The State of Play of Competition Policy and Law Reforms

The Case of Uganda

EACOMP Project

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CUTS Nairobi
Yaya Court 2nd Floor, No.5, Ring Road Kilimani
P.O. Box 8188-00200, Nairobi, Kenya
Ph: +254.20.3862149, 3862150, 20.2329112,
Fax: +254.20.3862149, Email: nairobi@cuts.org
Web site: www.cuts-international.org/arc

Researched and Written by:

Jane Seruwagi, Martin Kaggwa and Kiiza Africa for SEATINI Uganda

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Abbreviations

ACP	Anti-competitive Practices
COMESA	Common Market for Eastern and Southern Africa
CONSENT	Consumer Education Trust
CSO	Civil Society Organisations
EAC	East African Community
EPA	Economic Partnership Agreement
EU	European Union
GDP	Gross Domestic Product
IMF	International Monetary Fund
LDCs	Least Developed Countries
MoFPED	Ministry of Finance, Planning and Economic Development
MTIC	Ministry of Trade Industry and Cooperatives
NTP	National Trade Policy
NYTIL	Nyanza Textile Industries Limited
PEAP	Poverty Eradication Action Plan
PRSP	Poverty Reduction Strategy Paper
SAPs	Structural Adjustment Programmes
SME	Small and Medium Sized Enterprises
TIPA	Trade and Investment Partnership Agreement
UBOS	Uganda Bureau of Statistics
UEB	Uganda Electricity Board
UNBS	Uganda National Bureau of Standards
USA	United States of America
VAT	Value Added Tax
WB	World Bank
WTO	World Trade Organisation

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Executive Summary

Imperfections in market operations lessen the envisaged benefits of adopting a liberal macro-economic stance. With the existence of more imperfect markets as compared to perfect ones, the case for liberal economic policy stance could not be justified even by pro-market economy sympathisers. The most common market imperfection emanates from lack of competition within the markets. Without competition market, consumers would be exploited and resources would not be allocated to the production of the most deserving goods and services. In addition, a local economy would never achieve envisaged efficiency that propels nations to sustainable economic growth path supported by increasing trade.

This study explores the state of competition in Uganda's market. The study reveals that whereas Uganda has no exclusive competition law and agency, it has a competition bill draft that proposes to establish a competition commission; sets offences and penalties for not complying with the provisions of the law; and outlines prohibited behaviour and practices. Further, the country also has relevant competition clauses entrenched in various sectoral laws, which cater for fair competition, promoting innovation, eliminating concentrated economic power, enhancing efficiency in trade and accelerating development. However, the study stresses the fact that Uganda would do well to expedite its competition law and usher in a competition regime to check on market monopolisation by a few companies, which is reported to be leading to anti-competitive practices like price-fixing, market sharing and predatory pricing. This is because such practices would likely be curbed, if not eliminated provided there is a statute to indict and punish the offender.

The study also reveals that lack of a competition policy has led to de-industrialisation, increased trade gap, market monopolisation by few companies, and subsequently resulting into anti-competitive practices (ACPs) like price-fixing, market sharing, predatory pricing, and resale price maintenance among others. It also unveils the fact that while competition law being for punishing/preventing anti-competitive practices in the market is one way of enforcing competition, the social and economic policies of the national government could also have implications for the extent of competition and on the overall competition policy. These policies include among others; Structural Adjustment Programmes (SAPs), Poverty Reduction Strategy Paper (PRSPs), Agriculture Development Strategy, the National Trade Policy (NTP) and World Trade Organisation (WTO) issues on competition.

In conclusion, the study stresses that while competition policies differ from country to country depending on their levels of development and their strategic objectives; it is important that they protect the consumers from exploitation; and also producers, especially Small and Medium Sized Enterprises (SME) from being out-competed by dominant market players. A competition policy should also aim at complimenting national policies in order to achieve national development objectives. However, the

study cautions that it should not be applied across the board but selectively, in order to promote the development of domestic industrial capacity and the attainment of dynamic efficiency through technological advancement.

1
Introduction

Uganda is located in East Africa and lies along the equator. The country occupies 241,547 sq. km, comprising of open inland waters and permanent wetlands. Uganda borders Kenya in the east, South Sudan in the north, Democratic Republic of the Congo in the west, Rwanda in the south-west and Tanzania in the south. The southern part of the country includes a substantial portion of Lake Victoria, shared with Kenya and Tanzania. The country lies within the Nile basin, and has a varied but generally equatorial climate. Uganda's population is currently estimated to be 35million people as of 2013, and has over 30 ethnic groups speaking different languages. The official language though remains English only.

Uganda follows a liberalised macro-economic development strategy, according to its national development plan. As such, the characteristics and operation of the market are critically important in the achievement of the country's development objectives.

In a liberalised economy, it is believed that markets are the most efficient allocators of scarce resources to the varied and competing needs of the society. On the other hand, markets ensure that consumers within a particular economy pay the lowest prices possible for goods and services being produced by the economy. In other words, if the market are working properly, what economists tend to refer to as perfect markets, they will ensure allocative and distributive efficiency of resources within a particular economy. The macro-economic policy stance adopted by Uganda tends to lean towards this school of thought.

This project seeks to assess the state of competition in Uganda's market. Uganda has no exclusive competition law and agency. However, the country has a competition bill in draft. The bill proposes to establish a Competition Commission; sets offences and penalties for not complying with provisions of the law; and outlines prohibited behaviour and practices. The country also has relevant competition clauses entrenched in the various sectoral laws. The provisions cater for fair competition, promoting innovation, removal of concentrated economic power, improving efficiency in trade and accelerating development. They also ensure equal opportunities for all market participants' especially small and medium enterprises among other reasons.

Also, in order to address cases where competition goes awry, the East African Community Competition (EAC) Act was assented to by the Summit in 2006. Its objective is to create the sort of environment that protects and promotes free and fair competition. It establishes the EAC Competition Authority to enforce the Act. The Act prohibits a number of anti-competitive practices in the region. Some of them include predatory pricing and cartels among others. As a member state of the EAC, it is therefore imperative for Uganda to have a competitive law and agency that is coherent and compliant with the objectives of the EAC Competition Law and Agency.

It is also almost a decade, since the 2004 version of Competition Law was drafted but it is still going round without consummation. Therefore, Uganda would do well to expedite its Competition Law and usher in a Competition Regime to check on market monopolisation by a few companies, which is reported to be leading to anti-competitive practices like price-fixing, market sharing and predatory pricing. This is because such practices would likely be curbed, if not eliminated, if there is a statute to indict and punish the offender.

2
Macro-economic Characterstics of Uganda's Economy

Uganda's economy is dominated by the agricultural, forestry and fishing sectors (Table 1). Agriculture, although no longer the biggest contributor to the country's Gross Domestic Product (GDP), contributes 48 percent of export earnings for the country. The sector further provides the bulk of raw materials for industry, and employs over 73 percent of the population.[1]The contribution of the agricultural sector has been systematically declining, over time though. The sector contribution to national GDP decline fell from 36 percent in 2000 to 15 percent in 2012. This decline is attributable to declining earnings from agricultural products, as a result being sold on the market with low value having been added within the local economy. The main exports in the agricultural sector are cash crops and some food crops being grown for exports as non-traditional exports.

In terms of earnings, the country's GDP is currently dominated by the industrial sector, which is composed of the mining, quarrying and construction, which are either rising year after year or are stable (as in Table 2). Among the contemporary challenges facing the economy at present, are rising fuel costs, greater capital equipment needs, and the decline in demand from traditional export markets in Europe. As a result, the decline in external demand, the current account deficit has been considerably increasing. The deficit reached 11.5 percent of GDP in the 2010/11 fiscal year.

Table 1: Features of Uganda's Economy

Structure of Uganda's Economy from 200-2010 (% share of GDP at current prices)					
Economic activity /Year	**2006**	**2007**	**2008**	**2009**	**2010**
Agriculture, forestry & fishing	22.6	20.7	21.6	23.6	21.1
Mining & quarrying	0.3	0.3	0.3	0.3	0.3
Manufacturing	6.9	6.9	7.2	7.7	7.9
Electricity and water	3.8	4.5	4.2	3.7	3.9
Construction	11.2	12.2	12.3	12.1	12.6
Wholesale & retail trade	13.6	14.1	14.7	15.3	13.2

[1] UBOS, Statistical Abstract, 2009,2010,2011,2012

Hotels and restaurant	4.1	4.1	4.1	4.4	4.5
Transport and communication	6	6.3	6.3	6.3	9.2
Community service	25.4	24.5	22.9	20.2	20.9
Adjustments	6.1	6.4	6.4	6.4	6.4
***Source**: Ministry of Finance, Planning and Economic Development, Background to the Budget (various years)*					

In terms of general economic performance, the country has been realising high economic growth for the past decade. However, this growth began to level off in the financial year 2011-12. The country's real GDP growth average was 7 percent per the years between 2000 and 2012. According to Mwambutsya, Uganda has experienced relative political stability, since the 1980's, which allowed the country to constantly undertake extensive and sustainable economic reforms, beginning with the economic reform programme in 1987, among which was the Public Enterprise Reform Divestiture. Following the early first generation of reforms, Uganda's authorities embarked upon a sequenced package of structural reform policies and investments designed to free up markets and create price incentives, stimulate private investment, and encourage competition.

Furthermore, marketing boards were abolished and the financial sector was liberalised. A privatisation package focussed initially on banks and then on public enterprises, and eventually in 1998 on utilities, including telecoms and electricity sectors2. As a result, the country has achieved economic stability and undertaken wide-ranging reforms, such as market liberalisation, privatisation of public enterprises etc. The later, has enabled a rebound of growth, thus allowing Uganda to attain high GDP growth rates. On an average, growth rate increased by 8.8 percent per annum between 2005-06 and 2008-09. Thereafter, the growth rate dropped to 5.8 percent in 2009/10, 6.7 percent in 2010/11and finally by 3.4 percent in 2012 (Table 2) due to effects of the global slowdown (global economic crisis), which led to a weaker global growth outlook.

Table 2: Uganda's Economic Growth Rate for 2009-2012

Years	2009/10	2010/11	2011/12
Real GDP (in %)	5.8	6.7	3.4
***Source**: 2013 International Monetary Fund, January 2013, IMF Country Report No. 13/25*			

Other important economic indicators for the country include GDP per capita income of US$506. The percentage of the population below national poverty line is 24 percent. Under the UN standard classification, Uganda is considered a least developed country. These economic indicators are indicative of the high-level of poverty in

[2] World Bank report No.39221-UG

Uganda, which has made sustainable development though trade more difficult to achieve due to low effective demand and low competitiveness potential within the local economy.

According to the 2012 Uganda Bureau of Statistics (UBOS), mortality rate under five years in Uganda is 90 deaths per 1000 live births; Overall literacy rate among the children of 10 years and above was 73 percent in 2009/10; nearly 7.5million Ugandans, living in 1.2million households, were considered poor in 2009/10; and on an average, income inequality increased from 0.408 in 2005-06 to 0.426 in 2009/10, nationally. All these statistics indicate that Uganda is still a poor Least Developed Country (LDC) that requires structural transformation in order to increase its competitiveness at the global-level.

3
Government Policies that Impinge on Competition in Uganda

Competition policy refers to a set of laws, regulations and measures employed by governments aimed at ensuring that markets remain competitive through maintaining a fair degree of competition by eliminating restrictive business practices by private enterprises. It covers the broad spectrum of economic policies that have a bearing on competition in the economy, such as trade policy, sectoral regulation and privatisation among others (CUTS 2003). The policy acts as an instrument to achieve efficient allocation of resources, technical progress, and consumer welfare. It is also important in the regulation of concentration of economic power detrimental to general market competition. As such, the core function of competition policy is the antitrust policy and law that deals with anti-competitive behaviour of firms.

In 2004, a Competition Bill for Uganda was developed and revised in 2007 before presenting the same to the Cabinet and the Parliament. The Bill was sent back to the Ministry mainly for two reasons: the need to first put in place a policy and second the need to have clear cost estimates relating to the implementation of the law. Subsequently, in 2009 a team of experts were tasked to develop a draft Competition Policy and Law. The team drew lessons from the 2004 Competition Bill, relevant national laws, the Common Market for Eastern and Southern Africa (COMESA) Competition Regulations, EAC Competition Act and laws of other countries. Also, National stakeholder consultations on the draft policy and law were undertaken in 2012, the cost estimates for implementing the Bill drawn, and a certificate of financial implication given by the Ministry of Finance in March 2014.

Therefore, at the moment, Uganda has no exclusive competition law, as the draft bill of 2012 and the Policy are awaiting support documents from the Ministry of Finance, Planning and Economic Development before they can be presented to Cabinet for endorsement. However, lack of this law has led to deindustrialisation, increased trade gap, market monopolisation by few companies, and subsequently led to Anti-competitive Practices (ACP) like price-fixing, market sharing, predatory pricing, and resale price maintenance among others. It is partly explained that despite the introduction of Structural Adjustment Programmes in a bid to stabilise her economy, poverty, unemployment, debt, among other indicators of under development have continued to prevail. It is, therefore, important for Uganda to have a Competition Policy and agency to regulate such ACPs.

However, Uganda has relevant competition clauses entrenched in the various sectoral laws. The provisions cater for fair competition, promoting innovation, removal of concentrated economic power, improving efficiency in trade and accelerating development. The sectoral legislations covering competition are indicated in table 3.

Table 3: Sectoral Legislations Covering Competition in Uganda

S. No.	Name of the Act	Cap number
1.	Business Names Registration Act	109
2.	Contract Act	79
3.	Customs (Dumping and Subsidies: Rates) Act	336
4.	Customs Management Act	-
5.	Sale of Goods Act	82
6.	Trade (Licensing) Act	101
7.	Liquor Act	93
8.	Uganda National Bureau of Standards Act	327
9.	Patents Act	216
10.	Value Added Tax Act	349
11.	Weights and Measures Act	103
12.	Adulteration of Produce Act	27
13.	Food and Drug Act	278
14.	Income Tax Act	340
15.	Land Act	227
16.	Local Governments Act	243
17.	National Drug Policy and Authority Act,	206
18.	Public Enterprises Reform and Divestiture Act,	98
19.	Public Health Act	281

While the Competition Law is to punish/prevent anti-competitive practices in the market is one way of enforcing competition, the social and economic policies of the national government can also have implications for the extent of competition and on the overall competition policy. In the following section, such policies that have a bearing on competitiveness of markets in Uganda's domestic economy are considered in an elaborate manner.

SAPs and their Impact on Competition and Regulatory Reforms

Structural Adjustment Programmes (SAPs), being widely inspired by the International Monetary Fund (IMF) and the World Bank (WB), and imposed as a precondition for further loans were as a result of a debt crisis that had hit, especially Developing and Least Developed Countries in the 1980s (Herbert Jauch 2012). SAPs have four fundamental principles i.e. liberalisation, privatisation of public services and companies, de-regulation of labour relations and cutting social safety nets, and improving competitiveness (Toussaint, E and Comanne, D. 1995).

The privatisation principle aimed at disengaging the state from economic production through privatisation of state monopolies and the strengthening of the private sector. Subsequently, trade and investment liberalisation has been a key to Uganda's economic performance, since the mid-1980s. By June 1999, about 76 government enterprises in Uganda had been divested through advertisement of notices in the Gazette and a prominent newspaper. These sectors include the dairy sector, telecommunications sector, banking sector, insurance sector, hotel sector, marketing boards, transport sector, mining sector etc.

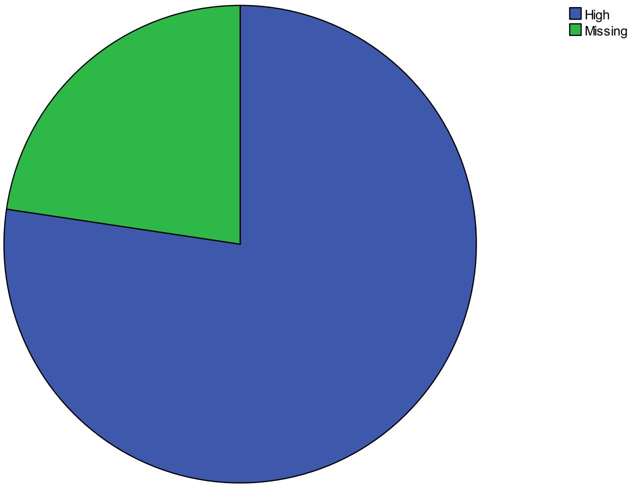
Privatisation and the mentioned boost to the private sector can be seen as competition enhancing measures. However, because privatisation puts the private sector at the centre, without laws in place to manage the private sector, it results into anti-competitive practices, which usually results into domination of the market by major corporations and pushing of small medium enterprises out of production. The privatisation process in Uganda was quite rapid and had many flaws right from its initiation. It has resulted into the collapse of small enterprises and declining cooperative movement.[3] By implication, therefore, the continued pursuit of macro-economic policies that have root in the SAPS has to some extent led to less competition in the domestic economy. Small companies, mainly indigenous have been ‘swallowed’ by big multinational companies.

The agricultural policy, based on SAPs theoretical framework led to abandoning of subsidies and farming price-stabilisation boards. Farmers’ cooperatives were abandoned to the detriment of small rural farmers. By and large, the privatisation process in Uganda has benefited the Government as the Government’s burden of financing the sector that were earlier underperforming has been minimised, and corporate interests (mainly from the developed countries) more than the Ugandan people (Kingston Christina *et al* 2011) also, SAPs affected agricultural production and productivity among small holder farmers as absence of Government’s active engagement in the sector has affected its sustainable production and productivity.

In the transport sector, competition has increased as the number of commuter taxi operators continues to grow on a daily basis. According to field data, 77.3 percent of respondents indicated that competition in the commuter transport operators was very high as indicated in the pie chart below:

[3] The Structural Adjustment Participatory Review International Network (SAPRIN)

Figure 1: Pie chart showing the level of competition in the Transport sector (Bus, Taxi)



However, this, according to respondents, has not come without a disadvantage and has not effectively led to protection of consumers' welfare. Privatisation without a transport regulatory agency to administer adequate regulation of transport services regarding fixation of travel fares has led to cartel like operators, especially in Buses, who, without any consultation or intervention by Government, determine the fares. The existence of cartels is a contradiction of government policy of competition for the protection of consumers, and an appropriate competition regime in Uganda will help outlaw cartel activities in the country. Respondents further stressed that the retreat of the state associated with removal of price controls and introduction of market economy has direct negative implications for competition in Uganda, whereby some big companies have ended up setting their prices below the cost price hence attracting many sales to the disadvantage of small enterprises trying to break even. It is, therefore, important for Uganda to have in place a fully functional competition law and agency to better guide the operation of firms and market players by creating a level-playing field and punishing market abusers, i.e those firms that engage in ACPs.

PRSP and its Possible Implications for Competition and Regulatory Reforms

After the failed SAPs, in September 1999 the WB and IMF adopted the Poverty Reduction Strategy Paper **(**PRSP)[4] as the mechanism through, which low and middle income countries would receive concessional assistance, under the enhanced Heavily Indebted Poor Countries Initiative (HIPC). PRSPs are both analytical and comprehensive frameworks that integrate macro-economic, structural, sectoral and social aspects that are part of poverty reduction measures and policies of each country. After formulating the Poverty Eradication Action Plan (PEAP) in 1997,

4 A PRSP lays down a country's macro-economic, structural and social policies and programmes, over a three-year or longer time-frame with focus on poverty reduction highlighting the associated external financing needs and major sources of financing.

Uganda approved the PEAP as her PRSP in 2000 becoming the first low income country to influence the PRSP process through what is referred to as the 'demonstration effect'[5]. PEAP 1997 was structured around four areas: 1) macro-economic policy; 2) institutional framework for poverty eradication; 3) policy framework to increase incomes of the poor; and 4) measures to improve the quality of life of the poor (Bahiigwa) PRSPs have led to further liberalisation that has left the weaker market players to anti-competitive practices by the dominant players. The PRSP provides for a framework for the development of detailed sector plans and investment in order to increase the private sector's competitiveness. However, coupled with poor implementation and corruption, the PRSP failed to achieve this that to date, the private sector in Uganda is still weak and unable to compete favourably in the largely liberalised economy.

Agriculture Development Strategy

Agriculture remains the most important sector in Uganda, at least with regard to employment. The sector employs about 77 percent of the rural adult population and accounts for roughly 50 percent of the merchandise exports (Uganda Bureau of Statistics or UBOS, 2011) Uganda's major agricultural exports include Coffee (whose share of Uganda's total export earnings increased considerably from 17.5 percent in 2010 to 21.6 percent in 2011-UBOS), Tea (whose exports increased from 54,555 tonnes in 2010 to 55,650 tonnes in 2011), Tobacco, Fish and fish products (whose export earnings increased from US$127.7million in 2010 to US$136.2millions in 2011. The contribution of Traditional Exports (TEs) earnings to overall export earnings increased from 27.2 percent in 2010 to 31.4 percent in 2011. (UBOS 2012).

Although the contribution of agriculture to total GDP has been declining over the years, the sector has continued to dominate the Ugandan economy. It contributed approximately 22.9 percent of the total GDP in 2011 at current prices. Furthermore, 65.6 percent of working population is engaged in agriculture, forestry and fishing industry (UBOS 2012 statistical Abstract).

In Uganda, since the 1990s, along with the adoption of SAPs, agricultural policy has introduced competition by abandoning subsidies and farming price stabilisation boards. With Government divestiture from buying of produce and distribution of inputs in the input market, liberalisation has meant allowing increased competition in the supply of inputs. Here too, the thinking was that competition would drive down the prices of inputs, thereby, making them affordable to farmers. This would enhance agricultural profitability (L. Bategeka; *et al* 2013). However, this has resulted into the sale of seeds and fertilisers at higher prices to the loss of the small holder farmers.

National Trade Policy and its Impact on Domestic Competition

Uganda's Trade and Investment policy framework is made up of different policies all aimed at promoting trade and investment in Uganda. They also aim to improve Uganda's effectiveness on the global market. However, regardless of the numerous

[5] http://publications.ossrea.net/index.php?option=com_content&view=article&id=118

policies, Uganda still remains inserted in the global economy as a major exporter of cheap raw materials and importer of expensive manufactures. Uganda also continues to be on the dependence end in of the global village.

Trade policy reforms in Uganda have been aimed at poverty reduction, promoting employment, economic growth and promotion and diversification of exports, particularly non-traditional exports. There are duty and tax exemptions and concessions, such as incentives to increase the volume and diversity of exports. The policy initiatives undertaken in recent years have provided incentives and increased producer prices. Table 3 provides a summary of evolution of trade policies within the country is presented.

Table 4: Evolution of Trade Policy in Uganda

Year	**Trade Policy Reforms**
1964	Customs (dumping and subsidies) Act
1967	Establishment of EAC
1970	The East African Customs Act The Excise Management Act The Stamp Duties Act
1977	Dissolving of EAC
1983	Uganda National Bureau of Standards Act Uganda Export Promotion Council Act
1986	Revaluation of the Official Exchange Rate
1987	Introduction of Economic Recovery Programme Introduction of Dual Trade Licensing System Duty exemptions on raw materials and capital goods suspended
1988	Some Protective Tariffs (sugar, soap) Raised Open General license (OGL) scheme of importation implemented
1989	Retention account scheme for export earnings introduced Special import programme Duty exemptions on raw materials
1990F‡	Export licensing system is replaced with certification system Forex bureau/parallel foreign exchange market legalised Taxes on government imports abolished Legalisation of the parallel foreign exchange market (March 1990)
1991	Import licensing replaced with Import Certification Scheme Investment code introduced Duty drawback scheme introduced Uganda Revenue Authority established Uganda Coffee Development Authority created Liberalisation of coffee marketing
1992	Foreign Exchange Auction Market created Tariff structure rationalized (10-60 percent range)

	Several duties on raw materials abolished Coffee marketing board`s monopoly removed
1993	Unified inter-bank foreign exchange market/floating exchange rate Surrender of coffee receipts waived Harmonised commodity coding system of imports introduced System of trade documentation reformed, pre-shipment requirements introduced Cross Border Initiative (CBI) to promote regional trade introduced Public Enterprise Reform and Divestiture Statute Establishment of the Permanent Tripartite Commission for EAC
1994	Further rationalisation (10-50 percent range) of the tariff structure Import duties on some of the materials suspended Tax on coffee exports reintroduced Cotton Development Organisation Statute (covering cotton) Establishing the Common Market for Eastern and Southern Africa (COMESA)
1995	Coffee export tax reduced Narrow range of products on a negative import list Reduced exemptions from duties on raw materials and intermediate inputs Uganda's Agreement to WTO (January 01, 1995) COMESA Implementation Bill (covering rules of Origin)
1996	Elemination of Coffee Export Tax Further rationalisation of tariffs, with reductions of top rate to 30 percent Establishment of Uganda Export Promotion Board (UEBP) Establishment of Uganda National Bureau of Standards (UNBS) Establishment of Uganda Coffee Development Authority (UCDA) • Cotton Development Organisation (CDO) established
1997	Accepted the obligations of Article VIII of the IMF Agreement
1998	Tariff bands reduced to three- 0, 7 & 15 % (although with some special excise duties) and almost all import bans removed
1999	Maintained an independently floating exchange regime Treaty for the Establishment of the EAC signed
2000	Fixed Duty Drawback Scheme and the Manufacturing Under Bond Scheme introduced for exporters Treaty for the Establishment of the EAC enters into force
2001	Government of Uganda launches the Strategic Exports Programme (SEP).
2002	Public Procurement and Disposal of Assets Act Trade Preferential System with Islamic States (OIC) entry into force
2003	Foreign Exchange Act EAC Customs Union Protocol EAC Customs Management Act New Copy Rights Act Customs automation process started.
2004	Excise Tariff Act EAC Common External Tariff (CET) comes into force Loans to agriculture sector exempted from tax
2007	Reduced documents to import (from 18 to 8) and export from (11 to 6)

	The Republic of Rwanda and the Republic of Burundi accede to the EAC Treaty National Export Strategy (NES) is launched
2008	Road license Fees except for charges on first registration abolished 10 year tax holiday to companies engaged in value exports EAC launches a programme for identification and elimination of Non-tariff Barriers (NTB)
2009	Created a new credit registry or bureau Increased procedural efficiency at main trial court (commercial court)
2010	EAC Market Protocol came into force

Source: Morrissey and Rudaheranwa (1998)

Overall, the Uganda National Trade Policy charges Government with the primary role to liberalise trade while taking cognizance of the possible negative effects on the country's producers and traders. It also points out that Government will continue to assist the private sector build capacity to produce and trade in quality goods and services competitively, reliably, and on a sustainable basis. It further stipulates that deliberate interventions will be made by Government in areas related to regulation, including those that are economically desirable, while ensuring the elimination of trade distorting policies and practices, locally and internationally.

While the Uganda national Trade Policy has good provisions of addressing anti-competitive practices, the current reduced role of the state in market operation has led it to be an ineffective tool in regulating competition. For example, failure of Government to take a proactive strict role in price fixation has led to setting up of different rates in business enterprises like supermarkets, foreign exchange bureaus all which have led to cheating and exploitation of consumers. Therefore, while the national Trade policy is a good tool in regulating competition, the practice has proved contrary. While the economy is purely liberalised, lack of a competition policy and a competition agency has led to Anti-competitive Practices (ACPs), de-industrialisation, and at times, cheating of consumers through sell of defective goods. It is, therefore, important for Uganda to have a fully implemented competition policy and a functional competition Agency in order to fully control ACPs in her liberalised economy.

Impact of WTO Issues on Competition

Competition is one of the so-called 'new issues' that was introduced by Developed Countries in 1996 WTO Ministerial Conference, addressing how domestic and international competition policy instruments, such as antitrust or competition laws, interact with international trade. Critics have argued that the WTO competition policy ignores political economy on grounds that Competition issues in terms of international trade and liberalisation, which would spill over national boundaries, can no longer be addressed through voluntary bilateral or regional cooperation, and may need to be addressed through international cooperation.

The push for competition policy as part of international trade agreements has come from rich countries and is seen as a means to ensure the market access of their large corporations (Marcy Lee *et al*). A number of subtle policies that have a direct bearing to market competition of local economies for part of this competitiveness dimension of international trade agreement. The major ones are as following:

1. Government Procurement Policy: an anti-corruption approach

It is generally the case that government procurement accounts for a significant share of public spending, and the procedures for awarding and monitoring contracts lack transparency. In this sense, there are linkages between weak competition and public procurement. Procurement reforms in Uganda started in 1999 with a task force aimed at transparency and accountability; maximising competition to satisfy customer needs and ensure value for money; and providing a more attractive Investment climate by lowering risk.

Therefore, measures to promote and or regulate competition and to make procurement more transparent offer potential benefits in enhancing the competitiveness and efficiency of the business environment. Rules and Procedures governing public procurement have had a huge bearing on competition and misnomers in the process have the capacity to distort competition in the economy. However, in a developing country like Uganda, having an effective procurement planning system will continue to be a challenge to local governments. Procurement planning is a function that takes place in complex political, economic, cultural, religious, environmental, technological and ethical environments. There are for example, stakeholders in local governments with divergent political ideologies, religious differences, economic expectations from the procurement function etc; and all these have a direct impact on the success of procurement planning. Procurement planning must become a priority for local governments and increased policy initiatives from the central government; through the parent ministries of local government and finance must support this priority. The Public Procurement and Disposal Authority (PPDA) must play a central role in providing training, technical guidance and ensuring compliance to all set rules, and in ensuring that both local and foreign Procurement agencies compete favourably.

2. Consumer Protection policy

Competition laws in general offer some consumer protection and consumer protection laws, by guarding against consumer welfare, decreasing collusion or malpractice, and enhancing fair competition (CUTS 2010). A Consumer Protection Act (CPA) provides for punishment of businesses that knowingly sell sub-standard goods and lie on pricing. It also provides for warranties for damaged or injurious goods. [6]

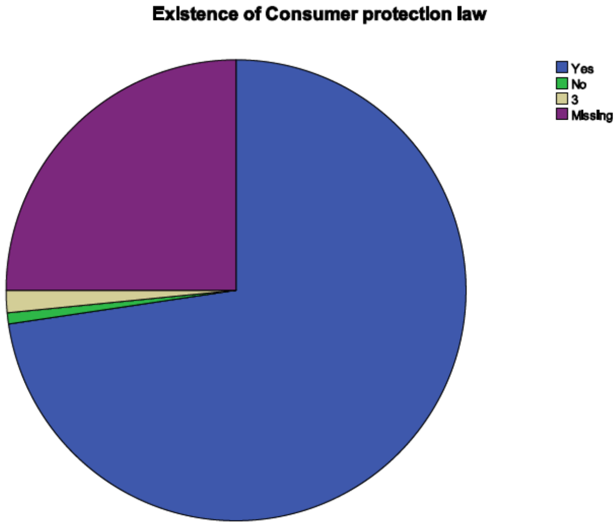
While Uganda does not have a standalone Consumer Protection law, Existing consumer protection law include; Uganda National Bureau of Standards (UNBS) Act,

[6] http://www.consumersinternational.org/news-and-media/news/2013/05/kenyacpa/

Cap.32 Food and Drug Act, Cap. 278, Public Health Act, Cap.281 and the National Drug Policy and Authority Act, Cap 206. However, these laws are not sufficient to allow for effective protection of consumers and emphasising of standards.

According to the research conducted, while there is no standalone Consumer Protection law in Uganda, 96.9 percent of the respondents interviewed are not aware of the need for a standalone Consumer Protection Law. The respondents believe that the existence of the aforementioned legislations do not call for a standalone Consumer Protection policy.

Figure 2: Existence of Consumer Protection Law



The objective of competition policy and law is to regulate competition for the benefit of consumers and fair market conditions, which allow for the entry of smaller businesses into the market. In the same vein, fair competition benefits consumers and the economy because it prevents the concentration of wealth in a few businesses, which serves the overall development of the economy. However, the argument that competitive and unconstrained markets lead to the maximisation of consumer welfare, increased economic activity and subsequently economic development needs to be interrogated as this assumption is dependent on a country's level of economic and market growth. This is because a country needs to have fairly mature markets for it to start focussing on regulating them. In economies like Uganda where markets are still informal and dysfunctional, governments ought to concentrate on developing these markets before their regulation, since it is the nature of the market that influences competition.

While Acts like the UNBS Act provide for promoting trade among African countries and the world at large through the harmonisation of standard specifications demanded in various countries; it does not clearly link with competition and consumer protection. It is, therefore, critical that Uganda enacts a consumer policy that is inter-linked with competition.

3. Labour Policy

Labour laws and their possible impact on competition in the labour market It should be noted that competition laws where they exist generally exclude collective wage negotiations from the List of Prohibited Anti-competitive practices.

However, similar to many poor and developing African counties, Uganda subscribes to the neo-liberal paradigm of development, which focusses on rewarding capital at the expense of labour. This has meant that private enterprises are prospering and becoming rich at the expense of poor labour which is rewarded with peanuts. Neo-liberalism has also exacerbated the tendency of labour standards being regulated by the market rather than by law. It has also exacerbated the twin problems of non-recognition of unions by investors and the casualisation of labour.

Therefore, while Lack of a labour policy to determine a minimum wage policy has worked in favour of business owners as regards determining of employee positions and remunerations it has not worked for the employees, and quite the contrary, has not bolstered competition for labour as apparently envisaged in the labour and competition linkages.

4. Investment Policy

Lee Kwan Yew in his memoirs, from Third World to First describes the process of a country being a better competitor on the global market as 'getting the basics right'; i.e. if you cannot satisfy the local market, can you compete or capture the regional or global market? Some of the prerequisites for designing a competition policy and law that has a development dimension include exempting small and medium enterprises when the impact of their business practices is insignificant in the relevant market, and granting exemptions to strategic growth-oriented sectors that need protection.

Sectors receiving FDIs in Uganda include oil and gas; banking; communications insurance; hotels; manufacturing; trading; construction among others. Uganda has put up some policy guidelines regarding foreign direct investment, which include inter alia US$100,000 worth of investment for every foreign investor; Freedom to repatriate 100 percent of profits; no restrictions as to who the investor should employ. While an investor can invest in any area including trade, land ownership is restricted to lease only. However, some sectors like sugar production are pushing for the implementation of the 2010 Sugar Legislation aiming at preventing unfair competition through prohibiting the establishment of new sugar factories within a distance of 35 km from the existing ones.[7]

[7] http://sugaronline.com/website_contents/view/1211560

While negotiations of an Investment Agreement at the WTO was unanimously rejected by the LDCs, the proponents of an investment agreement ultimately required international binding rules that provided foreign investors the rights to enter countries without conditions and regulations, and to operate in the host countries without many conditions existing at present, and would be granted 'national treatment' and Most Favoured Nation (MFN) status. An international agreement on investment rules of this kind is ultimately designed to maximise foreign investors' rights whilst minimising the authority, rights and policy space of governments and the developing countries. This has serious consequences in terms of policy-making in economic, social and political spheres, affecting the ability to plan in relation to local participation and ownership, balancing of equity shares between the foreign and local investors and also amongst the local communities, the ability to build the capacity of local firms and entrepreneurs, and the need for protecting the balance of payments and the level of foreign reserves. Moreover, it would also weaken the bargaining position of government *vis-a-vis* foreign investors (including portfolio investors) and creditors.

In conclusion, it is apparently clear that competition policies differ from country to country depending on their levels of development and their strategic objectives. Whatever the model, it is important to protect the consumers from exploitation. Competition policy should aim at complimenting national policies in order to achieve national development objectives.

Progress by National Governments Implementing Competition Regimes

In 2004, a competition bill was developed and revised in 2007 before presenting the same to the Cabinet and the Parliament. The bill was sent back to the Ministry mainly for two reasons; i.e the need to first put in place a policy; and the need to have a clear cost estimates relating to the implementation of the law. The objectives of the bill are to foster and sustain competition in the Ugandan market, and to protect consumer interest while safeguarding the economic freedom of various market participants.

According to Kamukama Stephen, a Senior Commercial Officer in the Ministry of Trade Industry and Cooperatives (MTIC), in 2009 a team of experts were asked to develop a draft Competition Policy and Law. The team will draw lessons from the 2004 Competition Bill, relevant national laws, the EAC Act and laws and regulations of other countries and National stakeholder consultations on the draft policy and law were undertaken in 2012. The draft bill 2012 and the policy are awaiting support documents from the Ministry of Finance before they can be presented to Cabinet for endorsement.

According to Elizabeth Tamale, Assistant Commissioner for Internal Trade in MTIC, when passed, the Competition Act will apply to anti-competitive agreements; abuse of dominant position; acquisitions and mergers. The Act will also provide the force of law and legal effect to the regional competition laws and regulations. In addition, the

Act will also establish a Competition Commission to exercise its jurisdiction, powers and authority to inquire into anti-competitive Agreements; inquire into acquisitions and mergers; provide judgments equivalent to those of high court on competition matters; and undertake studies and keep, under constant review the competition situation in the market. Moreover, she also stressed that there should be enhancement of the linkages between protection of consumers, under the Competition Act and strengthening of Uganda National Bureau of Standards (UNBS) to enhance the implementation of the competition policy.

In conclusion, Uganda has drafted a national competition bill that proposes a framework for promoting competition in the local market. According to Kamukama Stephen, few sectors have comprehensive regulations to ensure consumer protection; and companies use the ACPs to block entry and protect their market shares. For example, in the recent times, Uganda has experienced numerous takeovers, mergers and acquisitions.

Notable ones have taken place in the subsectors of banking, insurance telecommunication, oil and petroleum and retail super-markets among others. The above mergers and acquisitions reflect the increasing need to assess their resulting effect on competition i.e. whether it enhances or reduces competition or whether public interest is taken into consideration. In some cases, the effects have been quite obvious and tending to reduce competition coupled with negative change in prices and supply. Also, the liberalisation stance in Uganda allows companies to form associations to discuss marketing strategies, provided it is under legal approval; i.e it does not lead to black market nor disrupt the economy.

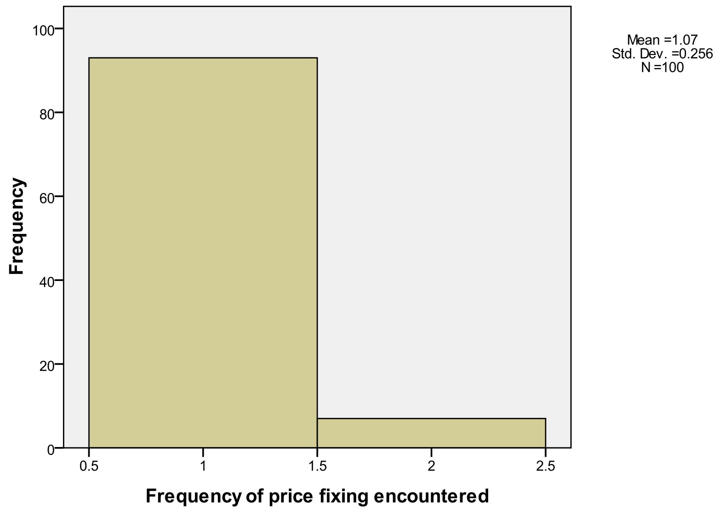
Investigation of Existing Competition Abuses and Distortions

Competition is a situation where anybody who wants to buy or sell has a choice of possible suppliers and customers. So competition abuses and distortions would negatively affect a person's freedom of choice when dealing with suppliers or customers. These are some of the competition abuses and distortions;

Collective price fixing

It is the most obvious violation of competition law to the extent that in all jurisdictions that enforce competition law, it is as a matter of law illegal. In Uganda, the Government has in theory eliminated price controls in the domestic market through the consistent pursuit of free market trade agreements with the European Union (EU), United States of America (USA), under the EPAs and TIP respectively, Common Market for Eastern and Southern Africa (COMESA) and economic policies like the trade policy among others. However, the absence of an autonomous and competent competition law and authority (commission) undermines adherence to the quest for market determined pricing structures. From the respondents interviewed, 93 percent indicated that they have encountered with price fixing as indicated in the table below.

Figure 3: Respondents on the Frequency of Price-fixing Encountered



Examples of collective price fixing can be drawn from the following sectors:

The petroleum industry

Price setting by the government for petroleum products was officially discontinued in 1994 through a deregulation policy. The role of government is now to monitor the activities of the industry by ensuring quality standards and safety as well as compliance with environmental requirements and also to license new investors. Uganda's distribution and procurement of oil products in the country is determined by Petroleum supply act of 2003, which under Part IV section 17 and 29 avails licenses to any person who applies for one. In addition, section 30 further provides for fair competition within this sector.

This policy enabled the state fight price fixing since many distributers and procurers intending to distribute quality oil products participated freely without major actors. It has to be observed that today price fixing is not a common practice since many participants are involved in the industry for example the industry is not only of total and shell but also others like Africa, Kobil among others, failing price fixing.

The coffee and air transport/civil aviation sectors

Uganda's coffee sub sector was the largest single foreign exchange earner for the country since the 1970s. Given the importance of the sector predominantly run by small farmers yet involved in the general world market environment characterised by fluctuations in the commodity prices, government has often created policies aimed at protecting the local exporters. These include the Uganda Coffee Development Authority (UCDA) Statute that provides for price fixing, which is obviously not in support of fair competition. The law permits the UCDA under section 3 of the UCDA statue, 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’ . This position protects local exporters from world fluctuations, which they might not be informed about, but this does not mean that all farmers need to be protected due to the fact that they might be more informed than the government due to their experience, travels and ideology, giving them the right to determine prices for their products. Farmer’s ability to determine product prices creates a competitive environment both nationally and globally, but lack of such an environment distorts trade and competition and affects innovations in value among others.

Another example of lack of competition can be taken from the Civil Aviation Authority (CAA), section 29, which provides powers to the authority to determine prices in the sector. In practice, airline companies have to apply to the authority before they can start charging prices on customers. The law gives the authority powers to set the ceiling or floor of airfare. This law fails competition among airlines.
In summary collective pricing whether by government or individuals should be illegal, since all producers do not incur the same costs and it’s a method that abuses and distorts competition.

4
Cases of Anti-competitive Behaviour in Uganda

Market Sharing, Customer Allocation and Allocation of Territories

The Beverages sector

The practice is no longer common due to the multiple beverage companies competing against Coca Cola and Pepsi, which had purchased Highland brand mineral water and Rwenzori Beverages Companies with intentions of controlling markets of soft drinks and water. Currently, the trade policy calls for a fair competition between all companies and not only two sharing a market. This led to a competitive arena between many companies both in water (as a product) and soft drinks for example Schweppes, Vimto, BB soda and the current Riham soda company. All of these soft drinks were out competed by Coca Cola and Pepsi leaving them to share the market except the Riham Company. Unlike the old ways of purchasing companies big companies are using legal suites to dominate the markets. For example, the current suit against the Riham company for allegedly using the same design of the Coca Cola bottle as their bottle design for Riham Cola. Though worth noting is the fact that in the water market Highland water and Rwenzori beverages are not the market sharing companies, since many companies still exist and compete against the two. So market sharing no longer exists among water companies like Sipi water and Aqua water among others.

Figure 4: Opinion on the frequency of ACPs

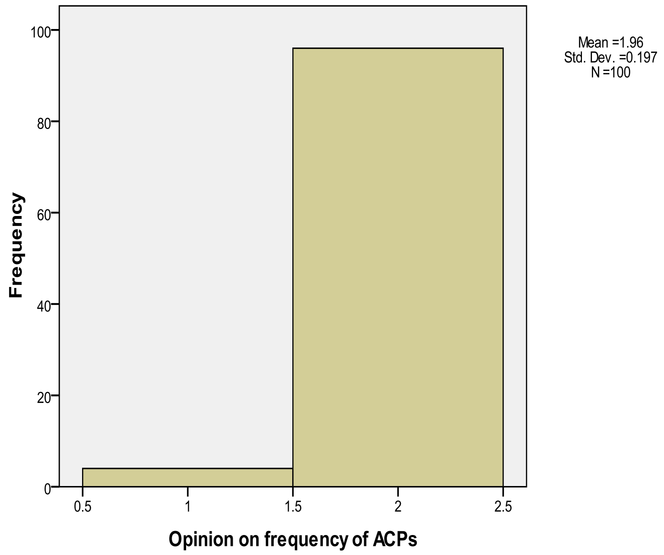
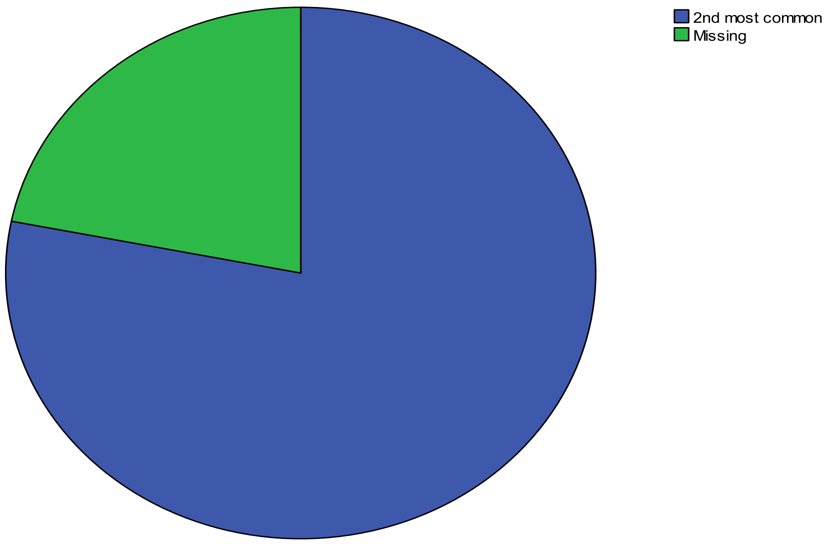


Figure 5: Opinion on frequency of market sharing encountered



The privatisation process

The privatisation process has been affected by awards of low bids to foreign and local private business. Companies that were victims of this bid rigging were the Uganda Commercial Bank Limited, Coffee Marketing Board and Nyanza Textiles Limited. Ugandans see privatisation as a way to fight monopoly and bankruptcy but with allegations rigging, many researches see the process as legalised robbery of national companies that transition into private expensive companies that cause many workers to lose their jobs leading to a sharp increase in unemployment and costs to Ugandans as they pursue self-centered interests.

News on the impact of Privatization and liberalisation on Uganda's traders

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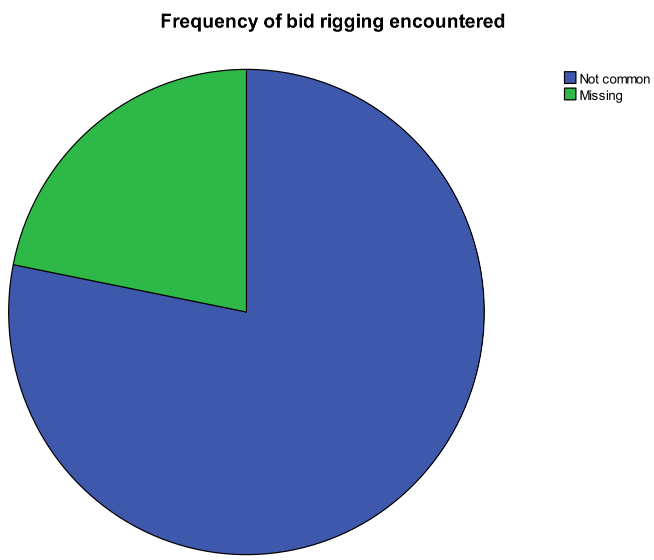
Allegations were focussed on the brother of the President as the buyer of Uganda Commercial Bank through a proxy (Malaysia based Westmont Asia) who attained the bank through bid rigging. Other allegations of bidding rigging were attached to the privatisation of NYTIL industries, which was sold at only 1,000, Uganda garment industry; allegedly sold to phoenix at only US$ 500,000 dollars making a loss of US$5.5 million dollars, since the Government had spent US$6million dollars rehabilitating the company.

This has failed fair completion during auction exercises leading to distrust of the government in its implementation of the privatisation process that is not transparent and legal. Moreover, in present times, the last natural monopoly yet to be privatised is the National Water and Sewage Corporation, researchers fear that its auctioning will be affected by bid rigging and the only office with power to identify this practice is the office of the Inspector General of Government (IGG), which has failed so the practice might continue if no commission is put in place to monitor these processes.

Collusive Tendering/ bid rigging

Bid rigging involves groups of firms conspiring to raise prices or lower the quality of the goods or services offered in public tenders. This illegal anti-competitive practice continues to cost the Ugandan Government and tax-payer billions of dollars every year. Competition rigging has been reported at the local government levels as provided by the local government act, which gives districts under **section 91 (7)** a lot of powers including awarding tenders for supply of goods and services. This law leaves local levels vulnerable to bid rigging, since there is no law protecting them against these practices. So there is a need to visit public procurement laws at the local levels, so that policies are set against such practices at all levels.

Figure 6: Opinions on Bid Rigging Encountered



Abuse of Dominance: Unreasonably High Prices

Telecommunications sub sector

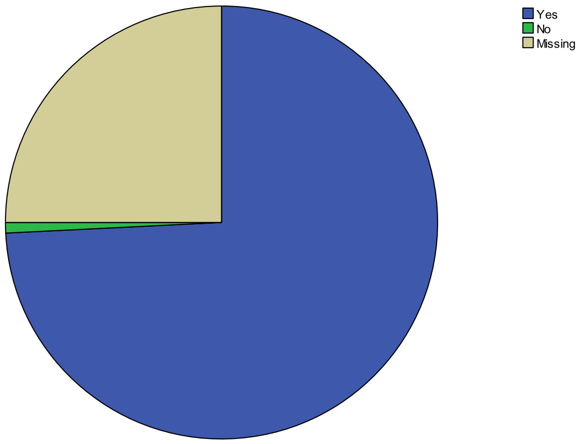
This practice no longer exists due to the communication act of 2000, which under Part V, section 23 and 24 of the act grants any person with a licence the right to establish radio or telecommunications in Uganda. In addition, the act promotes fair completion, prohibits unfair completion and provides a commission that receives complaints from victims of unfair practices both natural and non-natural. This forced dominant companies to drop their prices, since authorities had been established that could punish their abusive acts for example Celtel has dropped its outrageous prices since the 1990s to free calls like paka (a 24 hour free package for its customers).

Entry Barriers

Manufacturing monopolies and oligarchies

This barrier no longer exists in Uganda due to the government's participation in the EPAs, TIP, EAC and at the WTO under the multilateral trade negotiations, which have provided Uganda with safe guard measures and anti-dumping policies to avoid incidences experienced in1999 where automotive batteries were manufactured by one establishment the Uganda Batteries Limited, which enjoyed protection through a complete ban on the importation of some classes of batteries dumped by importers. Notice has to be made of the existence of the customs duties (dumping and subsidies) act of 1959 and the revised, which gave the president power to determine rates of dumping yet the practice continues by importers in 1999 even after the coming into force of the customs (dumping and subsidies) act of 1964. This shows how ineffective competition policies are if not implemented and mainly where people (both in power and civilians) are ignorant about acts role. In addition the act is out dated and needs to be revised.

Figure 7: Existence of State-owned Monopolies



News on the effect of competition on soft drinks sector in Uganda


TUESDAY, APRIL 29, 2014

business analysis

Daily Monitor

www.monitor.co.ug

Price war among soft drinks manufacturers hurts profits

THE NUMBERS

23 bottles

Per capita consumption of carbonated soft drinks in Uganda.

Shs67.3 billion

Amount of money Coca Cola invested in a plastic bottle production line last year

Shs70 billion

Amount of money Pepsi contributes in taxes annually.

Shs100 billion

Amount of money Coca Cola contributes in taxes annually.

Plastic soda bottles going through a production line.

Unfair Trade Practices

Liberalisation of the 1990s led to a competitive market due to the investment code act of 1991(amended in 2000 and still under review) but reduced the safety nets for consumers and quality assurance. These are dominant in a number of sectors, examples of these practices include misleading advertisements and information, poor customer care and service delivery in utilities, wrong billing, bribing and threats from powerful regional enterprises are numerous for example, Mosanto other institutions in Uganda are promoting genetically modified products through misleading and illegal means like misleading advertisements and information, so that they can access African markets like Uganda.

These affect consumers, since they end up purchasing low quality goods and services due to practices for example the production of Riham cola has made consumers in Uganda purchase the drink thinking that it is Coca Cola yet it is of lower quality. Other examples include Chinese products like phones, ear phones, which easily get spoilt specifically in a period of three days yet they are sold as gods of high quality. Many such examples are common in the Uganda market making consumers vulnerable at the national, regional and global level in trade.

In conclusion the above practices cannot be completely done away with where policies/ acts are implemented by different ministries which deal with one practice at a time, since ministries are allocated resources separately and in different percentages thence they cannot adequately implement the penalties set out in these acts or sustainably maintain the commissions established in the acts for example dumping still existed in Uganda even after the implementation of the 1959 customs duties (dumping and customs) act of 1959. Also, respondents indicated the concern that ACPs in Uganda have not been regulated because the regulators are top officials who are engaged in business. Thus, this should be checked if the Competition policy is to be fully implemented. In addition, separate laws setting penalties for practices lead to mass ignorance of the existence of the these bodies (commissions) set to punish those involved in abusive competition practices, hence, the need for a competition law and authority is essential, so that resources are not wasted in maintaining many authorities of different acts calling for fair competition in there arena but only one authority entitled to attach penalties to defaulters of the law as set by the different acts and its policy. This will lead to awareness and popularity of such a body within the state and its roles and responsibilities.

5
Assessment of the Implication of Natural Monopolies on Competition

A natural monopoly exists when economies of scale are so substantial that a single firm can produce total business output at a lower unit cost, and thus more efficiently than two or more firms[8] or are those sectors of the economy in which services are most cost effective, when provided by a single firm. Natural monopolies occur in sectors where capital cost (usually network infrastructure) far outweighs the cost of running the industry.

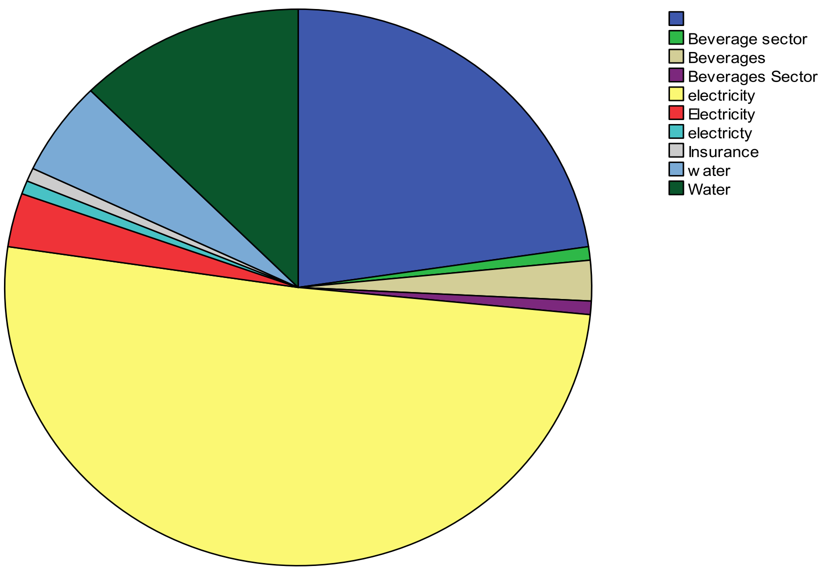
Types of monopolies included and include Celtel, UEB until 1999 generated, transmitted and distributed electricity in Uganda and was known for constant load shedding, UBC, Water sewage corporation, Diary corporation, which was established in the 1990s and supplied over 80 percent of the market of processed milk, Uganda Posts and Telecommunications Corporation (UPTC) was a natural monopoly before 1997 when new communications act was passed including UTV (Uganda Television), the public transport system was from the 1960s up to the early 1990s, was dominated by state-run bus companies, namely Uganda Transport Corporation (UTC) and People's Transport Company (PTC), the Uganda Coffee Development Authority (UCDA) and Uganda Airlines Corporation (UAC). At present, only the water sewage corporation stands as a monopoly though a state enterprise.
The various reasons provided by the authorities for their existence are as following:

- Natural monopolies exist due to the high cost of building a network of pipes or wires for example electricity, telecommunications and transport.
- Monopoly rents provide the incentive to innovate in the modern age of large-scale Research & Development since the government provides cheap services to its citizens. This enables the citizens to be innovative in other sectors.
- Monopolies exist when economies of scale are so substantial that a single firm can produce total business output at a lower unit cost.
- Unregulated private monopolies will not make investments necessary to offer the quality of service appropriate to the country's changing needs over time.
- Government intervention in the market maintains social efficiency and equity for all citizens.
- Natural monopolies avoid externalities spillover costs or benefits by a free market. Whenever there are external costs, the markets will (other things being equal) lead to a level of production and consumption above the socially efficient level and where there are external benefits the markets will be below the socially efficient level.

[8] Sherer, F.M. (1980), *Industrial Market Structure and Economic Performance,* Chicago: Rand McNally.

- To avoid public goods being underprovided by the market and without government intervention it would not be possible to prevent people from abusing competition and thereby escaping contributing to their cost of production.
- To prevent people from consuming or producing at imperfect levels caused by people's ignorance and uncertainty or imperfect information which may be provided at the market or no information all.
- Markets may respond sluggishly to changes in demand and supply creating problems of instability.
- To protect the consumers from substandard products.
- To avoid the suppression of a few by the privileged since they own property. This may deny others the right to retrieve costs from those privileged by property rights.
- It is the government's social responsibility so it should be of no concern to business since government would do best for society by serving the interests of its shareholders.

Figure 8: Sectors Characterised by Monopolies



<u>The Real Reason</u>

- In most cases, governments tend to go with monopolists in order to have political influence in a country.
- Natural monopolies are common because they are important for the functioning of the government.
- Natural monopolies cause governments to raise taxes on other markets in order raise revenue since they make zero profits. Hence it's an extra expense to the tax payer who would have used this money to invest in another business yet take

away your option of choice since they are not diverse, so one cannot avoid expense.

- There is a lack of understanding/awareness in the political circles of the benefit for the economy/country from a competition law.

Pricing output decisions and quality of natural monopolies

Natural monopolies provide low cost services that ensure consumer protection but provide products of a low quality and quantity for example the diary corporation produced low quantities of milk while UEB could not avoid constant load shedding and extension of electricity to other rural regions of the country thence provided insufficient services.

Implications

- They cause rise in taxes like VAT since the monopolies make no profits. This is another way government abuses its power by setting a monopoly price through taxes.
- The inefficient market outcome for example Uganda electricity board is a classic example of a natural monopoly where competition may lead to an inefficient market outcome.
- They are at the same time so great that the largest firm with the lowest costs could drive all other competitors out of the market for example water distribution or electricity in particular the Uganda water and sewage corporation has discouraged other competitors till date . This makes natural monopolies barriers.

- Natural monopolies can be an impediment to national growth where there services are substandard, since there services are an important part of a nation's infrastructure.
- Government monopolies in the market may lead to shortages based on poor information, costs in terms of administration, stifle incentives and disruptive if government policies change too frequently or never change yet the economy is changing.

As observed above, the most important factor in natural monopolies is the use of a single network infrastructure to deliver services to numerous consumers. This requirement makes it economically inefficient as the consumers increase in number. In addition these sectors suffer chronic inefficiencies and infrastructural decay, owing to a number of factors, which include mismanagement and political interference, lack of sustained investment in maintenance and capacity development among others, thus causing an embarrassing sector for the government and its citizens who are also left out of the global market since they cannot participate nationally regionally and worldwide.

Regulatory Agencies to Monitor Natural Monopolies

Regulatory bodies are set up to monitor and control activities that are against the public interest like fixing prices. They can conduct investigations of specific cases and punish those natural monopolies in breach of the regulations these include the Uganda Coffee Development Authority which may issue price guidelines to ensure that no agreement to export coffee sets a price lower than the set level, sector regulatory approval and ministries in charge of the sector.

Cases for transition

- The 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.
- The Uganda's public transport sector has for long been liberalised. However, from the 1960s up to the early 1990s, it was dominated by state-run bus companies, namely Uganda Transport Corporation (UTC) and People's Transport Company (PTC). The two companies collapsed in the early 1990s and ever, since several privately run companies have sprouted to fill the vacuum left by the withdrawal of the state from public transport services these include akamba buses, taxes, special hire cars and motor cycles among others. In fact the current law does not discriminate any type of transport means so promoting competiton at all levels in the transport sector.
- Liberalisation of the telecommunications industry saw the emergence of mobile telephone services in the mid-1990s operated by CelTel Uganda. The liberalisation led to increase of sector services that include VSAT (satellite internet) business services, mobile trunked radio services, cellular services and other value added services like payphones, fax bureau, call boxes and internet cafes among others and the increase in prices where telephone fixed lines have jumped from 45,000 in 1997 to 75,000 in 2002, mobile phone lines have shot up from 3,000 in 1996 to close to 500,000 in 2003, and internet subscriptions from 1,000 in 1996 to over 6,000 in 2000. However, it has to be recognised that in 2012, more competition led to mobile phone lines costing 3,000, 2000 shillings, which is cheaper than in the previous years and internet is at 500 shillings for 30 minutes and promotions of free calls by Warid, Orange and UTL (Uganda Telecom). This trend shows the importance of completion to the customers, citizens and the government.

Reasons for transition

- The collapse of natural monopolies created a transition process like Uganda Transport Corporation (UTC) and People's Transport Company (PTC) in the early 1990s, this created a vacuum that had to be filled by privately run companies that availed service for short distances and all over Uganda.
- The creation of policies giving authorities power to give licenses to other competitors for example the electricity act of 1999 gave authority to the Electricity Regulatory Authority (ERA), whose main functions were to issue

licenses for generation, transmission, distribution, sale of electricity and consumer complaint handling to other companies led to the transition.

- The creation of civil aviation authority which liberalised air transport enabled several airline companies to compete leading to the emergence of Eagle Aviation and Mission Aviation Fellowship, Africa One Airlines and East African Airways, British Airways, Air France, SN Brussels (the successor to Sabena), Gulf Air, South African Airways, Emirates Airlines, Ethiopian Airline and Kenya Airways among others. This opened up Uganda to the international services.
- The need to accelerate economic growth based on fair competition in all economic sectors including agriculture
- To ensure access of basic social services to the poor and social welfare
- To increase equitable employment opportunities and income generating activities for the poor.
- To promote good governance
- Understanding/awareness of the political circles of the benefit for the economy/country from a competition law.
- Developments in both multilateral and bilateral trade negotiations opening up Uganda's market to the world and regions like EU and USA in the EPAs and TIPA, which protect foreign direct investors in the receiving countries.

Other reasons for the transition

- New developments, such as technological progress which offer means of contesting a monopoly have fundamentally challenged the traditional regulatory practices based on the concept of natural monopoly.
- The degree of natural monopoly of many industries has also been drastically reduced due to globalisation of markets, which has forced governments to no longer focus on their economies but on other economies of neighbouring countries.
- Many traditional natural monopolies have been shown to be less naturally monopolistic than was once thought to be the case.
- Recent developments on the theoretical front have enforced this embrace of the competitive model, as the right way to organise many network industries previously viewed as natural monopoly industries.

In summary to a greater extent transition policies should be replicated in other sectors for which we still have monopolies due to the fact that natural monopolies are not justified since they drag the country's economy with poor services that are not global and only target a specific economic scale yet all scales go through change in time. This will allow small scale companies to thrive in an economy but all this will not be easily recognised where there is no competition policy and authority in place to guide and punish practices abusive to the competition regime.

Identification of cross-sectional (business, consumers and government) perceptions regarding competition concerns

Basing on field research, respondents expressed mixed feelings about competition and the need for Uganda to have a competition policy.

According to Kimera Henry Richard of CONSENT, Competition drives efficiency, innovation and productivity growth, which are keys to competitiveness and remunerative employment. Competition policy is also associated with increased investment and trade, and has a bearing on national poverty alleviation effort. The Policy is an important tool in the realisation of benefits of East African Community (EAC) integration.

According to Samalie Mukyala of Uganda Investment Authority, competition policy is associated with increased investment and trade, and has a bearing on national poverty alleviation effort. The Policy is also an important tool in the realization of benefits of East African Community (EAC) integration,

According to Kayondo of Kampala City Traders Association, Trade openness as envisaged in Uganda has not accrued to promoting sustainable local production and entrepreneurship, but has led to benefits which are skewed in favour of foreign big businesses. Subsequently, Competition has begotten monopoly that there is urgent need for the state to come in and favourably protect the domestic investments and traders in order to promote structural transformation and attain sustainable development.

In conclusion, respondents showed that because Uganda is a largely liberalised economy, and because current markets have not favoured sustainable domestic production and entrepreneurship because of being outcompeted by powerful firms, it is important for Uganda to have a competition policy to protect both consumer welfare and domestic production.

6
Conclusion and Recommendations

It is clear that competition policy and practices differ from country to country depending on their levels of development and their strategic objectives. Whatever the model, it is important to protect consumers from exploitation. In case of trade-offs between competition policy and other national policies, countries should make conscious decisions as to what policy should take precedence, over the other. Competition policy should also aim at complimenting national policies in order to achieve national development objectives.

Some of the pre-requisites for designing a competition policy and law that has a development dimension include exempting small and medium enterprises when the impact of their restrictive business practices is insignificant in the relevant market, and granting exemptions to strategic growth-oriented sectors that need temporary protection.

Generally, competition policy and law should be implemented by an autonomous body with powers and capacity to investigate uncompetitive practices and behavior and impose penalties where applicable. The EAC competition policy essentially extends the implementation of Uganda's Competition Bill objectives across the EAC region taking into consideration regional integration dynamics.

Also, a country needs to have fairly mature markets for it to start focusing on regulating them. In an economy like Uganda where the market is still informal and dysfunctional, the government ought to concentrate on developing the market before its regulation. Uganda's competition Bill assumes that competition leads to perfect markets i.e. markets that maximise both resource allocation and technical efficiency in a particular economy. In practice, however, it is the market that influences competition not the other way round.

In Uganda and the rest of the EAC, most sectors are dominated by large foreign companies that control markets and prices. Under such circumstances, government should encourage some market concentration among local firms; and promote mergers.

The competition policy should also take into account the dynamic factors in the global economy, i.e. the rapid technological changes, and high degree of capital mobility and globalisation.

In conclusion, the objective of a competition policy and law is to regulate competition for the benefit of consumers and fair market conditions, which allow for the entry of smaller businesses into the market. Competition in Uganda is becoming more critical as players jostle to survive within the existing competitive market environment. Uganda's competition law and its enforcement should be designed to restrain anti-competitive behaviour by large domestic corporations by limiting or pre-empting abuse of monopoly power. It should also not be applied across the board but selectively, in order to promote the development of domestic industrial capacity and the attainment of dynamic efficiency through technological advancement.

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Annexures

Questionnaire

i. "Accelerating the Implementation of the EAC Competition Policy and Law Project"

ii. (EACOMP Project).

Instructions:

1. ***The Interviewee should be informed that information provided in this questionnaire will be treated with high confidentiality***
2. ***Each question below has various options. We request you to please give your response by selecting the most appropriate option***
3. ***Additional comments are strongly encouraged and the space given in the questionnaire does not limit the length and scope of the answers.***

Introduction

SEATINI together with CUTS CITEE, Nairobi is implementing a project entitled 'Accelerating the Implementation of the EAC Competition Policy and Law Project' (EACOMP Project) in Kenya ,Uganda, Tanzania ,Burundi and Rwanda. One of the elements of the project is a detailed assessment of the perception of consumers on national competition issues. One of the main focusses is on anti-competitive practices or other concerns that could result in lack of competition in the Ugandan market

Competition can be defined as a situation where sellers or firms independently try to gain buyers' attention through offering the most favourable terms in comparison to others (fair competition). Such a situation result in firms developing new products, services and technologies to attract consumers. Thus competition results in:

- lower prices for the products, compared to what the price would be if there was only one firm operating in the market
- more products being available resulting in improved choice
- the products offered being of higher quality and
- easy availability of products and services.

A high-level of competition therefore exists if there are many products made easily available by a large number of firms, at reasonable prices and good quality; while a low-level of competition exist if these attributes (Price, Access, Choice, Quality) are absent.

Anti-competitive practices are of three main types: (a) cartel agreements, (b) abuses of dominant power and (c) anti-competitive mergers or acquisitions.

A. Cartel is an agreement among competitors to avoid competition among themselves to maximise their revenue. In doing so, they collectively seek to block entry into a relevant market by non-members of the cartel, fix prices and sales conditions and share markets. Cartels are also very damaging in Government project tendering procedures, because they may cause rigging of bids (cartel members take turns among themselves to win bids), thus stifling competition. The types of practices encountered in cartels are listed below in number **(** 1-3).

1. **Price-fixing**: Competitors at any levels in the production-distribution process enter into a collusive agreement (form a cartel) and fix prices. With respect to agriculture, this could be aided by the existence of intermediaries, who control the prices at which they buy from poor farmers and sell to big retailers at huge margins.

2. **Market-sharing**: Two or more firms agree to allocate markets (products and customers) among them, i.e., predetermine who shall deal with whom and where to avoid competition.
3. **Bid rigging**: Firms participating in a bid for a tender, secretly arrange among themselves as to which one will make the relatively best offer; the others accepting to make uninteresting or "covered" bids.

B. Abuse of Dominance happens when a single firm is able to impose a series of restraints on its suppliers or its distributors and customers, in order to increase its earnings abusively.

To do this, the firm needs to have so-called dominant market power, (either by having a monopoly or a situation close to a monopoly), whereby the firm is so much more powerful than its competitors, that it will not be affected by their actions. When in such a ' dominant position of market power', the firm may impose anti-competitive practices, such as nos. 4 to 10 below:

4. **Tied Selling**: A supplier forces a buyer interested in a desired product to buy another product (tied-product) along with it, even when the buyer is not interested in the tied-product.
5. **Exclusive Dealing**: Here the producer forces an agreement with the retailer prohibiting the latter from dealing with competing producers or distributors.
6. **Concerted Refusal to Deal**: Firms at different levels of the same production-supply chain agree among themselves not to sell or buy from certain customers or suppliers.
7. **Resale Price Maintenance**: The producer dictates the resale price of the goods that would be charged by the retailers.
8. **Price Discrimination**: This refers to a situation when a firm sets different prices of its goods/services at will, depending on the circumstances, customers, etc.
9. **Predatory Pricing**: A situation when a dominant enterprise charges extremely low prices (much below cost) for a product/service over a long period of time to drive a competitor out of the market, or deter others from entering it and then raises prices to recoup the losses.
10. **Entry Barriers**: This refers to certain situations where the entry of new players in the market is hampered by the existing players (or sometimes by government policies)

C. Mergers and Acquisitions (M & As) can also be anti-competitive if they result in increasing the concentration of market power to the point that it creates dominant firms, or in the ultimate case, in a monopoly. Examples of such anti-competitive M&As include nos. 11 and 12 below:

11. Take-overs that eliminate local competitors, for example by large foreign Multi National Companies
12. Government-induced mergers that create monopolies or dominant firms

Question	Answers	Code	Remarks
PERSONAL INFORMATION			
1. Name			
2. Designation			
3. Organisation			
4. Address and e-mail			
STATE OF COMPETITION AND ANTI-COMPETITIVE PRACTICES			
5. Broadly speaking, what is your assessment of the level of competition (in terms of access, price, choice and quality) among companies in Uganda?	High Moderate Low Nil Please explain	1 2 3	
6. To what extent do you think that the level of competition (in terms of access, price, choice and quality) in Uganda has an impact on the daily lives of consumers?	Highly Moderately Not at all Please explain	1 2 3	
7. In your opinion how often are **anti competitive practices** (as listed above, nos. 1-12) encountered in the country?	Very frequently Quite frequently Infrequently Not at all Please explain	1 2 3 4	

Question	Answers	Code	Remarks
	....		
8. What are the most frequent anti-competitive practices in Uganda? (Please write <u>**three most common**</u> **anti-competitive practices** you encountered in your country from the list in order of prevalence)	(i) (ii) (iii) Price fixing Market sharing Bid rigging Tied selling Exclusive dealing Concerted Refusal to deal Resale Price Maintenance Price discrimination Entry barrier Predatory pricing Anti-competitive M & As Any other ……… Can you provide example(s)? ……	01 02 03 04 05 06 07 08 09 10 11	
9. In your view which sectors are characterised by monopolies?	(i) (ii) (iii)		
10. What is your assessment of competition (in terms of access,			

Question	Answers	Code	Remarks
price, choice and quality) in following sectors: a) Telecom b) Power c) Retail (consumer goods) d) Commuter Transport (Bus, Taxi)	High Moderate Low Nil Comments…………… ……………………… ……………………… ……………………… ……………………… ……………………… ……………………… …….. High Moderate Low Nil Comments…………… ……………………… ……………………… ……………………… ……………………… ……………………… ……………………… …….. High Moderate Low Nil Comments…………… ……………………… ……………………… ……………………… ……………………… ……………………… ……………………… …….. High Moderate Low Nil	1 2 3 4 1 2 3 4 1 2 3 4 1 2 3 4	

Question	Answers	Code	Remarks
	Comments…………… ……………………… ……………………… ……………………… ……………………… ……………………… ……………………… ……..		
ENFORCEMENT ISSUES			
11. Are there any rules, regulations or laws to check **anti-competitive practices** (as listed above, nos. 1-12) in your country?	Yes No Don't know	1 2 3	
12. If yes can you name them?	(i) (ii) (iii)		
13. Are there any agencies in place to administer such legislation/rules?	Yes No Don't know If yes please state ……………………… ……..……………… ……………………… ……………………… ……………………… ………………	1 2 3	
14. Is there any action taken if these rules are violated?	Yes, always Yes, sometimes No Don't know Please give examples......................	1 2 3 4	
15. If no, why do you think that is the case?	*[Tick All that apply]* Law is not enforced Agency not strong	 1 2	

Question	Answers	Code	Remarks
	enough Corruption Strong lobbies Any other .... Please also elaborate ……………………… ……………………… ……………………… ……………………… ……………………… ……………………… ……………………… ……………	3 4 5	
16. Is there a consumer protection law in your country?	Yes No Don't know	1 2 3	
17. If yes, can you indicate the name of the law?	....		
18. Do you know of any agency/institution(s) which protects consumer's interests?	Yes No	1 2	
19. If yes, can you indicate the name(s) of the agency/institution?	....		
Role of government			
20. Are there state owned monopolies in Uganda?	Yes No Don't know	1 2 3	
21. Do state-owned monopolies indulge in anti-competitive practices?	Yes (please state all which apply) i.	1	

Question	Answers	Code	Remarks
(e.g. tied selling, exclusive dealing, resale price maintenance, price discrimination)	ii. iii. iv. No Don't know	 2 3	
22. How do you think that the Competition Authority should involve different stakeholder groups in its functioning?	On a random manner, when needed Through a structured process Not at all Any other (please state) .... ………………………… ……………........... ……………………… ………………………… ……………………… ………..........	1 2 3	
COMPETITION CULTURE AND PUBLIC AWARENESS			
23. How high is awareness on competition issues among the following groups: a) Politicians b) Business c) Consumers	High Moderate Low Nil High Moderate Low Nil High Moderate Low Nil	1 2 3 4 1 2 3 4 1 2 3 4	
24. Do you think that Competition issues are well understood in the country?	Yes No	1 2	

Question	Answers	Code	Remarks
25. If yes, why do you think this is the case?	Political will Active competition authority Publicity about competition issues Competition covered in Univ. courses Other............................	1 2 3 4 5	
26. If no, why do you think this is?	Lack of political will Inactive competition authority Lack of publicity on competition issues Competition not covered in Univ. courses Other	1 2 3 4 5	
27. If you encountered any anti competitive practice, which of the following actions would you take? (please state all which apply)	Complain to CA Inform the local politician/MP Seek intervention of the local court/council Seek help from consumer forums Report to the local police Complain to the company concerned Take no action Any other (specify) ………………………	1 2 3 4 5 6 7	

Question	Answers	Code	Remarks
	………………....... ……………………… ……………………		
28. How often are competition issues or violations (**anti-competitive practices**, as above nos. 1-12) reported in the media?	Very often Sometimes Rarely Not at all (end of questionnaire)	1 2 3 4	
29. How are these reported? (Please state all which apply)	Television (Local/national channel) Newspapers Radio Other (please state) ……………………… ………………....... ……………………… ……………………… ……………………… ………..........	1 2 3	
30. Based on these reports do you think that journalists understand competition issues well?	Yes To a certain extent No, not at all Please explain/give reasons................	1 2 3	

Possible Questions for EACOMP Research Phase

For opinion seeking interviews as indicated in the research guidance note

This note is made with specific reference to the Guidance Note for the Research Phase note that was circulated earlier. The note is meant to provide some guidelines as to the nature of questions to be asked during the research phase, to allow for consistency in the information to be solicited. It is important to note that while the questions are given here as per items listed in the research methodology, the responses provided may be relevant for other research areas.

1.Progress made by project countries towards operationalising competition regimes

These set of questions should be asked to the relevant government departments which has been involved or should be involved in the process of developing competition regimes, or other non-state actors with full knowledge of the developments with respect to competition laws. The questions can also be addressed by competition authorities in the country.

1. Countries with no competition laws

(i) What is the Government's view regarding the need for competition regimes/laws?

(ii) Such and Such Bills (*Quote relevant Bills*) were prepared by different agents and never passed in Parliament to become Acts.

For each Bill, answer the following questions:

(a) Who had decided on the need for competition laws at that stage? (*This is meant to establish whether the move was donor initiated or self initiated)*

(b) What could be the possible reason as to why this Bill could not be passed into law?

(c) To what extent were/are the issues preventing its passage still relevant for future Bills?

OR

(iii) Which Bills relevant to competition laws were developed by different agents even though they could not be passed into Acts? (*If the researcher is not aware of them*)

(iv) What steps is the government currently taking to have a competition law?

(v) What are some of the new challenges/constraints that are likely to prevent the passage of competition laws?

(vi) Apart from competition laws, what other laws/policies does the government have at its disposal to address anticompetitive practices in the market?

2. Countries with competition laws but with incomplete implementation

(i) It is now ---- years (*provide number*) since the competition law---(*provide name*) was passed into law but up to now the law has not been implemented;

OR

(ii) It took ----- years (*provide number*) before the competition law---*(provide name)* became effective (or for the competition authority to be established) after it was passed;

(a) What factors led to the adoption of the competition law (*donor initiated or self initiated*)?

(b) How long did it take to come up with the law from the time the decision was taken to have one (*reference can be made to the various amendments made, if any*)?

(c) Which factors are responsible for the delay in implementing the competition law?

(d) To what extent have these inhibiting factors been addressed?

(iii) Is the government convinced that competition laws are necessary in the country?

3. Countries with fully implemented competition laws

(i) What factors led to the adoption of the competition law?

(ii) What were the distinct phases in the process of developing the law?

(iii) How long did the process of coming up with the current law take from the time the decision to have the law was taken?

(iv) How long did it take to have the competition authority established after the law was enacted?

(v) Which are some of the amendments that have been made to the competition law, and what were the reasons behind the amendments?

2. Political Economy Constraints in implementing competition regimes

These questions are meant to establish the extent to which political economy factors constrain the successful implementation of competition regimes as mandated by the law. As such they can be addressed by competition authorities in countries where they exist, or other relevant government departments, responsible for enforcing any law that is related to competition law where there are no competition agencies.

1. Independence of the Agency

(i) To what extent is the institution able to make independent decisions without influence from the line Ministry?

(ii) How often does the Minister issue directives regarding the operation of the institution?

(iii) How binding are the decisions made by the institution?

(iv) How are the Board members selected?

(v) What are the sources of funding of the organisation?

2. Exemptions from the law

(i) Which sectors are exempt from the application of the relevant law (competition law or the law giving the mandate to the institution)?
(ii) What is the rationale for exempting such sectors or activities?
(iii) How relevant are the exempted activities to the law?

3. Other conflicting regulations

(i) What other laws have provisions that may be in conflict with your mandate?
(ii) Which legislation has an overriding effect over the other in case of conflict of objectives?
(iii) Are there any operational guidelines to ensure the harmonisation of such conflicts?
(iv) Have these conflicting objectives ever been utilised by stakeholders pursuing their own agendas?
(v) To what extent is the application of the law hindered by existence of powerful political elites with vested interests?

3. Interface between Sectoral Regulation and Competition Authorities

These questions should be asked to both the competition authorities and the different sector regulators (water, electricity, investment, telecom, etc). They are meant to establish the extent to which the competition and sector specific regulatory laws work towards the common goal of competition. They should also expose any limitations in the existing framework as well as potential conflicts that could arise. In countries with no competition laws/authorities only sector regulators should be interviewed.

1. Competition Authorities

(i) Does the mandate of the competition authorities extend to sectors with their own regulators?
(ii) Does the competition law have separate provisions on how such cases can also be handled?
(iii) Briefly how does the law provide for harmonisation in the functioning of the competition authority and sector regulators?
(iv) What is the procedure that a potential stakeholder has to follow to satisfy both regulators, i.e the competition authority and the sector regulator?
(v) Have there been any reported cases of conflicts between the competition authority and the sector regulator? If so, which authority was overridden?
(vi) Does the competition authority consult with the sector regulator before making a decision?
(vii) Is there a good working relationship between the two set of regulators?
(viii) Is the competition authority happy with the power it is given vis-à-vis the sector regulator?

2. **Sector regulators**
   (i) Are the regulatory authorities empowered by their respective legislations to regulate competition in the market?
   (ii) Do the laws regulate mergers and acquisitions?
   (iii) Are there provisions for punishing abusive behaviour of one company against its competitors?
   (iv) Does the law authorise companies to form associations to discuss marketing strategies?
   (v) Does the law have separate provisions on dealing with cases falling under the scrutiny of other regulators, such as the competition authority?
   (vi) Have there been any reported cases of conflicts between the competition authority and the sector regulator? If so, which authority was overridden?
   (vii) Does the sector regulator consult with the competition authority on matters related to competition before making a decision?
   (viii) Is there a good working relationship between the two set of regulators?
   (ix) Is the sector regulator happy with the power it is given vis-à-vis the competition authority?

3. Assessment of the implication of natural monopolies on competition

These questions can be asked to regulatory authorities who regulate the sectors where natural monopolies exist. In order to assess their full implication on competition, competition authorities can also be interviewed to shed more light on the matter. Countries with no competition laws/authorities can interview the respective sector regulators only.

1. **Sector regulators for natural monopolies**
   (i) What are the major reasons for having only one player in the sector?
   (ii) How do the monopolies determine their prices and output decisions (Does the sector regulator have to approve them?)?
   (iii) Are the different stakeholders happy with the prices charged?
   (iv) How can this sector be transformed to allow other players to enter?
   (v) Is the regulatory authority happy with the performance of the monopoly?

2. **Competition authorities**
   (i) Is the competition authority happy with the behaviour of the monopoly?
   (ii) Have there been any allegations of abuse of dominance levelled at the monopoly?
   (iii) In the authority’s view, is it really necessary to have a monopoly in the sector?
   (iv) What measures can be initiated to introduce competition in the sector?

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