brand mineral water and Rwenzori Beverages Companies makers of Rwenzori Brand went to Coca Cola. The development was seen as a move towards stifling competition from the water companies that analysts had noted were corroding the market of carbonated soft drinks. Now the companies are able to control market shares through controlling the production of both soft drinks and bottled water despite the fact that the two products lay in different market segments.

The acquisitions of stake in the bottled water companies by the two beverage giants appear to have been inspired by the rationale suggested by some study reports that the market for soft drinks is affected by the availability of near substitutes like packed fruit juices and water.

3.3 COLLUSIVE TENDERING/BID-RIGGING

3.3.1 Prevalence of the practice

Central/local governments

The advent of economic liberalisation resulted in the introduction of competition in almost all sectors of the economy. As a result, tendering and bidding in government departments is now competitive and more transparent. These procedures are designed to provide competition in areas where it might otherwise be absent. An essential feature of the system is that prospective suppliers prepare and submit tenders or bids independently.

However, reports of alleged bid rigging have surfaced, particularly at local-government levels. Under the country's decentralisation arrangement provided for in the Local Government Act, districts have a wide range of powers including the awarding of tenders for supply of goods and services.

The privatisation process

The privatisation process has been bedevilled by controversies related to the award of bids to private business entities. Most prominent among the divestiture projects to be hit by controversies is the sale of controlling stake in Uganda Commercial Bank Limited, Coffee Marketing Board and Nyanza Textiles Limited. Privatisation of the former state-run entities has been affected by allegations of possible bid rigging. In the case of the controversy-riddled privatisation of the Uganda Commercial Bank, the biggest commercial bank in Uganda, the brother of the President has been alleged to have bought the former state enterprise through a proxy, Malaysia-based Westmont Asia (Bhd). It was alleged that Westmont was awarded the bank stake through bid rigging. The controversy over the sale of the bank came in the wake of allegations that several privatised state-owned enterprises were sold through bid rigging.

Consequently, the privatisation exercise in the country has been dogged by credibility questions with sections of the country distrusting government's ability to divest state enterprises in a transparent and legal manner.

3.3.2 Measure(s) to check the practice

With regard to the privatisation process, weaknesses on the part of the body in charge of privatisation have been blamed for the reported bid rigging as well as other malpractices. However, parliamentary intervention has lent some badly-needed credibility to the processes, although outcomes have been in the form of condemnation which have not helped allay fears that similar practices may recur in future due to failure by the authorities to mete out deterrent punishment to culprits.

Absence of a competent authority to investigate the allegations has left the issues raised by complainants hanging. The Office of the Inspector General of Government (IGG) is the only body that has sometimes intervened in response to petitions and carried out investigations into allegations of unfair award of tenders. Unfair award has often included failure to follow tendering regulations but has also included allegations of bid rigging. Failure to establish the occurrence of the practice could imply that the IGG has no capacity to do so or that the practice may after all not occur.

3.3.3 Perceived gaps

Mechanisms to check bid rigging are in place. However, enforcement bodies are as they are still in their infancy nature and have low capacity to investigate reported cases. The long-term solution to check the practice of bid rigging in the tender/bid awarding processes at district and central government level is therefore to follow laid down procedures and regulations as well as building capacity among technical staff to enable them to identify and investigate the practice.

The expected enactment of the proposed Competition Law will provide mechanisms like special tribunals with special competencies to investigate and mete out sanctions to errant firms involved in such anticompetitive practices.

3.4 RESTRICTIVE TRADE PRACTICES (RTPs)

RTPs include vertical arrangements that generally refer to agreements between undertakings operating at different stages of the production and marketing chain. Perhaps RTPs are most obvious in the local trade environment. Arrangements of resale price maintenance are widely reported. Resale price maintenance involves restriction on the price to be charged by downstream firms. However, the practice is not illegal in Uganda.

3.4.1 Prevalence of the practice

The beverages sector

The beverages sector, notably the soft drinks (sodas) sub-sector is the biggest culprit when it comes to resale price maintenance.

Local makers of soft/non-alcoholic drinks that include carbonated drinks, fruit juices and squashes have more than doubled in the last 10 years. The biggest soft drink producers are franchises of big international companies, namely Pepsi and Coca-Cola, producing carbonated soft drinks. About a dozen companies that process and pack low-cost fruit juice and bottled mineral water have also emerged lately.

Both Century Bottling Company, the local franchise holder for Coca-Cola and Crown Beverages Limited holders of the Pepsi franchise are involved in the practice of setting "recommended prices", which in effect amounts to resale price maintenance. The companies have repeatedly rationalised the practice arguing that it removes pricing distortions and minimises transaction costs.

Retailing outlets

Several products made locally have recommended prices. Products range from juices, packed food products to cosmetics.

3.4.2 Measure(s) to check the practice

No measures are currently underway since the practice is not illegal. Uganda's official policy that allows investors to enjoy benefits of their investments and to engage in trade without restrictions gives businesses a blank cheque to the extent that many are involved in anticompetitive practices. The government argues that the state can no longer intervene in the market. It, however, indirectly deals with prices through fiscal measures like tax reductions followed by "persuasions" from the ministries responsible for finance and trade.

3.4.3 Perceived gaps

The absence of consumer protection policy and supportive legislation in the country means that consumer perspectives in trade are not taken into account. Therefore, enactment of a policy to this effect will go a long way towards refocusing the attention of authorities and stakeholders on the market practices that may be injurious to the interests of both consumers and businesses alike. Also, it is envisaged that when the proposed Competition Law is enacted, anticompetitive practices will be outlawed and errant firms will be sanctioned through due process initiated through the appointed competent body.

3.5 EXCLUSIVE TERRITORIES

3.5.1 Prevalence of the practice

The soft drinks sub-sector

The sub-sector is also involved in the RTP of restricting its operations to locations of its choice. For instance, cross-border trade in soft drinks has almost stopped owing to arrangements that restrict production and supply to national territorial boundaries.

3.5.2 Measure(s) to check the practices

The liberal nature of the country's trade policy means that the practice cannot be stopped since it is not illegal. This coupled with the infant industrial base of the country underpinned by a small market presents challenges to government at a time when it is in search of more FDI inflows.

3.5.3 Perceived gaps

The fact that the practice is not illegal requires that studies should be carried out to ascertain its effects on competition and consumer welfare in general. The results of such studies could suggest measures that could be taken. One of the steps must include enactment of a relevant policy to guide the authorities and trade in general.

3.6 EXCLUSIVE DEALING

3.6.1 Prevalence of the practice

Consumer goods retailing

Metro Cash and Carry retailing group has in place an arrangement with selected retailing outlets for vending its products. The South African company was previously sold to an exclusive class of people who were issued with membership cards. However, the company has since discarded the arrangement and now sells to the general public.

3.6.2 Measure(s) to check the practices

While the practice of exclusive dealing may not be *per se* illegal, it is against the spirit of the liberal trade policy in the country. Media and public complaints about the practice have not elicited any official response. The emergence of competition from South African retailing giant Shoprite Checkers is seen as the force that cracked Metro's practice of exclusive dealing.

3.7 TYING ARRANGEMENTS

3.7.1 Prevalence of the practice

Retail outlets of food supplements

Local retail outlets of globally renowned food supplement makers House of Health, Swissgarde and Golden Neo-Life Diamite (GNLD) are involved in the practice of setting terms that amount to tying arrangements. Members to the schemes established by the companies are required to purchase products for a fixed amount of money as a precondition for future dealings.

Although it is not clear whether it is through collusion that the practice prevails, consumers are forced to pay for quantities of products they may not necessary need.

Fast food outlets

Fast food outlet Nandos and Steers offer packages to consumers in which Coca-Cola features as a mandatory drink. The offer deprives consumers of the right to choose which brand of soft drink they would prefer to take. It's all apparent that the fast-food outlet and Coca-Cola could have an arrangement to include their products in the packages. However, the practice is not illegal.

General provisions in the investment law

Restrictions on the source of suppliers for particular inputs used by firms are legal. Under Uganda's Statutory Investment Code, 1991, investors are required to use specified proportions of locally available raw materials. The measure, designed to support exploitation of locally available raw materials, is inconsistent with the principle of competition as well as the GATT 1994 that requires allocation of factors of production by market forces. The investment law also provides for measures which stipulate that a certain proportion of production should be exported.

There are other measures that regulate sales by established companies. Accordingly, the investment law obliges a company to sell a certain proportion of its output locally.

A number of local companies use locally available raw materials, although it is not clear whether their decisions to source locally are a result of the UIA provisions. The companies include local brewing companies, Uganda Breweries Limited and Nile Breweries, that use locally grown sorghum, fruit juice processing companies that use locally available tropical fruits and companies that source packaging materials locally in spite of the relatively low quality.

3.7.2 Measure(s) to check the practice

An amendment to the Uganda Investment Authority Statute is in the pipeline aimed at removing all the Trade Related Investment Measures (TRIMs). This is in line with the country's move towards compliance with the WTO framework, particularly with the TRIMs Agreement. By extension, the expected changes are likely to address the anticompetitive practice of procuring or selling to particular market segments through tying arrangements.

3.8 ABUSE OF DOMINANCE: UNREASONABLY HIGH PRICES

3.8.1 Prevalence of the practice

Telecommunications sub-sector

Liberalisation of the telecommunications industry saw the emergence of mobile telephony services in the mid 1990s operated by CelTel Uganda. The monopoly (natural) nature of the company resulted in consumers paying unreasonably high prices for the service. Uganda Communications Communication (UCC), the statutory autonomous agency charged with regulating the industry, was established much later in 1997.

However, entry into the market of two other players, first the South African continental giant Mobile Telephone Network (MTN) followed by partly state-owned Uganda Telecommunications Limited (UTL), led to price wars eventually driving call prices down by over 500 percent. Today, CelTel Uganda is trailing the new comers in terms of market share.

3.8.2 Measure(s) to check the practice

Government policy that led to the establishment of the Uganda Communications Commission (UCC) established by the Uganda Communications Act, 1997 has resulted in far-reaching improvements in the fast growing industry. The UCC aims to develop a modern communications sector and infrastructure by various means including reducing the government's direct role as an operator in the sector. The UCC has as one of its functions "to promote competition, including the protection of operators from acts of other operators that are damaging to competition and to facilitate the entry into markets of new and modern systems and services."

3.8.3 Perceived gaps

UCC still has institutional weaknesses, particularly with regard to ability or willingness to investigate and report complaints related to anticompetitive practices as well as violation of consumer rights. Nevertheless the telecommunications sector has seen major improvements in terms of growth and regulatory framework.

3.9 ENTRY BARRIERS

3.9.1 Prevalence of the practice

Manufacturing monopolies and oligarchies

Until 1999, automotive batteries were manufactured by one establishment, Uganda Batteries Limited, which enjoyed protection through a complete ban on the importation of some classes of batteries.

Government has taken fiscal measures against certain imports after some local producers raised complaints over alleged dumping, a move seen as anticompetitive especially by importers. Local manufacturers have often raised allegations of dumping.

3.9.2 Measure(s) to check the practice

Further liberalisation of the economy through elimination of most of the remaining non-tariff barriers will in the long run check this practice without resorting to the force of competition policy. Entry barriers have mostly been erected at the instigation of players in the market who normally want to be protected from competition by imports. Further liberalisation through attraction of more FDI should be increased to stimulate domestic production and eliminate inefficient monopolies.

3.10 PREDATORY PRICING

3.10.1 Prevalence of the practice

Telecommunications

The emergence of competitors in the country's mobile telephony service market led to price wars with the new operators reducing call tariffs significantly to the extent that market analysts called them acts of predatory pricing. The pioneer in the market CelTel Uganda, the company that has since 1995 had a service license, faced competition for the first time in 1998 when MTN Uganda, the second national network licence operator, joined the market. MTN's maiden tariff structure reflected lower call charges, a development that was to be followed by CelTel. When the privatised state-run UTL started cellular telephony services in 2001, call rates further dropped, leading to defection of some of CelTel's customers to its rival networks.

3.10.2 Measure(s) to check the practice

Consumer organisations and the media have noted that the market could be on the brink of a price war that could in the long run hurt consumers if one of the companies collapsed. CelTel is thought by market watchers to be going through a difficult phase following the defection of many of its customers. Uganda Communications Commission, the sectoral regulatory agency, has responded by promising investigations into the allegations. Results from the investigations have not been publicised yet.

3.10.3 Perceived gaps

Failure by the authorities to investigate the alleged predatory pricing and publicising the results is indicative of the institutional weaknesses in the UCC. There is a need to build capacity in the UCC to enable the institution play its rightful role.

3.11 UNFAIR TRADE PRACTICES

3.11.1 Prevalence of the practice

Misleading advertisements/information

Trade and general economic liberalisation of the 1990s has led to the expansion of businesses and increased competition in markets. The liberalisation of the media has led to the emergence of over 120 commercial radio stations in the last 10 years, 12 regular newspapers and 5 television stations. Some of the media outlets, mostly radio stations often broadcast misleading advertisements from competing firms.

3.11.2 Measure(s) to check the practice

The Broadcasting Statute, 1997 provides for the establishment of the Broadcasting Council to check malpractices that range from professional misconduct to outlawed broadcasting of misleading advertising/information.

3.11.3 Perceived gaps

Institutional weaknesses have rendered the broadcasting council unable to execute its role of policing firms and investigating market misbehaviour.

3.12 OTHER UNFAIR PRACTICES

Sale of counterfeit products and copyright violations

3.12.1 Prevalence of the practice

Like in other developing countries, infringement of intellectual property rights is rampant in Uganda usually, but not exclusively, by small operators. Dubbing and resale of audio and video cassettes is most common. Local music theatre artistes are particularly aggrieved by the apparent failure of the authorities to take appropriate action.

Piracy in the computer software industry is also rampant because it is not covered by the local copyright law and is therefore not yet illegal. Sale of counterfeit products including foodstuffs, shoes, clothing, accessories and electronic products is widespread. Although these infringements are committed by small operators, the cumulative effect of the practice is quite significant in a business sense.

Weaknesses in the Economy: Legal and Institutional Framework

Utilities (Power Transmission, Water, Telecommunications, Railways)

The utilities sector is still dominated by monopolies. Until the late 1990s, the power sector was in the hands of the government. There is only one active player in the generation sub-sector, the South Africa-based Eskom that operates the only 2 power generation facilities in the country. The other two Independent Power Producers (IPPs) are yet to start construction of their facilities, partly due to government policy.

Power transmission (high voltage power above 33kv) remains a preserve of the government. According to the Electricity Act, 1997 and certain privatisation regulations, power transmission will remain a function of the state.

Although power distribution has been liberalised, the soon-to-be privatised state-run Uganda Electricity Distribution Company (UEDCL) remains the sole monopoly in the sector. New entrants in the market are required to invest in their own distribution infrastructure and move out into rural areas.

The railways sector, which, with the exception of goods freighting, has virtually collapsed, remains a monopoly too. Years of neglect and mismanagement by the government led to the near-collapse of the monopoly, Uganda Railways Corporation (URC). The government plans to concede it to private investors after restructuring it.

Water supply remains a responsibility of the state through the National Water and Sewerage Corporation (NWSC). The water sub-sector is undergoing restructuring with the aim of offering concessions to the public to commercially supply water and sewerage services at regional and district levels.

The telecommunications sub-sector is relatively closed with only two national network operators, MTN Uganda and the partly state-owned UTL, until 2005.

After the passage of the Electricity Act, 1998, power generation has been liberalised with the emergence of independent power producers (IPPs) AES Nile Independent Power and the Norwegian-affiliated Norpak. This is in addition to the state-owned Uganda Electricity Generation Company (UEGCL) that was recently offered through a 20-year concession to South Africa-based Eskom Enterprises (Africa). The other relatively insignificant generating entities are Kasese Cobalt Company and Kilembe Mines Limited that sell power to the UEDCL.

Threats from powerful regional enterprises

While the East African economies have become more integrated lately, Ugandan producers are threatened by their foreign counterparts from sophisticated economies like Kenya and South Africa that are characterised by more developed financial markets where investible capital can be accessed more cheaply as well as other business-support amenities.

3.12.2 Measure(s) to check the practice and perceived gaps

A lot of progress has been made to address some aspects of competition in regard to the financial, insurance, communications, power generation and securities markets. Also in line with the general liberalisation thrust by government, ministries and public officials are exercising voluntary restraint, though there are measures under various laws that could be taken to regulate businesses and interfere with the level of competition in the market.

It has been observed that, in several respects, deregulation coupled with administrative weaknesses could result in unfair competition. However, during the law review process in the country, the need for a competition law has been raised. This should help address all aspects, general and specific, to competition.

3.13 STATE'S REGULATORY MEASURES AGAINST ANTICOMPETITIVE BEHAVIOUR: SPECIFIC CASES

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 6th Parliament set into motion a new era in the country's communications sector with wide-ranging implications for 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 the sole telecommunications company and courier service provider in addition to being the provider of 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 that 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 and other value added services like payphones, fax bureau, call boxes and 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 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 75,000 in 2002. Mobile phone lines have shot up from 3,000 in 1996 to close to 500,000 in 2003. The number of call offices has increased from 992 in 1997 to over 5000 in 2002 and internet subscriptions from 1,000 in 1996 to over 6,000 in 2000.

Competition regime put to the test

Mobile telephone services

UCC 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 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 the government's 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 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 decided 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 step to encourage proliferation of communications 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 dampened the price wars.

Energy sector

Uganda's electricity grid serves 200,000 households and 5 percent 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

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 the passage of the Electricity Act, 1999, UEB has been 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 sectoral regulatory agency. ERA was established in 2001. Most of its structure has since been put in place and further developed. In effect, 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 and therefore 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 is due for privatisation later in 2003.

Earlier, government licensed two private companies to develop hydro-electricity power facilities along River Nile. The two companies are the American company AES-Nile Independent Power and the Norwegian company 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.

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

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 the 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 also been proposed for debate and subsequent enactment by Parliament.

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.

Insurance

Although the local insurance industry was liberalised in 1990 when the state-owned Uganda Insurance Corporation (NIC) was opened to competition from the private sector, the industry is still largely underdeveloped 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, 1996.

The industry, valued at Ush40bn ($20.8mn) in 2002, has limited coverage. Most insurance companies are in general insurance and life assurance businesses. Engineering and liability insurance is underdeveloped. Besides, the insurance market does not provide aviation, marine hull, agriculture, livestock and crop insurance. Social insurance, for instance, education and health expenses, is totally lacking.

Elusive competition

By 2001, there were 15 insurance operators, 11 covering non-life insurance only and 4 covering non-life and life insurance. Further, there were 28 licensed insurance brokers, 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 has largely been stymied by a 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 percent of the insurance market is under the control of four insurance companies and close to 60 percent of insurance-broking business is under the control of one broker.

The Insurance Statute, 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 soon-to-be-privatised NIC controls the bulk of the business. Privatisation of NIC, slated for later in 2003, is seen 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 six local companies were locked out – some had less than Ush10mn ($5,200) as working capital. The law sets Ush500mn ($260,000) for local companies and Ush1bn ($520,000) for foreign ones as minimum working capital.

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 have 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 the foreign ones. UCBL was recently bought by Standard Bank International (Stanbic) of South Africa

Privatisation and change

The Financial Institutions Statute, 1993 was enacted to put in 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 regulating 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 in the closure of four 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 four 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, launching of "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. It is 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 as 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, though it is not clear yet what effects the divestiture would have on competition in the long run.

The development-banking sub-sector 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, another 30 percent to a strategic investor and 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.

Dairy sector

Until 1994 the Dairy industry was dominated by the Diary Corporation, the state-owned monopoly in pasteurised milk. The liberalisation drive of the industry in 1990 led to transformations but did not open the corporation to intense competition until after 1998 when the new legal framework for the dairy industry came into force. This followed the enactment of the Dairy Industry Act, 1998.

Before this, the legal framework for the industry was based on four instruments, the Dairy Industry Act, 1967, the Public Health Act, 1963, the Food and Drugs Act, 1962 and the Cooperative Societies Statute, 1991. However, the laws' thrust was handling and marketing of dairy products.

The 1998 law sought to reform the organisational and policy framework for the dairy industry and also to provide for the establishment and function of the Dairy Development Authority (DDA), the regulatory body in the sector. However, the force of the new law did not come into effect until 2000 when the DDA administration was constituted and enforcement of the new law therefore embarked upon.

Emergent competition

Dairy Corporation was incorporated into a public limited liability company, Dairy Corporation Limited (DCL) in the late 1990s and has been listed among parastatals due for privatisation. DCL, which controls about 50 percent of the market for processed milk and milk products, down from slightly over 80 percent in the mid 1990s, is facing stiff competition as more processing facilities are established by the private sector.

Over 10 companies as well as cooperative societies have emerged in the last eight years, most of them formed after the establishment of the new law. The companies operate facilities for handling, processing and marketing milk and milk products.

Competition in the dairy industry has been quite progressive, demonstrated by an improvement in technology and production capacity among farmers and investors, which have combined to reduce DCL's market share in the recent past.

Pharmaceuticals industry

Before 1993, trading in drugs was unduly 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, for operating 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. Before the enactment of the NDA Statute in 1993, this law among other things gave the Minister 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 private and public sectors.

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 and establishment of the NDA have not only helped bridge the demand of pharmaceuticals in the country, but also 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, though by default.

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

Government has indicated that the NMS will be privatised by the end of 2003. This could open state procurement of pharmaceutical products to competition and lead to price reduction and availability of variety on the market.

3.14 SURVEY

This section presents a summary of survey findings that focused on the competition and consumer protection scenario that was carried out as an input for this handbook. 26 responses were received from government ministries, departments, regulatory agencies, institutions of learning, lawyer and business associations, law reform agency, parastatals and consumer organizations.

- As regards competition and competition regimes, all respondents noted that the country needed effective laws because the existing ones were weak and ineffective.

- Majority of the respondents are not happy with the market/consumption environment.

- As regards whether competition and consumer protection regimes are good for business and consumers in Uganda, respondents noted they were good and in case formulated and implemented, the regimes should:
  i. Promote efficiency and economic growth
  ii. Promote good quality / standards products
  iii. Curtail consumer exploitation and monopolist tendencies.

- Respondents noted that:
  i. In cartels collective price fixing is the most common practice, followed by bid rigging and market sharing.
  ii. Restrictive trade practices, discriminatory dealings are the dominant practice followed by exclusive dealings in the beverages sector and tied selling.
  iii. As regards abuse of dominance, businesses fix unreasonably high prices, erect entry barriers and vertical restraints, and indulge in predatory pricing.
  iv. Among unfair trade practices, misleading advertisements and information are most common and attributed to a lack of consumer-protection law and specific laws and regulations on advertisement.

- As regards how to promote competition culture and consumer protection in Uganda, respondents recommended:
  i. Intensive national consumer – stakeholder awareness
  ii. Effective policy, laws, regulatory and enforcement regimes
  iii. Capacity building and information dissemination

4

Conclusions and Recommendations

Conclusions

Uganda has no comprehensive law covering competition. However, in general, government and government agencies and functionaries are aware of the benefits fair competition can confer on the economy and on the consumer. From a situation of overregulation the economy has swung to one in which government is loath to intervene except in a few select sectors considered too sensitive to be left entirely to the vagaries of market forces.

Privatisation and liberalisation call for a certain level of discipline on the part of all players in the marketplace, but, except in a few restricted sectors, there are no benchmarks, no parameters and no monitoring processes or systems to ensure that discipline. Monitoring of competition is not synonymous with interference, but as the Ugandan economy continues to grow, publicly owned companies will become more and more important and successful small companies (and those no so small companies) will be targets for hostile takeovers.

Developments like the mergers and takeovers in the local beverages sector need rules and monitoring to protect the consumer and the economy generally and to enhance competition. At the moment, those rules and monitoring systems do not exist.

The subject of vertical restraints, which are generally classified as restrictive trade practices (RTPs), is controversial because most of the instances of their occurrence entail claims of efficiency gains. Businesses believed to be engaged in RTPs argue that their aim is removal of pricing distortions, optimised investment levels and avoidance of transaction costs. They insist that these must be offset against alleged anticompetitive consequences. The difficulty in evaluating these types of arrangements lies also in the fact that, while they arguably put restrictions on the firm's ability to compete freely, they may at the same time be efficiency enhancing.

Recommendations

Competition policy should be provided with a home under the supervision of the Ministry responsible for commerce and industry, similar to the Monopolies Commission in the UK or the Bundeskartellamt in Germany. It should be the responsibility of this new agency to put in place the benchmarks for proper conduct within the competition law and the mechanisms for monitoring and sanctions.

Uganda should speed up the process of enactment of a competition law, of course taking cognisance of similar developments underway within the COMESA framework as well the EAC during the soon-to-be concluded commercial law reform exercise.

There is an obvious absence of an independent law, which clearly defines government policy on consumer protection and competition, outlines the rights of the consumer, establishes an institution or institutions specifically to handle consumer affairs and provides for an alternative dispute resolution system which would expedite redressal of consumer disputes. There is also a need to establish a competition authority or agency to specifically handle cases of anticompetitive practices.

Endnotes

1 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.

2 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 scheduled to be tabled before Parliament in 2003.

3 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 Defined by John Black. Oxford Dictionary of Economics – 2nd Edition 2002.

5 Section 3(e), of the Communications Act No 8 1997.

6 For instance Dr. Sulaiman Kigunddu former Director defunct Greenland bank served a sentence of six months in Luzira upper prison.

7 The property of proprietors of the Defunct International Credit Bank was attached.

8 To be referred to as the FIS hereinafter.

9 Section 6 (1) FIS

10 Section 11(f)

11 Section 4.

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