Consumer Education Trust (CONSENT)

PRELIMINARY COUNTRY PAPER - UGANDA

In respect of

Capacity Building on Competition Policy in select Countries of Eastern and Southern Africa

With support from

Consumer Unity and Trust Society (CUTS)

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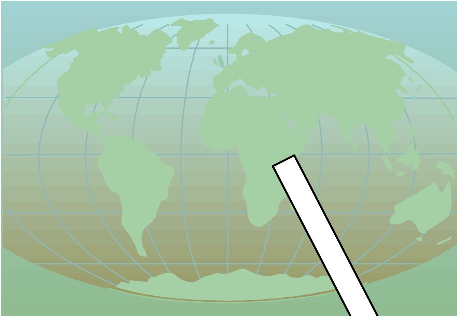
GENERAL BACKGROUND

Where on earth is Uganda?



About CONSENT: *Consumer Education Trust of Uganda (CONSENT) is a civil society organisation founded in 1997 that strives for a socially informed, equitable and just society through empowerment of consumers, promotion of ethical practices among businesses and engagement of policymakers to enact pro-people policies. CONSENT has been engaged with implementing projects on – consumer education, food and agriculture, trade and economics, utilities and services and health and environment, by engaging in research, and building partnerships with various stakeholders, thereby mobilising public support on relevant socio-economic issues.*

VITAL NATIONAL INFORMATION, STATISTICS

POLITICS & GEOGRAPHY	
Geographical location	East Africa, astride the Equator, land locked.
Geographical neighbours	Kenya, Tanzania, Sudan, DRC, Rwanda
Administrative system, structure	Decentralised system with central government retaining role of policymaking, supervision and admin. Units - 56 districts
Area	241,038 sq km (93,072 sq miles)
Life expectancy	45 years (men), 47 years (women) – UN
Population distribution	82% rural, 18% urban
System of government	'No party' movement system, transiting to multiparty dem.
SOCIAL & HISTORICAL POINTERS	
Historical background	Former British protectorate, stable before independence but chaotic afterwards (turmoil, unrest, economic decline)
Major languages	English (official), Kiswahili, Ganda
Major religions	Christians, Muslims
Number of phone lines	1,040,127 mobile, 71,056 fixed (5% penetration) – UCC, Nov. 2004
Access to electricity	5% of population (250,000 connections - ERA)
Access to clean water	60% (national), 55% rural – 2004 (DWD)
Literacy rate	69.9%
Adult HIV prevalence	7% (MoH, 2005)
No of radio sets (per 1000pple)	130 (unicef, 2002)
No of television sets (per 1000pple)	16 (unicef, 2002)
Prevalence of poverty	38% (MoFPED, 2004)
Available HEP capacity	315mw (April 2005- ERA)
Population / population density	26.7 million / 126 persons per Km^2 (UN, 2004)
Population growth / fertility rate	3.4% PA / 6.8 children per woman
ECONOMICS & TRADE	
Main exports	Coffee, Fish and fish products, tea, tobacco, cotton, maize (corn), beans (MoFPED)
Monetary unit	Uganda shilling
Exchange rate	$1=sh1,770; є1=2,200; £1=3,200
GDP per Capita	US $240 (World Bank, 2003)
Integration, trade arrangement	Member of EAC, COMESA, WTO, OIC
Major taxes	Income tax (including corporate tax), withholding tax and rental income tax; value added tax (VAT); excise duty on certain products and sales tax. Imported goods attract import duty and import commission. (Source: MoFPED)
Total External debt stock	US$ 4.3billion [10% GDP] (2003/04 – MoFPED)
Inflation	7.0% (March 2004 – MoFPED)
Tax revenue	12% of GDP (MoFPED)

OVERVIEW OF EVOLUTION OF ECONOMY, TRADE POLICY

Pre-colonial era

Before the advent of colonial administration, present day Uganda was a collection of monarchies and chiefdoms that thrived on barter trade and self-sustainability of individual homesteads. The role of the state was largely to provide security and to mobilise the populace to produce enough food and provide for their families. However, provision of social services was centrally or locally planned through a formally laid out administration structure in the major kingdoms like Buganda, Bunyoro, Tooro, Ankole and Busoga.

Monarchies played the role of enactment and enforcement of informal fiscal policies under which working and wealthy adults paid a form of tax to the state. Collections were largely used to run palace activities and provide for limited infrastructure development. Trade was not centrally controlled as it was non-monetised and depended on consent between buyers and sellers outside the formal market environment as known today. Also trade was not subjected to rigorous standards and criteria. During this period, early merchants made inroads into the heart of the country (kingdoms) and laid the foundation for formal trading markets.

Colonial period

The colonial era also marked the escalation of trade with the introduction and boosting of cash crop production. The foundation of the commodity-sustained trade regime that thrives until the present day was laid during this time. Cotton and coffee production was boosted and many local farmers thrived. In due course, the state was availed a more sustainable source of tax revenue, compared to the earlier forms of tax like gun and hut tax. Later poll tax was introduced thus widening the pool for the exchequer.

Mercantile trade also thrived during this era with the introduction of currency. Manufacturing and processing industries also came into place as the country eventually opened up and fused into the regional and global economic and trading system. Importation and export of goods was overseen and controlled by the colonial administration.

Post-independence time

The post independence period has been marked by intermittent policy reviews and reversals that reflected the thinking of the successive governments in place at the given time.

Socialist-leaning nationalisation Drive (common man's charter)

Shortly after independence, Milton Obote's government adopted socialist-leaning policies that saw an increase of state involvement in means of production. Under the so-called Common Man's Charter, private businesses were nationalised and the state overnight had an unprecedented foothold in major economic activities like banking, manufacturing and export. Competition in some sectors was dealt a major blow as state owned enterprises were cushioned by subsidies and outright favours like monopoly to supply the state.

Amin's Indigenisation policy ('Economic war')

The nationalisation drive was soon buttressed when the Idi Amin government expelled Asians and confiscated their businesses, accusing them of exploiting Uganda. He declared an 'economic war.' However, the change of hands of businesses (mainly trading concerns) did not bear fruit as the trading concerns were soon run down by the new owners. The country's economy was dealt a further blow by economic sanctions slapped on the Amin government by the major western powers.

Post-war reconstruction, revival and transformation
The ouster of Idi Amin through war resulted into substantial damage to infrastructure and human resources. Unfortunately, the period of reconstruction and economic revival that had started was cut short by another civil war that ended in the mid 1980s. At the end of the war, the economy was in bad shape due to socio-economic ruin occasioned by political turmoil. The late 1980s and early '90s marked the beginning of a period, heavily supported by the donor community, involving reconstruction and economic revival.

Consequently, the structure of the economy has considerably changed. Uganda now operates in a 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.

Improved macroeconomic management has resulted into strict inflation control and private sector-led growth. During the last decade, Government has brought inflation under control, and real private investment has risen by three times between 1991/2 to 2002/3, and as a share of GDP from 9%to 15%.

Uganda has experienced strong economic growth averaging 6.5% per annum since 1991/92. At the same time, the structure of the economy has been changing, as the share of agriculture fell from 51% in 1991/2 to 39% in 2002/3. Government aims to boost growth from 6.5% to 7% over the medium term through various interventions including:

- Removal of bureaucratic barriers to investment
- Improvement in transport infrastructure and utility services
- Modernisation/commercialisation of agriculture, with emphasis on value-addition
- Instituting actions to improve rural access to finance and to strengthen SME development.
- Putting in place actions to enhance environmental sustainability
- Restoration of security in Northern Uganda
- Continued focus on HIV prevalence reduction and impact mitigation

Actions to promote production, competitiveness and incomes are guided by the policy Frameworks of Plan for Modernisation of Agriculture (PMA,) Medium Term Competitive Strategy (MTCS) and Strategic Exports Programme (SEP).

SOCIAL AND ECONOMIC POLICIES AFFECTING COMPETITION

Development policy: Poverty Eradication Action Plan (PEAP)

The 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. In order to achieve middle-income status, Uganda needs to industrialise by enhancing its competitiveness. Industrialisation in Uganda will depend on using the resource-base and hence on equipping farmers to understand the technical and quality requirements of commercial production. Government will therefore ensure the provision of public goods to support both agriculture and industry. In order to reverse the recent marked increase in inequality, Government will aim to increase the ability of the poorer households to participate in economic growth through self-employment inside and outside agriculture and wage employment.

Four core challenges for the PEAP include:

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

The PEAP is grouped under five ‘pillars’ or components:

1) Economic management

Uganda has experienced strong economic growth averaging 6.5% per annum since 1991/92. At the same time, the structure of the economy has been changing, as the share of agriculture fell from 51% in 1991/2 to 39% in 2002/3. Government aims to boost growth from 6.5% to 7% over the medium term by the following measures: Removal of bureaucratic barriers to investment; Improvement in transport infrastructure and utility services; Modernisation/commercialisation of agriculture, with emphasis on value-addition; Actions to improve rural access to finance and to strengthen SME development; Actions to enhance environmental sustainability; Security in Northern Uganda and Continued focus on HIV prevalence reduction and impact mitigation.

2) Production, competitiveness and incomes

In order to restore growth in rural incomes, agriculture remains a critical sector, because it continues to provide the majority of employment, because low agricultural incomes form a constraint on the expansion of non-agricultural rural production, and because agriculture is responsive to public goods such as research, extension and support to marketing. To address the recent increases in inequality, Government’s strategy will focus on agriculture, promote better security in the North, and take actions to empower women and strengthen women’s land rights, and promote the involvement of men in HIV prevention and care. Actions to promote production, competitiveness and incomes are guided by the policy Frameworks of Plan for Modernisation of Agriculture (PMA), Medium Term Competitive Strategy (MTCS) and Strategic Exports Programme (SEP).

3) Security, conflict-resolution and disaster-management

Uganda has suffered from insecurity of various kinds including rebel insurgency and, cattle rustling. The country suffers from various forms of natural disaster in addition to the large number of internally displaced persons. Government plans to strengthen its capacity to respond to all forms of security threats as well as natural disasters.

4) Governance

This would be achieved through strengthening processes of democratisation that includes respect for human rights. Other measures would include Improving the justice, law and order sector and managing the public sector with a focus on addressing issues of accountability, with special attention to tackling corruption in public office. Efforts are to be channelled in strengthening decentralisation to achieve major improvement in getting funds to their destination. It is envisaged that fiscal decentralisation would lead to simplification in transfer of resources to districts

5) Human development

The pillar focuses on Health, education, water supply and social development. Government would like to ensure that Ugandans are healthy and well-educated as a necessary condition for development and one of the central objectives of development. During the first two regimes of the PEAP, Government invested in a massive expansion of primary education. In a bid to address the challenges of child and maternal health, Government prepared an Infant and Maternal Health strategy focusing on improving the quality of healthcare and treatment of malaria, sanitation, community mobilisation, and family planning. Also efforts to improve water supply were substantially scaled-up. However, under the new PEAP regime, efforts would be channelled into balancing private and public sector roles in urban and rural areas.

The PEAP provides the foundation for a vibrant and competitive economy with forward and backward linkages amongst the component sectors.

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 for all Ugandans. The primary role of government remains to minimize the barriers to exporting created by national and other countries' policies. By fostering private sector development and market-led development, Uganda's trade policy supports the market role in fostering the development of activities of comparative advantage with export potential.

Further to correct the imbalances in the factor allocation system, government's role has been to encourage export diversification, and restore credibility of the fiscal and monetary policies. Trade and foreign exchange liberalisation has played a major part in this context, with the dismantling of marketing monopolies of parastatal bodies as a significant bold step. Further to this, the easing of restrictive / regulatory measures have 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 improved since the formation of the Uganda Revenue Authority (URA), there is a perception that corruption is pervasive in the tax body, a perception and, to an extent, fact that can only serve to undermine competition by putting the law abiding to a disadvantage. However, important reforms are underway those have lately been associated with increased revenue collection as well as efficiency.

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. Uganda has been on the fast track on intra-COMESA trade tariff reduction. There are indicators 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 resisted by local manufacturers who asked government to go slow on tariff reductions. The local business community argued that their counter parts in the COMESA region would not reciprocate and that it would have a negative impact on the country's tax revenue. Government obliged.

The Uganda government has historically 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 1990's it had at least 40 parastatals 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 were it was previously involved.

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).

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. Under these arrangements, Uganda's export commodities are accorded a more favourable treatment with respect to import duties. These initiatives are essentially unilateral and beneficiaries are required to comply with given criteria. 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).

Multilateral Agreements

Uganda's economic liberalisation trend has integrated the country into the world economy. Consequently, the country participates in multilateral trade agreements. The World Trade Organization (WTO) stands out as the most prominent. Signed by Uganda on September 29th 1994, the WTO (Marrakesh Agreement) came into force on January 1, 1995 aimed at establishing a global framework for global trade.

The WTO was the outcome of the General Agreement on Tariffs and Trade (GATT) to which Uganda was a contracting party since her independence in 1962. As a member of the WTO, Uganda is bound by all WTO multilateral agreements. Although the country hasn't ratified the WTO Agreement through enactment of an enabling law, it has made special efforts to establish appropriate machinery to implement the WTO agreements. The WTO Implementation Bill has been drafted to provide the legal basis to domesticate Uganda's commitments in the WTO. Most significant of these undertakings is reform of all its commercial laws aimed at bringing all its trade-related laws, regulations and procedures into conformity with WTO requirements.

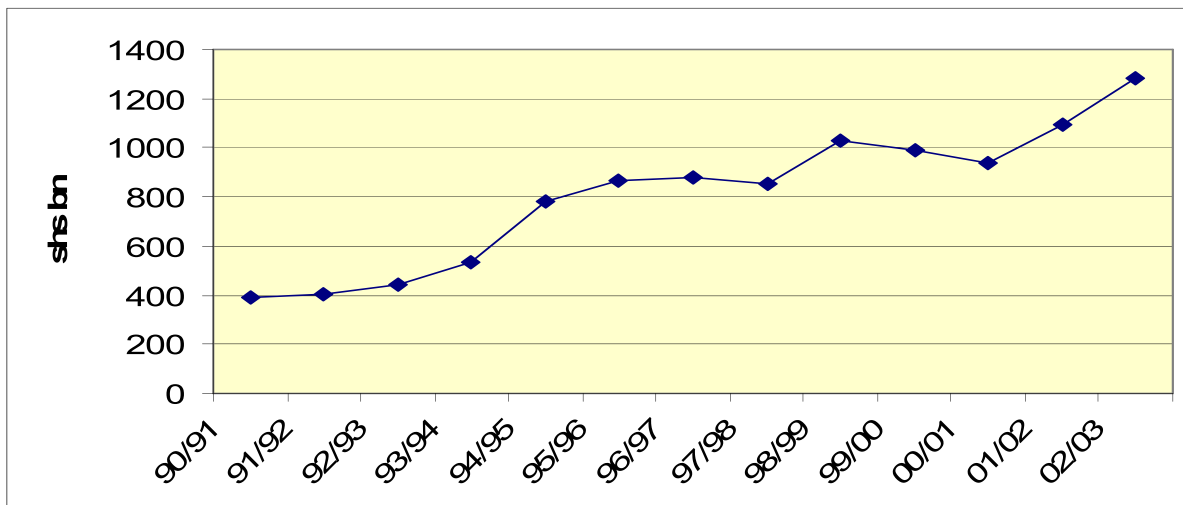
INVESTMENT POLICY

Government created the *Uganda Investment Authority (UIA)* in 1991 in a bid to reflect 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. Under the new concept, the UIA created a network with all the relevant government agencies in order to provide more efficient services to investors. As a result, today, each agency has a desk officer that is assigned to handle investment related matters promptly. In order to reinforce the new concept, the UIA has introduced "Client Charters" in key government agencies that provide service to the private sector.

Along with the creation of the UIA, Government put in place a law to govern foreign investments – the Investment Code of 1991. The Code provided for the licensing of investment, certain facilities and incentives for investors, protection of foreign investment, agreements for the transfer of foreign technology and externalisation of funds. However, the Code has been reviewed and the UIA no longer issues tax holidays to investors. 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.

Real private investment 1990/91 – 2002/03 (constant 1997/98 prices)



***Source**: Ministry of Finance, Planning and Economic Development*

Private sector investment more than tripled in real terms between 1990/91 and 2002/03, as a result of the stable and conducive policy environment created by the Government of Uganda during the 1990s. This growth resulted in private investment almost doubling as a percentage of GDP, from 9.1% of GDP in 1990/91 to 15.6% in 2002/03. Total investment amounted in 2002/03 to 20.3% of GDP, as compared to 15.3 % in 1990/91.

Several constraints still stand in the way of investors as was revealed by a study whose findings are listed below:

THE BUSINESS ENVIRONMENT IN UGANDA			
% of firms evaluating constraint as "major" or "very severe"			
Item	**General**	**Exporter**	**Non-Exporter**
Cost of Financing	60.3	62.5	60.2
Tax rates	48.3	48.9	48.4
Macroeconomic instability	45.4	64.3	41.7
Access to Financing	45.0	37.2	46.6
Electricity	44.5	52.4	42.9
Corruption	38.2	56.4	35.0
Tax administration	36.1	42.9	35.1
Anti-competitive or informal practices	31.1.	41.5	29.4
Skills and Education of Available Workers	30.8	36.6	30.0
Regulatory Policy Uncertainty	27.6	42.9	24.6
Customs and Trade Regulations	27.4	33.3	26.3
Crime, theft and disorder	26.8	36.4	25.3
Transportation	22.9	36.4	20.2
Access to Land	17.4	17.1	17.4
Labour Regulations	10.8	14.6	10.1
Business Licensing and Operating permits	10.1	8.9	10.4
Telecommunications	5.2	7.0	4.5

DELAYS IN PROCEDURES AND CONSTRAINTS TO BUSINESS[i]	
Procedure	**Delays**
Utilities	Takes 1-2months to get an electricity connection; water connections are slow: no formal procedure for self-financing connections
Registration	Foreign businesses have to register with three agencies. Business registry and city council are slow. UIA takes 3-5 days. Times are longer than in Europe or North America though faster than in most African countries.
Tax appeals	Process formal and slow.
Duty drawback	Should take 7 days but can take months because of manual administration. Businesses report that it has become slower.
VAT refunds	Businesses report that it has become slower. URA reports period 10-26 days, almost always within the 30 days stipulated.
Imports border clearance	6 days
Imports veterinary./health inspection	5 days
Imports customs clearance	9 days
Land purchase	Sometimes a very slow process
Export border clearance	6 days
Exports veterinary/health clearance	3 days
Exports – customs clearance	4 days

Source: See *Uganda: Administrative barriers to investment: update, Foreign Investment Advisory Service, World Bank 2003*

Government procurement policy
The need for transparency has resulted into tightening the regulatory noose over 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).

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.

However, the main drawback is failure to set a minimum wage, 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 were workers' rights are abused and/or, are exploited) in the country run by mainly foreign investors.

A revised and comprehensive labour policy has for long been mooted by government but it hasn't been enacted yet.

SMEs
Importance is being attached to 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 will 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.

NATURE OF MARKET COMPETITION

Overview

Uganda's foray into a market economy is still in its infancy, characterised by inexistence of enabling frameworks or the existence of inadequate and/, or archaic policies and laws. Also, 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 injurious 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. Also, policy options that hurt competition like ill-enforced public procurement and selective and inequitable provision of subsidies to some 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.

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 legislations and not directly. Therefore one can hardly speak of an institutional framework[2], 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

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[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 2005.

by default, taken the sectoral approach but curiously only for those sectors where control[3] 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.

Sectoral Set-up

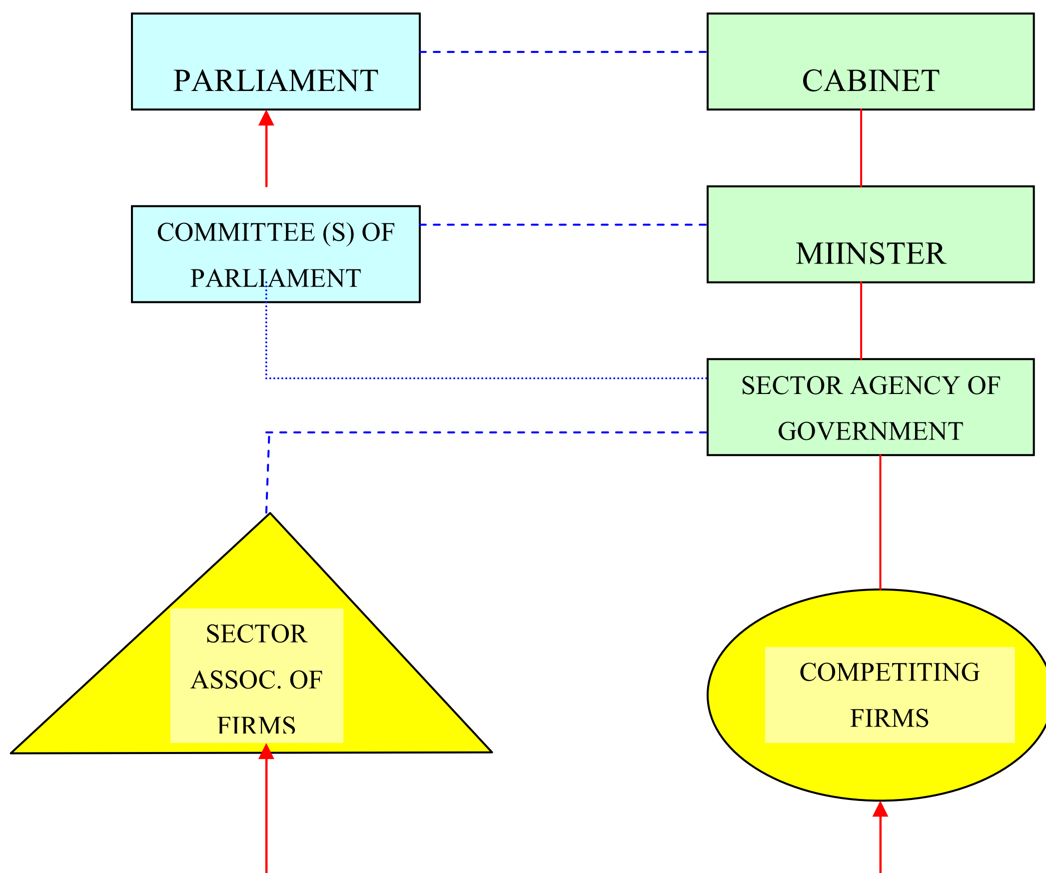
As noted above, sectors where deregulation was instituted are those considered crucial to the economy to check anti-competitive activities and actions of unscrupulous firms and persons that could be injurious to the economy and to individual consumers. It was also due to the need to put in place a rigorous 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 the competition out of the market through hostile takeovers, and creation of virtual monopolies etc. Through agencies like the UCC 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.

[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.

Institutional Framework – Sectoral



Source: MTTI

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 sanctions restrictive practices and enhance competition are largely, part of other legislations.

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 explicit exception is the Uganda Coffee Development Authority (UCDA). Under its statute, the UCDA may issue price guidelines to ensure that no agreement to export coffee sets a price lower than that.

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 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 registrar persistent flouters of its requirement, but its apparent 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.

Competition Policy and Law

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.

The proposed legislation covers:

- Restrictive trade practices and a set of various uniform measures which enterprises could use to distort or eliminate competition in order to acquire and abuse monopoly power;
- Agreements or arrangements which are in writing, oral form, informal or formal aimed at stifling competition;
- The competition commission: functions and composition, qualifications of commissioners, their tenure of office and powers of the commission.

Intension of legislation:

- To ensure that restrictive trade practices do not impede or negate the realisation of benefits that arise from liberalisation, particularly those affecting trade and development.
- To promote competition and innovation and to control concentration of economic power, in order to improve efficiency in trade and to accelerate development.
- To protect and improve social welfare generally and in particular, interests of Ugandan consumers.

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: Deal 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.

Also, the EAC policy and law contain specific provisions on merger control - types of mergers and the need for pre-merger notification. 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.

SECTORAL APPROACHES

Competition regulation has been instituted in some sectors that have recently been restructured. However, restrictive trade practices 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 bedrock for establishing a culture of competition that requires considerably less effort to enforce.

Telecommunications services:

The Communications Act 1997 provides for the restructuring of the communications industry in Uganda. The Act establishes the Uganda Communications Commission (UCC), and provides for its functions. The Act also liberalises and introduces competition in the industry following the unbundling of the state-owned monopoly, the Uganda Posts and Telecommunications Limited (UPTC). The law provides for the incorporation of Uganda Telecom Ltd and Uganda Post Limited, the successor companies of UPTC. Competition has been introduced in the telecom sector[1] through regulation and licensing competitive operators to achieve rapid network expansion, standardisation as well as operation of competitively priced quality services. Under section 57 of the law, the Commission is mandated to encourage fair competition. Activities which exhibit unfair competition are prohibited.

Under the Act, the Commission may on its own motion, investigate any activities which may breach fair competition, or the Commission can be alerted by any person by lodging a complaint to the Commission which in turn effects investigations.

As a result of liberalisation of the Communications sector, there are a number of players in the market, which has resulted into better services to consumers. Currently, there are three major telephone companies offering both mobile and fixed land line services. These include Uganda Telecom Ltd, Mobile Telephone Network (MTN) and Celtel Uganda. 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 to some extent protected in the law. For instance, 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 substantially the same tariff, limiting variations to available or appropriate technologies required to serve specific subscribers.

However, competition has been stifled by a restrictive licensing regime under which only two players (MTN and Celtel) have been issued with national network operator licences. A third license operator is due for licensing in mid 2005, a development that is expected to increase competition in the sector.

Power Sector

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 establishes 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.

[1] Section 3(e), of the Communications Act No 8 1997.

Under section 126 of this Act, the Minister is empowered to form successor companies to 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 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 are open to competition as new players have been licensed to start business. 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 north 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.

Financial Services:

There are two major statutes that regulate the running of banking institutions. These are the Bank of Uganda statute, 1993 and the financial institutions statute, 1993. Fair competition exists 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 tender, maintaining a sound financial structure. The Central bank is established 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 co-operation in order to maintain adequate and reasonable banking services for the public. There is fair competition in the financial sector, buoyed by rigorous entry requirements and 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, particularly protection of consumers' deposits. In some cases the directors of defunct institutions have been prosecuted[2] and personal Property attached[3] to pay for mishandling their customers' finances. The standards set by Central bank are uniform, wherefore there is no discrimination between one financial institution and another. This ensures a level ground that is necessary to motivate new entrants in the market.

The Financial Institutions Statute 1993[4] deals with financial institutions extensively, to include 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.

A renew of the FIS that is underway, is intended to increase capital requirements for licensed companies to operate as financial institutions. The proposed amendment also sets a ceiling of ownership by close relatives in a financial institution, breach of which is punishable as determined by courts of law.

The central bank issues a licence to a company proposing to transact banking, building societies, or credit institutions business. There are stringent conditions[5] to be satisfied before a licence can be issued and these relate to capacity to carry on the business, the competence and integrity of the proposed management .The central bank may revoke[6] the licence where the institution is carrying on business in a manner that is detrimental to the interest of consumers.

The role played by Micro Finance institutions in promoting competition cannot be ignored. There are a number of Micro finance institutions operating in Uganda. They have for long been registered as Non Governmental Organisations. The beneficiaries of these services are usually the poor people who are organised in small groups registered as members with the various Micro Finance institutions. A law was recently enacted to regulate the sub sector. The law sets conditions for licensing or and other regulatory aspects of these institutions. Consumers have raised several complaints over microfinance services, mainly related to failure to disclose information related to services, a shortcoming linked to the heavy loan delinquency in the sub-sector with all implications.

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 No.1996, Allied Health professional statute 1996, Nurses and Midwives Act 1996, Pharmacy and Drugs Act, 1970, National Medical Stores statute, 1993, The National Drug policy and Authority Statute1993. 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 establishes a

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

[3] The property of proprietors of the Defunct International Credit Bank was attached.

[4] To be referred to as the FIS hereinafter.

[5] Section 6 (1) FIS

[6] Section 11(f)

Medical and Dental Practitioners Council. The Council has a duty[7] of monitoring and exercising general supervision and control of medical and dental standards and enforcement of medical and dental ethics as well as disciplinary control. 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.

[7] Section 4.

ANTI-COMPETITIVE PRACTICES IN UGANDA

Anti-competitive practices (ACPs) that prevail in Uganda include cartelisation, restrictive trade practices, abuse of dominance and unfair trade practices. ACPs cover agreements involving implicit or explicit arrangements between firms competing with identical or similar products 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.

CARTELS

Collective price fixing

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 the adherence to the quest for market-determined pricing structures.

The petroleum industry
In line with this policy stance, price setting for petroleum products was officially discontinued in 1994 through a deregulation policy instrument. The role of the Government is now to monitor the activities of the industry to ensure quality standards, 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 anxiously awaited at the time of presentation of the government Budget every year.

Uganda imports all her 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 by the Anglo-Dutch company is replete what would result from absence of competition regulation and consequences businesses and consumers would be faced with. 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% to over 40%, further widening the gap with its competitors the French company Total Uganda that controls 25%, Caltex 20% and Gapco 10%. The rest of the market is shared out between recently registered upstarts Petro, Kobil, Jovena, Galana, Gelp, Gaz, Pearl and Delta among others (statistics are for 2002).

Consequentially, there is compelling circumstantial evidence that price fixing is prevalent in the local petroleum industry. Price leadership has been observed to take place, led 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 coupled with the fact that the crop is grown 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.

In line with the foregoing, 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 emerged recently to operate on international routes. 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, 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 the ceiling or floor of airfare. A case in point was 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 back 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, in the 1960s up to the early 90s it was dominated by state-run bus companies: 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 though fully liberalised, is not adequately regulated much to possible disadvantage to 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 bargaining skills of both parties and is therefore not sustainable.

Miscellaneous ministerial powers

Although not invoked in recent times, the Distribution and Price of Goods Act, 1964 legalises the anti-competitive 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 the country.

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 to say that investigations would be carried out to ascertain allegations of over the existence of pricing cartel. 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 as well as pricing 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 association 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 contemporary trade arrangements. The Distribution and Price of Goods Act, 1964 is one of a series of laws earmarked for repeal.

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 the very existence of 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 anti-competitive and restrictive trade practices are not illegal may, after adequate consultations, require legislative and legal reforms to change the status quo. There is 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 the long-term solution to not only check the alleged anti-competitive practices in the petroleum and other sectors but in the other facets of the economy as well.

Market Sharing, customer allocation and allocation of territories

Prevalence of the practice

The Beverages Sector: Recent developments in the beverages sector, notably carbonated soft drinks (soda) and bottled water sub-sectors bare hallmarks of anti-competitive practice of market sharing or customer allocation.

According to unconfirmed reports, the two biggest soft drink producers, franchises of big international companies Pepsi Cola and Coca-Cola, are alleged to have bought into the leading water bottling companies. According to the reports, Pepsi bought into NC Beverages, bottlers of Highland brand mineral water and Rwenzori Beverages Companies makers of Rwenzori Brand is alleged to have gone to Coca Cola. However, the two companies deny the allegations. Instead the companies state that they have joint distribution arrangements. Products from the water and soft drinks companies are routinely jointly distributed to retail outlets.

Nevertheless, the implications of the alleged developments is that, in theory, the soda companies would be able to control market shares through regulation of production of either soft drinks or bottled water. The alleged acquisition of stake in the bottled water companies by the two beverage giants appears to stem from study reports that suggest that the market of soft drinks is affected by the availability of near substitutes that packed fruit juices as well as water.

Collusive Tendering/Bid-Rigging

Prevalence of the practice

Central / Local Governments

The advent of economic liberalisation resulted in 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. Bidding and tendering 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 schemes have been reported to occur in the country, 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 hit 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 to the President claimed 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 hit by a credibility question with sections of the country distrusting government's ability to divest state enterprises in a transparent and legal manner.

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 badly needed credibility to the processes, although outcomes have been in the form of condemnation, which has 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.

Perceived gaps
Mechanisms to check bid rigging are in place. However, enforcement bodies are weak due to their infant nature and low capacity to investigate reported cases. The long-term solution to not only 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 be able to identify and investigate the practice.

The expected enactment of the proposed Competition Law is enacted, will provide mechanisms like special tribunals with special competencies to investigate and mete out sanctions to errant firms involved in this and other anti-competitive practices.

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 the most obvious in the local trade environment.

Resale price maintenance

This involves restriction on the price to be charged by downstream firms. However, the practice is not illegal in Uganda.

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 Pepsi Cola and Coca-Cola, producing carbonated soft drinks. About a dozen companies that process and pack low cost fruit juice and bottle 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 amount 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.

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 anti-competitive practices. Government argues that the state can no longer intervene in the market. Government indirectly deals with prices through fiscal measures like tax reductions followed by “persuasions” from the ministries responsible for finance and trade.

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 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.

Also, it is envisaged that when the proposed Competition Law is enacted, this and other anti-competitive practices will be outlawed and errant firms would be sanctioned through due process initiated through the appointed competent body.

Exclusive territories

Prevalence of the practice

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

Measure(s) to check the practices

The liberal nature of the country’s trade policy means that the practice cannot be stopped since it’s 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’s in search of more FDI inflows.

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. Arising from the results, measures could be taken which, as one of the steps must include enactment of relevant policy to guide the authorities and trade in general.

Exclusive dealing

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 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.

Measure(s) to check the practices

While the practice of exclusive dealing may not be per se illegal, it's 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.

Perceived gaps

As with regard to the above practice, the fact that it's not illegal requires that studies should be carried out to ascertain its effects on competition and consumer welfare in general. Arising from the results, measures could be taken which, as one of the steps must include enactment of relevant policy to guide the authorities and trade in general mapping illegal and bona fide practices.

Tying arrangements

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's not clear whether its 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 - provision in the Investment law: Restrictions on the source of suppliers for particular inputs used by firms is legal. Under Uganda's Statutory Investment Code of 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 competition practice as well as the GATT 1994 that pushes for 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's not clear whether their decisions to source locally are as 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 companies that source packaging materials locally in spite of the relatively low quality.

Measure(s) to check the practice
An amendment to the Uganda Investment Authority Stature is in the pipeline aimed at removing all the Trade Related Investment Measure (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 ATP of tied arrangement of procuring or selling to particular market segments.

ABUSE OF DOMINANCE

Unreasonably high prices,

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%. Today, CelTel Uganda is trailing the new comers in terms of market share.

Measure(s) to check the practice
Government policy that enacted policy leading to the establishing 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 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."

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

Entry barrier

Prevalence of the practice
Manufacturing monopolies and Oligarchies: Until 1999 automotive batteries were manufactured by one establishment, Uganda Batteries Limited that 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 anti-competitive especially by importers. The local manufacturers have often raised allegations of dumping.

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.

Perceived gaps
Entry barriers have mostly been erected on 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.

Predatory pricing

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 observed were 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 CelTels customers to its rival networks.

Measure(s) to check the practice
Consumer organisations and the media have noted that the market could be on the bring of a spectre 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.

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 need to build capacity in the UCC to enable the institution play its rightful role.

UNFAIR TRADE PRACTICES

Prevalence of the practice

Misleading advertisements / Information

Consumer products: 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.

Measure(s) to check the practice
The Broadcasting Statute of 1997 provides for establishment of the Broadcasting council to check malpractices that range from professional misconduct to outlawed broadcasting of misleading advertisement / information.

Perceived gaps

Institutional weaknesses have rendered the broadcasting council unable to execute its role of policing and investigating professional misconduct.

Other unfair practices

Weaknesses in the economy: legal and institutional framework

Utilities (Water; telecommunications; Railways):

Sale of Counterfeit products and Copyright Violations:

Like in other developing countries, infringement of intellectual property rights is rampant in Uganda, usually but not exclusively by small operators. Dubbing and re-sale of music and videocassettes is the commonest. 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 its not covered by 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 occasioned by small operators the cumulative effect of the practice is quite significant in business sense.

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.

Measure(s) to check the practice and possible 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, although there are measures under various laws that could take 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.

State's Regulatory Measures against Anti-Competitive Behaviour: Specific Cases

THE 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 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 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 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 shot up from 3,000 in 1996 to close to 500,000 in 2003; 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.

Competition Regime under test

Mobile Telephone Services
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.

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

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.

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 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.

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.

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 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 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

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 soon-to-be-privatised NIC control 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 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.

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

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 its 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.

DAIRY SECTOR

Until 1994 the Dairy industry was dominated by the Diary Corporation, the state-owned monopoly of 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 of 1998.

Before this, the legal framework for the industry was based on 4 instruments: the Dairy Industry Act 1967, the Public Health Act 1963, the Food and Drugs Act 1962 and Cooperative Societies Statute of 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 operationalisation of the new law therefore embarked upon.

Competition emerges

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 privatization. DCL, which controls about 50% of the market for processed milk and milk products, down from slightly over 80% in the mid 1990s is facing mounting competition as more processing facilities are established by the private sector.

Over 10 companies as well as cooperative societies have emerged in the last 8 years, most of them formed after 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 improvement in technology and production capacity among farmers and investors, which have combined to reduce DCL's market shares in the recent past.

PHARMACEUTICALS INDUSTRY

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. Before 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 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.

However, there are concerns that centralised procurement by government through a state-run company, the National Medical Stores Limited 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 has indicated that the NMS will be privatised by the end of 2003, a development that could open state procurement of pharmaceutical products to competition and lead to price reduction and availability of variety on the market.

CONSUMER PROTECTION 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.

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.

Bearing in mind the costs and benefits of proposed measures, the economic, social, cultural and technological diversity of the country, and the needs of its population, evolve time bound programmes for the protection of consumers.

Measures
These measures should apply to indigenously produced goods, services and technology as well as to imports.
Physical safety: Protect consumers from hazards to their life and safety:
- Enhance the adoption of national as well as international standards for the safety and quality of goods, services and technology; and
- Encourage and build capacity of consumer organisations to carry out testing of essential consumer goods and dissemination of information.

Information: Access of consumers to adequate and reliable information:
- Government, business and voluntary organisations should develop and strengthen consumer information programmes to encourage people to act as discriminating consumers. Special attention is to be given to the development of mass media programmes to cater to the needs of the disadvantaged consumers;
- Enhance the access of consumers to adequate information to enable them to make informed and environmentally benign choice of goods, services and technology according to individual as well as societal needs; and
- Encourage formulation, adoption and wide dissemination of Citizens' Charters in all ministries, department and bodies of government, business and cooperative sectors to increase awareness, accountability and transparency.

Choice: Promote and protect consumers' interests to make informed choice of goods, services and technology:
- Strengthen measures to prevent restrictive and unfair business/trade practices which are harmful to consumers and the environment; and
- Develop, maintain and strengthen a fair competition policy with a view to provide consumers with appropriate range of choice of goods, services and technology at the lowest prices.

Representation: Represent consumers' view in the decision-making process:
- Provide and strengthen representation to consumer organisations in the decision-making process of the Government at all levels as well as business and co-operatives;
- Promote and encourage an independent consumer movement in the country by providing help to consumer groups to form their organisations and giving them the opportunity to present their views in the decision-making process; and

- Encourage formulation, adoption and wide dissemination of Citizens' Charters in all ministries, departments and bodies of government, business and cooperative sectors to increase representation, accountability and transparency.

Redressal: Expeditious and inexpensive consumer redressal system:

- Strengthen legal and administrative measures to enable individual consumers, consumers as a class and consumer organisations to obtain redressal through quasi-judicial procedures; and
- Encourage consumers to take recourse to alternative dispute resolution systems such as arbitration, conciliation and /or ombudsmen schemes.

Consumer education: To help consumers in their decision making:

- Promote consumer education as an integral part of the formal education system at primary, secondary and college levels;
- Encourage business to undertake publication of consumer educational material for mass distribution; and
- Enable consumer organisations to undertake capacity building programmes for consumers, activists and others.

Basic needs: Access of consumers to basic goods, services and technology:

- Strengthen measures to ensure access of consumers to basic goods and services of acceptable quantity which include adequate supply of basic goods like food and clothing, and utility services like health care, drinking water and sanitation, housing, education, energy and transportation; and
- Encourage the establishment and strengthening of consumer co-operatives and related trading activities as well as information about them, especially in rural areas.

Healthy environment: Sustainable production and consumption patterns:

- Develop and strengthen environmental testing of products and dissemination of information through governmental institutions, media and consumer organisations; and
- Encourage consumer organisations to review the implementation of environmental regulations by providers of goods, services and technology and verification of environmental safety claims.

International exchange of information on consumer protection:

- Initiate and implement exchange of information on measures of consumer protection, regionally and internationally; and
- Encourage consumer organisations to participate in information exchange programmes with international organisations.

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 terms. A proposed draft law was produced by Uganda Consumers Protection Association (UCPA) and handed 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:

- **Safety**: The right to be protected against the marketing of goods and services which are hazardous to life and property.

- **Information**: The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices.
- **Choice**: The right to be assured, wherever possible, access to a variety of products and services at competitive prices.
- **Representation**: The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums.
- **Redressal**: The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.
- **Consumer education**: The right to consumer education.

Furthermore, from the U.N. Guidelines for Consumer Protection, 1985, two other rights of consumers are inferred:

- **Basic needs**: The right to basic goods and services which guarantee dignified living. It includes adequate food, clothing, health care, drinking water and sanitation, shelter, education, energy and transportation.
- **Healthy environment**: The right to a physical environment that will enhance the quality of life. It includes protection against environmental damage. It acknowledges the need to protect and improve the environment for future generations as well.

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.

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:

- Competition policy and law can have a role to play in ensuring that trade liberalisation is not undermined by anti-competitive behaviour.
- Ugandan competition law and policy could encounter major challenges when it comes to international problems like cartels and mergers. This calls for additional safeguard measures or mechanisms to check the external threats.
- 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.
- Uganda has no specific legislation on competition, although there are policies used to influence the local markets e.g. trade policy, industrial policy, investment and licensing regulations, company and partnership laws, labour and environment laws.
- Enactment of Competition policy and law, 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.

CHALLENGES GOVERNMENT HAS TO ADDRESS:

- Low stakeholder awareness
- Harmonisation of sectoral and general competition regulation regimes
- Further adjustment of the economy to attract quality investments
- Absence of a weak auxiliary policy and legislation
- Harmonising economic and trade policies within the EAC and COMESA region

EXPECTED GOVERNMENT ACTION:

To realize an effective competition regime, fair trade and consumer welfare, it is pertinent that the following should be put in place:

- 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.
- In a bid to enhance competition, practices 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 systems.
- 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.
- Functional consumer protection regimes should be established and promoted to ensure efficiency, economic growth, best practice, quality assurance and fair trade.
- 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.

- Establishment of a competent authority manned by professional and experienced manpower to address the increasingly complex challenges in the economy.
- 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.
- Strengthening sectoral regulatory bodies to build their capacity play their expected roles in competition regulation.
- Government should lend the requisite political support for the anticipated market dispensation by way of enactment of supportive legislation, followed by their enforcement.
- 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.

[i] See Uganda: Administrative barriers to investment: update, Foreign Investment Advisory Service, World Bank 2003