



THE REPUBLIC OF UGANDA

MINISTRY OF TRADE, INDUSTRY AND COOPERATIVES

National Competition and Consumer Protection Policy

Regulated Competition for Efficiency and Enhanced Consumer Welfare

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2014

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Foreword

Government maintains a liberal trade policy; and commits to creating opportunities for equal participation in trade, providing an enabling environment for private sector growth, competitiveness and development. One of the key policy actions Government undertakes to implement in the course of implementing the National Trade Policy is to “formulate and implement specific sectoral policies necessary for promoting efficiency, competitiveness and consumer welfare in a liberal environment. Government is cognizant of the benefits of economic growth and development emanating from the liberalization policy; hence the need to have such benefits distributed to producers and consumers by ensuring a market that is free of distortions, uncompetitive practices and consumer exploitation. It is in this context that the National Competition and Consumer Protection Policy has been developed.

The National Competition and Consumer Protection Policy is cognizant of the country’s Vision 2040, National Development Plan, National Trade Policy, and other sectoral policies and strategies aimed at increasing incomes, creating wealth and ensuring sustainable development. Furthermore, the Policy commits government to implement obligations and commitments at the EAC, COMESA and WTO on consumer protection and competition

Fair competition stimulates innovation, productivity, creates possibilities for Micro small and medium sized enterprises to flourish, eliminates market barriers and hence increases a country's competitiveness and attraction to investment. Consumer protection on the other hand, fosters consumer’s welfare through protection of their rights and guarding them against exploitation.

Through this Policy, Government has committed to establish an enabling environment for fair competition and attainment of consumer welfare. This is to be achieved through strengthening institutional and regulatory framework that will regulate competition aspects including mergers and acquisitions, abuse of dominance and other anticompetitive practices such as price fixing, collusive tendering, refusal to supply and geographical limitations among others. Regarding consumer protection, Government has committed to ensure consumer rights to choice, safety, information and value for money among others.

I wish therefore, to extend my appreciation to the members of public and private sector who participated tireless during the consultative process in the development of this Policy. Finally, I am pleased to present to the people of Uganda, the National Competition and Consumer Protection Policy and I appeal to all Ugandans and Development Partners to support its speedy implementation for economic and social transformation of our country.

Amelia Kyambadde (MP)

MINISTER OF TRADE INDUSTRY AND COOPERATIVES
NOVEMBER 2014

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Acronyms

1.0 Introduction

In 2008, Government passed the National Trade Policy with the theme of “*trading out of poverty into wealth and prosperity*”. In the Policy, the Government envisions transforming Uganda into a dynamic and competitive economy in which the trade sector stimulates the productive sectors. Government maintains a liberal trade policy; and commits to creating opportunities for equal participation in trade, providing an enabling environment for private sector growth and development, and targeted interventions in specific sectors as and if necessary. In view of the above principles, Government adopted a multifaceted approach to foster the development of domestic trade, including strengthening of domestic trade policies and laws. Accordingly, one of the key policy actions Government undertakes to implement in the course of implementing the National Trade Policy is to “formulate and implement specific sectoral policies necessary for promoting efficiency, competitiveness and consumer welfare in a liberal environment

The formulation of the Policy is also cognizant of the country’s industrialisation strategy as enshrined in the National Industry Policy, especially in the context of creating a business friendly environment for private sector-led industrialization in which industries will develop, improve productivity and the quality of products through, *inter alia*, creativity and innovation and become more competitive in the global economy”.

The formulation of this policy meets the National Development Plan (2010/11-2014/15) agenda. Under the chapter on Trade Development, Government commits to address the improvement of the ‘doing business’ environment. The relevant strategy is to strengthen the related regulatory frameworks with the intervention of developing and amending the required commercial laws.

Government has pursued liberalisation policy since the 1990s, which has resulted in trade and investment growth and opportunities. However, in some sectors, liberalisation brought on board a number of challenges relating to uncompetitive practices such as resale price maintenance, geographical limitations, barriers to market entry, abuse of monopoly powers, development of cartels and collusions. Uncompetitive practices hinder consumers and producers from maximising the benefits of liberalisation. It is in this context that the National Competition and Consumer Protection Policy has been formulated to address this situation, *inter alia*.

Competition refers to the way firms behave in the market place and how they respond to the actions of other suppliers and consumers. The idea of competition is based on the premise that supply and demand are limited, at least in the short term, and that firms must strive to obtain their share of the available resources. Ideally, competition between firms would be based on price and the ability to innovate and respond to changes in the market. With this, there would be no impediments to the operation of the price or market systems.

In reality, human ingenuity, high entry barriers to some sectors and subsectors, efficiencies of scale obtainable from large-scale operations and other factors combine to impair perfect competition in various ways. Normally, this leads to economic rents being accorded to some firms, but without any obligation on their part to let the consumer benefit from this situation. At international level, Governments recognize this, and they normally seek to protect competition through competition policy.

Competition policy refers to approaches of Governments to the promotion and protection of competition. Competition policy is also concerned with the welfare enhancing effects of opening non-tradeable sectors to competition. Competition policy includes rules and regulations to foster the competitive environment in an economy, mainly through more efficient allocation of resources. Competition policy normally deals four main groups of behaviours by firms:

- (i) horizontal arrangements - mainly arrangements between firms to maintain and control prices;
- (ii) vertical arrangements - including exclusive dealing, resale price maintenance, geographical limitations on activities and tied dealing;
- (iii) misuse of market power by monopolies and large firms, and
- (iv) control of mergers and acquisitions to ensure that they do not impair overall competitive conditions in the market.

A consumer is defined as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing. Consumer protection refers to measures established to; promote the free flow of truthful information in the marketplace, prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over other market players, provide additional protection for the weak and those unable to take care of themselves, and ultimately ensures fair trade competition.

Consumer protection plays an important role of prohibiting unfair or misleading trade practices such as the use of false weighing or measuring equipment, deceptive advertising, e.t.c; vices which usually increase under a liberal trade regime. In the era of globalization, consumer protection is essential in the promotion of fair trade in a competitive environment by way of ensuring that there is maximum freedom for participants to effectively operate in the market while recognizing the case for appropriate standards. Consumer protection is required so as to;

- i. Establish appropriate standards while maintaining maximum freedom for participants to effectively operate in the market
- ii. Guard against exploitation, ensure value for money and thus improve the quality of life and general welfare
- iii. Empower consumers with adequate knowledge and skills to enable them make informed choices, and avoid unnecessary payments or risks associated with the goods and services available in the market
- iv. Instil confidence in consumers on the market
- v. Boost up-take of appropriate products, enhance savings, reduce indebtedness, eradicate poverty and generally stimulate economic growth.
- vi. Promote efficiency in the supply of goods and services and in response to consumer needs and consequently increase general demand in the country, and
- vii. Promote consumption of healthier and safer products

2.0 Situational Analysis

Uganda has maintained a liberal economic policy since the late 1980s. This policy approach has seen Uganda divest most public enterprise, liberalise the marketing of agriculture commodities, and allow private sector players in a number of important sectors of the economy such as telecommunications, energy/electricity, transport and banking. There is evidence that this economic policy approach has driven economic development in the country, with greater multiplier and inter-sectoral effects.

However, the full potential of the economic policy reforms has been hampered by some uncompetitive practices by some of the private sector players. This usually happens worldwide if the trade policy reforms are not accompanied by complementary policies regulations and laws, and Uganda was not an exception. Currently, Uganda does not have a comprehensive policy and legal regime on consumer protection that guarantees consumer rights and obligations. Generally, there is fragmentation in the legal and policy framework on aspects related to promotion of fair competition and consumer protection. A number of sub-sectors such as; energy, financial services, communication, transport, tourism, health, trade, and professional services have some laws that govern some aspects of competition; but these are absent in most sectors. Similarly, there is no coherence in institutional frameworks dealing with fair competition and consumer protection. Given the Government's policy of liberalization, such gaps can greatly undermine the potential benefits of running a liberal economy. The National Competition Policy addresses these gaps; and should therefore set the ground for Uganda to benefit more from liberalization.

Consequently, the benefits of the growth from the economic reforms have not been distributed among the population as desired. In some instances, consumers have not enjoyed the benefits of competition possibly due to such market distortions within some sectors. Due to lack of a comprehensive consumer protection policy, the market is characterized with practices which exploit consumers and undermine their interests such as; the supply of low quality, unsafe and substandard products; fraud; invasion of consumer privacy; tying-in practices; consumer mistreatment, consumer misinformation and unreasonable charges and prices, among others.

In addition, the current legal regime does not provide for a legal and institutional mechanism for implementing Uganda's obligations at both regional and international levels on competition policy and consumer protection.

Regarding market shares, there are varying levels of market control across the different sectors, with some clearly having dominant players while in others the market power can be described as evenly distributed. There are 'natural' monopolies in a number of sub-sectors providing utility services such as water, electricity, railway transport and health. The regulations in these sectors provide for exclusive provision of services by particular agencies. Natural Monopolies per se are not illegal but service provision of the mandated agencies need to be regulated to cater for consumer interests, efficient use of resources and ensure that there are no abuses of market and statutory powers.

The following sub-sections examine the status of competition and consumer protection within the major sub-sectors of the economy.

2.1 Communications

The communications sub-sector covers telecommunications, electronic communication services (television and radio), and postal services. The Uganda Communications Commission is the regulatory authority for this sub-sector. The Commission is mandated to monitor, inspect, license and regulate communication services, and protect consumers from excessive tariff increases. The Uganda Communications Act, Cap 106, empowers the Commission to promote, develop and enforce fair competition and equality of treatment among all operators in any business or service relating to communication. The Commission is mandated to receive complaints and investigate any act or omission in breach of fair competition, approve any mergers or acquisitions, order an operator to stop unfair competition or pay a fine, and to declare any anti-competitive agreements or contracts null and void. The decision of the Commission can be appealed to a Tribunal. Some exceptions to fair competition are allowed in the sector.

The communications sub-sector is one of those few in Uganda with better legal provisions on consumer protection. Under the Act the mandate of the Commission includes; safeguarding the rights and obligations of consumers and operators as regards the quality of communications services and equipment; promoting consumer awareness; receiving, investigating and handling consumer

complaints, conducting consumer awareness and education programmes, strengthening dialogue among stakeholders in the sector, and conducting consumer research.

Although the telecommunication sector has better provisions on consumer protection, the law does not provide for clear redress and compensatory mechanisms for aggrieved consumers. The regulations provide for a lengthy procedure for addressing consumer complaints. For example, a consumer must first register his or her complaint to the operator before notifying the Commission. Even then, the Commission cannot effectively resolve consumer complaints because the Uganda Communications Tribunal provided for in the legislation to handle such matters is yet to be formally operationalized. However, even if the Tribunal was fully operationalized, its performance would still be hindered by the lack of an effective functional law on consumer protection issues. In addition the laws do not provide for sanctions on the part of offenders and compensations to the aggrieved parties.

In terms of market share, dominance in the telecommunications sector is also high. There are six players established in the sector. Interestingly, one of the six companies controls 50% of the market. This is certainly a dominant position and potentially a threat to fair competition and protection of consumers' rights. The sector has also witnessed a number of takeovers in the recent past; a key phenomenon for consideration in promotion of fair competition.

2.2 Information and Technology Sub-sector

The Information and Technology sub-sector is regulated by the National Information Technology Authority established under the National Information Technology Authority Act, 2009. Among other functions, the Authority is mandated to set standards in the sector, arbitrate disputes arising between suppliers of information technology and consumers and to protect and promote the interests of consumers or users of information technology services or solutions.

There are other three main cyber laws that govern the sub-sector aimed at protecting critical national information infrastructure, encourage safe online business and increase the country's competitiveness to attract foreign investment

such as in the Business Process Outsourcing Industry. They include the; Electronic Signatures Act, 2011, Electronic Transactions Act, 2011 and Computer Misuse Act, 2011.

Regarding consumer protection, the cyber laws have provisions which regulate the; unauthorized use or interception of computer services and disclosure of access code or private information, electronic fraud, child pornography, cyber harassment, cyber stalking and invasion of privacy, unsolicited goods, services or communications, protection on electronic supply of goods, and services and liabilities of the electronic supplier, among others.

Generally, the information and technology sub-sector, as with the telecommunication sub-sector, has some better provisions on consumer protection. However, the provisions do not provide for enforcement of redress and compensatory mechanisms at the undertaking level. Aggrieved consumers have to follow a court procedure which is a lengthy process in addressing consumer complaints. Moreover, the laws do not provide for clear consumer rights and awareness mechanism.

2.3 Financial Services

2.3.1 Banking services

The Bank of Uganda is the regulatory authority with respect to banking services. The Bank of Uganda is mandated to monitor, inspect, license and regulate banking services, and protect consumer's interests. In granting a license Bank of Uganda puts into consideration the convenience and needs of the community to be served and whether public interest is to be served. The Central Bank is mandated to either revoke the license or seize the institution or temporarily manage it and close or merge with another if there is failure to comply with the regulations. The relevant regulatory laws in the sector include the Bank of Uganda Statute, Financial Institutions Act (2004), the Deposit Taking Institutions Act (2003) and the Moneylenders Act 1952 (ch 273).

The Moneylenders Act mandates a Magistrate having jurisdiction in the place in which the moneylender operates or intends to operate to grant or revoke a license. The Act obliges a moneylender to supply a borrower with comprehensive information relating to the loan, and prohibits deceptive advertising; which are essential to consumer protection. It is an offence for a moneylender to; advertise or canvass in any form other than that provided for in the Act, make false

statements and representations through false or deceptive statements or dishonest concealment of material facts to fraudulently induce or attempt to induce any person to borrow money and charge for costs relating to the granting of the loan. A borrower or intending borrower who pays unknowingly is provided with a right to recover such money.

However, Tier 4 segment of the financial sector remains largely unregulated. The Tier 4 institutions which are partly regulated by the Bank of Uganda or other regulators¹, are not authorized to take deposits from the public, but can offer collateralized or non-collateralised loans to the public. They comprise of Savings and Credit Cooperative Societies (SACCOs), Village Savings & Loans Associations, Money Lenders, Rotating Savings & Credit Associations and other informal saving clubs.

There are varying levels of market control in the banking sectors, with some players clearly having dominant position. For example, 50% of the market in terms of assets is shared between only three commercial banks out of the twenty two commercial banks operating in the country. Similarly, 45% of the market share of commercial banking is shared between the three banks. This indicates that in this sub-sector there is market dominance and potential for any of the three banks to apply their market powers in a manner that is detrimental to the other players and the consumers. The banking sector has experienced a number of acquisitions and takeovers over the last decade.

2.3.2 Capital markets

The Capital Markets Authority is mandated under the Capital Markets Act 1996 (cap 84) and as amended in the Capital Markets Authority Amendment Act 2011 to regulate conflict of interest, exploitation of consumers, dissemination of misleading information and fraudulent concealment of material facts, among others, in the capital market sector.

2.3.3 Insurance

The insurance sub-sector is governed by the Insurance Act 1996 (Ch 213). The Act sets up the Uganda Insurance Commission as the regulatory authority; and prohibits reckless advertising false or deceptive statements, and dishonest concealment of facts. A culprit is liable to a fine not exceeding one million shillings. The Commission must approve the amalgamation and transfer of

¹ Such as the Commissioner Cooperatives for SACCOS or the courts in the case of money lenders

insurance business. In the process of approval, the Commission considers rights and obligations of an existing policyholder whose policy is part of the amalgamation or transfer, and whether the transferor has settled all financial obligations. In this way, the Act protects consumers' rights. However, there is no mandatory need for consideration of fair competition aspects prior to approval of amalgamation or transfer, which leaves aspects of fair competition unaddressed. The insurance sector has some players that are in a dominant position. Six out of the twenty one firms control 80% of the market share; 26% of the industry's written premiums in 2009 went to the top two firms. A number of companies in this sector have merged over the recent past. The dominance of the sector by a few firms is worrying and is a potential recipe for anti-competitive behaviours by firms.

In general, the financial services sector has some high-level provisions concerning fair treatment of consumers. The regulations in the sector require undertakings to: establish adequate procedures for handling of customers' complaints; avoid misleading information; disclose conflict of interest and impartiality, desist from imposing unfair or unreasonable charges and ensure remedial action and proper handling of complaints from customers

However, although the sector has much better regulatory provisions on consumer protection, the laws to which they give effect are focused at enforcing prudential management of sector², that is, soundness and effective management of the delivery of financial services. As a result, the regulations are not comprehensive on consumer protection. The regulatory provisions fall short of legal action and enforceability because of the absence of a concrete supportive law with actionable areas on consumer protection issues. In addition, the laws do not provide for consumer rights and obligations nor do they provide for clear consumer awareness mechanisms.

2.4 Energy

2.4.1 Electricity

The Electricity Act 1999 sets up the Electricity Regulatory Authority for the generation, transmission, distribution, sale, exportation, and importation of

² BOU report: Towards an Effective Framework for Financial Literacy and Financial Consumer Protection in Uganda, 2011

electrical energy in Uganda. The Authority has powers to issue and revoke licenses; prescribe terms and conditions, enforce directions to ensure compliance, establish a tariff structure, develop and enforce sub-sectoral performance standards, approve codes of conduct in respect to operations in the sub-sector, promote fair competition and ensure fair balance of the interests of the consumers. The Authority considers applications for licenses; and must in the process consider the energy needs of the country, the need to protect the environment and conserve natural resources, ability of the applicant to operate in a manner designed to protect the health and safety of users, and any representations and objections by an affected party, and the price or tariff offered. Whereas some aspects of consumer protection are addressed, the Act does not handle aspects of fair competition in the sector. This is in spite of the importance of the electricity sector in driving national development.

Generally, the laws and regulations in the electricity sub-sector do not explicitly require sectoral operators to establish consumer complaint handling mechanisms. The Subsector laws do not have clear provisions on consumer rights and obligations.

2.4.2 Petroleum products

The Petroleum Supply Act, 2003, governs the petroleum sector. The Act provides for the supervision and monitoring, importation, exportation, transportation, processing, supply, storage, distribution and marketing of petroleum products. The Minister and Ministry responsible for the petroleum sector act as the regulatory authority for the sector. There are gaps in dealing with anti-competitive practices such as price fixing, cartels; mergers and acquisitions, and consumer protection. The Petroleum (Exploration and Production) Act mandates the Minister responsible for petroleum exploration and production not to grant a petroleum exploration license where the block in question at the time of application has already been allocated. It is illegal to transfer a license without the approval of the Minister.

Regarding Consumer Protection, the Petroleum Supply act, 2003 mandates the Ministry to regulate sub-sectoral activities, for the safety and protection of public health and the environment. Specifically, the Act promotes elimination of discrimination or preferential treatment of any participant and the observance of the principles of a free market and fair competition. According to the Act

licensees must sell their products and offer their services to all interested persons without undue delay and without any form of deliberate discrimination by means of quality, quantity or price or other conditions and restrictions which cannot be justified under legitimate commercial or operational grounds.

The Petroleum (Exploration and Production) Act 1985 is limited on consumer protection probably because, the subsector is concerned with the production process rather than the marketing of the product. Like the electricity subsector, the Petroleum laws and regulations are silent on the need for sectoral operators to establish consumer complaint handling mechanisms and do not provide for consumer rights and obligations.

The petroleum sector has experienced numerous takeovers, mergers and acquisitions over the last decade. In the petroleum distribution sector, there are two main players, with each commanding a market share of at least 20%; and one of the main players has announced intentions to withdraw from upstream operations. Whereas in other countries in the region such acquisitions have been regulated and subjected to approval with respect to promoting fair competition, in Uganda such has not happened due to absence of an enabling policy and legal framework.

2.5 Transport Services

The transport sector is governed by three main laws; the Traffic and Road Safety Act 1998, Inland Water Transport (Control) Act 1939, Civil Aviation Authority Act 1991.

The Traffic and Road Safety Act 1998 sets up the Transport Licensing Board as the regulatory authority for water and road transport. In considering the grant of an operator's license, the Board puts into consideration the needs of the public, the desirability of providing services, the interests of any person holding omnibus operator's license over any route, and any objection relating to the grant of the license. The license granted by the Board is not transferable. However, consumers are not accorded sufficient protection under the Act as arbitrary price increases are not prohibited; nor are cartels and collusion prohibited.

The Traffic and Road Safety includes provisions aimed at ensuring consumer protection. The main provisions that address consumer protection issues include; conditions for the safety of the operator and the passengers or the other public, restrictions on overloading, restrictions on reckless or dangerous operations, prohibitions on cheating a passenger and conditions for delivering a passenger to his or her destination and on initial agreed terms.

Regarding water transport, the Inland Water Transport (Control) Act 1939 empowers the Transport Licensing Board to, with prior approval or upon the directions of the Minister, grant to any person an exclusive license authorizing that person to operate ships for the carriage of passengers or goods in such area, over such routes or between such places as the Board may decide. In this respect, promotion of fair competition is impaired.

The Civil Aviation Act 1991 sets up the Civil Aviation Authority with a mandate to regulate license air transport sector in Uganda. The Authority designates domestic and international air carriers, undertakes the establishment, maintenance, development, operation and ownership of aerodromes, registers aircraft and regulates on safety of civil aviation. The Authority advises the Minister on establishing fares, freight rates and related matters. The Authority can prohibit any aircraft from departing or arriving in or from Uganda, and puts into consideration the air worthiness of the aircraft, the traffic demand of proposed route and ability of the existing aircraft operators to meet this demand. Any person affected by the decision of the Authority relating to licensing under the Act, can appeal to the tribunal. The Act falls short when it comes to handling issues of fair competition.

Other sub-sectoral laws with similar provisions on consumer protection especially in regard to safety of passengers and transport charges include; Vessels (Registration) Act Cap 349, Airport Services Charges Act 6, 1965, Ferries Act, Cap 350, Motor Vehicles Insurance (Third Party Risks) Statute No 5, 1991, Passports Act, No.6, 1982, Roads Act, Cap 345, Uganda Air Cargo Corporation Statute No. 18, 1994.

However, consumers are not well protected under the existing laws governing transport services in Uganda. The Acts do not provide for redress mechanisms in the event that consumers are aggrieved by the transport operators. There are no established mechanisms for registering, investigating and resolving passenger complaints. More still, some of the laws like the Inland Water Transport (Control) Act 1939(Ch 356) include provisions which provide for exclusive operators a

situation that can breed monopolists and thus open up associated inefficiencies and consumer exploitation tendencies.

2.6 Professional services

Some of the key professional services in Uganda include surveyors, journalists, veterinary Surgeons, engineers, architects, advocates, accountants and medical practitioners. Professional services are regulated under the different acts which include the Surveyors and Registration Act 1974, Press and Journalist Act 1995, Veterinary Surgeons Act 1958, Engineers Registration Act 1969, Advocates Act 1970, Accountants Act 1992, Allied Health Professionals Act 1996, Nurses and Midwives Act 1996, Pharmacy and Drugs Act 1971 and Medical and Dental Practitioners Statute 1996. Different regulatory bodies are set up under these laws to regulate, and among other functions protect consumers from unscrupulous or unqualified practitioners or people claiming to be qualified as such.

Some of the laws mandate sectoral associations to regulate the professional service providers in the respective sector, including granting and revoking practicing licenses, registration and deregistration and settlement of disputes. This can potentially lead to conflict of interest and greatly impair fair competition and effective consumer protection. Although a number of Acts in the professional services area cover some aspects of consumer protection, their scope is limited. For example, while professional services are regulated in terms of misconduct, the laws do not categorically state the rights of consumers nor do they put in place redress mechanisms.

2.7 Tourism Sector

The tourism sector is regulated under the Uganda Tourism Act, 2008. The Uganda Tourism Board is the regulatory body under the Act and is mandated to enforce, and monitor standards in the tourism sector and to inspect, register, license and classify tourism facilities and services. The Board provides procedures for safety and dispute settlement in the sector. The Board is mandated to remedy defects or even cancel licenses where it appears that any qualification issues are not properly implemented. The Act includes provisions on the suitability of tourism and the health, security and comfort of the consumers.

However, the Act itself does not explicitly provide for the rights and obligations of consumers. It does not even have direct provisions on mechanisms for handling consumer complaints. In such a situation, regulations on consumer

protection developed and implemented through the Board may not be effective in the absence of a supportive law.

2.8 Agricultural sector

The key agriculture sub-sector laws relating competition issues include the Dairy Industry Act, Hide and Skin Trade Act 1951, Cotton Development Act (ch 30) and Uganda Coffee Development Authority Act 1994. These laws mainly deal with setting and enforcement of standards for the respective sector, and promotion of the sector. These are done in the context of promoting consumer protection, with very little focus on promoting fair competition. Other sub-sectors such as Tea are regulated by their respective associations. In such instances, there have been complaints of barring new entry into the market, especially at the marketing level.

2.9 Trade Sector Laws

The Trade Sector is governed under a number of laws relating to the demand and supply of goods and services. These include the; Contract Act, Cap. 73, Sale of Goods Act, Cap. 82, Weights and Measures Act, Cap. 103, Uganda National Bureau of Standards Act, Cap. 327, Adulteration of Produce Act (Ch 27), Trade (Licensing) Act 1969 (Ch 101) and Enguli (Manufacture and Licensing) Act 1966 (Ch 86). However, of the laws governing the trade sector, a few listed below include provisions on consumer protection.

2.9.1 The Sale of Goods Act, Cap. 82

The Sale of Goods Act provides for basic principles of general contract law and focuses on transactions involving the sale of goods. The Sale of Goods Act addresses the unequal status among parties to contracts by enacting exceptions to the general rule of freedom of contract. Under the doctrine of caveat emptor (buyer beware), it cautions consumers to rely on their own resources and devices when contracting. Under the Act, there is also an implied condition that the goods will be fit for the purpose for which they are purchased “where the buyer makes known to the seller the particular purpose for which the goods are required”. Another implied condition is that the goods will be merchantable or commercially viable.

The Act presents a number of weaknesses. It does not include awareness provisions and mandates and as a result most vendors and suppliers make consumers accept the exclusion or limitation of the protective provisions embodied in the Act. In addition, the Act requires that a contract for the sale of goods of the value of two hundred shillings or more has to be in writing if it is to be enforceable. This provision is also very limiting first, because in Uganda today, two hundred shillings does not buy anything of value. Secondly, most of the contracts for sale of goods in Uganda are not in writing. Therefore, a consumer who buys defective goods may fail to secure redress for breach in a court of law because the contract of sale was not in writing.

2.9.2 The Weights and Measures Act, Cap. 103

The main function of this Act is to provide for and regulate the use of weighing and measuring equipment. It seeks to ensure that a consumer of goods is given the right quantity of goods and achieves this by laying down detailed procedures of how weighing or measuring equipment is certified as fit for use in trade. The Act also makes it an offence to sell or expose for sale underweight goods.

One general weakness about the Weights and Measures Act as amended is its heavy reliance on penal sanctions to enforce compliance. Moreover the offences created throughout the Act attract very paltry fines ranging between five hundred shillings and two thousand shillings. These fines have never been revised upwards. A consumer who buys underweight goods as a result of a trader using false equipment is not interested in seeing the trader going to jail. A consumer's need is just to get compensated or to be given the right quantity of goods that he or she had paid for. This Act should be amended so as to provide for more up to date ways of appeasing a cheated consumer, for example compensation or being given the right amount of goods.

2.9.3 The Uganda National Bureau of Standards (Amendment) Act, Cap. 327

The Act establishes the Uganda National Bureau of Standards (UNBS). The main functions of UNBS that are of specific relevance to consumer protection are: to enforce standards in protection of the public against harmful ingredients, dangerous components and shoddy material; and to provide for testing of locally manufactured or imported commodities to determine whether such commodities conform to the standard specifications.

The Act does not have clear avenues for redress of consumer complaints. For instance, there is no provision in the Act that states that the UNBS may receive complaints from the consuming public in case a consumer is cheated or has bought sub-standard products.

2.9.4 Adulteration of Produce Act (Ch 27)

The Act prohibits the adulteration of produce, concealment of inferior quality produce and abstracting from produce part of it so as to injuriously affect its nature, substance or quality. The Act is obsolete and needs to be amended to reflect the current trends, especially with respect to penalties. This Act should be amended so as to provide for more up to date ways of appeasing a cheated consumer, for example compensation or being given the appropriate goods. Like most of the laws in the country, the Act does not have clear avenues for redress of consumer complaints.

2.10 Health

The health sector is regulated under a number of laws relating to the safety and health of the public. They include the; National Drug Policy and Authority Act, Cap. 206, Food and Drugs Act, 1959 (Ch 278), Public Health Act, 1935 (Ch 281) and those discussed earlier which govern conduct of professionals such as the; Pharmacy and Drugs Act 1971 (Ch 280), Medical and Dental Practitioners Act 1998 (Ch 272), Allied Health Professionals Act 1996 (Ch 268), Nurses and Midwives Act, 1996, and the National Medical Stores Act 1993 (Ch 207).

2.10.1 National Drug Policy and Authority Act, Cap. 206

This is the basic law regulating drug use in the country. Under the Act, the National Drug Authority is established to regulate importation, exportation and sale of pharmaceuticals in Uganda and to approve the National List of Essential Drugs. No person can import or sell any drug unless it appears on the National Drug Formulary. Some of the main challenges to the National Drug Authority Act relate to its implementation or enforcement. One of the most glaring lacunae in the Act however is the lack of regulation of herbal medicines. A large number of consumers in Uganda use herbal medicines. It has been discovered that some herbalists mix herbs with conventional drugs to treat some ailments, for example, some of them mix herbs with anti-malaria drugs such as chloroquine and the

concoction is used to treat malaria. This poses a serious health risk to the consumer. These practices however continue unabated and are not investigated mainly because the National Drug Authority Act does not provide any mechanism for regulating herbal medicines and their use.

2.10.2 Food and Drugs Act, 1959 (Ch 278)

The Act makes provision for the prevention of adulteration of food and drugs. The Act prohibits; the sale for human consumption food or drugs rendered injurious to health and false description of the food. Any person in breach of this Act is liable on conviction to a fine of two thousand shillings or imprisonment not exceeding three months. The Act makes it an offence for any person to display food with a label that falsely describes the food or is calculated to mislead as to its nature, substance or quality. Like the Weights and Measures Act, this Act has good provisions which if implemented, would curb the sale of adulterated food and drinks. However, the Act also lacks effective provisions that would ensure compliance and also relies on penal sanctions to enforce compliance and these are very low. More still, the Food Hygiene Advisory Committee established under the Act is not active and this is has not helped in halting the sale of expired and adulterated food on the market, much to the detriment of consumers.

2.10.3 The Public Health Act, 1935 (Ch 281)

The Public Health Act is intended to make provision for securing and maintaining health. It covers a wide range of public health and consumer matters such as sanitation, housing, prevention of infectious diseases, protection of foodstuffs, public water supplies, meat, milk and food articles. However, the Act is obsolete and does not cover new health challenges. It does not even cover health risks associated with appliances used in homes and offices which are associated with cancer causing fumes and infrareds emitted from fridges, computers, mobile phones, television sets etc. There is therefore need for updating and popularizing the Act in order to effectively protect consumers and the general public from safety and health risks.

Cabinet Minute 213 (CT 2014) pronounced to transform the National Drug Authority (NDA) to National Food and Medicines Authority (NFMA). Cabinet also approved additional principles for amending the affected laws, to make them compliant with the new NFMA.

2.11 Competition Policy, Consumer Protection and the Regional Perspective

Uganda is involved in the regional integration processes at the East African Community (EAC), Common Market for Eastern and Southern Africa (COMESA), EAC-COMESA-Southern Africa Development Community (SADC) Tripartite as well as the EAC-European Union Economic Partnership Agreement negotiations. These regional integration processes oblige Uganda to have in place a regime to regulate competition and protect consumer interests, and thus provide an additional incentive for Uganda to formulate the relevant Policy. The East African Legislative Assembly enacted an East African Community Competition Act in 2006 and its regulations in 2009. COMESA also enacted Competition Rules and Regulations in 2004 to govern operations and conduct within the common market on competition related matters. There are similar initiatives in the ongoing negotiations at both the EAC-COMESA-SADC tripartite and EAC-EPA configurations.

The Competition policies and regulations at these regional economic blocs apply to all Member state's economic activities and sectors having cross border effects. Article 18, 43, and 48 of the EAC Competition Act and Article 5 of the COMESA Competition Regulations require Member States to have in place national authorities with jurisdiction over national operators and operating in subsidiarity with regional authorities such as the East African Competition Authority and COMESA's Regional Competition Commission.

However, the existing laws do not provide for the establishment of a competent authority to facilitate the work of international organizations as required in some of the international obligations. They also do not enable Uganda to benefit from the rights and obligations she has under international agreements to which she is a party. Formulation of this Policy has duly taken this into account.

3.0 Justification and Consultation.

3.1 Justification

The current policy, legal and regulatory frameworks related to promotion of fair competition and consumer protection are fragmented. A number of sub-sectors have policies and laws that govern the promotion of competition and consumer protection. Some of the existing sub-sector regulations with sections on competition and consumer protection include those governing: Financial institutions i.e. Deposit taking, Money Lenders and Insurance companies; Telecommunications; Electricity generation and distribution; Petroleum extraction, development and distribution; Information and Communications Technology; Industrial Licensing; Livestock and entomology especially for business in hides and skins, dairy and cotton; Transport Licensing and Civil Aviation; Investment licensing and registering of Companies and Professional conducts for surveyors, journalist, veterinary doctors, medics, engineers and lawyers; among others

However, the regulations in the above sub sectors are not comprehensive and in some cases contradict each other. The laws do not regulate comprehensively competition issues relating to mergers and acquisitions and anti-competitive practices such as predatory pricing practices, price maintenance, collusive tendering, bid rigging practices; cartels, collective and price fixing, price tying, price gauging and many others.

This problem is compounded by the absence of a coherent institutional framework dealing with fair competition and consumer protection. Consequently, the full potential of the economic policy reforms has been hampered by uncompetitive practices by some private sector players.

In addition, the current legal and regulatory framework does not provide a mechanism for implementing Uganda's obligations at both regional and international levels on competition policy and consumer protection. For example the EAC Competition Act, 2006, and the COMESA Competition Regulations, 2004, oblige Uganda to put in place a regime to promote fair competition and consumer welfare.

The National Competition and Consumer Protection Policy aims at addressing these gaps.

3.2 Consultation Process

In 2007, Cabinet stressed the need to develop a guiding policy and the need to have clear cost estimates relating to the implementation of the law. Subsequently, in 2009, the Ministry tasked a team of experts to develop a draft Competition and Consumer Protection Policy. The Team drew lessons from the 2004 Competition Bill, relevant national laws, international best practices, the COMESA Competition Regulations 2004 and EAC Competition Act 2006.

The drafting of the Policy followed a wide consultative process of stakeholders from the public sector, academia, private sector, and civil society. These include; Ministries responsible for Finance, Justice and Constitutional Affairs, East African Affairs, Foreign Affairs, Works and Transport, Information and Communications Technology, Energy and Mineral Development, Agriculture, Tourism, Health and Internal Affairs. Other institutions include; Bank of Uganda, Capital Markets Authority, Uganda Insurance Regulatory Authority, Electricity Regulatory Authority, Civil Aviation Authority, Cotton Development Organization, Uganda Coffee Development Authority, National Drugs Authority, Uganda export Promotion Board, Uganda National Bureau of Standards, Private Sector Foundation Uganda, Uganda Manufactures, Uganda Consumers Protection Association (UCPA), Consumer Education Trust (CONSENT) Uganda, SEATINI and professional associations (Engineers, Medics, Bankers, Surveyors, Architects, Accountants, Journalism,)

The consultation process helped in identifying and developing consensus on the priority areas of the Policy, especially in the context of fostering fair competition and promoting consumer welfare. The issues raised during the consultation have been incorporated in the preparation of this Policy.

4.0 Vision

The Vision of the Policy is;

Efficient markets in a liberalized economy for consumer welfare, transformation and prosperity

4.1 Mission and Policy Objective

The overall Mission of the Policy is to *enhance efficiency, competitiveness, welfare and equity in production and trade for sustainable development*

4.2 Specific Policy objectives

The Policy will specifically aim at;

- a) Promoting and maximizing efficiency in the operation of markets and allocation of resources
- b) Promoting consumer welfare by ensuring competitive prices, product choices and protection of their rights,
- c) Promoting regional cooperation by way of harmonising with regional and multilateral obligations and ensuring that Uganda's competition and consumer protection regime is in line with international best practices;
- d) Promoting effective competition for equitable economic development
- e) Creating an environment of fair competition with the ultimate goal of consolidating a conducive investment climate in the Country ;

4.3 Guiding Principles

The Policy shall be guided by the following principles;

- i. Creating equal opportunities for participation in trade
- ii. Provision of an enabling environment for private sector growth and development through fair competition and consumer protection

- iii. Targeted Government interventions in specific sectors and transactions if and as deemed necessary
- iv. Pursuit of bilateral, regional and multilateral approaches to competition policy and consumer protection issues
- v. Being mindful of the negative social and economic effects that may come with growth in trade, and putting in place mitigating measures
- vi. Coherence and complementarity with regional and international initiatives in the area of competition and consumer policy
- vii. Cooperation with international partners in addressing aspects related to anti-competitive behaviour and consumer protection
- viii. Adopting and implementing measures that establish a level playing field where the public sector competes with the private sector, and eliminate the potential for conflict of interest in regulating competition {competitive neutrality}
- ix. Explicit definition of the rights and obligations of the market players

4.4 Priorities and requirements in the implementation of the Policy

In implementing the National Competition and Consumer Protection Policy, Government will focus on;

- i. Institutional building, particularly by setting up a National Competition and Consumer Protection Commission
- ii. Fostering/strengthening institutional collaboration amongst Agencies with mandates and competences that have a bearing on fair competition and consumer protection
- iii. Building the human resource base in both the public and private sector for promotion of fair competition and consumer protection
- iv. Creation of public awareness amongst all stakeholders on matters related to competition policy and consumer protection
- v. Fostering a Public-Private Partnership (PPP) approach in addressing matters related to consumer policy and consumer protection
- vi. Harmonization of competition and consumer protection aspects in various (sectoral) policies and laws, and with international obligations
- vii. Promoting market conditions favorable for the competitiveness where market players have corresponding

5.0 Specific Policy Interventions

This section presents the specific policy actions to be undertaken with respect to promoting fair competition and consumer protection.

5.1 Promoting Fair Competition

To promote fair competition, Government shall;

- i. Assess the existing sub-sectoral regulatory laws with a view to harmonizing them, fostering institutional complementarities and efficient utilization of resources
- ii. Develop the country's human resource base necessary for implementing competition and related policies
- iii. Regularly conduct market surveillance to detect and redress any practices that undermine the proper functioning of markets in a liberalized economy
- iv. Formulate and implement a National Competition law
- v. Delineate clearly the roles of regulators and players in a sector, taking into consideration the need to avoid conflict of interest
- vi. Check the abuse of dominant position in the relevant market
- vii. Regulate mergers and acquisitions to ensure conformance to principles of fair competition
- viii. Promote collaboration with regional and international institutions on issues of competition policy and law

5.2 Consumer Protection

To promote consumer protection, Government shall;

- i. Create awareness on consumer rights and obligations amongst consumers and the general public
- ii. Assess the existing sub-sectoral regulatory laws with a view to harmonizing them, fostering institutional complementarities and efficient utilization of resources
- iii. Encourage consumer protection associations to regularly conduct market surveillance to detect any practices that undermine consumer rights
- iv. Formulate and implement measures that prevent mis-presentation and mis-representation of goods and supplies to consumers
- v. Formulate and implement a national consumer protection law
- vi. Provide a mechanism for redress in instances of breach of consumer rights

- vii. Foster the formation of consumer associations in the context of Public-Private Partnership
- viii. Promote collaboration between consumer advocacy and protection agencies/associations
- ix. Ensure value for money in procurements/purchases on one hand and supply of goods or services on the other
- x. Foster mutually beneficial relations and dialogue between consumers on one hand and producers and suppliers of goods and services on the other
- xi. Promote collaboration with regional and international institutions on issues of consumer protection policy and law

6.0 Implementation of the Policy

The Ministry responsible for trade shall coordinate and provide a platform for oversight regarding implementation of this Policy. The Ministry shall, in so doing, collaborate with other relevant Ministries, Agencies and Departments and the private sector, namely namely; Office of the President and the Ministries responsible for Finance, Justice and Constitutional Affairs, Internal Affairs, Information and Communication Technology, Energy and Mineral Development, Works and Transport, Foreign Affairs, Labour, Gender and Social Development, East African Community Affairs, Water and Environment, Agriculture and Tourism. Other institutions will include; Private Sector Foundation of Uganda; Uganda Manufacturers Association, Uganda National Chamber of Commerce and Industry, Kampala City Traders Association, bankers and insurance associations, consumer associations, and professional regulatory authorities, among others.

The Policy establishes a National Competition and Consumer Protection Commission a phased approach to spearhead its implementation. Establishment and operationalization of the Commission will require money from the National Treasury but in the long run, the Commission is expected to be self financing as well as generate revenues for Government through fees and fines. In addition, policy implementation shall follow a complementary and mutually reinforcing approach, especially amongst the existing sub-sectoral regulatory agencies.

A strategic plan including monitoring and evaluation mechanism will be developed to guide implementation of the Policy.

7.0 Conclusion

The National Competition and Consumer Protection Policy presents an opportunity to substantially reduce poverty in the country, particularly through enhancing the capacity of the country to manage trade liberalisation and enabling consumers to benefit from competition accruing from liberalisation. In the past, some problems have existed with respect to expending deliberate efforts to develop trade, with the private sector largely expected to play the lead role. With this approach, Government's regulatory role in the liberalized economy was not given due attention, a shortcoming the formulation of this Policy addresses.

This policy document learns from the past and puts in place corrective measures. It aims at enhancing competitiveness and nurturing the private sector through promotion of fair competition and at enhancing consumer welfare. The task ahead is quite challenging and will require a collaborative approach between the private sector, especially private sector players, consumers and the public sector. Government commits itself to implement the Policy in its entirety.

The wide consultative process that has been followed in developing this Policy has helped to identify, by consensus, the priority areas to focus on in the context of implementing the National Competition and Consumer Protection Policy, especially in the context of fostering fair competition and promoting consumer welfare.