

**NAVIGATING COMPETITION: ASSESSING THE EFFICACY OF THE COMPETITION ACT AS
AN ANTITRUST POLICY FRAMEWORK IN UGANDA**

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**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW, IN PARTIAL FULFILLMENT OF
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ABSTRACT

This study evaluates the efficacy of Uganda's Competition Act as an antitrust policy framework, focusing on its impact on business competition, consumer rights, challenges and opportunities of implementation, adherence to international standards, and mitigation of monopolistic practices. Employing a historical research strategy and descriptive research design, data is gathered from both Ugandan and international sources. The key findings indicate that while the Act addresses major tenets of antitrust policy, such as prohibition of cartels, abuse of dominant positions, and notice requirements for mergers, it requires improvements in administration, enforcement, and dispute resolution. The study recommends establishing a streamlined system for complaints and dispute settlement, enacting necessary bodies and rules, and conducting mass public awareness campaigns. This research is aimed at contributing to the limited information on competition law in Uganda while serving as a foundation for future studies in the field.

DECLARATION.

I, OTONG MICHAEL FAVOUR, affirm that the work and study presented here are entirely my creations. This material has not been previously published or submitted for any other academic degree or purpose at any other educational institution. All sources consulted during the research process have been acknowledged through appropriate citation methods. The author retains all rights to this work, and no part of this publication may be reproduced, stored, or transmitted in any form without my explicit permission, whether electronically, mechanically, through photocopying, recording, or otherwise.

Signature:

Date:

APPROVAL

I confirm that I have supervised the completion of this research project report and have carefully reviewed its contents. Based on my assessment, I recommend it for acceptance by the faculty of Law for the award of a Bachelor's Law Degree.

Supervisor: MR. NGABIRANO SOSTINE

Signature:

Date:

ACKNOWLEDGEMENT

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LIST OF STATUTES

NATIONAL LAWS.

1. 1995 constitution of Uganda
2. The Competition Act 2023

INTERNATIONAL LAWS.

1. United Nations the General Assembly Resolution 9/147
2. the East Africa Community Competition Act, 2006
3. The Competition Act no 89 of 1998 (south African)
4. The Competition Act no 12 of 2010 (Kenya)

LIST OF CASE LAWS

1. Bread Limited v Uganda Company Ltd & Uganda Industrial Machinery Ltd [1975]
HCB 214
2. Catalano, Inc. v. Target Sales, Inc. 445 US 643 (1980)
3. Chicago Board of Trade v. U.S. (1918)
4. Donoghue V Stevenson (1932) 1 ALLER.
5. Palmer v. BRG of Georgia, Inc. 498 US 46 (1990)
6. Re Cancun Trading No 24CC and other v seven eleven corporation SA CASE No
18/1R/Dec 99
7. State v. Am. Cotton Oil Trust, 1 RY. & CORP. L.J. 509 (La. Civ. Dist. Ct. 1887)
8. States v. Apple the U.S. Department of Justice (DOJ)
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10. *Texaco, Inc. v. Dagher* 547 US 1 (2006)

11. *United Brands V Commission*, [1978] C.J. Comm. E. Rec. 207, at para. 65

12. *United States v. Microsoft Corp.*, 584 U.S. (2018)

Contents

ABSTRACT	ii
DECLARATION.....	iii
APPROVAL	iv
ACKNOWLEDGEMENT	v
LIST OF STATUTES.....	vi
CHAPTER ONE: RESEARCH PROPOSAL	1
1.1 Introduction	1
1.2 Background	2
1.2.1 Historical background	2
1.2.2 Conception Background	4
1.3 Statement of the problem.....	6
1.4 Objectives.....	7
1.4.1 General objective.....	7
1.4.2 Specific objectives.....	7
1.5 Research questions	7
1.6 Justification and significance of the study.....	8
1.7 Research methodology	8

1.8	Research Design	9
1.8.1	Data Collection Sources	9
1.8.2	Ethical Considerations.....	10
1.9	Scope of study.....	10
1.9.1	The Geographical Scope	10
1.9.2	Time scope.....	10
1.10	Chapter Synopsis	11
CHAPTER TWO: LITERATURE REVIEW		12
2.1	Introduction	12
2.2	Literature review	12
2.3	Conclusion	17
CHAPTER THREE: THE IMPACT OF UGANDA'S COMPETITION ACT ON BUSINESS COMPETITION.....		19
3.1	Introduction	19
3.2	Provision for business	19
3.3	The impact of the competition provisions on business competition.	20
3.3.1	Anti-competitive Practices/ Anti-competitive Agreement.	20
3.3.2	Abuse of dominant position	21
3.3.3	Notice of the merger, acquisition or joint venture	24
3.3.4	Impact on promoting fair market competition	25

3.4 Conclusion	27
CHAPTER FOUR: THE ROLE OF THE COMPETITION ACT IN SAFEGUARDING CONSUMER RIGHTS IN UGANDA	28
4.1 Introduction	28
4.2 Safeguarding Consumer Rights	29
4.3 conclusions.....	31
CHAPTER FIVE: THE CHALLENGES AND OPPORTUNITIES OF IMPLEMENTING THE COMPETITION ACT IN UGANDA	33
5.1 Introduction	33
5.2 Opportunities for Implementing the Competition Act in Uganda	33
5.3 Challenges of Implementing the Competition Act in Uganda.....	34
5.4 Conclusion	36
CHAPTER SIX: A COMPARATIVE STUDY: UGANDA'S COMPETITION ACT VS. INTERNATIONAL ANTITRUST POLICIES.....	37
6.1 Introduction	37
6.2 Terms of Regional Standards.	37
6.3 Terms of Administration of the Act.....	39
6.4 Terms of complaint and dispute settlement	40
6.5 Conclusion	41
CHAPTER SEVEN: SUCCESS OF UGANDA'S ANTI-COMPETITION POLICY FRAMEWORK...	43

7.1	Introduction	43
7.2	Provisions of the Purpose of the Act	43
7.3	Administration and Management	44
7.4	Effectiveness of enforcement of the Act	45
CHAPTER EIGHT: CONCLUSION AND RECOMMENDATIONS		46
8.1	Introduction	46
8.2	Challenges faced during the research.	46
8.3	Recommendations	46
8.4	Conclusion	48
BIBLIOGRAPHY.....		49

CHAPTER ONE: RESEARCH PROPOSAL

The chapter begins with a comprehensive background analysis of the research, addressing key issues outlined in the statement of the problem. It delineates the study's objectives, defines the study's scope, underscores its significance, justifies its relevance, and discusses the methodology. Additionally, the chapter explores the scholarly works of various authors in the literature review.

1.1 Introduction

Competition lies at the heart of any successful market economy and is crucial to the protection of consumers' interests and the efficient allocation of resources¹ and for this, the **concept of Competition policy, also known as antitrust policies²**, have been set up to enhance this noble goal.

Bryan A Garner defines antitrust law as; **the body of law designed to protect trade and commerce from restraints, monopolies, price-fixing, and price discrimination³**. The rationale of anti-competition policies is to provide consumers with competitive prices and opportunities and to guarantee that all persons have an equitable opportunity to participate in the economy.⁴

¹ Uganda law reforms commission, A study report on competition law, 2004 Kampala, Uganda.

² Laura Phillips Sawyer, US Antitrust Law and Policy in Historical Perspective, Harvard Business School 2029, page 1 <https://shorturl.at/boBO6>

³ Bryan A Garner, Black's Law Dictionary (8th ed. 2004), Page 291.

⁴ Joel Basoga, the Competition Act 2023: What it means for businesses in Uganda, 2024, page 1.

1.2 Background

1.2.1 Historical background

Competition policy originated in the United States in the late nineteenth century in response to the rise of trusts⁵, a term that became a euphemism for big business. A trust is a legal device used to coordinate multiple property owners through a unified management structure. Business owners combine their interests into a single legal entity thus the trust⁶.

Wayne D. Collins points gives an account that the Long Depression from 1873 to 1879 caused an asset price deflation even as unit production was increasing, which primary cause for the declining prices was overproduction and underemployment, both caused by technological advances. These factors gave rise to what became popularly known as “ruinous,” “destructive,” or “excessive” competition, that is, a competition that drives prices below a level that permits the producer to make a fair return on its productive efforts, in that Profit margins reportedly dropped by almost 80 per cent.

Although excessive competition benefits customers temporarily through lower prices, competitors who cannot survive exit the market, and when enough competitors have left, the remaining firms raise prices above remunerative levels until new entry appears and the cycle repeats itself.

⁵D. L. Rubin Feld, Antitrust policy page 553 [c:/u_tmp/peter \(berkeley.edu\)](https://u_tmp/peter/berkeley.edu)

⁶ Laura Phillips Sawyer, US Antitrust Law and Policy in Historical Perspective, Harvard Business School 2029, page 2 <https://shorturl.at/boBO6>

The excessive competition gave rise to a merger wave that occurred in 1895, where operations and holding of stock of another corporation were possible. Wayne D. Collins gives an example of the Standard Oil combination⁷ as a trust, which enabled the combination to exercise command and control over its operations much like a corporate holding company within the next decade, several major, and an unknown number of more minor, combinations had emulated Standard Oil and adopted a trust structure. The trust was aimed at reducing competition and thus prices would be set by the trust enabling the producer to maximize profits and stay long in business.

The trusts found led to the loss of employment from shuttered plants, outrage from local competitors threatened with the destruction of their businesses, and at least the perception of higher prices charged to customers. Several states responded to public demands for actions against the trusts by initiating quo warranto proceedings to revoke the charters of domestic corporations participating as trust members. **State v. Am. Cotton Oil Trust**⁸ was the first to be handled which was Louisiana against a member of the American Cotton Oil Seed Trust.

This encouraged firms to go independent and small-scale businesses started springing up thus states started reacting to the calls for antitrust legislation based on the court's principles in the quo warranto proceedings to counterbalance concentrated economic

⁷ the Standard Oil Trust became the model for other trusts, illustrates the formation and operation of a trust. The 1882 agreement was joined by all of the stockholders and members of fourteen corporations and limited partnerships, the controlling stockholders and members of an additional twenty-six corporations and limited partnerships, and forty-six individuals, all of whom would be the beneficiaries of the trust

⁸ State v. Am. Cotton Oil Trust, 1 RY. & CORP. L.J. 509 (La. Civ. Dist. Ct. 1887)

power, which reformers feared might be wielded to influence political outcomes or trammel independent proprietors with unfair business tactics.⁹

1.2.2 Conception Background

The story of Antitrust policies in terms of legislation began in 1890 with the coming of the Sherman Act¹⁰ which Act became popular with many states adopting it making it a worldly celebrated principle.

In Uganda, the concept of Competition policies first saw the light in 1998 with a proposed Competition Bill contented in a report “Uganda Commercial Justice Sector Study” commissioned by the Ministry of Justice and Constitutional Affairs and the Ministry of Finance, Planning and Economic Development¹¹ however, was never enacted. This Bill was followed by the signing of the EAC Treaty on the 30th of November 1999 which came into force in June 2000 and is projected as one of the fastest-growing regional groupings, the Treaty put in place provisions that prohibited practices that aimed to limit fair competition in trade among member states¹².

In 2004 the Uganda Law Reform Commission noted that Competition law should not stifle business and investment but instead create a competitive environment in which firms can have a degree of certainty that they would not be subject to anti-competitive

⁹Laura Phillips Sawyer, US Antitrust Law and Policy in Historical Perspective, Harvard Business School 2029, page 2 <https://shorturl.at/boB06>

¹⁰ D. L. Rubin Feld, Antitrust policy page 553 [c:/u_tmp/peter \(berkeley.edu\)](https://u_tmp/peter%20(berkeley.edu))

¹¹ Uganda law reforms commission, A study report on competition law, 2004 Kampala, Uganda, p1

¹² Emmanuel Elau, the state of competition law in Uganda
https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://papers.ssrn.com/sol3/papers.cfm%3Fabstract_id%3D3461772&ved=2ahUKEwi-pbDH2riEAXVo8LsIHZjLB3cQFnoECB4QAQ&usq=AOvVaw3MftAr4-Z_G4h5EfjcgDdu. Retrieve on 16/02/2024.

practices, which would lower the cost of capital¹³ thus drafting a Bill which Bill caught the eye of the public and hence the discussion of competition policy took a main stage in Uganda.

On the 2nd day of February 2024, the President of Uganda assented to the Competition Bill coming into law which law ‘focuses on five main areas (i) the law’s purpose (ii) the new competition regulator (iii) the prohibition of cartels or concerted practices (iv) abuse of dominant positions and lastly (v) the notice and approval requirements for mergers, joint ventures & acquisitions’¹⁴.

1.2.3. Contextual background

Given the escalating frequency of the anti-competition tendencies for example, the president’s directive on advertisements for Uganda broadcasting corporation, the famous coffee deal with the Italian business lady, the UPDF engineering brigade push to take over government construction projects, kakira sugar work push for zoning to mention but a few, the Competition Act has been past at the time and thus only fair to assessing its effectiveness as an Antitrust Policy.

¹³ Supra footnote 1

¹⁴ Joel Basoga, the Competition Act 2023: What it means for businesses in Uganda <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://handgadvocates.com/insights/competition-law-briefing-ugandas-new-competition-act-2023&ved=2ahUKEwiF7Oer27iEAxV2hP0HHUSoCWUQFnoECBEQAO&usg=AOvVaw1rjHzQz1L0MLeoER2GoLjZ> Retrieve on 16/02/2024.

1.3 Statement of the problem

Article 40(2)¹⁵ of the Ugandan Constitution grants every person in Uganda the right to practice their profession and engage in any lawful occupation, trade, or business. **Article 21**¹⁶ in the same vein offers' equal protection thus; all persons in all spheres of political, **economic**, social, and cultural life ... shall enjoy equal protection of the law. In Uganda, business and trade are recognized and everyone is free to carry out trade and is afforded equal status in the eyes of the law meaning actions that give an advantage to a person or group of people are strongly against the law hence those in business have to compete on their merits when carrying out business. The Competition Act, 2023 seeks to acknowledge this truth as seen in its long title i.e. **"The Act aims to promote and sustain fair competition in Ugandan markets and prevent practices that harm competition within these markets."**

Uganda is a capitalist state where most of its income is held by a few people, this can be seen through the World Bank's reason for rejecting Uganda's middle-income status¹⁷. For this reason, those who hold the majority of the income tend to venture into monopoly action for example Kakira Sugar Works ltd who enjoyed a monopoly in the sugar business for over a decade pushed for the zoning of sugar farming and selling in the sugar business which would give the monopoly of sugar production especially in terms of setting prices in that given zone.

¹⁵ Article 40 of the Constitution of the Republic of Uganda.

¹⁶ Article 21 of the Constitution of the Republic of Uganda.

¹⁷ World bank group, Uganda Economic update, 14th edition February 2020.

This research acknowledges the importance and timely enactment of the Act by seeking to assess the different principles of Anti-competition put in place in the Competition Act and using the Ugandan experience to come up with a conclusion if the past Act is adequate to encourage equal status of every Ugandan under the law especially those in business.

1.4 Objectives

1.4.1 General objective

To assess the efficacy of the Competition Act as an Antitrust Policy Framework in Uganda

1.4.2 Specific objectives

- 1) To explore the impact of Uganda's Competition Act on Business Competition.
- 2) To understand the Role of the Competition Act in Safeguarding Consumer Rights in Uganda.
- 3) To examine the Challenges and Opportunities of implementing the Competition Act in Uganda.
- 4) To have a comparative study: Uganda's Competition Act vs. International Antitrust Policies.
- 5) To address monopolistic Practices: Evaluating the Success of Uganda's Antitrust Policy Framework.

1.5 Research questions

1. What are the impacts of Uganda's Competition Act on Business Competition?

2. What is the role of the Competition Act in safeguarding consumer rights in Uganda?
3. What are the challenges and opportunities of implementing the Competition Act in Uganda?
4. Does the Competition Act meet International Antitrust policy standards?
5. How will the Competition Act mitigate monopolistic Practices?

1.6 Justification and significance of the study

Competition law is an area of law at its infant stage with very little literature in the Uganda jurisprudence hence creating a knowledge gap in Competition Law in Uganda despite this fact, there has been a rise of anti-competition tendencies in the most recent years if not checked then small and medium businesses and consumers are bound to suffer. The reason for my study is not to establish competition law in Uganda but to enhance the existing understanding of the ongoing discourse on competition policies in Uganda.

This research will offer an analysis of the impact of Uganda's Competition Act on Business competition; it will show how the Act will fight against Monopolistic Practices and also offer a comparative Study with International Antitrust Policies. The findings should be able to awaken the debate on an informed point of view.

1.7 Research methodology

This section presents the research design, study population, sampling techniques, data collection methods, data collection instruments, validity and reliability, data collection

procedure, and ethical considerations which shall be employed during the carrying out the reason.

1.8 Research Design

A historical research strategy will be employed as a design by gathering data using past information both in the Ugandan and international spaces to test the Competition Act's effectiveness.

In addition, descriptive research will be used to obtain information concerning the status of business practice in terms of competition and matters of consumer protection.

1.8.1 Data Collection Sources

1.8.1.1 Primary sources

I will primarily be getting original information from statutes (both national and international laws).

1.8.1.2 Secondary Sources

Secondary data will content of data already collected by someone other than me. I will gather this data from already existing materials like books, journals, reports and the internet and for the case of secondary data I will keep most parts original as recorded so as not to alter facts i.e. extracted from books, journals, articles, newspapers, internet and other sources available in libraries physical and online.

1.8.2 Ethical Considerations

This paper does not contain any new research but a compilation of important existing material and to ensure the truthfulness of the data analysis, I will include links and all relevant information so that the information contented can be independently verified.

I will get permission, recommendation and approval from the relevant authorities especially from the School of Law UGANDA CHRISTIAN UNIVERSITY under the supervision of MR SOSTAINE NGABIRANO.

1.9 Scope of study

The primary focus of this study is assessing the efficacy of the Competition Act as an Antitrust Policy Framework in Uganda.

1.9.1 The Geographical Scope

I will carry out my study using sample experiences covering Uganda as a whole in the business sector.

1.9.2 Time scope.

I will conduct this research in two (2) months, including data collection, analysis, and report writing.

1.10 Chapter Synopsis

This section of my proposal entails a brief overview of what each chapter in my research shall contain.

Chapter	Content
Chapter one	Research proposal
Chapter two	Literature review
Chapter three	The Impact of Uganda's Competition Act on Business Competition
Chapter four	The Role of the Competition Act in Safeguarding Consumer Rights in Uganda
Chapter five	The Challenges and Opportunities of Implementing the Competition Act in Uganda
Chapter six	A Comparative Study: Uganda's Competition Act vs. International Antitrust Policies
Chapter seven	Success of Uganda's anti-competition policy framework.
Chapter eight	Conclusion and recommendations.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This literature review adopts a threefold approach, incorporating theoretical, conceptual, and actual dimensions to comprehensively explore antitrust policies in Uganda. The theoretical review establishes foundational definitions and frameworks, providing a basis for understanding antitrust as a pressing issue in the modern legal landscape. The conceptual review examines legal and procedural frameworks, citing works by scholars like Joel Busoga who highlight the carry state of antitrust jurisprudence.

The actual review draws insights from real-world cases, exemplified by the analysis of Ugandan experiences shedding light on the practical challenges necessitating the development of antitrust policies especially about the business arena and consumer protection. Through critically examining contributions from various scholars, the literature review aims to contribute substantively to the study of antitrust policies by addressing gaps and building upon existing knowledge.

2.2 Literature review

Antitrust policies are a regime of laws that tend to injure the heart of businesses that lies in the concept of competition,¹⁸ it tends to encourage unfavourable business practices which in turn affects the consumers. Emmanuel Elau in his paper *The State of Competition Law in Uganda*¹⁹ traced the noble concept to the Uganda Communications

¹⁸ Uganda law reforms commission, *A study report on competition law*, 2004 Kampala, Uganda.

¹⁹ Emmanuel Elau, *the state of competition law in Uganda*

Commission regulating competition in the Telecommunications sector through enacting regulations to that effect which was aimed at dealing with the threats to the free market that include abuse of market dominance, mergers, cartels, bid rigging, predatory pricing and others. These practices have been noted to kick out small businesses since they cannot compete. Instances illustrating these challenges include Harris International, the producer of Riham Cola, which encountered legal disputes with Coca-Cola for allegedly producing a beverage packaged in containers resembling Coca-Cola bottles. Another example is Kabaka Telecom, which faced formidable competition from major networks like MTN, impacting its ability to thrive in the telecommunications sector. Additionally, the acquisitions of Highland Mineral Water and Rwenzori Water by Pepsi and Coca-Cola, respectively, exemplify concerns regarding market consolidation and its potential implications for competition²⁰.

In addition to the threats to the free market above, Consumer education trust (Consent) in a report Competition Scenario in Uganda²¹ points out that the growth of foreign direct investment, trade, regional and sub-regional economic integration, and cooperation which as an effect led to restrictive²², undesirable and deleterious business practices. This also constitutes an obstacle to the achievement of optimal economic growth, trade liberalization and economic efficiency within the country and in the immediate region or beyond.

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://papers.ssrn.com/sol3/papers.cfm%3Fabstract_id%3D3461772&ved=2ahUKEwi-pbDH2riEAXVo8LsIHZjLB3cQFnoECB4QAO&usg=AOvVaw3MftAr4-Z_G4h5EfjcgDdu. Retrieve on 16/02/2024.

²⁰ *ibid*

²¹ Consumer education trust (Consent), Competition Scenario in Uganda <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://cuts-ccier.org/pdf/CRR-Uganda.pdf&ved=2ahUKEwi1gsz12riEAXXcgP0HHXQkDOgQFnoECB0QAO&usg=AOvVaw1qHhbqIV9C992rkM2AHVwy>. Retrieve on 16/02/2024.

²² That only allow a small of players in the market system.

HyungJu Hong suggests two main categories of benefits from increased competition; redistribution and efficiency effects. Redistribution effects are related to the effect of competition on inequality and employment in the market while efficiency gains are the outcome of the positive impact of competition on productivity growth, which enables businesses and industries to produce more and better products and services at lower cost²³.

For this reason, the Competition Act 2023 was passed to promote and sustain fair competition in markets in Uganda and to prevent practices harming competition in markets in Uganda²⁴. On the side of consumers, competition policy like the newly past Act is to enhance consumer well-being. Competition policy addresses the supply side of the market and aims to ensure that consumers have adequate and affordable choices, while consumer policy tackles demand-side issues and aims to ensure that consumers can exercise their choices effectively²⁵. It also aimed at addressing issues of switching costs, asymmetric information and misleading advertising and how they affect consumer welfare and competition²⁶.

In addition, competition law in relationship to consumer protection should; Establish appropriate standards while maintaining maximum freedom for participants to

²³ HyungJu Hong, Effects of Competition Policy on Macroeconomic Outcomes
https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.jstor.org/stable/27130224&ved=2ahUKEwip7ovA3LiEAXWw7rsIHU6UDa8QFnoECA8QAOQ&usg=AOvVaw02IdXG9dmgU24zJexu_Nv9
Retrieve on 16/02/2024.

²⁴ The long title of the competition Act, 2023

²⁵ UNCTAD secretariat, The benefit of competition policy for consumers
https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://unctad.org/system/files/officialdocument/ciclpd27_en.pdf&ved=2ahUKEwj0usDJ27iEAXXG9LsIHWI8AbAQFnoECCAQAQ&usg=AOvVaw0WmAWCRdnGXDI4D2SRQ1CY Retrieve on 16/02/2024.

²⁶ *ibid*

effectively operate in the market; Guard against exploitation, ensure value for money and thus improve the quality of life and general welfare; Empower consumers with adequate knowledge and skills to enable them to make informed choices, and avoid unnecessary payments or risks associated with the goods and services available in the market; Instil confidence in consumers on the market; Boost up-take of appropriate products, enhance savings, reduce indebtedness, eradicate poverty and generally stimulate economic growth; promote efficiency in the supply of goods and services and in response to consumer needs and consequently increase general demand in the country and; Promote consumption of healthier and safer product²⁷.

Joel Basoga²⁸ points out that the Act brings in place five main areas i.e. (a) the law's purpose thus to provide consumers with competitive prices and opportunities for Ugandans to participate in the world market, among others and to guarantee that all persons have an equitable opportunity to participate in the economy; (b) the new competition regulator which he points out that the Act designates the Ministry of Trade, Industries and Cooperatives, as the principal regulator and further notes that Uganda used an approach of using an executive governmental department as opposed to Kenya and Tanzania; (c) the prohibition of cartels or concerted practices (d) abuse of dominant

²⁷ Ministry of trade, industry, and cooperatives, The Regulated Competition for Efficiency and Enhanced Consumer Welfare

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=http://www.mtic.go.ug/wp-content/uploads/2019/08/National-Competition-Policy.pdf&ved=2ahUKEwi8g7uR27iEAXWtgV0HHXiCCiEQFnoECBwQAQ&usg=AOvVaw3YcIjGZjegeO8Oo3mVn9bH> Retrieve on 16/02/2024.

²⁸ Joel Basoga, the Competition Act 2023: What it means for businesses in Uganda

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://handgadvocates.com/insights/competition-law-briefing-ugandas-new-competition-act-2023&ved=2ahUKEwiF7Oer27iEAXV2hP0HHUSoCWUQFnoECBEQAQ&usg=AOvVaw1rjHzQz1L0MLeoER2GoLjZ> Retrieve on 16/02/2024.

In addition, under sections 4-8 Private Sector Foundation Uganda in a position paper³¹ mainly focuses on the Administration of competition in the country which includes the establishment of an Independent Commission for several reasons including accountability, timeliness in handling matters as well as ensuring proper structures and resolution channels among others. The administration and enforcement of the Act is another area where the research will throw light on, evaluating whether the measures under the Act are adequate to ensure the noble spirit of the Act is reached.

2.3 Conclusion

In conclusion, while Uganda's Competition Act of 2023 aligns with several international antitrust policies, there are areas where it falls short of meeting certain standards set by international bodies such as the East African Community Competition Act and similar legislation in other countries. While the Act addresses key aspects such as prohibition of anti-competitive practices, abuse of dominant positions, and regulation of mergers and acquisitions, it lacks explicit provisions for crucial elements such as protection of consumer welfare and anti-competitive practices in procurement.

Furthermore, the Act's administration under the Ministry of Trade raises concerns about potential political influence, corruption, and inefficiencies, highlighting the need for an independent body to ensure impartiality, transparency, and accountability in enforcing competition laws.

³¹ Private sector foundation Uganda, Private sector position paper on the competition bill 2022 https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.psfuganda.org/policy-papers/287-private-sector-position-paper-on-the-competition-bill-2022.html&ved=2ahUKEwifv_7-2riEAXV9_rsIHWG_AT0QFnoECBEQAQ&usg=AOvVaw37pcNFZd787aaZjVtishHJ. Retrieve on 16/02/2024.

Additionally, the complaint and dispute settlement mechanism outlined in the Act, which involves the Ministry conducting inquiries and making orders, may not be as robust or independent as preferred by international standards. Countries like South Africa and Kenya have established specialized tribunals or authorities to handle competition matters independently from government ministries, ensuring a fair and impartial resolution process.

To enhance Uganda's compliance with international antitrust standards, it is essential to consider amending the Competition Act to include provisions for protecting consumer welfare, addressing anti-competitive practices in procurement, and establishing an independent authority or tribunal for administering and adjudicating competition matters. By aligning with international best practices, Uganda can foster a more competitive and equitable business environment, ultimately contributing to economic growth and consumer welfare in the region.

CHAPTER THREE: THE IMPACT OF UGANDA'S COMPETITION ACT ON BUSINESS COMPETITION

3.1 Introduction

In this chapter, I critically analysed the provision of the Competition Act 203 that affects the businesses in Uganda keeping in mind the question; What are the impacts of Uganda's Competition Act on Business Competition? When answering this question, I looked out for the provision that orders and directs businesses in running day-to-day activities. This chapter draws on the legal provisions that provide for the carrying out of business in Uganda, the provisions of the new Act that relate to business action and how these provisions have impacted the business competition.

3.2 Provision for business

Competition laws are based on an understanding that in doing business, consumers are to be provided with competitive prices and opportunities, and all people are guaranteed equitable opportunities to participate in the economy.³²

Article 40(2) of the constitution provides that, “every person in Uganda has the right to practice in his or her profession and to carry on any lawful occupation, *trade or business*”³³. Objective 11(1) of the National objectives and directive principles of state policy places a duty to the state to make laws that afford people equal opportunities in development and to that effect **Article 21** of the constitution provides that all persons are equal before and under the law in all spheres of political, economic, ... and shall enjoy equal protection of the law. This therefore goes to show that in carrying out

³² Joel Basoga, the Competition Act 2023: What it means for businesses in Uganda, 2024, page 1.

³³ Article 40(2) of the 1995 constitution of Uganda

trade and business, all people in Uganda are to be treated the same which endorses the notion of fair competition among those in business.

3.3 The impact of the competition provisions on business competition.

3.3.1 Anti-competitive Practices/ Anti-competitive Agreement.

Section 9 of the Competition Act ³⁴states a prohibition against anti-competitive practices or enter into an anti-competitive agreement. This includes practice or agreement which involves the taking of a decision or engaging in any concerted action or concerted practice concerning the production, distribution, supply, or control of goods or the provision of services which cause or are likely to harm competition³⁵. An example of this can be the exclusion of competitors by the dominant person provided for under **section 13 of the Act** ³⁶where holders of dominant positions are prohibited from engaging in any practice that excludes or is intended to exclude competitors from the market. In **Palmer v. BRG of Georgia and HBJ**³⁷, the defendants agreeing with BRG was to give an exclusive license to market an HBJ trademark and HBJ agreed not to compete with BRG in Georgia and would receive a cut from enrolments made by BRG. The US Supreme Court noted that the agreement was unlawful on the face of it noting that agreements between competitors to allocate territories to minimize competition are illegal. The court also held that this law extends to agreements between parties that are splitting a market within which they both do business or merely reserve one market for one.

³⁴ Section 9 of the competition Act of 2023

³⁵ Section 3 of the competition Act of 2023

³⁶ Section 13 of the competition Act of 2023

³⁷ Palmer v. BRG of Georgia, Inc.498 US 46 (1990)

A Ugandan example of this can be the move by Kakira Sugar Works Ltd, which enjoyed a monopoly in the sugar business for over a decade and pushed for the zoning of sugar farming. With the increase in the number of sugar players in Uganda and farmers with the ability to select and sell their sugarcane to manufacturers that offer a high price, Kakira Sugar Ltd pushed to have the industry zoned in which farmers can only sell the sugarcane with their zone which would give the monopoly of sugar production, especially in terms of setting prices in that given zone.

This places a duty on all businesses to ensure that businesses avoid agreements with competitors that price, restrict output, or divide markets failure to adhere to these strict guidelines, businesses shall attract penalties under **section 9(8) and part 7 of the Act.**

3.3.2 Abuse of dominant position

section 11 of the act³⁸ provides for Abuse of dominant position which is defined as a position of economic strength enjoyed by a person, individually or collectively, which gives the person the power to behave independently of the person's competitors, customers and consumers and in particular to foreclose another person from competing in the relevant market³⁹. **United Brands v Commission**⁴⁰ also defines as "a position of economic strength enjoyed by the enterprise which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of

³⁸ Section 11 of the competition Act 2023

³⁹ Section 3 of the competition Act

⁴⁰ United Brands V Commission, [1978] C.J. Comm. E. Rec. 207, at para. 65

its consumers." In **Suiker Unie et al. v. Commission**⁴¹, the Court noted that dominance is the power to impede the maintenance of effective competition.

According to **section 11(5)**⁴² of the Act, a person abuses a dominant position where that person (a) directly or indirectly imposes unfair or discriminatory purchase or selling prices or conditions; (b) limits production, markets or technical development to the prejudice of consumers; (c) indulges in actions resulting in denial of market access; (d) makes the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of those contracts; or (e) uses dominance in one market to move into or protect another market.

In the case of **United Brands V Commission**⁴³, the plaintiff was a New York corporation that was the largest group on the world banana market. the Commission of the European Communities (Commission) handed down a decision which declared that United Brands had infringed Article 86 of the EEC Treaty by; requiring its distributors to refrain from selling its bananas while still green, by charging its distributor in the various Member States dissimilar prices for equivalent transactions, by imposing unfair prices and by refusing to supply a major distributor on the ground that it had taken part in an advertising campaign for bananas of a competing brand. The Court of Justice of the European Communities (Court) upheld the commission decision point it to be abuse of a dominate position.

⁴¹ Suiker Unie et al. v. Commission, [1975] C.J. Comm. E. Rec. 1663,

⁴² Section 11(5) of the competition Act 2023

⁴³ supra

Section 12 of the Act ⁴⁴Prohibition dominant person from the exploitation of consumers, this is done by imposing unfairly high or unfairly low purchasing prices or unfair trading conditions, limiting production or technical development and innovation to the prejudice of consumers, and discrimination between consumers or suppliers based on non-commercial criteria including nationality or place of residence. An example can be in the case of **Catalano, Inc. v. Target Sales**⁴⁵, where an agreement was made among competing wholesalers to refuse to sell goods until the retailer makes payment in cash in advance or upon delivery is a form of price fixing and was held to amount to plain anti-competitive action.

The policy ensures a level field for trade to all players in business where smaller businesses can keep afloat and failure to adhere to **section 11(6)** ⁴⁶is to the effect that such a person commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding four years, or both.

Section 20 of the act ⁴⁷provides that where the ministry finds out that an agreement, decision, concerted practice or action of a dominant person, to which a complaint or reference relates contravenes this Act may direct order parties; to discontinue and not repeat any such agreement, decision, concerted practice or abuse; to pay a fine not exceeding ten per cent of the average of the person's turnover for the last three years, awarding compensation to an aggrieved party as may be determined following regulations made under this Act, directing that the agreement be modified in respect

⁴⁴ Section 12 of the competition Act 2023

⁴⁵ Catalano, Inc. v. Target Sales, Inc. 445 US 643 (1980)

⁴⁶ Section 11(6) of the competition Act 2023

⁴⁷ Section 20 of the competition Act 2023

of the person in such manner as may be specified by the Ministry or directing the person concerned to pay costs of the aggrieved party.

3.3.3 Notice of the merger, acquisition or joint venture

Section 15 of the Act ⁴⁸provides instructions for cases of mergers⁴⁹, acquisitions⁵⁰ and joint venture⁵¹. It directs that a person who proposes to enter into any merger, acquisition or joint venture shall give notice of the merger, acquisition or joint venture to the Ministry in the manner and form prescribed by the Minister. A company has power under **section 10 (1) (g)** of the Companies Act⁵² to alter its memorandum of Association to enable it to amalgamate with any other company or body of persons.⁵³ In the case of **Texaco, Inc. v. Dagher**⁵⁴ the court noted that it is not per se illegal under the Sherman Act (which is a Competition Act) for lawful, integrated parties into a joint venture which can set the prices at which it sells its products.

Subject to any restriction in their respective incorporation documents and following the procedure prescribed in **Sections 238,239,240 & 241 of the Companies Act, 2012** two or more companies may amalgamate or continue as one company. This goes to point out that the new Act of Uganda didn't come against the international and well-

⁴⁸ Section 15 of the competition Act 2023

⁴⁹ Section 3 of the Act defines "**merger**" to mean an amalgamation or joining of two or more firms into an existing firm to form a new firm

⁵⁰ Section3 of the Act defines "**acquisition**" to mean acquiring or agreeing to acquire, directly or indirectly, shares, voting rights, management control or control over assets in a person

⁵¹ Section 3 defines "**joint venture**" as a person who is subject to joint control by two or more undertakings which are economically independent of each other

⁵² section 10 (1) (g) of the Companies Act

⁵³ See Bread Limited v Uganda Company Ltd & Uganda industrial Machinery Ltd [1975] HCB 214

⁵⁴ Texaco, Inc. v. Dagher 547 US 1 (2006)

established principle of merger, acquisition or joint venture but instead placed a duty to notify the ministry of acceptance of the proposal as per **subsection 4 (a)**.

The ministry is under duty to within 120 days decide whether to approve or reject the union⁵⁵. Upon receipt of notice of a merger, acquisition or joint venture, the ministry directs the parties to publish details of the merger, acquisition or joint venture, in the manner prescribed by the Minister by regulations⁵⁶ to allow the public to submit written comments or objections against the merger, acquisition or joint venture. Where the Ministry thinks that a merger, acquisition or joint venture has no adverse effect on competition in the market, it shall approve however if it harms competition in the market it shall propose to the concerned parties subject to conditions that should be accepted within 7 days or parties are free to negotiate modifications to the ministry⁵⁷.

3.3.4 Impact on promoting fair market competition

The principal objective of the Act is to foster and maintain fair competition within Ugandan markets; and to prevent practices harming competition in markets in Uganda⁵⁸. **section 3 of the Act**⁵⁹ defines competition to mean the striving or potential striving of two or more persons engaged in the production, distribution, supply, purchase or consumption of goods or services in each market in Uganda against one another which results in greater efficiency, high economic growth, increased employment opportunities, lower prices and improved choices for consumers.

⁵⁵ Section 15(6) of the competition Act 2023

⁵⁶ Section 16 of the completion Act 2023

⁵⁷ Section 17 of the competition 2023

⁵⁸ The long title of the competition Act 2023

⁵⁹ Section 3 of the competition Act 2023

Competition forms the cornerstone of a thriving market economy, playing a pivotal role in safeguarding consumers' interests and facilitating the efficient allocation of resources⁶⁰ and for this reason, restrictions have to be put in place to ensure that businesses participate in a health competition system that not only protects those in the sector but also seeks to join the sector. **Chicago Board of Trade v. U.S.**⁶¹ the Supreme Court pointed out that the true test of the legality of a restriction is whether a restriction merely regulates and perhaps thereby promotes competition, or whether it may suppress or even destroy competition, the Competition Act of 2023 through the different mechanisms in place⁶² has fostered fair competition among businesses in that Businesses are prohibited from;

- 1) Businesses are prohibited from directly or indirectly fixing purchase or selling prices;
- 2) limiting or controlling production, supply, markets, technical development or investment;
- 3) sharing markets or sources of production supply by territory type, size of customer or in any other way; or
- 4) directly or indirectly taking part in bid-rigging or collusive tendering.

This is all to ensure that all business practices do not result in the creation of barriers to new entry, or result in forcing existing competitors out of the market, or result in any consumer benefit or pro-competitive impact. The Act creates a standard for

⁶⁰ Uganda law reforms commission, A study report on competition law, 2004 Kampala, Uganda.

⁶¹**Chicago Board of Trade v. U.S.** (1918)

⁶² Mechanisms such as prohibition of anti- competition mechanisms, prohibition of abuse of dominate positions, requirements for notice in case of merger, acquisition or joint venture.

businesses to encourage the improvement of production and distribution and promote technical and economic progress while allowing players to fairly share the benefits of businesses.

3.4 Conclusion

In conclusion, Uganda's Competition Act of 2023 has significantly impacted business competition by introducing provisions that promote fair and equitable practices in the marketplace. Through its regulations against anti-competitive practices, abuse of dominant positions, and provisions for mergers, acquisitions, and joint ventures, the Act aims to ensure a level playing field for all businesses while safeguarding consumer interests. By fostering fair competition, the Act encourages greater efficiency, economic growth, increased employment opportunities, lower prices, and improved choices for consumers. Moreover, it establishes standards that encourage businesses to innovate and improve production and distribution methods, thereby contributing to overall economic progress. Moving forward, continued enforcement and adherence to the principles outlined in the Act will be crucial in maintaining a healthy and competitive business environment in Uganda.

CHAPTER FOUR: THE ROLE OF THE COMPETITION ACT IN SAFEGUARDING CONSUMER RIGHTS IN UGANDA

4.1 Introduction

The principle of consumer protection can be traced back to **Donoghue v Stevenson**⁶³ under the principle of product liability where the court placed a duty of care by a manufacturer to the consumer in that Stevenson was held to be liable for defective products passed to the consumer even if there is no contractual relationship between the manufacturer and consumer. The **United Nations General Assembly**⁶⁴ adopted general guidelines for consumer protection that promote and protect consumers' rights and place restrictions on producers. They included; protection from hazardous goods; protection of economic interests; Access to adequate information; Consumer education; and promotion of sustainable consumption patterns.

Although Uganda which is a member of the United Nations doesn't have an exclusive law that provides for consumer protection, Uganda has nevertheless had legislation promulgated to deal with certain aspects of consumer protection for example the National Drugs Authority Act, the Weight and Measures Act Cap 103, sale of goods Act, 2018 and the contracts Act 2010 to mention but a few. The Competition Act 2023 is yet another Act that introduces this noble aspect, which inclusion is the basis of this chapter.

⁶³ Donoghue V Stevenson (1932) 1 ALLER.

⁶⁴ United Nations the General Assembly Resolution 9/147

4.2 Safeguarding Consumer Rights

Section 3 of the Act⁶⁵ defines a consumer to mean a person who buys goods or services, or who intends to buy goods or services, as the end-user of the goods or services. Consumer protection are the different measures put in place to assure the consumer that goods or services are of a suitable quality that is appropriate to his purposes and that it will give him reasonable use.

Section 5 of the Act⁶⁶ gives the ministry a function towards consumers i.e. (b) to protect the interests of consumers in the market; f) to hear and determine complaints in respect of competition and consumer protection matters; (g) to protect consumers and implement the law relating to consumer protection.

This chapter therefore will be looking at the different provides under the Act that offer protection to consumers of goods and services.

One of the objectives of this Act is to provide consumers and producers with competitive prices and product choices.⁶⁷ This is done under section 9⁶⁸, prohibiting engaging in an anti-competitive practice or entering into an anti-competitive agreement that directly or indirectly fixes purchase or selling prices. South African competition tribunal **Re Cancun Trading No 24CC and other v seven eleven corporation SA**⁶⁹ that involved an agreement that required all members of a franchise to sell all products at the same price, which the tribunal equalled to price-fixing (page 11). In **Catalano, Inc. v. Target**

⁶⁵ Section 3 of the competition Act of 2023

⁶⁶ Section 5 of the competition Act 2023

⁶⁷ Section 2(b) of the competition Act 2023

⁶⁸ Section 9 of the competition Act 2023

⁶⁹ Re Cancun Trading No 24CC and other v seven eleven corporation SA CASE No 18/1R/Dec 99

Sales⁷⁰, an agreement was made among competing wholesalers to refuse to sell goods until the retailer makes payment in cash in advance or upon delivery is a form of price fixing, the US Supreme Court held to amount to plain anti-competitive action. Where businesses set prices instead of supply and demand, businesses set artificially high prices which consumers end up paying more than goods are, by preventing this reasonable prices are maintained and promote consumer preference.

The act also protects Consumers from exploitation by a dominant person under **section 12**⁷¹. This is done by imposing unfairly high or unfairly low purchasing prices or unfair trading conditions, limiting production or technical development and innovation to the prejudice of consumers, and discrimination between consumers or suppliers based on non-commercial criteria including nationality or place of residence. A developing case on this matter is the lawsuit by the **US against Apply**⁷² which is accused of monopolizing the smartphone market and crushing competition, the state believes that citizens wouldn't have to pay very high prices for these phones if it wasn't for that. In **United States v. Microsoft Corp**⁷³, that involve Microsoft was accused of illegally monopolizing the web browser market through the legal and technical restrictions it put on the abilities of PC manufacturers and causing users to uninstall Internet Explorer and use other programs. The appellant court upheld the trial court decision noting that holding that Microsoft's dominance of the computer operating

⁷⁰ Catalano, Inc. v. Target Sales, Inc. 445 US 643 (1980)

⁷¹ Section 12 of the competition Act 2023

⁷² BBC, apply lawsuit: US accuses tech giant of monopolizing smartphone market, [Apple sued live: US accuses Apple of monopolizing smartphone market - BBC News](#), United States v. Apple The U.S. Department of Justice (DOJ)

⁷³ United States v. Microsoft Corp., 584 U.S. (2018)

systems market constituted a monopoly and that Microsoft had taken actions to crush threats to that monopoly and violated the Sherman Antitrust Act.

The Competition Act 2023 provided for a penalty for a person that exploits consumer to be liable to pay a fine not exceeding ten per cent of the average of the person's turnover for the last three years as per **section 20**⁷⁴. The ministry can also direct the person concerned (the dominant person who has misused a position) to pay the costs of the aggrieved party as per **section 20(1) (e)**.⁷⁵ These fines and penalties help to foster company compliance and also help to raise money for the enforcement of laws.

In terms of enforcement of the right of consumer protection, the Act under **section 7**⁷⁶ establishes the technical committee that provides technical guidance and advice to the Ministry on the implementation of the policy and laws relating to competition and consumer protection. An aggrieved consumer may lodge a Complaint through a written comment which shall be Inquired about by the ministry⁷⁷ and within one hundred and twenty days a report on the findings of the investigation⁷⁸ establishing whether there is an Anti-Competitive Practice or not shall be made after which the ministry shall make orders to that effect as per section 20 of the Act.⁷⁹

4.3 conclusions

In conclusion, the Competition Act of 2023 in Uganda plays a pivotal role in safeguarding consumer rights by prohibiting anti-competitive practices, ensuring fair pricing and

⁷⁴ Section 20 of the competition Act 2023

⁷⁵ Section 20(1) (e) of the competition Act 2023

⁷⁶ Section 7 of the competition Act 2023

⁷⁷ Section 19 of the competition Act of 2023

⁷⁸ Section 19 (3) of the competition Act of 2023

⁷⁹ Section 20 of the competition Act of 2023

product choices, and providing avenues for consumer complaints and enforcement. By defining consumers' rights and holding businesses accountable for their actions, the Act contributes to a more transparent and equitable marketplace. Through penalties for exploitation and the establishment of enforcement mechanisms, it aims to foster compliance and protect consumers from unfair practices. Moving forward, continued vigilance and enforcement will be crucial in upholding these principles and ensuring a fair and competitive landscape for consumers in Uganda.

CHAPTER FIVE: THE CHALLENGES AND OPPORTUNITIES OF IMPLEMENTING THE COMPETITION ACT IN UGANDA

5.1 Introduction

In this chapter, I examine Uganda's legal, institutional, and procedural frameworks aimed at implementing the Competition Act in Uganda, showing this procedure set out in the Act to promote completion in Uganda. This chapter also examines the obstacles and practical issues that have a bearing on / impact on aspects of implementing the Competition Act.

5.2 Opportunities for Implementing the Competition Act in Uganda

Administration is provided for under Part 2 of the Competition Act of 2023. The Ministry responsible for trade⁸⁰ is the body entrusted with enforcing the Act and is under the duty to perform functions under section 5. The ministry is also empowered under **section 8 of the Act**⁸¹ to take any reasonable action necessary in furtherance of its functions which include directing an enterprise may be directed to desist from engaging in any anti-competitive practices, or an order may be issued for the termination or nullification of such practices, as the case may require, of any agreement, conduct, activity, practice or decision prohibited by this Act. **Section 27 of the Act**⁸² give power to the ministry to, make regulations that give the Act effect.

⁸⁰ Section 4 of the competition Act 2023

⁸¹ Section 8 of the competition Act 2023

⁸² Section 27 of the competition Act 2023

The ministry under the Act is to be assisted by a technical committee⁸³ on competition and consumer protection, to be established within the Ministry⁸⁴. This committee shall assist the Ministry to perform its functions; and provide technical guidance and advice to the Ministry on the implementation of the policy and laws relating to competition and consumer protection. This committee shall comprise persons knowledgeable in competition and consumer protection matters from Ministries, departments and agencies of Government, the private sector and academia.⁸⁵

Section 24 of the Act ⁸⁶offers Protection from liability to any person acting on the direction of the Ministry not to be personally liable for an act or omission done or omitted to be done in good faith in the exercise of duties or functions under this Act. This doesn't leave people without remedies, any person aggrieved by a decision or order made by the ministry or person with authority under the Act may appeal to the High Court as per section 26 of the Act.

5.3 Challenges of Implementing the Competition Act in Uganda

Private sector foundation Uganda⁸⁷ before the onset of the Act provided recommendations to the bill of 2022 with justification for the position, especially under **sections 4-8** which mainly focus on the Administration of competition in the country which includes the establishment of an Independent Commission for several reasons including accountability, timeliness in handling matters as well as ensuring proper

⁸³ Section 7(3) of the Act- composition, appointment, functions, meetings and remuneration of the technical committee

⁸⁴ Section 7 of the competition Act 2023

⁸⁵ Section 7(4) of the competition Act 2023

⁸⁶ Section 24 of the competition Act 2023

⁸⁷ Private sector foundation Uganda, Private sector position paper on the competition bill 2022

structures and resolution channels among others. However, the President rejected the proposal of having an independent body. The bill of 2022 provided for the Competition and Consumer Protection Commission, which was responsible for enforcing the Act. The rejection was on the basis that this would be contrary to the government's policy on rationalization whereby the government has frozen the establishment of new statutory bodies, to eliminate structural and functional duplication and overlaps⁸⁸.

This move has created controversy for example MMAKS Advocates recently published an article sharing their concern that enforcement of the Act by the Ministry will create challenges, considering potential political influence and inefficiencies with the Technical Committee whose members may not be fully dedicated to competition matters owing to pre-existing full-time jobs⁸⁹. They argue that an independent autonomous office on the other hand would likely instil more public confidence for example in private equity investors vis-a-vis the Ministry owing to perceived red tape in decision-making at ministerial levels⁹⁰.

Borrowing a leaf from other sectors of the country that relate to maintaining standards of operations and have operationalized committees that monitor standards of products available to consumers such as the National Drugs Authority, the Uganda National Bureau of Standards, Uganda Communications Commission Wildlife Authority among others and given the output, it is safe to mention that having an independent body shall include a better recognition of the spirit of the Act. This is because they are more productive,

⁸⁸MMAKS Advocates, analysis of the new competition act, 2023

⁸⁹ Ibid

⁹⁰ Ibid

and efficient and help mitigate corruption and unjust acts like favouritism, tribalism and people-pleasing attached to political positions.

In matters of dispute resolution, an aggrieved person can file a written comment. The current legislation fails to adequately incorporate provisions for the facilitation of dispute resolution and formal channels for the lodging of grievances by parties impacted by its provisions. This absence of robust mechanisms for recourse undermines the efficacy and fairness of the regulatory framework.

5.4 Conclusion

The implementation of the Competition Act in Uganda faces both opportunities and challenges. While the Act provides a framework for promoting competition and consumer protection, its administration and enforcement are crucial to its success. The rejection of an independent Competition and Consumer Protection Commission raises concerns about political influence, inefficiencies, and lack of expertise. To ensure the effective implementation of the Act, it is essential to address these challenges and consider establishing an independent body to oversee competition and consumer protection matters. By learning from other countries' experiences and incorporating robust mechanisms for dispute resolution and grievance lodging, Uganda can promote a competitive economy that benefits consumers and businesses alike. Ultimately, the successful implementation of the Competition Act will depend on the government's commitment to creating a fair and competitive market environment that drives innovation, efficiency, and growth.

CHAPTER SIX: A COMPARATIVE STUDY: UGANDA'S COMPETITION ACT VS. INTERNATIONAL ANTITRUST POLICIES

6.1 Introduction

This chapter shall be using the East African Community Competition Act as a standard to determine Ugandan compliance with international standards, the Competition Act of 2023 was also compared to other countries' anti-competition policies to come up with a conclusion of whether or not the Competition Act of 2023 meets international standards.

6.2 Terms of Regional Standards.

The East Africa Community Competition Act, EACCA⁹¹ aims to promote competition and consumer welfare in the East Africa region and provides for the prohibition of anti-competitive behaviour by Restricting agreements, decisions, and practices that prevent, restrict or distort competition⁹²; Prohibition of abuse of dominant position which involves Prevents companies with significant market power from abusing their position to harm competition⁹³; Regulation of mergers and acquisitions by Requiring notification and approval of large mergers and acquisitions to ensure they don't harm competition⁹⁴; Protection of consumer welfare by ensuring fair business practices and protection from harmful or unfair practices⁹⁵; Prohibition of anti-competitive practices in procurement by Restricting bidders from colluding or engaging in other anti-

⁹¹ The East Africa Community Competition Act, 2006

⁹² Section 5 and 6 of the East Africa Community Competition Act, 2006

⁹³ Section 8 to 10 of the East Africa Community Competition Act, 2006

⁹⁴ Section 11 to 13 of the East Africa Community Competition Act, 2006

⁹⁵ Section 28 to 38 of the East Africa Community Competition Act, 2006

competitive conduct⁹⁶; and Cooperation and enforcement through Fostering cooperation among member states and enforces the Act's provisions⁹⁷.

Uganda has expressly included most of these tenets in its Act that is to say prohibition of cartels or concerted practices⁹⁸, abuse of dominant positions⁹⁹, notice and approval requirements for mergers, joint ventures & acquisitions¹⁰⁰, cooperation among member states¹⁰¹ and also mentioned another main tenant of the EACCA, however, there is no express provision for some important tenets of the Act, for example, the Protection of consumer welfare¹⁰² whose rationale is discussed in length under **chapter 4 of the report**, Prohibition of anti-competitive practices in procurement and Cooperation and enforcement of the Region Act?

In line with anti-competitive practices in procurement, **section 9(3) (d)** ¹⁰³of the Ugandan Act prohibits acts that directly or indirectly result in bid-rigging or collusive tendering and **subsection 5**¹⁰⁴ of the same defines bid-rigging to means an agreement, decision or understanding between persons involved in the same manufacturing, trading or service rendering activity which has the effect of eliminating competition for bids or which adversely affects or manipulates the bidding process. Bid-rigging in public procurement has been over the year a growing form of corruption Ugandans ought to place special emphasis on curbing this growing practice which can be done by adopting

⁹⁶ Section 18 to 20 of the East Africa Community Competition Act, 2006

⁹⁷ Part IX of the East Africa Community Competition Act, 2006

⁹⁸ Part III of the competition Act 2023

⁹⁹ Part IV of the competition Act 2023

¹⁰⁰ Part V of the competition Act 2023

¹⁰¹ Section 8(c) of the competition Act 2023

¹⁰² See chapter four

¹⁰³ Section 9 (3) (d) of the competition Act 2023

¹⁰⁴ Section 9(5) of the competition Act 2023

some of the measures put in the EACCA that provide for the Prohibition of anti-competitive practices in procurement, Transparency and disclosure, Equal treatment, Fair and competitive bidding processes, Prohibition of unfair advantage, Complaints handling and Collaboration and information sharing. The Act should also put in place express provisions that make procurement anti-competition an offence punishable under the law.

6.3 Terms of Administration of the Act

Administration is provided for under Part 2 of the Act¹⁰⁵. The Ministry responsible for trade¹⁰⁶ is the body entrusted with enforcing the Act and is under the duty to perform functions under section 5. This mode of administration hasn't been widely accepted by the international community mainly because of potential political influence, corruption and inefficiencies with the Technical Committee whose members may not be fully dedicated to competition matters owing to pre-existing full-time jobs¹⁰⁷. Instead of this system of administration, an independent body responsible for administration is preferred.

This involves a government agency or entity that operates separately from political influences and interference, making decisions based on impartial considerations¹⁰⁸. These bodies are designed to be autonomous while ensuring impartiality, transparency and accountability.

¹⁰⁵ Part 2 of the Competition Act of 2023

¹⁰⁶ Section 4 of the competition Act 2023

¹⁰⁷ MMAKS Advocates, analysis of the new competition act, 2023

¹⁰⁸ Bryan A Garner, Black's law dictionary 8th ed. 2004, page 192

The argument for an independent body to implement the policy is preferred by countries with a more developed competition law policy for example in South Africa the Competition Act no 89 of 1998 establishes the competition commission under **section 19 of the Act** which consists of the Commissioner and two or more Deputy Commissioners. Although this is similar to the Technical Committee in the Ugandan Act, the difference lies in the level of autonomy the competition commission enjoys under **section 20¹⁰⁹** of the Competition Act no 89 of 1998 that provides for the Independence of the Competition Commission.

Similarly, in Kenya, the competition authority of Kenya is responsible for the management of the Act established under **section 5¹¹⁰** of the Competition Act, No. 12 of 2010. the competition authority of Kenya is mandated to promote and safeguard competition in the national economy and protect consumers from unfair and misleading market conduct free from interference from outside forces.

6.4 Terms of complaint and dispute settlement

The Competition Act 2023 provide for a detailed overview of the dispute resolution process under **part VI of the Act¹¹¹** thus the process involves, Complaint Filing through a written comment, Inquiry by the ministry¹¹² and within one hundred and twenty days, a report of the findings of the investigation¹¹³ is made establishing whether there is an Anti-Competitive Practice or not. After which the ministry shall make orders to that

¹⁰⁹ section 20 of the competitions Act no 89 of 1998

¹¹⁰ section 5 of the Competition Act, No. 12 of 2010

¹¹¹ part VI of the Uganda Competition Act of 2023

¹¹² Section 19 of the competition Act of 2023

¹¹³ Section 19 (3) of the competition Act of 2023

effect under **section 20 of the Act**¹¹⁴ which order is subject to appeal under **section 26** of the Act¹¹⁵

As opposed to this, the majority of countries prefer complaints to be heard by a tribunal which is independent from the administration process that ensures that free and fair results yield out of the process. In South Africa, under **section 26**¹¹⁶ establishes a Competition Tribunal that consists of a Chairperson and not less than three, but not more than 14 other members. In addition to this the South African competition jurisprudence under **section 36**¹¹⁷ establishes the Competition Appeal Court which gives the last discussion. This places South Africa with a fully pledged system to receive and hold all competition matters independently from the mainstream judicial system.

In Kenya, matters are received by the competition authority of Kenya that investigates complaints¹¹⁸, mediates and if that fails the matter shall be appealed to the Competition Tribunal within 30 days **section 40**¹¹⁹ of the Act. The tribunal is established under section 71¹²⁰ of the Act and whose discussion is appealable to the High Court under section 77 of the Act¹²¹.

6.5 Conclusion

In conclusion, while Uganda's Competition Act of 2023 aligns with several international antitrust policies, there are areas where it falls short of meeting certain standards set

¹¹⁴ Section 20 of the competition Act of 2023

¹¹⁵ Section 26 of the competition Act of 2023

¹¹⁶ Section 26 of the competitions Act no 89 of 1998

¹¹⁷ Section 36 of the competitions Act no 89 of 1998

¹¹⁸ Section 9(1) (b) of the competition Act n012 of 2010

¹¹⁹ Section 40 of the competition Act n012 of 2010

¹²⁰ Section 71 of the competition Act n012 of 2010

¹²¹ Section 77 of the competition Act n012 of 2010

by international bodies such as the East African Community Competition Act and similar legislation in other countries. While the Act addresses key aspects such as prohibition of anti-competitive practices, abuse of dominant positions, and regulation of mergers and acquisitions, it lacks explicit provisions for crucial elements such as protection of consumer welfare and anti-competitive practices in procurement.

Furthermore, the Act's administration under the Ministry of Trade raises concerns about potential political influence, corruption, and inefficiencies, highlighting the need for an independent body to ensure impartiality, transparency, and accountability in enforcing competition laws.

Additionally, the complaint and dispute settlement mechanism outlined in the Act, which involves the Ministry conducting inquiries and making orders, may not be as robust or independent as preferred by international standards. Countries like South Africa and Kenya have established specialized tribunals or authorities to handle competition matters independently from government ministries, ensuring a fair and impartial resolution process.

To enhance Uganda's compliance with international antitrust standards, it is essential to consider amending the Competition Act to include provisions for protecting consumer welfare, addressing anti-competitive practices in procurement, and establishing an independent authority or tribunal for administering and adjudicating competition matters. By aligning with international best practices, Uganda can foster a more competitive and equitable business environment, ultimately contributing to economic growth and consumer welfare in the region.

CHAPTER SEVEN: SUCCESS OF UGANDA'S ANTI-COMPETITION POLICY FRAMEWORK

7.1 Introduction

In examining the success of the Competition Act 2023, I shall be examining the level at which the provisions of the Act align with the purpose of the Act, the enforcement of the Act and its ability to solve the current competition problems in Uganda today.

7.2 Provisions of the Purpose of the Act

Anti-competition policies are aimed at providing consumers with competitive prices and opportunities, and to guarantee that all persons have an equitable opportunity to participate in the economy.¹²² This rationale is portrayed in the long title of the Competition Act 2023 which places the primary purpose of the Act to promote and sustain fair competition in markets in Uganda; and to prevent practices harming competition in markets in Uganda¹²³.

The Competition Act has incorporated these provisions to ensure this purpose is fulfilled that is to say; the Act provides for the prohibition of cartels or concerted practices¹²⁴, and abuse of dominant positions¹²⁵ where Enterprises with dominant positions are prohibited from the imposition of unfair or discriminatory prices and conditions, among others and the notice and approval requirements for mergers, joint ventures & acquisitions¹²⁶.

¹²² Joel Basoga, the Competition Act 2023: What it means for businesses in Uganda, 2024, page 1.

¹²³ The long title of the competition Act 2023

¹²⁴ Part III OF The Competition Act 2023

¹²⁵ Part iv of the competition Act 2023

¹²⁶ Part v of the competition Act 2023

In terms of consumer protection, the Act places firm prohibitions against **Section 9**¹²⁷, prohibiting engaging in an anti-competitive practice or entering into an anti-competitive agreement that directly or indirectly fixes purchase or selling prices. The act also protects Consumers before exposition by a dominant person under **section 12**¹²⁸. This is done by imposing unfairly high or unfairly low purchasing prices or unfair trading conditions, limiting production or technical development and innovation to the prejudice of consumers, and discrimination between consumers or suppliers based on non-commercial criteria including nationality or place of residence.

This goes to show that the Act has indeed upheld its purpose by, providing for equality and fair competition among players while protecting consumers from adverse effects of anti-competition practices.

7.3 Administration and Management

The Act has in place an effective administration system in that administration has been placed under the Ministry responsible for trade¹²⁹ that is entrusted with enforcing the Act and is under a duty to perform functions under section 5. The ministry is supported by the Technical Committee¹³⁰ on Competition and Consumer Protection. It is safe to note that the Act has in place an effective administration and management system to ensure the realization of the spirit of the Act.

¹²⁷ Section 9 of the competition Act 2023

¹²⁸ Section 12 of the competition Act 2023

¹²⁹ Section 4 of the competition Act 2023

¹³⁰ Section 7 of the competition Act 2023

7.4 Effectiveness of enforcement of the Act

The Competition Act was assent to by the president on February 2024 and there is no legal proceeding so far brought under this Act and the ministry hasn't yet made the necessary¹³¹ provides and bodies to ensure the effective enforcement of this Act.¹³² Nevertheless, the enforceability of the Act is visible through the presence of the different penalties provided for under the Act. This is provided for under **Part VII of the Act**¹³³. This provides for under **section 22 of the Act**¹³⁴ provides that where a person contravenes a provision of this Act..., commits the offence and is liable to the penalty prescribed for the offence. This is evident under section 15(8) that places a penalty of a fine may be imposed, not exceeding ten per cent of the person's annual turnover. This goes to show that the Act provides mechanisms to have its spirit enforced.

¹³¹ Section 27 of the competition Act 2023 gives the Minister power to make statutory instrument and regulations for giving effect to this Act.

¹³² Technical committee on competition and consumer protection provided for under section 7 of the competition Act 2023

¹³³ Part VII of the competition Act of 2023

¹³⁴Section 22 of the competition Act of 2023

CHAPTER EIGHT: CONCLUSION AND RECOMMENDATIONS

8.1 Introduction

This being the final chapter of my report, this chapter shall give an overview of my experience when doing my research especially in regards to challenges I face when doing my research, the general conclusion of the research and recommendations to ensure that the spirit of the Competition Act is realized.

8.2 Challenges faced during the research.

During my research on anti-competition policy, I encountered a significant challenge: limited availability and accessibility of relevant information that relate to Uganda. This scarcity of data and resources hindered my ability to conduct a comprehensive analysis, making it difficult to identify effective strategies and best practices. As a result, I had to rely on incomplete and fragmented information most of which was from foreign jurisdictions, potentially impacting the validity and reliability of my findings. This experience highlights the need for improved data collection, sharing, and dissemination to support informed research and policy development.

8.3 Recommendations

My first recommendation shall be in the furtherance of the discussion under chapter five on the topic of having an independent body to administrate the Act as opposed to having the Ministry of Trade to the administration of the Act. A body should be set up that should exclusively be charged with the administration of the Act similar to that under the National Drugs Authority, the Uganda National Bureau of Standards, and the

Uganda Communications Commission Wildlife Authority among others. This shall ensure the timely and effective administration of the act in Uganda.

To ensure effective implementation and compliance with the recently passed Competition Act, it is crucial to educate stakeholders, including businesses, consumers, and regulatory officials, on its provisions and implications. A comprehensive awareness campaign should be launched to disseminate information on the Act's requirements, benefits, and enforcement mechanisms. This education and outreach program should target various sectors and regions, utilizing multiple channels, such as workshops, training sessions, brochures in plain language and public awareness campaigns. By empowering stakeholders with knowledge, we can foster a culture of competition and consumer protection, driving economic growth and development.

The government and private sector should also pull the Ministry of Trade to quickly come up with respective regulations and name the Technical committee on competition and consumer protection to ensure the enforcement of the time for there is need for the enforcement of the Act following the rise of the anti-competition behaviours in Uganda for example, the president's directive on advertisements for Uganda broadcasting corporation, the famous coffee deal with the Italian business lady, the UPDF engineering brigade push to take over government construction projects, kakira sugar work push for zoning to mention but a few, the Competition Act has been passed at the time and thus only fair to assess its effectiveness as an Antitrust Policy.

8.4 Conclusion

Based on the research study on the efficacy of the Competition Act as an Antitrust Policy Framework in Uganda, it can be concluded that the Act is largely fulfilling its intended objectives for it provides for the major tenants of the Antitrust Policy i.e. It provides for policy that create prohibition of cartels or concerted practices, abuse of dominant positions, notice and approval requirements for mergers, joint ventures & acquisitions and cooperation among member. However, there is still room for improvement in terms of the administration and enforcement of the Act and on the issue of dispute resolution, a more streamlined system for raising complaints and dispute settlement should be set up. The government and public select should also push the ministry to enact necessary bodies, and rules for procedure and conduct mass public awareness and education about the Acts' functions; rights obligations and duties provided under the Act. Furthermore, it is imperative to develop and implement a comprehensive public awareness campaign aimed at educating Ugandan citizens about the benefits of anti-competition policies. As a researcher, I propose collaborating with the government to create and distribute simplified forms and brochures in plain language, thereby enhancing accessibility and understanding of these crucial policies among the public.

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