



**U**ganda is a landlocked country in Eastern Africa. Formerly a part of the British East Africa, it declared independence in 1961. It has a population estimated at 26 million people, 80 percent of whom are peasants in the rural set-up and 20 percent are scattered in main urban centres.

Uganda is a member of several regional and global socio-economic groupings like the COMESA, EAC, Cotonou Agreement (ACP/EU), the UN and the WTO.

However, the country's participation in most of the social and trading blocs is limited. Though as an LDC, it has considerable latitude in complying with the rules of the multilateral trading system and the WTO agreements.

### Economy

Uganda's economy has continued to register impressive economic growth with an annual average increase of six percent in GDP. It has a narrow economic resource base, which is heavily dependent and mainly driven by agriculture. However, construction, telecommunication, agro-processing and transport have improved significantly.

Uganda operates in a free market environment after the pursuance of an economic reform agenda from the late 1980s to date, aimed at boosting the national economy; reducing government involvement in business; and encouraging private sector-led economic development through privatisation, liberalisation, and deregulation amongst others. To further correct the imbalances in the factor allocation system, the Government has encouraged export diversification and the restoration of relative fiscal and monetary discipline.

With respect to competition, the Government has generally eliminated price controls in the domestic market. Price setting for petroleum products was discontinued in 1994. The only explicit exception is the Uganda Coffee Development Authority (UCDA). Under its statute, the

| PROFILE                                                                                                                                                                         |                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Population:                                                                                                                                                                     | 25.3 million***                           |
| GDP (Current US\$):                                                                                                                                                             | 6.3 billion***                            |
| Per Capita Income: (Current US\$)                                                                                                                                               | 250 (Atlas method)***<br>1,390 (at PPP)** |
| Surface Area:                                                                                                                                                                   | 241 thousand sq. km                       |
| Life Expectancy:                                                                                                                                                                | 45.7 years**                              |
| Literacy (%):                                                                                                                                                                   | 68.9 (of ages 15 and above)**             |
| HDI Rank:                                                                                                                                                                       | 146***                                    |
| Sources:<br>- World Development Indicators Database, World Bank, 2004<br>- Human Development Report Statistics, UNDP, 2004<br>(**) For the year 2002<br>(***) For the year 2003 |                                           |

UCDA may monitor the price of coffee in order to ensure that no export contract for sale of coffee is concluded below the minimum price. Basic utility services like water and electricity are still largely available from public enterprises with total monopoly positions. These enterprises are allowed to set their prices subject only to ministerial or sector regulator approval.

Presently, the Government concentrates on policy formulation and monitoring. For instance, the departments of trade, industry and tourism at the Ministry of Tourism, Trade and Industry are mainly involved with policy formulation and monitoring, whilst the Uganda Investment Authority deals with the registration of prospective investors, facilitation, as well as general investment promotion.

### Competition Evolution and Environment

Uganda's economy, until very recently, has been highly regulated. While competition was not deliberately and negatively interfered with, it was encouraged rather haphazardly. Competition was dealt usually in the context of other legislation and not directly. The majority of firms

\* Original paper submitted in December 2004. Revised in August 2005 & March 2006

in Uganda are small family controlled entities, making the need for an enforceable competition regime perhaps less obvious.

### **Competition Law and Policy**

There is currently no competition law in Uganda. The good news from the gloomy picture is that Uganda has drafted the Competition Bill 2004. This Bill was deliberated upon by the stakeholders at a one-day workshop, held on October 19, 2004, with support from the COMESA.

The stakeholder workshop was abundant in representation and discussions. The deliberations were constructive and two major observations were noted:

- A number of stakeholders (both in the public and private sector) are still ignorant about the importance of competition laws and the negative effects of anticompetitive practices; and
- There is a great need to intensify stakeholders' awareness and the promotion of a competition culture in Uganda in order for the evolution of an effective competition framework.

The workshop's content was rich, as it provided stakeholders the information on overall competition policy, the legal and institutional framework, and its evolution in the national, regional and global arena. Policy-makers, regulators, technocrats, academia, consumer advocates and business representatives addressed the workshop. .

The draft Competition Bill 2004, when finally be enacted and enforced, is expected to:

- foster competition in the Ugandan market;
- protect consumers' interests, whilst safeguarding the freedom of economic action of various market participants;
- prevent practices which limit access to markets or otherwise unduly restrain competition, affecting domestic or international trade or economic development; and
- establish a Competition Commission in Uganda.

The draft Competition Bill is composed of 10 parts and 56 sections entailing: interpretation; establishment of the commission; formation; functions; procedures and jurisdiction of the Commission; anticompetitive practices; offences; obligations; competition advocacy; and funds, amongst others.

The draft Competition Bill was developed with the adoption of and alignment with other national, regional and global competition policy, legal and institutional frameworks. For instance, issues of cross border mergers were left to the EAC framework. The procedure was adopted from the EU Competition Directive.

The challenges and anticompetitive practices are quite prevalent and, in some cases, are more manifest than

before. Therefore, responding to the need of an effective competition policy and legal framework for socio-economic development, one has to recognise that it is imperative today.

Competition policies are generally designed globally to prevent actions that are not ethical, which offer no benefits to consumers, and hurt fair trade. Against this backdrop, it is unfortunate that Uganda neither has a policy on competition nor a comprehensive law to regulate competition, in spite of the many market-oriented reforms that have taken place in the country. Market oriented reforms can only be effectively sustained in the long run if competition, which results from these reforms, is protected and consolidated by legislation and suitable policies.

However, it is worth noting that a number of sectoral regulatory agencies established recently are legally enjoined to protect consumers and to prevent anticompetitive practices in their respective sectors.

### **Anticompetitive Practices**

Anticompetitive practices that prevail in Uganda include cartels, RTPs, abuse of dominance and UTPs. The practices cover agreements involving implicit or explicit arrangements between firms competing with identical or similar products in the same market (in Uganda or across borders). Such arrangements are mostly between producers, between wholesalers or between retailers dealing in identical or similar kinds of products.

### **Collective Price Fixing**

Prevalence of this practice is the most obvious violation of competition norms and principles to the extent that, in almost all jurisdictions that enforce competition law, it is *per se* illegal. The Government has, in theory, eliminated price controls in the domestic market through the consistent pursuit of free market policies. However, market-determined pricing is not ensured due to the absence of an effective competition authority.

There is compelling circumstantial evidence that price fixing is prevalent in the local petroleum industry. Evidence is in the form of pump price structures, characterised by uniform prices of products at retail outlets, differing only with regard to location rather than with the company involved.

The sector has, for a long time, been liberalised though it is not adequately regulated much – to the possible disadvantage to consumers. Whilst there is free entry and exit as well as pricing in the public transport sector, business decisions are taken through collusive action. For instance, vehicle owners under associations, which are normally contracted by local government authorities to run bus and taxi terminals collude to fix bus and taxi fares.

### ***Market Sharing, Customer Allocation And Allocation of Territories***

Prevalence of the practices is mainly in the beverages sector, notably carbonated soft drinks (soda) and bottled water sub-sectors show clear evidence of anticompetitive practice of market sharing or customer allocation.

### ***Collusive Tendering/Bid-Rigging***

As a result of the advent of economic liberalisation that resulted in the introduction of competition in almost all sectors of the economy, tendering and bidding in government departments and Local Governments is now competitive and more transparent. Bidding and tendering procedures are designed to provide competition in areas where it might otherwise be absent.

However, cases of alleged bid-rigging schemes have been reported to occur in the country, particularly at local government levels. Under the country's decentralisation arrangement provided for in the Local Government Act, districts have a wide range of powers including the awarding of tenders for the supply of goods and services.

### ***The Privatisation Process***

The privatisation process has been hit by controversies related to the award of bids to private business entities. Most prominent amongst the divestiture projects to be hit by controversies is the sale of controlling stake in Uganda Commercial Bank Limited; Coffee Marketing Board; and Nyanza Textiles Limited. Privatisation of the former State-run entities has been affected by allegations of possible bid-rigging.

The absence of a competent authority to investigate the allegations has left the issues raised by complainants hanging. The Office of the Inspector General of Government (IGG) is the only body that has sometimes intervened in response to petitions and carried out investigations into allegations of unfair award of tenders. Unfair awards have often included the failure to follow tendering regulations but have also included allegations

of bid rigging. Failure to establish the occurrence of the practice could imply that the IGG has no capacity to do so; or that the practice may not be prevalent.

Perceived gaps in mechanisms to check bid-rigging are in place. However, enforcement bodies are weak due to their infant nature and low capacity to investigate reported cases. The long-term solution to check the practice of bid-rigging in the tender/bid awarding processes, at the District and Central Government levels, is therefore, to follow laid down procedures and regulations; as well as building capacity, amongst technical staff, to be able to identify and investigate the practice.

The formation of the Procurement Authority and expected enactment of the proposed competition law will provide for mechanisms like special Tribunals with special competencies to investigate and mete out sanctions to errant firms involved in anticompetitive practices.

### ***Restrictive Trade Practices***

RTPs include vertical arrangements that generally refer to agreements between undertakings operating at different stages of the production and marketing chain, and horizontal arrangements referring to agreements among undertakings operating at the same stage of the production and marketing chain. Vertical arrangements are the most obvious practice in the local trade environment, where resale price maintenance prevails in several sectors through retailing outlets.

No measures are currently enforced to curb the practice since it is not deemed illegal. Uganda's official policy allows investors to enjoy benefits of their investments and to engage in trade without restrictions, giving businesses a blank cheque to the extent that many are involved in anticompetitive practices. Government argues that the state can no longer intervene in the market. The government indirectly deals with prices through fiscal measures like tax reductions followed by 'persuasions' from the ministries responsible for finance and trade.

Other anticompetitive practices are prevalent like exclusive territories in the beverage and food sector, exclusive dealing in consumer goods retailing, tied arrangements in retail outlets of food supplements, fast food outlets among others.

### ***Unfair Trade Practices***

Trade and general economic liberalisation of the 1990s has led to the expansion of businesses and increased competition in markets, but reduced or even disbanded the safety nets for consumers and quality assurance. UTPs are prevalent in a number of sectors. Practices like misleading advertisements and information, poor customer-care and service delivery in utilities, wrong billing and threats from powerful regional enterprises are prevalent.

#### **Box 58.1: Soft Drink Companies Buy out Bottled Water Firms to Stifle Substitution Competition**

The two biggest soft drink producers, franchises of big international companies Pepsi Cola and Coca-Cola, allegedly bought into the leading water-bottling companies. The development was seen as a move towards stifling competition from the water companies offering substitutes to the carbonated soft drinks. It is also alleged that analysts had noted water substitutes were corroding the market of carbonated soft drinks, and hence, the dominant companies were attempting to take over and control the market and minimise the competition. The alleged acquisitions by the two beverage giants stemmed from unpublished studies.

Measures to check the practices effectively are non-existent. It is assumed that effective competition regimes coherent with other sectoral regulatory regimes and compliance with regional regulations and rules, are likely to gradually, but generally, address the anticompetitive practices. The nature of some anticompetitive practices requires regional or global/multilateral arrangements.

The anticompetitive and unfair trading practices that warrant the regional and global arrangements are due to the nature of political and protective interference and business influence, or underhand arrangements done across borders. The heavy handedness of Governments in the name of investment, whilst deterring control or enforcing regulatory aspects; plus the weak roles of government surveillance mechanisms, have resulted in the gradual abrogation of this responsibility to citizens, and Governments have in turn become answerable to business in pursuit of attracting foreign investments.

### Sectoral Regulation

The State regulatory measures against anticompetitive behaviour, under the given circumstances, are commendable taking into account the low levels of awareness, institutional capacity constraints, political and protective interference and incoherence of the sectoral policies and regulatory frameworks.

It is noteworthy that the existing sectoral policies; legal and regulatory frameworks in the communications, energy, financial, dairy, coffee, cotton, media, standards, revenue, investment, amongst others, provide a learning experience and spring board to the proposed Competition Commission. Thus, there is a cause to hope for the best and to campaign for the enactment and effective functioning of the competition policy and legal framework in Uganda.

Some of the existing sectoral policies and laws related to competition and need to be coherent with the competition regimes include:

- **Communications:** The *Communications Act 1997* established the Uganda Communication Commission (UCC), the sectoral regulatory authority. It issues licences to prospective operators of all services in the communications sector, in line with regulations laid down in the Act. The UCC has powers to ensure that competition prevails in the market and answers consumer complaints in relation to sector players;
- **Electricity:** The *Electricity Act* established the Electricity Regulatory Authority, the sector regulatory agency in 2001. It issues licences to prospective operators; approves power purchasing agreements and tariffs; quality of service delivery and efficiency; and handles consumer complaints. The legal and regulatory framework provides for competition when fully privatised;
- **Water:** Water regulation and supply remains a responsibility of the State, through the Directorate of

Water Development and National Water and Sewerage Corporation (NWSC). The water sub-sector is undergoing restructuring, with the aim of offering concessions to the public to commercially supply water and sewerage services, at national or district levels;

- **Financial:** The *Financial Institutions Act* regulates banks under the supervision of the Central Bank; and non-bank financial institutions like the Insurance sector, although with a separate regulatory entity – the Uganda Insurance Commission. Uganda’s financial sector is increasingly becoming more competitive and efficient;
- **Dairy:** The 1998 law sought to reform the sector and its policy and legal framework. The Dairy Law also established the Dairy Development Authority, the sector regulatory agency. It monitors to ensure consumer safety, quality assurance, and best practices, whilst dealing with licences, consumer complaints and advocacy;
- **Pharmaceuticals:** The *National Drug Authority Statute* lays out the National drug policy and contains a provision for the Authority to ensure the provision and use of essential and efficacious drugs. The Statute covers government control on the manufacturing, exportation, marketing and use of drugs. The national drug policy is supposed to cover both the private and public sector;
- **Broadcasting:** The *Broadcasting Statute* of 1997 provides for the establishment of the Broadcasting council to check malpractices that range from professional misconduct, to outlawing broadcasting of misleading advertisement/ information; and
- **Standards and Safety:** The *Uganda National Bureau of Standards Act*, 1983, provides for the establishment of the Standards Bureau to protect consumers; and inspect products, promote businesses and good practices through quality assurance and standards development.

### Consumer Protection

Scattered provisions on consumer protection and welfare exist in sectoral policies (water, telecommunications, electricity, etc). However, a comprehensive consumer protection policy is not in place yet. Currently, neither is there an overall consumer protection policy nor a law to protect consumers in Uganda. A draft proposed bill was produced in 1997 and presented to the Uganda Law Reform Commission (ULRC) during the review of commercial laws.

With regard to consumer issues, it is envisaged by the local consumer movement that the National Consumer Policy should promote and protect consumer rights for just, equitable and sustainable economic and social development.

The policy should be designed to:

- empower consumers to have access to the basic needs of life;
- protect consumers from hazards to their life and safety;
- enhance the access of consumers to adequate information to enable them to make informed and environmentally benign choices according to individual as well as societal needs;

- promote consumer education through formal as well as non-formal education systems so as to help consumers in their decision making;
- promote accountability and transparency through adoption of Citizens' Charters;
- provide expeditious and inexpensive system of delivery of justice; and
- initiate and implement appropriate mechanisms for exchange of information on measures of consumer protection, nationally, regionally and internationally.

A major process of law reform has been underway in Uganda since 1997 spearheaded by ULRC a statutory body in charge of law reform in Uganda. The reform is underway in the context of other legal and economic reforms. One of the prominent issues that have arisen since the onset of the law reform process started is consumer protection. Spearheaded by the local consumer movement, the process of enactment of a consumer protection law has been protracted but with apparently low interest on the part of the Government.

A proposed draft law was produced by Uganda Consumers Protection Association (UCPA) and handed to government for consideration as part of the organisation's bid to ensure that a law to protect consumers was enacted. Contents of the draft have been considered and are included in the government draft produced by the ULRC. The draft awaits cabinet approval before it goes to the Parliament.

### Concluding Observations and Future Scenario

Uganda has no comprehensive law covering competition. However, in general, the Government and government agencies and departments are aware of the benefits fair competition can confer on the economy and on the consumer. From a situation of over-regulation, the economy has swung to one in which the Government is loath to intervene, except in a few select sectors considered too sensitive to be left entirely to the vagaries of market forces.

Privatisation and liberalisation call for a certain level of discipline on the part of all players in the marketplace but, except in those few restricted sectors, there are no benchmarks, no parameters and no monitoring processes or systems to ensure discipline. Monitoring of competition is not synonymous with interference, but as the Ugandan economy continues to grow, publicly owned companies will become more and more important and successful and small companies could be targets for hostile takeovers.

Practices like mergers and takeovers need rules and monitoring to protect the small business, consumer, promote fair trade and the economy generally to enhance competition. At the moment, those rules and monitoring systems do not exist.

The enactment of competition policy, legal and institutional frameworks as well as their operation; with the responsibility to put in place the benchmarks for proper conduct, mechanisms for monitoring, sanctions and redress need to be expedited.

The challenge worth noting is due to the nature of Uganda's economy and a number of sectoral set-ups established after deregulation to regulate, promote and check anticompetitive activities and actions of entities that could be injurious to the economy and to individual consumers. In this regard, the draft Competition Bill needs to be enriched and made coherent with other existing regulatory regimes. The challenge ahead is how to harmonise the competition policy and law with other existing operational sectoral authorities, or commissions, to address particular abuses. These can be in areas where one, two or three firms may be operating price cartels, in order to run competition out of the market through hostile takeovers; creation of virtual monopolies; and mergers, amongst other anticompetitive practices.

The expected competition policy regime should be coherent with national development strategies for poverty eradication, sustainable socio-economic development, other sectoral regulatory regimes, as well as regional and multilateral initiatives.

Competition and consumer protection regimes are good for the national economy, business and consumers and therefore, should be promoted for efficiency, economic growth, best practice, quality assurance and fair trade.

To realise an effective competition regime, fair trade and consumer welfare, it is paramount that as a country, Uganda develops:

- a competition culture through public awareness;
- consumer protection mechanisms and awareness;
- effective policy, laws, regulatory and enforcement regimes, through stakeholder awareness and participation;
- institutional and human resource capacity; and
- information dissemination and feedback mechanisms.

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