

A REPORT ON THE KENYA CONSUMER ROUNDTABLE HELD ON THE 12TH OF JULY 2011 AT THE NAIROBI SAFARI CLUB, NAIROBI

**US - FTC, MONOPOLIES & PRICE COMMISSION, CIN AND CUTS
CONSUMER CHAMPIONS DIALOGUE**



12TH JULY 2011, NAIROBI

Consumer Unity and Trust Society (CUTS), Nairobi in partnership with the Monopolies and Price Commission of Kenya (MPC), the US Federal Trade Commission (US FTC) and the Consumer information network (CIN) organized a Consumer Protection Round Table in Nairobi Kenya on the 12th July 2011 at the Nairobi Safari Club Hotel.

The objective of the consumer roundtable was to appreciate the ongoing and completed consumer protection initiatives in the country, to share on the experience of consumer protection by US federal Trade Commission and to forge the way forward of enhancing consumer protection in the country. The round table was a launch pad session to bring together consumer champions and protection agencies in the country. Consumer champions were able to deliberate freely on issues bedeviling consumers in Kenya and forge common ground on dealing with these fundamental issues. The discussion was put to order at 9.00 am with opening remarks from: Kate White the attorney, bureau of consumer protection of the US FTC, Mr. Clement Onyango, the Director, CUTS Nairobi, Mr. Wangombe Kariuki of MPC, Mr. Samuel Ochieng, of CIN

Overview of Kenya's consumer protection legislation and system

Presenter: Beldine Omolo, Monopolies and Price Commission

This session had a presentation by the Monopolies and Price Commission with the review on consumer protection legislations and institutions in the country. The presentation illustrated on the consumer protection provisions in article 46 of the new constitution and the UN guidelines on consumer protection. It highlighted on the legal rationale for protecting consumers and the history of consumer protection. It also pointed on the milestone in terms of having a one stop consumer protection law in place; the private member bill (2007 consumer protection bill) had been taken up by government through Kenya law reform commission and is now called 2009 consumer protection bill.

The MPC noted that section 55-70 of the competition act has provisions for consumer protection which addresses false and misleading representation, unconscionable conduct, product safety and information, liability for defective and unsuitable goods. It was noted that the competition act, which borrows heavily from both the EAC & COMESA Competition act, with provisions for consumer protection, will be operational by the 1st of August 2011.

The emerging issues from the presentation and the discussions that followed showed that, Kenyan consumer laws are scattered in different legislations under jurisdiction of various government agencies and ministries.

Deliberations were consistent to the need for unity among the consumer lobby groups in representing issues facing consumers in the country instead of acting as competitors. Consumer lobby groups were advised to have responsible advocacy when voicing their concerns.

It was also pointed out that consumer lobby groups need to have facts (evidence) that back up the issues they are addressing and the need to strike a balance between consumers and producers's interests when addressing market concerns.

The presentation also highlighted on other consumer protection initiative by other bodies including financial education and consumer protection partnership (FEPP) of Central Bank in partnership with the World Bank to enhance consumer financial capability in the financial sector.

The question of the day was whether consumer laws should be consolidated into one specialized agency or should it be a shared responsibility of different bodies.

Overview of consumer protection at FTC

Presenter: Kate White of US FTC

This session led by Kate White of Federal Trade Commission detailed on the history of FTC and the general idea of consumer protection at the FTC. The presentation highlighted on the FTC consumer protection role and its jurisdiction which covered over nearly every economic sector. It touched on FTC's authority which covers frauds in internet, spam, telephone bill, credit and lending statutes, identity theft, multi level marketing, business opportunity, solicitations for phones, charities, advertising and sale of funeral data privacy and security.

There was learning on FTC approaches to consumer protection with comprehensive focus and illustrations on cases, rules, guides, education and industry self regulation. Kate guided the discussion on consumer sentinel network for cyber crime investigations and the associated complains like identity theft et al. We learnt that the organisation mainly deals with unfair methods of competition in business practices and write guide to businesses on how to comply with the law.

The Kenya consumer champions and protection agencies had an opportunity to learn about FTC's consumer protection bureau with its different divisions that handle different kinds of consumer issues ranging from; advertising practices, education, enforcement, financial practices, marketing practices, planning and information, privacy and identity protection.

Consumer outreach efforts in Kenya

Presenters: Mr. Daniel Asher (CUTS Nairobi) and Mr. Samuel Ochieng (CIN)

This session led by presentation from Daniel Asher of CUTS Nairobi, Samuel Ochieng of CIN and other consumer groups focused on the various ongoing and completed consumer outreach efforts by the respective consumer organizations in Kenya. These included the evidence based policy advocacy in the country through engagement of key stakeholder's i.e. inclusive research and policy discussions by key government ministries and agencies, advocacy through the conventional media, organization of economic round tables involving key government persons, professional institutions and the public to deliberate on consumer issues and making policy recommendations.

Other outreach activities already pursued by consumer organizations in Kenya included advocacy through social media e.g. use of consumer protection Google groups, consumer empowerment forums on face book, use of yahoo groups, tweeter, and blogs. There are also efforts by some consumer lobby groups to inform consumers on where to find affordable goods by posting the different commodities and their prices on various websites. There have been efforts to also post the different interest rates of various banks on the media to assist consumers in making an informed choice.

The discussion pointed on the need to devolve consumer interest at the county level in line with the new constitution. A number of ongoing projects are being implemented by various consumer organizations in Kenya which include a study on the quality of consumer financial services by the commercial banks in Kenya being undertaken by CUTS Nairobi among others.

ERC echoed the need for responsible advocacy when voicing emerging issues in the energy sector. It was also pointed out that when voicing consumer concerns, it was necessary for the consumer lobby groups to have facts that back up the issues they are addressing.

MPC pointed the need to strike a balance between consumers and producers interests when addressing market concerns. The Kenya law reforms commission (KLRC) pointed the strength in the consumer protection bill 2009 in terms of creating markets and protecting

consumer interests in the country and called for strong regulatory institutions to work with the competition authority while declaring that the main objectives of market regulations is to bring stability, competition and importantly to protect consumers.

In regards to having consumer courts/industrial courts, as suggested by the consumer organizations, the KLRC pointed that it is a policy decision to be made by the government with stakeholders' consultation. It was suggested that a consumer tribunal can be proposed. KLRC confirmed that they have already drafted small courts' bill for small claims that will help in dealing with consumer issues.

While explaining the intricacies on number portability, CCK informed that the main reason for the introduction of number portability initiative was to make competitors improve on their services and to lower prices for the benefit of consumers. CCK receive accolade for excellent work in regards to consumer education and protection.

The anti counterfeit agency (ACA) echoed the role played by consumer watchdogs in terms of creating awareness and sensitization of consumers in regards to prevalence of anti-counterfeits in the market and called for a modality to reach out to consumers. They reiterated that the agency is still young but keen on working with consumer organizations. They called on consumer organizations to put their house in order to allow for a structured mode of representation.

Kenya association of manufactures (KAM) called for collaboration among consumer groups and the development of supply agreements with monopolies and large suppliers.

Capital Market Authority (CMA) was concerned with the sustainability of consumer organizations in terms of taking forward the noble agenda of consumer protection in the country.

CUTS re-emphasized that the main challenge bedeviling performance and sustainability of consumer lobby groups remains funding on consumer projects since most donors are yet to appreciate the importance of consumer protection in the country. It also pointed on the poor or ineffective representations of consumer interest into the regulatory process leading to frequent violations of consumer's socio-economic rights and regulatory capture in key government regulatory agencies.

Consumer Protection and Credit Reporting System: Overview of the FTC's Enforcement of the Fair Credit Reporting Act (FCRA)

Presenter: Kate White US FTC

The discussion touched on detail the contents of *consumer (credit) file* including identifying information: - name, address, date of birth, social security number and credit header information; credit account information:-mortgages, car loan, credit card; public records: - bankruptcies, foreclosures, civil judgments, tax liens; collection accounts (delinquent debts) and enquiries. There were discussions on sources of information to the bureaus including furnishers: - creditors and other lenders. We learnt that Credit bureaus maintains files on 215 million US consumers from 30000 data furnishers.

The presentation also delved on some of the challenges that faced the implementation of the fair credit reporting Act including lack of regulation on who could obtain credit reports, general unawareness by consumers on the existence of credit reports, inability of consumers to challenge errors because they often did not know files about them existed or who had them and the growing concerns about the reports' accuracy and the harm inaccurate information might have on consumers.

With a comprehensive overview of fair credit reporting Act, the presentation also touched on the guiding principles of FCRA including details on principles of privacy, accuracy and fairness. The discussion pointed that the US credit reporting system upholds consumer rights with the credit report giving both positive and the negative information. However, the consumer has the right to dispute negative reports.

There were a lot to borrow by the credit reference bureau in Kenya from the US FCRA in terms of the contents of the consumer files and the usage of consumer credit information.

Credit Reporting and Financial issues facing Kenyan Consumers;

Presenter: Mr. Stephen Mwaura Nduati, Central Bank of Kenya

The discussion was led by Central Bank of Kenya with a chronology of the development progress of the credit referencing bureau (CRB) emanating from the lack of information to borrowers which prompted banks to share information. It started way back in 2006 with the banking Act which led to the creation of credit reference bureau which are regulated and supervised by central bank of Kenya. In 2011 all financial institutions (commercial banks and lenders) were mandated to share negative financial information.

CBK mentioned the four (4) pilot projects on financial education – what works for Kenya undertaken by the Plan international, Faulu Kenya, Equity Bank, and Makutano Junction. CBK has the mandate to license credit reference bureau to enhance competition for accurate information sharing.

CBK mentioned that the main aim of having CRB was to facilitate flow of information and to reduce the cost of credit to consumers by making available information on the consumers to banking or lenders at minimal cost.

On best practices, CBK noted the World Bank's global standards on credit reporting where consumer services are key and the global best practices in the US and South Africa.

CBK informed on the opportunities for consumer financial protection in the pending finance bill which is likely to be passed in January 2012 and has consumer rights in existence. The discussion touched on the provisions of consumer protections and initiatives including the banking act, deposit protection fund, the amended SACCO law with the creation of SACCO regulatory authority, financial sector deepening trust: - an initiative by the central bank in which consumer groups can join and participate in a lot of research and financial education initiatives.

Key on the floor deliberation included the redress to consumers incases where government provides financial services, whether consumer protection extends to the budget making process. CBK informed of the already opened space for consumer participation in terms of citizen's budget, tax tracking and the alternative budget.

Consumer concerns in the financial service provision

Consumers had issues with the CRB in which they had perceive it to be a black listing point for consumers and away in which those with pending loans had to be imposed high interest rates based on CRB's credit rating. Credit Reference Bureau (CRB) advised consumer groups on the benefits of getting their financial reports before applying for loan and that the sharing of credit information is purely to facilitate quick processing of credit by lending institutions and to reduce cost to consumers.

Consumers were concerned with how the information sharing by CRB help in lowering interest rates and enhance consumer protection. CBK informed consumers of its new website that share bank information with consumers.

Among the emerging challenges that have been seen with the CRB, is the difficulty in getting positive comprehensive information on individuals, problems in ensuring the poor consumers get access to credit finances offered by banks.

There was concern regarding ineffective representation of consumer groups in key institutions and agencies with consumer protection mandate which has limited advocacy and representation of consumer interest in the country.

Consumers raised complains concerning the problem of fine print in which a lot of hidden fees and rates allowing financial institutions to advertise one low price when their actual prices are generally higher, non standardized terms of financial services in the country making financial products and services difficult to comprehend for rational consumer choices, lack of predetermined standard of recourse for aggrieved financial services consumers and the general problem of lack of information on the financial services and consumer redress available in the country.

There were calls for an all inclusive consumer financial education with priorities being on the legal provisions, recourse and the financial products by financial institutions. Strong legislations to protect on confidentiality of financial consumer's info and to ensure full disclosure on interest rates and services fees by financial institutions, legislations to guide on disclosure of information on terms of deposits offered, rates, and communications with depositors; plain language agreements fully explained to customers, legislations to guide on the mode of communication to consumers on changes to the terms of the contract, consumer rights and obligations, provisions on monthly loan account statements, publicity on the recourse process to all financial services consumers to curtail against unscrupulous financial service providers.

Discussions on the way forward on consumer protection in Kenya

This session's objective was to brainstorm and give suggestions on the way forward, from the emerging issues facing consumers.

Energy regulatory commission (ERC) welcomed consumers to engage with them in addressing consumer concerns in the sector. The immediate approach on engagement with ERC is through tariff review in which consumer organizations are to present their issues in regards to quality and efficiency.

Communication Commission of Kenya (CCK) welcomed the idea of having consumer representation in the agency. They also noted the likely hood of engaging consumers in their research activities while pointing on the possibility of having consumer groups in their

database for distribution of information and inclusion in their stakeholders' meetings and activities. They showed a bit of reservation given the given the government's procurement process.

Consumers' organizations floated the idea of using an already established model by Kenya Bureau of standards (KEBS) in which the agency had in its budget allocation intended for consumer protection activities – organizing events and paying for the bills by themselves with no money given to consumer organizations, allocations for contracting consumer organizations to undertake some studies.

Monopolies and prices commission (MPC) noted the concurrence of jurisdiction and called for the drawing of a memorandum of understanding on how to deal with consumer issues.

Central bank of Kenya (CBK) called for the consumer organizations to be organized. CBK cited opportunity for research under financial education and consumer protection partnership (FEPP) where membership is open and more details can be accessed in their office at Kenya Re.

Capital Market Authority (CMA) voiced the need to engage with consumer organizations on one on one on issues of consumer protection and affirmed their readiness to collaborate with consumer organizations mentioning that they can be approached for more discussions in their current office location at Re- insurance plaza presently or in upper hill by September 2011.

Kenya Bankers Association (KBA) called on consumer organization to carry out publicity/market them selves noting that some of their contact details (telephones) are not going through. KBA sort to be copied in CUTS newsletters.

Anti Counterfeit Agency (ACA) envisioned working together with consumer organizations on research on consumer issues. They pointed out the need for consumer lobby groups to have a partnership structure, which will ensure that they have one voice when presenting the consumer concerns to the regulators. This would also help in facilitating possible funding from regulatory bodies.

ACA took the discussion to clarify that generic medicine are not counterfeits but can be counterfeited. They mentioned that in terms of enforcement, they are presently engaging with the dealers and the provincial administration and are looking forward to serious engagement with consumer organizations. They highlighted on the consequences of anti-counterfeit products while giving an example of mathematical set in which protractor have ended up with wrong calibrations mentioning that they have taken initiative to repot such complains to dealers.

Consumer information network (CIN) remarked that the idea of merging consumer organizations was far fetched while ACA clarified that coming together of consumer organizations does not imply merger but a mechanism of sharing or having a common position-directors coming together to voice their concern through a harmonized ground.

CBK informed of the avenue of partnership through its initiated financial education and consumer protection partnership (FEPP) in partnership with the World Bank to enhance consumer financial capability in the financial sector. The FEPP recognizes that it is imperative for the financial sector to appreciate the reasons why consumers are challenged in the course of accessing financial services and that the sector must find ways to engage the consumer so that there services are more transparent.

CBK reaffirmed that consumers need to be educated so that they know their rights as well as responsibilities and initiative are aimed at making the industry robust and more inclusive. The FEPP taskforce has established four core working groups to drive the project forward. The working groups are tasked with responsibilities to: Increase the number of consumers reached with consumer education messages. Promote consumer protection regimes including transparency and disclosure of bank charges and interest rates. Establish a financial education and consumer protection policy framework. Generate the evidence base of what works or doesn't work through research, monitoring and evaluation of programmes.

In terms of realization of enforcement, KAM suggested the need for engagement with dealers and to have a clear cut agreement on provision of services. Regulators were advised to organise an all inclusive activities to bring consumer groups members and deliberate on issues. This can also be enhanced by developing a database whereby, regulators can be mailed quarterly news letters to inform them on the consumer issues in the country.

The meeting ended at 3:30 pm with closing remarks from Mr. Clement Onyango the Director of CUTS Nairobi and Mr. Samuel Ochieng of Consumer Information Network.

AGENDA AND PARTICIPANT LIST

8:30 – 9:00.	<p>Opening Remarks</p> <p>Aim of sessions: To provide an overview of the missions, legal authorities and structures of consumer protection efforts in Kenya and at the FTC.</p> <p>Speaker:</p> <p>Kate White - An attorney, United States Federal Trade Commission's Bureau of Consumer Protection, in the Division of Privacy and Identity Protection-)</p> <p>Clement Onyango - Director: CUTS, Nairobi.</p> <p>Wang'ombe Kariuki - Monopolies and Prices Commission</p> <p>Samuel Ochieng – CEO, Consumer Information Network</p>
9:00 - 9:30	<p>Overview Kenya's Consumer Protection Legislation and System</p> <p>Speaker: Monopolies and Prices Commission</p>

9:30 – 10:00	<p>Overview of Consumer Protection at the FTC</p> <p>Consumer Outreach and Business Education</p> <p>Speaker: Kate White, FTC</p>
10:00-10:15	Break
10:15 -11:00	<p>Consumer Outreach Efforts in Kenya</p> <p>Speakers: CUTS, COFEK, CIN, others</p>
1100-1145	<p>Consumer Protection and Credit Reporting System:</p> <p>Overview of the FTC’s Enforcement of the Fair Credit Reporting Act</p> <p>Speaker: Kate White (US FTC)</p>
11:45 -12:30	<p>Credit Reporting and Financial Issues Facing Kenyan Consumers</p> <p>Speaker: Central Bank of Kenya, CUTS, CIN, others</p>
1230 – 1300	<p>Children’s Food and Nutrition</p> <p>Speaker: Kate White</p>
1300 - 1400	Lunch
1400 -1450	Way forward on future collaborations
1450-1500	Closing Remarks

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