

First Quarter, 2011

**Special points of interest:**

- **Welcome to the first edition of the second volume of the African Dialogue Newsletter!**
- **Annual Wrap Up and Local Consumer Issues**
- **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

## 2010 Wrap-Up and New Year Kick-Off

We would like to congratulate our participants on a fantastic 2010! In 2010 we made great progress in advancing our priority initiatives and expanding and formalizing the program of the African Consumer Protection Dialogue ("African Dialogue"). We hosted a conference in Arusha, Tanzania, where representatives from the World Bank, Consumers International, and American law professors from Washington and Lee University Law School. Our first secretariat as well as four regional liaisons worked to establish relationships with regional organizations like ECOWAS, COMESA, and the African Union. We welcomed new members, including Tunisia, Madagascar, Mali, and

several others, and enjoyed presentations on a host of consumer protection issues during our monthly teleconferences. Our partner in Ghana drafted a formation document for West Africa for the African Dialogue and is working with our regional liaisons to finalize the document and ready it for dissemination.

We entered the New Year on a high note, welcoming nine countries and twenty-three participants in the first teleconference of the Year. The Tanzanian Secretariat, gave a presentation, highlighting deceptive advertising issues in Tanzania. Following the presentation we had a robust exchange of comments

from other delegates on the teleconference.

Though our work has indeed been commendable, we must forge ahead, and continue our efforts. We encourage those who participate in our priority initiative committees to work together, and notify us of your progress, and also to present your work to the rest of the African Dialogue during one of our upcoming teleconferences. We also encourage all members to send in documents for the website. This includes any relevant laws, organization information, or resources. Thank you for your hard work; we are looking forward to another fantastic year!

## Regional Economic Integration Poses New Questions for Consumer Protection

Recent efforts to foster cooperation at the regional level in Africa have led to much discussion. These initiatives often fuel regional development and allow for far-reaching economic expansion, albeit with some increased risks for consumers.

One of the more robust movements toward regional economic cooperation has been in southern Africa, especially between South Africa, Zambia, Namibia and Angola. South Africa has made regional integration a priority in light of the recent economic crisis and has stressed that development must be balanced and cooperative at the regional level if it is to be sustainable and meaningful. Efforts to develop must also involve economic diversification, which should favor the development of sectors that go beyond those that have traditionally been lucrative for southern African countries (like natural resource production).

South Africa has recently announced regional economic projects involving

Namibia, Angola and others, such as the Spatial Development Initiative, the Trans Kunene Corridor and the foreseen Namibe-Malanje and Cubango corridor, as well as cooperative agreements between banks and financial service providers which will facilitate trade and loans within and between Angola and South Africa.

From a consumer protection standpoint, regional integration may have some serious consequences. Increased trade between countries often raises questions about the integrity of the seller, identity protection, and accountability for fraudulent merchants. The number of cross-border fraud cases, especially those involving online companies, has risen markedly in recent years, and enforcement is not always as adept at tracking online merchants operating across borders.

The African Dialogue can be an invaluable resource in combating some of the new consumer challenges posed by increased regional economic coop-

eration. Information-sharing between law enforcement officials in different countries is critical. We encourage countries to communicate, and of course, any country that needs to contact one of its foreign counterparts, but does not have the appropriate contact information, can contact the U.S. FTC or the Secretariat for assistance. In addition, the FTC maintains the consumer.gov database, which stores complaints from consumers all over the world regarding cross-border fraud. Inquires about a specific country or company can be made by contacting Deon or Sally. Finally, we encourage members to make cross-border fraud concerns known among members of the African Dialogue by writing about them in the newsletter and by bringing them up during our monthly teleconferences.



*“The Egyptian Consumer Protection Agency (ECPA) believes firmly that consumer education must start at an early age.”*



## Integrating Consumer Protection Culture Into the Curriculum of Egypt’s Schools

### Egypt CPA

The Egyptian Consumer Protection Agency (ECPA) believes firmly that consumer education must start at an early age. The ECPA has therefore embarked on an ambitious plan to introduce consumer education into Egyptian schools.

The ECPA, which works under the auspices of the Ministry of Trade and Industry of Egypt, has initiated a dialogue with the Ministry of Education to stress the importance of integrating consumer education material into Egypt’s schooling system. The Ministry of Education has been very cooperative. In 2009-2010 communications between the Minister of Trade and Industry and the Minister of Education resulted in an agreement that integrated consumer protection education into curriculums across all levels.

The ECPA, in collaboration with the Center for Education Development (an agency within the Ministry of Education) selected the main Consumer Protection topics which would be introduced in Egyptian schools at the primary through the secondary level.

The main topics which will be

addressed are:

- \*the meaning of the terms “consumer,” “supplier” and “the standard of a good;”
- \*the importance of obtaining an invoice;
- \*the role of the government in providing consumer protection to the consumer;
- \*the role of Non-Governmental Organizations in consumer protection;
- \*deceptive advertising and how to avoid falling prey to it;
- \*rationalizing consumption;
- \*and commercial fraud and how to avoid it.

Moreover , it was agreed that both the CPA and the Center for Education Development would work together on a strategy for “teaching the teachers” about the main elements of consumer protection. Without educated teachers it would be extremely difficult to have a successful program.

In order to educate teachers, the ECPA is currently looking at the experiences of other countries that have already intro-

duced consumer education into schools. The ECPA is in contact with several UK institutions to see how the UK has trained teachers and how consumer protection education can be integrated into curricula in a way that is both fun and useful.

The ECPA has also made an effort to engage directly with Egyptian schools. Indeed, the Executive Director of the ECPA, Mr. Amr Fahim recently addressed a group of graduating seniors at the El Alsson school. Mr. Fahim conducted a presentation on the importance of knowing one’s rights as a young consumer and the way to seek redress should these rights be violated. El Alsson School was very pleased with his presentation. Based on the success of this event, the ECPA will continue to conduct presentations on consumer protection at other schools throughout Egypt.

## “No Return, No Exchange” Disclaimers Outlawed in Zambia

### Zambia CCPC

A new law in Zambia will prevent merchants from selling items to consumers and then refusing to provide refunds or exchanges when the product is defective. Indeed, until recently, sellers were able to call upon a legal disclaimer known as the “no refund, no exchange” disclaimer, that provided consumers no recourse for faulty products.

Since January of 2010 the Competition and Consumer Protection Commission (CCPC) of Zambia has handled over 50 cases involving defective products. According to Vaida Bunda, the CCPC’s public relations officer, “Zambia is one the countries that has a lot of defective products on its market and it has been unfair for traders to deny consumers refunds for exchange even for defective products,” she said. The total value of these products is approximately K60 million Kwacha (USD12,700), and the vast majority of these cases involve traders who refused to either refund or replace defective products citing the “No Refund, No Exchange” disclaimer. However, thanks to the Competition and Consumer Protection Act No. 24 of 2010, this practice is now

illegal.

Section 48 (1) of the Act states

*“Up to this point it has been unfair for traders to deny consumers refunds or exchanges even when goods were found to be defective, and thus we consider this a major step towards greater consumer protection in Zambia.”*

that “an owner or occupier of a shop or other trading premises shall not cause to be displayed any sign or notice that purports to disclaim any liability or deny any right that a consumer has under this Act or any other written law.”

Up to this point it has been unfair for traders to deny consumers refunds or exchanges even when goods were found to be defective, and thus this law is considered a major step towards greater consumer protection in Zambia. Ms. Bunda confirmed that the new law would make it easier for the Commission to handle cases of defective prod-

ucts because sellers would no longer be allowed to display the disclaimer in their store.

The Commission had, due to the mandate of the repealed Competition and Fair Trading Act (CAP 417 of the Laws of Zambia), been unable to prevent traders from displaying such disclaimers due to the absence of an express provision outlawing this. With an express provision, the new law is more proactive and will make it easier for the Commission to handle cases of defective products.

The Act makes it a punishable offence to display such disclaimers and states that a person who, or an enterprise which, violates this is liable to pay the Commission a fine not exceeding ten percent of that Person’s or enterprise’s annual turnover.

The Commission hopes that such fines will help curtail the sale of defective products especially to consumers who may be ignorant of certain key information relating to the product. Currently, the Commission is working on educating sellers on the illegality of these disclaimers.



## ***Towards a Rights-Based Consumer Protection Law in Ghana***

### *Ghana*

Currently Ghana does not have a comprehensive consumer protection law. Instead, there are several laws that deal with consumer protection. Defective national trade policies are often blamed for the lack of a comprehensive legal framework, however, progress is being made, and it appears that a new rights-based consumer protection law will come to life soon in Ghana.

One statute that deals with consumer issues is the Ghana Trade Policy, which was approved by the Cabinet in 2004. This law is part of Ghana's long-term strategic goal of becoming a middle-income nation and a leading agro-industrial country in Africa. The policy was designed to provide the Ministry with clear guidelines for implementing the government's domestic and international trade agenda as well as to establish a stable policy environment within which the private sector can operate. The fundamental principle underlying the policy is that the private sector is the engine of growth, and it is the role of the government to provide a stable political environment in which private sector initiatives can thrive.

The new consumer policy is being formulated using this same philosophy. The new consumer protection law will add onto the old law by including provisions related to: consumer protection; health and safety of consumers; economic interests of consumers; access to adequate information; consumption and the environment; consumer representation; competition policy and government procurement. The new law will ensure a fair and transparent market place in which the rights of the consumer are recognized and protected.

As a developing country, Ghana must

also address consumer issues related to the provision of essential services such as drinking water, sanitation, education and health care. As such, the new consumer protection law will also give special attention to the basic needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers, and those with very low levels of literacy. It must clearly spell out the rights of consumers, the responsibilities of suppliers of goods or services and regulate all aspects of the purchasing cycle for goods and services, including the advertising or marketing of products, the sale of goods, the disclosure of product or service information to consumers, warranties, and finally refund and return policies.

Specifically the new law should also integrate the universally accepted consumer rights into law by referring, implicitly or explicitly, to eight specific consumer rights, namely:

1. The Right to Basic Needs
2. The Right to Safety
3. The Right to Information
4. The Right to Choice
5. The Right to Representation
6. The Right to Redress
7. The Right to Consumer Education
8. The Right to Healthy Environment

As national constitutions have evolved to reflect a citizens' rights-based approach, so too have consumer protection laws. The Consumer Protection Law for Ghana should move beyond mere consolidation of scattered sectoral laws to reform consumer rights. This would ensure an easily-accessible, consumer-friendly, cross-cutting, rights-based ap-

proach to the development of a single, comprehensive legal framework for consumer protection.

The new Ghana Consumer Protection Law should create the necessary institutions to ensure consumer rights, product safety and the specialized area of financial services that will all strengthen the Consumer Protection Regime. Chief among these institutions should be a Consumer Protection Authority and Small Claims Courts, but arrangements should also be made for a Consumer Product Safety Commission and a Consumer Financial Protection Commission.

Finally, it is essential that the government implement education programs for consumers, businesses and manufacturers alike. The actions of educated consumers and responsible businesses are often highly effective in minimizing the harm caused by shoddy services and unsafe products. More importantly, educated consumers and businesses apply practices that are good for the consumer in a way that does not interfere with market activity. As such, having educated actors in the marketplace is preferable to taking enforcement actions after a wrong has been committed.

#### **For more information, contact:**

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*“The new Ghana Consumer Protection Law must move for the creation of the necessary institutions to ensure consumer rights.”*

# Exploring the Consequences of Anti-Competitive Behavior for Consumers

## Mauritius

According to the International Development Research Centre, competition policy contributes to the economic empowerment of consumers by improving consumer choice and lowering prices.

### Political economy constraints

The establishment of an effective competition regime requires political and economic constraints. However, there are some things that can compromise the quality of regulation. For one, in a small economy like that of Mauritius, where the market tends to be concentrated in the hands of a few families that are capable of controlling several industries, as well as influencing policy-makers through political party funding, winning political support for competition policy remains a major challenge. Additionally, the appointment of political party operatives at the head of sector regulation agencies may also undermine competition regulation. Finally, political party funding by the private sector can also be an obstacle to the implementation of competition law.

### Anti-competitive behavior which hurts consumers directly

#### Cartels

Cartel agreements are some of the most restrictive business practices in the market. It is the responsibility of the Competition Commission to investigate cartels for unfair pricing and restricting choice in the marketplace and hold them accountable.

There are several examples of cartels in Mauritius. One obvious example is in the banking sector. In spite of the large number of commercial banks, there is evidence, according to the University of Mau-

ritius, that the market is highly concentrated in the two largest banks, which accounts for 70% of the market. The research also confirms that bank charges are often unduly inflated and that loan-seekers are the most frequent victims of abusive charges.

Furthermore, banks often require a life insurance policy as a guarantee for loans. Most banks direct loan applicants to specific insurance companies, normally companies belonging to same family, hence denying consumers their right to free choice.

The Insurance sector is also characterized by heavy market concentration. This has led to alleged collusive agreements to fix premiums in a variety of cases.

Other industries that require the attention of the Commission include soft drinks, cattle importers, private clinics, and the association of private laboratories.

#### Monopolies

Monopolies also exist in Mauritius and involve only one entity, as opposed to cartels which involve several entities working together. Monopolies are illegal in Mauritius, and anti-competitive behavior is subject to punishment.

In the sugar market, the Mauritius Sugar Producers Association enjoys a monopoly situation in the import of white sugar for local consumption. Although Mauritius is itself a producer of sugar, the price of sugar has shot up from Rs 10.20 a kilo to Rs 28.00 during the past 12 months, which represents a more than 100% increase.

Predatory pricing, enabled by supermarkets which allow certain

producers to buy premium space on supermarket shelves among other things, must also be considered. Predatory pricing will affect consumers in the long run as it enables companies to acquire a larger share of the market and restrict competition.

One example, where vertical concentration has a direct and negative impact on prices is in the poultry market. Small scale farmers depend on the large companies for day-old chickens which would then, after sometime, be sold as fresh chicken. This alone would be cause for concern, however, in addition to controlling the production of day-old chickens, frozen chicken, eggs and poultry feed, these large companies also have their own fresh chicken outlets that compete with the small scale farmers. When all is said and done, there is little price competition in the market, as the larger companies are able to price as they please due to their privileged role in this industry.

All national competition laws within the region (apart from those in South Africa) include consumer protection provisions as do the national laws of countries as diverse as Poland, France, Canada, and Venezuela. We support this approach. In Mauritius, where competition law and consumer protection law are separated, the links between them are clear. Indeed, in Mauritius, as in many other countries, this link is acknowledged by the fact that the agency regulating competition often also oversees consumer protection, and vice versa. It seems a natural next step then, that competition law include provisions that relate to consumer rights. Initiating action in this direction can be the next step in enhancing both consumer protection and competition.



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# Inequality in Product Promotion in Namibia

## Namibia

A few weeks ago I went to the National Assembly to listen to a debate. Quite unusually, on this particular day an atypical atmosphere of celebration prevailed.

A private company had set up catering equipment with food for passers-by and with a display show-casing their products. During the tea break, as lawmakers exited the chambers to enjoy their tea, they were greeted by the people who had set up the display. Lawmakers were offered food and drink by this company, which included, of course, some of the new products that the company has come to promote.

This type of display that incorporates marketing and outreach by targeting a particular audience is referred to as a “sales promotion.” Promotions are said to account for “more than 60 per cent of a typical marketing budget” in Namibia of some companies, and can be extremely important to the success and desirability of a particular product.

Generally speaking, companies market products to a specific audience. However, marketing messages can also be aimed at customers who have influence in the target market. In these cases, a “knock-on” or snowball effect is hoped for, which means that consumers in the market for a

particular good will choose a particular product because someone of influence or importance has been seen using or enjoying the product. Often at sales promotions, companies will offer free samples of their product, which is a particularly appealing tactic for sellers of foodstuffs and beverages, as I witnessed outside of the National Assembly.

It occurred to me that there was probably a very good reason for setting up this particular promotion at the National Assembly. Clearly, consumers in a supermarket, Katutura, or rural areas would have also been interested in samples of this product, however, it was the national lawmakers who were in fact treated to the promotion. Indeed, the product was one that would have been consumed by an average Namibian -it was relatively inexpensive and sold in small quantities- and as such, worth promoting among the general population. Although this practice is common in many parts of the world, the choice of location for the launch might suggest that producers choose their locations in order to get closer to the people who have influence in a particular marketplace. Though there was no evidence of malfeasance, it is important to consider the disparities that exist in the market and assert the rights of ordi-

nary consumers to make their own choices.

Sales promotions that involve sampling and product displays are perfectly acceptable as a way for companies to inform the public about their product and get the word out about a particular product’s advantages. Indeed, I am not suggesting that any wrong-doing took place at the National Assembly, however, it is important to consider the implications for the average consumer of location when companies organize promotional events.

If our goal is to provide the greatest choice and quality to all consumers, it is important that products are marketed fairly and in a way that allows consumers to make choices based on personal preference and comparative quality, rather than being swayed by people who happen to have influence. Ordinary consumers may not have the power to change this system, and thus are left to stand by while those with greater power enjoy choice and exposure to a variety of products. As such, I advise businesses to stay away from the parliament, and to market products in spaces that are more open and available to the average consumer, like supermarkets, and public squares.

*“It is important to consider the implications for the average consumer of location when companies organize promotional events.”*

