

First Quarter, 2010

**Special points of interest:**

- **Welcome to the African Dialogue Newsletter!**
- **Creating a Framework for the African Dialogue**
- **Articles on legislation for consumer protection in South Africa, Nigeria, Egypt, Mauritius and Benin**
- **All articles written by African Dialogue delegates.**
- **For more information, or to make a submission for future issues, contact Deon Woods Bell (dwoodsbell@ftc.gov), or Sally Blatz Du Rivage (jdurivage@ftc.gov)**

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# African Consumer Protection Dialogue Newsletter

## The African Consumer Protection Dialogue: Promoting Consumer Protection and Cross-Border Collaboration in Africa

The African Consumer Protection Dialogue is an informal consumer protection dialogue among consumer protection government agencies/entities (the "African Dialogue") in North, South, East and West Africa. The idea for the African Dialogue is to exchange consumer protection experiences, information and best practices and to organize informal monthly teleconferences among several regional agencies/entities to discuss current issues. The African Dialogue started last year and held several teleconferences to share information with input/feedback from government agencies and NGOs from , Benin, Cote D'Ivoire, Egypt, Ghana, Kenya, Lesotho, Liberia, Mauritius,

Morocco, Nigeria, Senegal, South Africa, Tanzania, Uganda, Zambia and others.

In August 2009 we also held the First Annual African Consumer Protection Dialogue Conference in Johannesburg, South Africa with officials from 12 countries. The conference was co-sponsored by the South African Department of Trade and Industry and the U.S. Federal Trade Commission. During the First Annual Conference participants developed a list of African Dialogue priorities, which included, among others, developing: an African Consumer Protection Legal Framework Toolkit; a

cross-border consumer fraud alert system; more robust law enforcement collaboration— as well as deepening the interface between government agencies and NGOs working on consumer protection issues and reaching out to more francophone and North African countries. The African Dialogue's approach, which includes both government-to-government technical assistance as well as a platform for interface between government and civil society, will help foster improved legal and regulatory environments and also deepen the ties between US and African consumer protection entities.

## Kickoff of African Toolkit: Initiation of the Legal Framework Series

Welcome! This Newsletter represents not only the inaugural issue of the African Dialogue Newsletter, but also the launch of the African legal framework series. One of the main priorities for the African Dialogue is the collection and analysis of African consumer protection legislation. By learning about consumer protection legislation and best practices from North, South, East and West Africa, we hope to advance and strengthen legislative efforts throughout the conti-

nent, thereby benefiting consumers in Africa, the United States and the rest of the world.

With this goal in mind, in this first edition of the Newsletter we highlight legislation from South Africa, Nigeria, Egypt, Mauritius and Benin. Other submissions on this topic will be presented in future issues. In the next issue of the African Dialogue Newsletter we will also explore efforts by delegates to organize activities in celebration of

World Consumer Rights Day (March 15, 2010). Several of our participants worked hard on outreach, stakeholder collaboration, and education in honor of this significant day.

We want to thank everyone for their hard work on this inaugural edition of the Newsletter, and congratulate those who have already made progress on consumer legislation. Congratulations, and once again, Welcome!



The South African DTI is a founding member of the African Dialogue.

*“A new Consumer Protection Legislation (CPA) was promulgated in April 2009 and will come into operation in October 2010.”*

## South African Legal Framework for Consumer Protection

### South African DTI

#### Background

Schedule 4 of the Constitution of the Republic of South Africa, Act No. 95 of 1996, stipulates that consumer protection is a concurrent legislative competency of the national government, and nine provincial government departments. The consequence of this concurrent jurisdiction is an obligation on the part of national and provincial governments to implement co-operative governance practices in the area of consumer protection. The national government sets norms and standards in this regard. Seven of the nine provincial offices have fully operative legislation, though only four of the nine provincial consumer offices currently have fully functional Consumer Courts/Tribunals.

The national government also has, through various consumer protection laws, set up a number of regulatory bodies to provide protection, guidance and advice to consumers such as the Independent Communications Authority of South Africa, (ICASA), the National Credit Regulator (NCR) which registers credit providers, credit bureau and debt counselors and the National Energy Regulator (NERSA), which regulates the energy industry. Related bodies include the Financial Services Board (FSB), The Advertising Standards Authority of South

Africa (ASA), The South African Bureau of Standards (SABS), and the Competition Commission (CC). Various industry sectors also provide consumer protection through industry-funded ombudsman offices such as the Ombudsman for long term and short term insurance that oversee the resolution of insurance-related disputes, and the Banking Ombudsman which resolves complaints about banking services. There are also industry associations that follow their own codes of goods practice (e.g. the Furniture Traders Association, the Wireless Application Service Providers Association (WASPA), and the Retail Motor Industry (RMI), etc.)

The independent consumer voice for South Africa is limited, however there are two national umbrella consumer organizations: the National Consumer Forum (CF) and the South African National Consumer Union (SANCU). There are a number of smaller organizations scattered throughout South Africa that also deal with consumer issues. These organizations act as the first line of contact for vulnerable consumers.

After the first democratic elections, South Africa realized that there had been no substantial review of the consumer protection laws since 1989 when the Unfair Business Practices Act was promulgated. South Africa

was lagging behind other international jurisdictions in this area.

#### The Consumer Protection Act No. 68 of 2008

As a result, new Consumer Protection Legislation (CPA) was promulgated in April 2009 and will come into operation in October 2010.

#### The Act is based on the following enforcement priorities:

- Promotion of a fair, efficient and transparent marketplace for consumers and business;
- Provision of a consistent, predictable and effective regulatory framework that fosters consumer confidence, but also recognizes the developmental imperatives of the South African economy;
- Provision of access to effective consumer redress for citizens;
- Promotion of better customer service in the public and private sector;
- Harmonization of the consumer protection framework with international best practices.

# Egyptian Consumer Protection Legislation

*Egyptian CPA*

Egyptian consumer protection law has three main facets (See Law No. 67 of 2006). Each tenet is listed below, together with a case study which illustrates the application of the law.

- Provide only consumer NGOs (rather than any other type of NGO) the privilege of an "Individual / Class Action."

**Case Study:** One of the NGOs in the "El Sharkeya" governorate has been able to take advantage of this privilege and filed a claim suit on behalf of a consumer. A court has ruled in this matter and a financial penalty levied against a merchant who refused to allow a consumer to return a defective mobile phone. (See Article 23)

- Prohibit unfair trade practices and impose penalty and redress. In addition, the CPA may undertake civil and criminal actions in cases of non compliance to CPA rulings.

**Case Study:** The CPA won a case on behalf of a con-

sumer against one of the largest automobile agencies in Egypt. The company was required to pay approximately US \$ 10,000 to the consumer because the agent sold a defective vehicle to the consumer and refused to comply to the CPA's ruling to repair the vehicle. (See Article 6 & 24)

*"CPA...has detected some illegal or unaccredited repair centers and shut them down."*

- Regulate advertising and require the advertiser to provide truthful, accurate, and complete data and information about the product or service that is being advertised.

**Case Study:** The CPA, in cooperation with other relevant government authorities,

detected illegal or unaccredited repair centers and shut them down. In addition, the CPA conducted a campaign to enhance public awareness for the accredited repair centers. (See Article 8 & 24)

To learn more about the work of the Egyptian CPA and Egyptian consumer protection law, please visit :

[http://cpa.gov.eg/english/legislations\\_rules.htm](http://cpa.gov.eg/english/legislations_rules.htm)



The Egyptian CPA is a founding member of the African Dialogue.

# Nigerian Consumer Protection: Legal Framework

*Nigerian CPC*

Consumer protection is getting a boost in Nigeria. The Nigerian consumer regulatory framework will hopefully be strengthened with by a new Consumer Protection Bill which was recently considered in the Senate. The Consumer Protection Council of Nigeria has, for many years, been pushing for an amendment to the Consumer Protection Council No. 66 Act of 1992. Happily, the effort made by the CPC is now yielding fruit. Some of the merits of the new Bill are as follows:

- For the first time in Nigeria, certain specific rights of consumers will be codified. The proposed Bill specifically provides for consumers' rights to: accurate information and disclosures; enhanced choice; fair and responsible marketing; fair dealing; fair and reasonable terms and conditions; and fair value, good quality and safety.
- Duties of suppliers of goods and services will be specified (i.e. they will be held responsible for codified duties to the consumer). This will also benefit suppliers as they will have more certainty in business transactions.

- An elaborate and well articulated redress system dedicated specifically to consumer issues is set up under Part 8 of the Bill. In addition, under the proposed Bill, consumers have different options on how they can enforce their rights, which they may do either by themselves, through the CPC, civil society groups, the Courts, or via Alternative Dispute Resolution.

- Broader and more clearly defined powers of investigative authority have been allocated to the CPC.

- Institutions dedicated specifically to the protection and enforcement of consumer rights are established under the Bill. These include a Consumer Affairs Tribunal, mobile courts for criminal offences and small claims courts for smaller value claims.

- To ensure geographic diversity and bring consumer protection to the community, the proposed Bill establishes state offices for the CPC. With the introduction of state offices, as opposed to the existing state committees, the funding and

control of state offices would be under the CPC. This will hopefully lead to more cohesive and consistent state-level regulation.

- The Bill also gives the CPC the authority to levy administrative fines.

- The CPC will also be charged with overseeing services in medical and pharmaceutical matters. The relationship of the CPC with sector

specific regulators is also clearly addressed and will hopefully improve upon the already cordial and collaborative relationships.

With this proposed legislation, Nigeria again shows its desire to create an improved consumer protection regime. The Bill will improve consumer confidence in commerce and the provision of services in the country, which will hopefully lead to expanded inter-regional and international trade.



**The Nigerian CPC is a founding member of the African Dialogue.**

*“For the first time in Nigeria, certain specific rights of consumers will be codified.”*



## Research Initiatives to Benefit African Consumers

*Consumers International*

A major research project analyzing consumer attitudes in the telecoms and Internet sector in Africa is being conducted by Balancing Act and the Link Centre in partnership with Consumers International.

The first stage of the research surveyed 30 African countries and provided three detailed case studies for Kenya, Senegal and South Africa which resulted in a substantial report with wide distribution and readership. It identified three issues where African consumers were adversely affected: price of service, quality of service and access to service. It pointed out a number of areas where regulators (in partnership with consumer groups) might take effective action.

The second stage of the research is action-based and looks at the effectiveness of the different approaches to helping consumers by bringing regulators and consumer groups together. The project covers African regulators in five countries (Ethiopia, Kenya, Mauritius, Rwanda and Zambia).

Africa's regulators know that the consumers of fixed and mobile telephones and the Internet are far from happy with the services they are provided with, both in terms of price and quality. They are also aware of the importance of policy and regulatory intervention to strengthen the protection and empowerment of consumers in their jurisdictions.

However, consumers in Africa often lack enabling legislation to provide the necessary protection or regulatory channels through which they can make their voices heard. They also lack a sense of empowerment and do not always have coherent organizations through which they can pursue their interests. Therefore, it becomes vitally important for policy-makers and regulators both to identify the issues of importance to consumers and to put in place the necessary regulatory interventions to ensure consumer protection and stimulate consumer empowerment.

The project findings will be presented in a meeting of the regional regulators association, the Association of Regulators of Information and Communications for Eastern and Southern Africa (ARICEA), by the regulators from the focus countries, allowing an opportunity for peer-to-peer learning.

In terms of the "best practices" element of the research which has been completed, the following areas have been identified: recognizing areas of interest to consumers (via consultation, surveys and complaints monitoring); setting a rules framework (codes of conduct, standard setting and enforcement); intervening on behalf of consumers in issues as they arise; communicating with consumers and the power of the media; and consumer redress (complaints procedures and regulator as referee of last resort).

The qualitative research with consumers has been completed in Ethiopia. Complaints from the research interviews focused on three areas: low network quality, network congestion and high prices, including the price and availability of Subscriber Identity Modules (SIM). There were more complaints about mobile services than about fixed line and Internet services. In large part, this is because the Ethiopian Communications Corporation (ETC), the monopoly provider, is rationing its supply of mobile service because it lacks the capital and human resources to manage a wide-ranging roll-out. Mobile users were particularly unhappy with the cost of Short Message Service, (i.e. text messages), which they felt should be cheaper. On the Internet side, it was striking that whilst Asymmetric digital subscriber line (ADSL) and 3rd General Mobile Communications Networks (3G Networks) have been made available in the capital, outside of the capital it was hard to get anything more than a dial-up service. Finally, there were low levels of awareness of the role of the regulator in protecting consumer rights with respect to these services.

If you are interested in knowing more about the project, please contact Russell Southwood at Balancing Act ([info@balancingact-africa.com](mailto:info@balancingact-africa.com)) or Mary Muchena at Consumers International ([mmuchena@consint.org](mailto:mmuchena@consint.org)).



**Consumers International is an international NGO that works all over the world to protect consumers.**

*"Consumers in Africa often lack enabling legislation ...or regulatory channels through which they can make their voices heard"*

# Investigating the Nexus Between Competition Policy and Consumer Protection Policy

Consumer Unity & Trust Society Africa Resource Center (Kenya)



There is a convergence between the objectives of consumer protection policy and competition policy. The main objective of competition policy and law is to preserve and promote competition as a means to ensure efficient allocation of resources in an economy, resulting in:

- maximum choice of quality goods
- lowest possible prices, and
- adequate supplies.

Competition policy should make markets work and thereby protect consumers from deception. Incidentally, these are also two important goals of consumer protection.

Competition policy promotes efficient allocation and utilization of resources, which are usually scarce in developing countries. This also means more output, lower prices and consumer welfare. It does not stop there since more output is also likely to lead to more employment. Competition may, of course, lead to some job losses in certain sectors in the short run, but this can be

alleviated by providing an appropriate social safety net.

Good competition policy and law lowers the entry barriers in the market and makes the environment conducive to promoting entrepreneurship and growth of small and medium enterprises. This has positive implications for development as small business and entrepreneurial activities, and also promotes employment. The lack of gainful employment is considered to be one of the major causes for widespread poverty in developing countries.

It is also useful to think of competition and consumer protection together with development. There are at least two approaches to development. The first is concerned with fulfilling the minimum basic needs of people, removing the sources of poverty and marginalization and focusing on problems like unemployment, basic health services, etc. The second approach is concerned with latest technologies, exports, industrialization, and more competition to provide better choices. At the core of this approach lies enhancement

and maintenance of competitiveness.

Consumer protection policy is often aligned with the first approach, while competition policy is often an integral part of the second approach, though there are significant overlaps. However, the two approaches do not mean two alternatives, but rather two instruments that should be used simultaneously.

Thus, the interaction between competition policy and consumer protection policy can often be complex. There are issues with trade-offs and striking the appropriate balance between the two. Hence, there is a strong case for bringing competition policy and consumer protection policy under one integrated framework. Unfortunately, in most developing countries such an effort is missing, and while some states have succeeded in establishing competition law often due to external pressure, few countries have adopted legislation that deals exclusively with consumer protection.

*“Competition policy promotes efficient allocation and utilization of resources, which are usually scarce in developing countries.”*



*"It is widely accepted that competition policy is complementary to consumer protection policy."*

## Competition Act Comes Into Force in Mauritius

### ICP Mauritius

November 25, 2009 marked the promulgation of the Competition Act 2007 (Act No. 25 of 2007). This is considered by the business community as well as the consumer movement as a major landmark in the promotion of fair trade practices and consumer welfare.

The Competition Act 2007 aims to enhance fair trade practices and curtail anticompetitive practices. The Act aims to safeguard and promote competition in Mauritius by:

- creating a comprehensive competition regime administered by an independent Competition Commission;
- prohibiting the most serious anti-competitive restrictive agreements;
- providing for the investigation and control, where necessary, of other types of restrictive agreements, and of monopoly and merger situations;
- promoting competition by enhancing efficiency and adaptability of the economy.

The Competition Act 2007 will address restrictive business practices like collusive agreements, such as horizontal agreements, bid rigging; vertical agreements involving resale price maintenance; and other restrictive agreements like non-collusive horizontal agreements. It will also seek to assess

monopoly situations and detect any abuse of monopoly restrictions as well as control merger situations. However, from the consumer point of view, it is regrettable that the Act does not address predatory pricing, nor vertical concentration among firms.

The Competition Act 2007 provides for the establishment of a Competition Commission whose members are nominated by the President of the Republic, on the advice of the Prime Minister and the leader of the Opposition. The Commission also has a chief executive officer, the Executive Director, who is also appointed by the President on the advice of the Prime Minister after consultation with the leader of the opposition. The former economist of the UK Competition Commission, Mr. John Davies, is the current Executive Director.

The Competition Act 2007 also establishes an Advisory Committee on Guidelines and Procedural Rules. Consumer organizations have been called on to play an important role within this committee. These guidelines shall be used by the Commission to determine penalties or remedies imposed under the Act. The procedural rules will specify the procedures which the Commission shall follow when carrying out its functions under the Act.

It is generally acknowledged that competition promotes consumer welfare. In a competitive regime, consumers are expected to benefit from a wider choice of goods, more competitive prices, and higher quality goods. Furthermore it is widely accepted that competition policy is complementary to consumer protection policy. *While Mauritius is on the way to developing a competitive environment through the implementation of the Competition Act, consumer protection legislation still appears to be a long way off.*

The major challenge for the Competition Commission will be to determine whether anti-competitive practices occur in different markets and to investigate restrictive practices. Consumer organizations claim that anti-competitive practices such as cartel agreements, abuse of monopoly and predatory pricing are prevalent and these affect consumers' interests. Although it is the duty of the Commission to investigate allegations of anti-competitive practices, consumer organizations also have a role to play.

Consumer organizations largely concur that there is a long way to go in establishing a strong culture of competition in Mauritius.

# Consumer Rights in Benin

LCDB Benin

The League for the Consumer Defense in Benin (LCDB) is a consumer association that was created in 1998. It is involved in consumer protection in an economic arena that is becoming increasingly complex. Its vision is one in which consumers can have access to safe and affordable quality goods and services and can efficiently exert their rights and responsibilities as educated consumers.

The mission of LCDB is to facilitate the interface between consumers and public as well as private institutions, in order to protect and defend the social, economic and sanitation interests of consumers.

As such, LCDB wishes to contribute to the establishment of an environment where the production

and consumption of goods and services are favorable to the consumers' financial capacity, environment, health and physical safety.

In Benin, the first consumer protection law was issued on 16<sup>th</sup> October, 2007 after intense advocacy by the LCDB (See Law No. 2007-21 ). Unfortunately, this law has not been fully implemented and most consumers remain unaware of their rights and responsibilities.

Nevertheless, there are certain legal provisions that benefit consumers. The Internal Trade Office of Benin's Ministry of Trade monitors the market and seizes unsafe goods. Accordingly, national and local offices of the Internal Trade Office have authority to monitor unfair trade practices, and may conduct research and perform

surveys. Consumers may provide relevant information about goods and services (See Article 47 of Law No.2007-21). The staff of the Internal Trade Office, in collaboration with the League for the Consumer Defense, may also seize goods periodically if they are found to be unsuitable for trade.

However, there are certain challenges regarding the application of this law:

- Consumers cannot take legal action individually or collectively;
- The law has not been fully implemented thus far. As a result, the National Consumer Council has not yet established its local offices.
- The law is not well known among the people of Benin.



*“The mission of the LCDB is to be an interface between consumers and public or private institutions.”*