MINISTRY OF TRADE AND INDUSTRY

Rwanda Competition and Consumer Protection Policy

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I. INTRODUCTION

One of Government’s important functions is to create an enabling environment in which enterprises will operate with minimal interference. Within this framework, clear policies and legislation have to be put in place to foster a competitive environment for business enterprises, thereby increasing efficiency in the economy to the ultimate benefit of both the consumer and the producers.

As the economy continues to move progressively towards increased liberalization, certain undesirable business practices will emerge which will act as a hindrance to this process. The absence of a competition policy in Rwanda has created opportunities for some sectors of the business community in the country to engage in unfair business practices, such as price fixing, speculative hoarding and collusive tendering.

Competition policy aims to promote fair competition; its purpose is not to condemn or penalize those industries in Rwanda that have large shares of the market. The reality of the situation is that large and strong companies can enjoy economies of scale which can enable them to minimize costs and withstand both domestic and foreign competition. On the other hand, the concern is also to ensure that consumers are adequately protected from firms, whether large or small, that engages in exploitative pricing collusion or collusion that is designed to prevent competition.

Competition policy is complementary to trade liberalization. The consumer welfare and developmental benefits resulting from trade and investment liberalization, in the absence of the appropriate competition rules and supporting institutional infrastructure, have been questioned in the light of the experiences of many developing countries. The potential benefits of a shift towards a more market oriented economy will not be realized unless business firms are prevented from imposing restrictions on competition. In the light of Rwanda’s commitment to a liberalized economy, there is a need for a fair and equitable environment where both the producer and the consumer can maximize their profit and satisfaction respectively.

There is therefore a need for a Rwanda Competition and Consumer Protection policy if market oriented policies are to be given the best possible chance of success. For example, price liberalization, if not accompanied by competition laws and policies aimed at controlling economic behaviour and structures, can result in substantial price increases and reduced benefits for the overall economy.
The main objective of having a Rwanda competition and consumer protection policy is therefore to improve competition as a means of assisting in the creation of markets responsive to consumer signals, and ensuring the efficient allocation of resources in the economy and efficient production with incentives for innovation.

Competition policy will have to be linked to the industrial and trade policies for effective regulation and supervision of markets. Also important are the many other supportive policies at the different Ministries and at provincial levels, including the attraction of foreign direct investment, incentives for research and development, labour market policy, the regulation of financial markets and the promotion of Small and Medium Enterprises.

In the light of this, it is therefore imperative for Rwanda to develop its Competition Policy with the supporting legislation, infrastructure and regulations.

I.1 DEFINITION OF THE CONCEPT

“Competition” means the striving or potential striving of two or more persons or organizations engaged in production, distribution, supply, purchase or consumption of goods and services in a given market against one another which results in greater efficiency, high economic growth, increasing employment opportunities, lower prices and improved choice for consumers;1

“Competition policy” is an economics term referring to the body of laws of a state which govern the extent, and ability, to which bodies can economically compete. They hence attempt to restrict practices which remove competition from the market such as monopoly and cartel.

The trade policy of the Ministry of Commerce, Investment promotion, tourism and cooperatives call for an action to make goods and services available not only to the domestic, but also at the international markets in order to achieve a better balance of trade. Thus, in order to play an active role in the national development and poverty reduction, the Ministry must make sure that trade is an engine of development by focusing on actions aimed at job creation as a source of income generation.

Competition and Consumer protection policies are necessary in all areas of sectoral economic activities. Competition policy is a regulatory tool that limits the conduct of economic actors to ensure that the benefits of competition are

1 http://en.wikipedia.org/wiki/competition_policy
not frustrated by the erection of private barriers to trade. It does so, among other things, by limiting abuses of monopoly power by dominant firms, by prohibiting cartelistic activity and by preventing mergers and other types of cooperative conduct that will harm social welfare.

II. BACKGROUND

II.1 SOCIO-ECONOMIC CONTEXT

Rwanda is a small landlocked country with a population of about 9.3 million people. With a per capita income of approximately $292 and Rwanda is among the least developed countries. 56.9% of households live below the poverty line. The population density of about 350 per km² is among the ten highest in the world and agriculture is the primary activity for the 90% of the population living in rural areas.

Over the last 12 years, Rwanda has made remarkable progress from a destructive genocide to peace, reconstruction and development. Key elements of macroeconomic stabilization have been achieved with most sectors of the economy having recovered. Growth rates during this recovery period have been much above Rwanda's historical growth rates. It has experienced rapid economic growth due mainly to large aid inflows, coupled with a recovery in agriculture yields and large investment in construction, tourism, banking and telecommunication. Between 1995 and 2004, the average growth rate was about 8%. Annual average inflation came down from 64% in 1994 to less than 4% during 1999-2002. This growth slowed during 2003 due to mainly a slowdown in agricultural growth caused by the drought. This limited GDP growth to only 0.9% in 2003 and about 4% in 2004, but growth rebounded to 6.5% in 2005.

Current estimates indicate that Rwanda’s GDP grew by almost 7%. This represents a substantial increase over the 2004 figure of 4% - and over the 0.9% rate of growth seen in 2003.

Considering a range of indicators, growth in the services sector is estimated to have been around 6%. Services account for 38% of GDP, consisting of wholesale and retail trade, transport, finance, insurance, and other core services (public administration, telecommunications and utilities). Industry accounts for 18% of GDP, with roughly half of its share attributed to manufacturing and the other half to construction. The majority of manufacturing firms are small. The larger establishments are primarily engaged in production and/or processing of beer, soft drinks, tobacco, cement, textiles, tea and coffee. Thus, the economy

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2 Annual Economic Report, Published by MINECOFIN, March 2006
3 Annual economic report, MINECOFIN March 2006
is heavily dependent on the primary sector, with industry strongly tied to processing of primary products, whose inputs come from the agriculture sector. Employment is heavily concentrated in Agriculture. Close to 86% of the working age population works in this sector. Public administration and social services employ another 10% of the population, with commerce, hotels and restaurants representing around 3%. Manufacturing, in contrast, employs less than 1% of the working-age population.

The government, as part of its long-term strategy, has set the targets of reaching the status of a middle income country by envisaging income gains to $900 per person by 2020, based on a rapid transition from subsistence farming to higher value added agriculture and non-farm activities. This ambitious agenda will rely heavily on private sector development and the transformation of Rwanda from a mainly agricultural society to a knowledge based economy where majority of employment is in industrial or service sectors. This will also include addressing constraints on trade competitiveness.

II.2 SOCIO-POLITICAL CONTEXT

From 1995, a bold programme of socio-political reforms, aimed at improving justice, governance, human resource development and democratization has been implemented in parallel with ongoing economic reforms. Important changes that have been made include privatization of state-owned enterprises, financial and banking sector reforms, improved public financial management and civil service reform. Rwanda has also embarked on a programme to modernize its legislative and regulatory framework for trade and investment, with the aim of fostering a modern, competitive private sector.

Building on this reform agenda, ambitious targets have been set for growth and poverty reduction in the government’s Vision 2020 and Economic Development Poverty Reduction Strategy (EDPRS).

II.3 REGIONAL AND INTERNATIONAL CONTEXT

Rwanda is an open trading economy with relatively low tariffs and few non-tariff barriers. Rwanda’s programme of economic liberalization is aimed at enhancing the efficiency and competitiveness of the domestic market. Regional integration can play an important role in underpinning outward orientated growth in Rwanda by improving the business environment and enhancing competitiveness, in particular by addressing transport costs which are pushing up the cost of trade by an estimated 30% to 50%.

Rwanda has signed a number of bilateral, regional and multilateral treaties, conventions and agreements. The country is also a member of several regional
and international bodies such as COMESA, EAC, and WTO. The principal aim of all these commitments is to create a favorable and competitive environment for business.

While geography and poor, fragmented infrastructure are key in driving up the cost of transport – and co-operation in the framework of NEPAD in particular could be significant in meeting infrastructural needs - regional integration could reduce border transactions and delays and lower transport costs. The benefits from reducing business costs are likely to be of greater significance than the impact of duty free access to regional markets. There are also significant benefits for competitiveness and consumer satisfaction.

Regional Integration provides an added incentive for the development of Rwanda’s Competition policy. Rwanda’s accession to the EAC, its deepening integration with COMESA as well as the EPA negotiations with the EU would open the Rwanda’s firms to competition from outsiders. It is necessary to have a competition policy in place to ensure that there are no loopholes for foreign firms to practice anti competitive behavior in Rwanda which would have been forbidden in their home countries.

In addition to this, COMESA is formulating and implementing a regional competition policy. The policy shall be consistent with provisions and intent of the COMESA Treaty and with internationally accepted practices and principles of competition especially the principles and rules of competition elaborated by UNCTAD under the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. Existing national competition policies shall be harmonized and brought in line with the regional policy to ensure consistency with the regional policy, avoid contradictions and provide a regionally predictable economic environment.

The Competition Policy builds on the framework of COMESA Competition policy and regulations. In order to fall in line with Rwanda’s regional integration objectives, Rwandan Competition policy reflect its regional integration agenda. A national competition policy which is geographically circumscribed does not provide adequate oversight for a strategy that is focused on a broader geographic area. There exists a COMESA Competition law and policy which member states will have to implement. Rwanda would take these factors into account in developing a Competition policy that would be consistent with the COMESA initiatives by the time they come into fruition. While a regional competition policy is important in the context of regional integration, national competition policy is necessary to promote national market development and other specific objectives. Rwanda’s competition
policy is therefore a necessary complement to COMESA’s regional competition policy.

The EAC Context

The EAC Parliament has enacted an East African Community Competition Act, 2006. The EAC Secretariat is also in the process of developing the EAC Competition Regulations for the soon to be established EAC Competition Authority.

Article 4 (1) provides that the Act shall apply to all economic activities and sectors having cross border effect. It would therefore appear that the Act envisages the existence of national authorities with jurisdiction over national operators alongside the existence of an East African Competition authority.

This would be in line with the international practice particularly EU practice where the EU DG Competition works with national competition authorities in enforcing competition rules within the region.

However Article 44 (1) of the EAC Competition Act gives the EAC Authority exclusive original jurisdiction in the determination of violations of the Act. This exclusive jurisdiction implies that national authorities or courts will not have the jurisdiction to make determinations or finding based on the EAC Act, thus reinforcing the need for Partner States to set up their own competition law, policy and authorities. It should be noted that this provision of the EAC Act is a departure from the EU practices where national authorities have parallel competence and are expressly empowered to apply not only the EU Competition laws but to also make determinations based on precedents set in EU case law.

It is also important to note that in the EAC is one of the outstanding issues in the EAC common market negotiations. The creation of a single or common EAC market might necessitate the existence of a single EAC Competition authority. Nevertheless, while that may be the eventual outcome, there is the need to address the immediate issues surrounding competition regulation in Rwanda at the moment.
III. GENERAL ORIENTATION

IV. 1 VISION 2020

VISION 2020 is a framework for Rwanda’s development, presenting the key priorities and providing Rwandans with a guiding tool for the future. One of the key pillars of the Vision 2020 is the development of an efficient private sector spearheaded by competitiveness and entrepreneurship. In its vision 2020 plan Rwanda has articulated a number of developments goals leading to an improvement in the welfare of the people as measured by an increase per capita GDP from $250 to $900 between 2000 and 2020.

The Government intends to act as a catalyst in ensuring that infrastructure, human resources and legal frameworks are geared towards stimulating economic activity and private investment. The vision 2020 statement recognizes that the emergence of a viable private sector that can take over as the principle growth engine of the economy is essential for Rwanda’s development. Rwanda’s Competition policy targets this objective of entrenching competitiveness and efficiency in the economy. It is therefore a crucial tool in enabling this important pillar of the Vision 2020.

III. 2 ECONOMIC DEVELOPMENT POVERTY REDUCTION STRATEGY

The Economic Development and Poverty Reduction Strategy (EDPRS) reflect market based private sector development and the increase of productivity and income. The overall purpose of the Private Sector Development Log frame in the EDPRS is to achieve inclusive and sustainable private sector led development. It tries to achieve this goal by setting up certain objectives.

These objectives address factors that may have hindered the development of Rwanda’s private sector in the past. The objectives include: the strengthening of the policy, institutional and legal framework under which the private sector operates; improving cooperation and coordination between the public and private stakeholders as well as developing the appropriate prioritized infrastructure (such as energy, transport, communication and water) for private sector development.

It also includes strengthening regional economic integration and international cooperation; increasing production and returns on the traditional export base as well as increasing the value of the diversified domestic and export bases. Other objectives of the Private Sector log frame include improving access to financial services to for all Rwandans in priority sectors as well as developing the appropriate skills for the adequate number of people necessary for private sector growth.
Development of Rwanda’s Competition Policy is one of the activities that have been identified as crucial to the creation of the proper market conditions for private sector development.

III.3 NATIONAL INVESTMENT STRATEGY

The National Investment strategy provides that the role of the Government in the development of private activities consists of establishing a legal and commercial framework favoring private investment development and promotion, and the implementation of the basic infrastructures necessary for competitive private activities.

It is clear that the Competition policy is the essential infrastructure necessary for encouraging competitive private activities and therefore conforms to the National Investment Strategy. The competition policy would prevent established operators from setting up barriers for new entrants into the Rwandan markets. It would also prevent foreign investors from using their superior resources to practice anti-competitive practices in Rwanda.

III.4 GOVERNMENT’S SEVEN YEAR PROGRAM

The Government Seven year program (2003-2010) calls for the revision of laws and regulations that hamper the development of the private sector. It is very clear that anti-competitive practices severely hamper the development of the sector. Therefore, the development of Competition policy, laws and regulations that prohibit such practices is an essential aspect of this review process.

III.5 MILLENNIUM DEVELOPMENT GOALS

The Government of Rwanda has declared its commitment to all of the Millennium development Goals (MDGs), to improving the statistical capabilities, to monitor the designated indicators, and to realize steady improvements in the nine designated areas of Extreme poverty, HIV/AIDS, Basic amenities, Food Security, Education, Gender Equality, Infant mortality, Reproductive Health and Environment.

Competition Policy that leads to efficiency and improvement in the economy will contribute towards the speedy attainment of these objectives. This would be through the creation of an environment suitable for private sector led growth.
V. CONCEPT PRESENTATION

STATE OF PLAY

Rwanda has no specific legislation governing competition. At present, the subject is covered by Law No. 15 of 28 January 2001 on the Organization of Domestic Trade, which establishes liberalization and prohibits dishonest dealings, express or tacit agreements that aim to impair the free movement of goods and services, obstruct the lowering of prices, or encourage artificial price increases in markets or in the event of competition.

It also prohibits the conclusion of secret agreements on the formation of uniform prices that are not the outcome of the normal interaction of supply and demand, and any other unlawful practices to establish monopolistic markets. In Rwanda, there are few markets with a single firm monopoly. Most markets can be characterized by imperfect competition, which may take different forms, according to the relative imperfection of competition: duopoly, oligopoly, monopolistic competition.

Law No. 15/2001 requires prices of goods and services to be determined by market forces unless there is market failure, for example in the form of monopolies organized for the purpose of speculation on increasing prices for sensitive products; professional monopolies on the production and distribution of certain products; and de facto monopolies on consumer goods and services. The list of sensitive goods and services for which prices may be fixed is established by ministerial order.

Article 5 of the Law establishes consultation (on marketing and prices) between the Government and operators in the sector concerned for the purpose of price-fixing. Consultation consists of meetings between economic operators using the marketing channels of the product in question and government representatives. The price agreed on must accommodate both the normal interests of traders and the concerns of consumers.

VI. PRINCIPLES OF THE RWANDA COMPETITION POLICY

V.1 POLICY VISION

The competition policy proposed here accepts the logic of free and active competition in markets, the need for greater economic efficiency, the objective of ensuring optimal allocation of resources, the principle of transparency, the

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need for greater national competitiveness, and the facilitation of entry into markets all within a developmental context that seeks to promote the growth and development of Rwandan enterprises.

Competition policy seeks to incorporate the interests of consumers, workers, emerging entrepreneurs, and other corporate competitors, and to protect the ability of our large corporations to penetrate international markets, just as we must allow foreign investors to do business in Rwanda in the interests of enhancing overall efficiency and growth.

Competition policy has to assume that the resolution of competition law cases be conducted in a procedurally-fair, coherent, expeditious and decisive manner, and that new institutional arrangements for pursuing the policy will entail an appropriate division of labour within the relevant agency and independence.

Finally competition policy seeks to be sufficiently flexible to incorporate existing policies and future modes of market regulation that extend in a coherent manner across the full spectrum of industrial and trade policy, foreign exchange policy, the attraction of foreign direct investment, the restructuring of state assets, tax reform, labour market policy, financial market regulation, consumer protection, research and development incentives, small business, corporate governance instruments, and revised company law.

V. 2 POLICY MISSION

The main mission of the competition policy should be to improve competition as a means of assisting in the creation of markets responsive to consumer signals, and ensuring the efficient allocation of resources in the economy and efficient production with incentives for innovation.

V. 3 PRINCIPLES OF THE POLICY

V. 3.1 GENERAL PRINCIPLES

The Rwanda Competition Policy will be based on the following principles:

- Free and active competition in markets;
- The need for greater economic efficiency, and aim to ensure optimal allocation of resources,
- To help the country be more competitive by lowering costs along the entire value chain, and by assuring foreign investors with an environment to do business unimpeded by closed or distorted markets;
➢ To maximize the benefits of, and compliment the national trade and investment liberalizations program while helping to reduce its potential disruptive effects;
➢ To preserve regulator flexibility in taking actions in line with the stated objectives of Rwanda’s Industrial and Trade Policy, and related policies

V. 3.2 SPECIFIC PRINCIPLES

In addition, Rwanda’s competition policy would also strive to achieve the following:
➢ To seek the maximum of consumer welfare, and to protect the interests of vulnerable consumers by:
   a) Empowering consumers through information and redress.
   b) Protecting them by preventing abuse
   c) Promoting the competitive and responsible supply
➢ To apply the competition and regulatory principles in a manner that does not discriminate between or among economic entities in like circumstances, whether these entities are foreign or domestic.
➢ To apply broadly of competition and regulatory principles to economic activity including goods and services, and private and public business activities.
➢ To recognize the competition dimension of policy development and reform this affects the efficient functioning of markets.
➢ To protect the competitive process, creation and maintenance of an environment for free and fair competition.
➢ The recognition that competitive markets require a good overall legal framework, clear property rights, and non discriminatory, efficient and effective enforcement.
➢ To ensure transparency in implementation of policies and rules.

VII. OBJECTIVES AND SCOPE OF RWANDA COMPETITION POLICY AND CONSUMER PROTECTION POLICY

The broad policy objective of the Rwanda Competition Policy is to promote economic competitiveness by granting a fair and equitable deal to both the consumer and the supplier.

SPECIFIC OBJECTIVES

➢ To provide consumers with competitive prices and product choices at the best possible quality;
To ensure especially that small and medium-sized enterprises have an equitable opportunity to participate in the economy and to promote a greater spread of ownership;

To provide the incentives to producers within the country for improvement of production and quality products through technical and organizational innovation;

To enhance the competitiveness of Rwanda enterprises in world markets by exposing them to competition within the country;

To create an environment which is conducive to foreign direct investment in the country;

To promote economic efficiency and enhance consumer’s choices, encouraging the development of Rwanda’s economy. In this regards, there are several aspects of the policy that give room for strategic considerations towards Rwanda’s Development plans.

VI. 1 Rwanda Competition Policy and Industrial Policy

Rwanda’s Competition policy would strive to complement the country’s Industrial policy. Active industrial policy sometimes calls for government’s support for specific industries, possibly through approving economic consolidation and intervening in the industry structure i.e. through ‘picking winners’ and channeling market forces into working for the particular interests of those winners.

The effective enforcement of competition law and policy is an important element of a successful industrial strategy since it opens up markets and places appropriate pressures on producers to become more efficient. In this regard, Rwanda’s Competition policy would not prevent firms from arrangements that would enable them to participate effectively and competitively in the global markets. The Competition Authority would therefore maintain discretion in approving mergers and acquisitions among Rwandan firms seeking to achieve this objective.

VI. 2 Promoting SMES

Rwanda’s Competition policy would strive to ensure that SMEs have a chance to participate in the economy. The role of SMEs in terms of providing employment is enormous. If they are exposed to unrestricted foreign competition, the vital nerve of the economy may collapse. Therefore it is necessary to shield these enterprises for temporary periods so that they could strengthen to face competition from large domestic as well as foreign enterprises at a later stage. It is for this reason that the Rwandan Competition legislation will specifically state that ensuring SMEs have an equitable opportunity to participate in the economy as one of its objectives.
VI. 3 Efficiency Defenses – Exemptions upon Certain Conditions

There may be certain instances where apparent restrictions of competition can mean more efficient resource use. In these cases, exemptions or exception may be granted upon the conditions that the arrangement must contribute to the improvement of the production or distribution of goods or promote technical or economic progress and it must allow the ultimate buyers a fair share of the resulting benefits. Exemptions are broader in scope as they apply to sectors or industries; exceptions are narrower in scope as they are determined on a case by case basis.

In this regard, the exemptions can be granted by the Rwandan Competition Authority for the following conditions:

1. promotion of exports;
2. promotion of the ability of small businesses or business associations controlled or owned by Rwandese to become competitive;
3. change in productive capacity necessary to stop decline in an industry; or
4. Economic stability of any industry designated by the Minister responsible for industry.

It should be noted that the exemptions or exceptions granted would be of a temporary nature to avoid permanent distortions in the markets.

VII. Strategies for the Rwanda Competition and Consumer Protection Policy

The strategies to be followed by the Government in pursuit of these objectives will involve action to reduce restrictive business practices and protect the consumer. The Competition Policy will primarily focus on the areas of:

- Business behaviour calculated to eliminate or reduce competition including price fixing, collusive tendering, customer allocation, tied sales;
- Market structures which permit abuse by an entity in a position of market power. It is important to note that, where economies of scale exist, there may be economic benefits arising from a monopoly or oligopoly situation. The focus is therefore on abuse of dominant positions rather than the existence of monopolies or oligopolies per se;
- Government legislation, both existing and proposed, which may impact on the operation of the free market in Rwanda;
- Merger control regulation and the impact proposed mergers may have on the ability of small firms to enter a market and compete in that market;
- Unfair business practices which have an impact on consumers.
Therefore, in reducing restrictive business practices, the Government shall by statute:

- Make practices such as price fixing, collusive tendering and undisclosed price cartels per se offences;
- Discourage the abuse of a dominant market position by a monopoly, or merger involving the acquirement of a substantial market share, which could be to the detriment of the consumer.

In an effort to counter unfair business practices and afford the protection of consumers, the Government shall by statute:

- Prohibit the hoarding of producer and consumer goods for the purpose of bringing about a price increase;
- Make a manufacturer or importer liable for defective products, or services rendered, that do not meet the suppliers descriptions of such goods and services;
- Make it an offence to engage in conduct that is liable to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, or quantity or quality of any product or services;
- Make it an offence to supply any product which is liable to cause injury to health or physical harm to consumers when properly used, or which does not comply with consumer safety standards which has been prescribed by law;
- Provide a system for civil and criminal suits for the recovery of damages suffered as a result of restrictive business practices.

VII. 1 COMPETITION ADVOCACY

These are activities related to the promotion of a competitive economic environment by means of non-enforcement mechanisms, mainly through relationships with government entities and by increasing public awareness on the benefits of competition. This would be achieved through two basic ways:

1. Governmental advocacy – the advocacy of the benefits of competition to governmental institutions.

2. Public advocacy - The advocacy of competition to the general public particularly consumers and other market players.

Such advocacy activities will include:

- the review of existing and proposed laws and regulations,
- providing suggestions and advice on government policies and measures that promote anti-competitive practices or inefficiencies;
- The review of possible sources of public restraints on competition e.g. sectoral regulation, trade policies and investment policies.
• Outreach activities to educate the public at large about the benefits of competition, for example, consumer awareness seminars, outreach newsletters etc.

• Developing continuous dialogue with key decision makers participating in regulatory proceedings. This can be done by developing formal memoranda on co-operation between the competition agency and sector regulators laying down clear rules for mutual co-operation; submitting formal proposals to regulatory bodies on particular issues etc.

• Public advocacy as an enforcement tool. Raising awareness of market participants and acting as a preventive measure.

• Competition policy and Privatization in Rwanda – There should be interface between the competition authority and the privatization agency. The need to ensure that the privatization process would not turn the state monopolies into private “hardcore” monopolies.
VIII. IMPLEMENTATION FRAMEWORK

Scenario 1 – The Rwanda Competition and Consumer Protection Authority

This is the scenario that has been proposed in the draft Competition Bill as well as the draft Competition Policy. It is the typical model for competition enforcement and regulation in most countries.

It entails the setting up of an independent, effective enforcement body for the effective enforcement and implementation of Rwanda’s Competition Policy. The institution will be called the Rwanda Competition Commission. It shall have administrative and financial autonomy.

The Commission will be given quasi judicial powers to enable it carry out its functions effectively. The Commission shall be empowered to monitor, control and prohibit acts or behaviour likely to adversely affect competition and fair trading in the country by:

➢ conducting, on its own initiative or through request of any person, investigations in relation to the conduct of business, including dominant position on the extent of anti-competitive trade practices;
➢ ordering interim measures suspending a practice that restricts competition and consumers rights; on its own initiative or on demand of individuals, private sector associations or consumer associations, to make orders or issue directives aimed at preventing, prohibiting or punishing anti-competitive practices or abuse of consumers.
➢ imposing sanctions where necessary in accordance with law related to competition and consumer protection;
➢ ordering the termination of an agreement, the halting of a practice or an activity, the setting aside of a decision which contravene the law related to competition and consumer protection.

The Commission will coordinate with the Rwanda Utilities and Regulatory Agencies (RURA) with respect to regulating competition in public utilities.

The Ministry of Trade and Industry will be the supervisory Ministry for the Competition Authority. The Ministry would carry out competition advocacy activities particularly with regards to interaction with other institutions that have some effect on competitive activities. The Ministry would be in charge of determining overall competition policy.
Advantages

- Its independence will enable it to carry out its activities more efficiently
- The specialized nature of the agency further guarantees that its resources and energies will be focused on competition regulation
- It is in line with the UNCTAD model law on Competition enforcement as well as international and regional best practices.

Disadvantages

- It will be relatively difficult to set up

Scenario 2 - The Department of Competition Regulation and Enforcement in the Ministry of Trade and Industry

This entails the setting up of an additional department within the Ministry of Trade and Industry. The department will be headed by a Director, reporting to the Secretary General of the Ministry. The Director will be complimented by 4 or 5 professionals.

In this instance, the Competition Law will empower the Ministry of Trade and Industry, through the Minister to monitor, control and prohibit acts or behaviour likely to adversely affect competition and fair trading in the country by:

- conducting, on its own initiative or through request of any person, investigations in relation to the conduct of business, including dominant position on the extent of anti-competitive trade practices;
- ordering interim measures suspending a practice that restricts competition and consumers rights; on its own initiative or on demand of individuals, private sector associations or consumer associations, to make orders or issue directives aimed at preventing, prohibiting or punishing anti-competitive practices or abuse of consumers.
- imposing sanctions where necessary in accordance with law related to competition and consumer protection;
- ordering the termination of an agreement, the halting of a practice or an activity, the setting aside of a decision which contravene the law related to competition and consumer protection.
For effective enforcement and implementation, this authority will be exercised by the Department of Competition Regulation and Enforcement within the Ministry of Trade and Industry.

The professionals and the director of this department have to be well qualified and preferably should be a mix of people with background in law and economics. The Ministry also has to undertake to train the staff of this department and give them the necessary exposure and backing to equip them to carry out their duties effectively. The department will also be responsible for carrying out competition advocacy activities as well as liaising with all relevant authorities and institutions on competition matters.

In effect, the department will be a scaled down version of the Commission proposed above.

The decisions of the department will be subject to the approval of the Minister as well as subject to appeal in the commercial courts.

**Advantages**

- It is easier and more cost effective to set up

**Disadvantages/Challenges**

- The lack of autonomy might prejudice the execution of its roles.

- It will not be completely consistent with the practice in the region or with international best practices. Experiences from countries such as Kenya that have tried this model as proven to sub optimal in the long run

**Recommendation**

An independent, effective enforcement body is necessary for the effective implementation of Rwanda’s Competition Policy. The primary institution that will be responsible for the enforcement and implementation of Rwanda’s Competition Policy shall be the Rwanda Competition and Consumer Protection Commission. It shall have administrative and financial autonomy.

Considering Rwanda’s limited resources, the Competition Commission would start with a small number of very good professionals; an aggressive education and publicity campaign; and undertake a modest enforcement agenda. There is also the need for long-term orientation focusing on institutional memory,
resource development and the need for continuous refinement and improvement.

**Interface between the Competition and Consumer Protection Authority and Sector Regulators**

The relationship between common competition law and sector specific regulation

Although competition law and sector regulation share the common objective of protecting and enhancing social and economic welfare, the regulated subject matters and the applied techniques are different. Competition law seeks to protect the process of competition in the market with a view of maximising productive and allocative efficiencies. In the view of competition policy, market forces are instruments that may be improved by strengthening competitive conditions. In situations characterised by a lack of competition, e.g. natural monopolies in the energy or telecommunication sector, sector specific regulation constitutes a substitute for competition by prescribing the market players what to do. Regulation is typically viewed as aiming to alleviate market imperfections by substituting regulatory measures for the working of market forces. Sector specific regulation may serve a number of legitimate objectives such as environmental safety or income redistribution goals which may seem as lying outside the field of competition policy. However, the way in which these objectives are pursued may have effects on competition and to that extent these elements of regulation cannot be excluded from consideration as part of a comprehensive competition policy.

In terms of regulatory roles, there are three distinct aspects of regulation that can be identified, namely technical regulation, economic regulation and competition enforcement. Economic regulation involves directly controlling or specifying production technologies, eligible providers, terms of sale and standard marketing practices. Technical regulation involves setting and enforcing product and process standards designed to deal with safety, environment and switching cost, externalities, as well as the allocation of publicly owned or controlled resources. Competition regulation involves the adoption, interpretation and enforcement of the framework and rules that ensure markets are as efficiently "self regulating" as possible. It also prevents firms from concluding anti-competitive agreements, abusing dominant positions and carrying out anti-competitive mergers.
In the event that a country opted for a specific regulator for sectors such as electricity, water services, communication, transport, telecommunications, banking and insurance industries the question arises of where to place the responsibility for competition policy. There is no unique answer to this question. A wide range of factors such as the social and economic context and the legal system may influence the division of labour between sector regulators and competition authorities. The characteristics of the regulated industry are also an important factor that has a bearing on the choice of regulatory framework, such that more than one approach might be employed within a country.

In fact, different countries have chosen different approaches to ensure coordination and policy coherence between sector regulators and the competition authority. These approaches can be classified into five types:

I. To combine technical and economic regulation in a sector regulator and leave competition enforcement exclusively in the hands of the competition authority;

II. To combine technical and economic regulation in a sector regulator and give it some or all competition law enforcement functions;

III. To combine technical and economic regulation in a sector regulator and give it competition law enforcement functions which are to be performed in coordination with the competition authority;

IV. To organise technical regulation as a stand-alone function for the sector regulator and include economic regulation within the competition authority;

V. Rely solely on competition law enforced by the competition authority.

The above matrix demonstrates the various ways to define the relationship between a competition authority and sector regulators. The provisions governing the respective competences and the cooperation between the two types of authorities may be introduced in the common competition law or in the sector specific regulation. Some countries have opted for a separate regulation for this purposes or entrusted the two types of authorities with the task to enter into a memorandum of understanding governing their relationship.

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Specific factors relevant for the design of the interface between the CCPC and the Multi-Sector Authority in Rwanda

It was recognised from discussions at the stakeholders meeting in November 2008 which included regulatory officials in Rwanda that there is a need for some kind of economic regulation that shall extend beyond the usual bounds of the competition legislation. It was further recognised that the question of how to allocate tasks and responsibilities for competition and regulation policies generally fall under the more general issue of the optimal organisation of government. The jurisdictional boundary between the competition and sector regulators in promoting competition varies from sector to sector or from country to country, depending on the statute creating the regulatory institution. In Rwanda, the Multi-Sector Authority is entrusted with competition law enforcement.

It was further recognised that Article 3 of the Draft Law which displaces the Competition Authority from dealing with competition issues in the regulated sectors raises concerns. This is so because we were given to understand that the Multi-Sector Authority since its establishment has not used its powers to deal with matters of competition law infringements. This can be explained partly as the result of lack of trained manpower to deal with competition issues.

Furthermore, it needs to be taken into account that the enforcement of competition law is a new phenomenon in developing countries. The establishment of national competition authorities has attracted training of local personnel in competition law enforcement. There are now substantial donor resources available for the strengthening of the competences of competition authorities in developing countries. In general, personnel who have competencies in competition law enforcement are going to be found in the national competition authorities as opposed to sector regulatory authorities. Consequently, the Multi-Sector Agency may not have the required competence to deal with complex competition matters in the regulated sector, whereas the CCPC will be better staffed to deal with the competition matters in the regulated sectors.

Comparative assessment

As to the question of the hierarchical relationship between general competition law and sector specific regulation, no clear picture results from the comparative assessment. Some competition law systems (e.g. the COMESA, Malawi and Germany) have opted for a clear primacy of the general competition law unless sector regulation provides for exemptions from the general competition law (COMESA) or constitutes an exhaustive regulation of the subject matter
(Germany). In other legal systems, e.g. in South Africa, the law is silent as to the hierarchical relationship between general competition law and sector regulations. Tanzania has taken the approach to exempt regulated sectors from the application of general competition law. However, the Tanzanian competition law provides for the possibility that the Minister intervenes upon the request of the competition authority if the latter finds competition concerns in an exempted area. Therefore, it can be concluded that in none of the legal systems assessed, the legislator would have opted for a 100% primacy of the sector specific regulations in the sense that the specifically regulated areas would always benefit from an exemption from general competition law.

With respect to the “division of work” between the competition authorities and the sector regulators, a multitude of different approaches can be deducted from the comparative assessment. Some competition law systems provide for a strict separation of the jurisdictions of the two types of authorities. In other jurisdictions, the competition authority and the sector regulators cooperate in fields of overlapping jurisdictions, whereby the degree of cooperation differs from consultations (e.g. in France) to more intense cooperation procedures (e.g. in Zimbabwe, the sector regulator may only approve a merger after the competition authority has given its authorisation).

Furthermore, there are different techniques as to the way how the cooperation between the two types of authorities is defined. In a number of legal systems, the law itself stipulates the procedure of cooperation between the competition authorities and sector regulators, whereas in other jurisdictions this task is conferred to the authorities. In the latter case, the competition authority and the sector regulator need to enter into some kind of agreement or memorandum of understanding on the procedure to be applied in case of overlapping jurisdictions. Usually, this agreement governs all cases of overlapping jurisdictions. However, in the United Kingdom, the Office of Fair Trading and the sector regulator concerned are required to enter into an agreement regarding the exercise of their competences on a case by case basis. In the event of a dispute, the mater is referred to the Secretary of State.

**Recommendation**

Taking into account that most of the analysed legal systems do not exempt specifically regulated sectors from the application of general competition law and taking into account that Rwanda aims for consistency, certainty and fairness in the application of competition law, it is recommended that the Competition and Consumer Protection Commission should have the jurisdiction on competition issues in the regulated sectors.
As to the hierarchy between the general competition law and sector specific regulations, we would recommend to opt for an approach that ensures the application of common competition law to all industry sectors, unless there is a specific need for an exemption. Such exemption should be carefully justified and clearly stated in the respective sector regulation.

Taking into account the requirement of particularly trained personnel for competition law enforcement, we strongly recommend that the CCPC will be primarily entrusted with the application of Rwanda’s general competition law. This approach would also be in line with the UNCTAD Model Law on Competition which provides for a prominent role of competition authorities with regard to sector regulators, see Chapter VII of the Model Law.

However, the CCPC's prominent role should relate exclusively to competition matters. It does not seem necessary or desirable to put the CCPC in the position of challenging the exercise by the Multi-Sector Authority of the powers under which it operates. If the Multi-Sector Authority has issued a license and the enterprise is acting in conformity with the license, competition law should not intervene. Competition Law (administered by the CCPC) will apply if the regulated company engages in activities that are anti-competitive and are outside the scope of a license (e.g. if a company engages in a cartel).

In cases where competition concerns arise in regulated industry sectors, Rwanda may want to provide for a cooperation procedure between the CCPC and the Multi-Sector Authority in order to allow the CCPC to benefit from the sector-specific knowledge and experience of the Multi-Sector Authority. Such cooperation procedure may be defined by the law itself. Another option would be to entrust the CPPU and the Multi-Sector Authority to negotiate an appropriate cooperation procedure by way of memorandum.

VIII. 2 LEGAL ENFORCEMENT TOOLS

- The Competition Law should be compatible with general legal principles and constitutional values.
- The Competition Authority should be granted broad investigative powers to monitor markets and obtain information on the conduct of market participants.
- Enforcing bodies should be able to impose high penalties for anti-competitive conduct. If sanctions are not sufficiently high, it would still be rational for market players to engage in anti-competitive conduct.
The criminalization of anti-competitive activities would ensure that security organizations like the Police can be used to enforce the proper aspects of the law and policy.

VIII. 3 INSTITUTIONAL TOOLS FOR BUILDING CREDIBILITY AND STATURE OF ENFORCING BODIES:

- Taking on large incumbent players at the early stages of enforcement. Beyond educational and immediate welfare purposes, this will signal to market participants that the enforcing authority is determined to follow a resilient agenda of enforcement. Possibility of examining market practices for certain food products.
- Transparency in administrative procedures and regulations;
- Strong emphasis on consistency and due process; adopting guidelines and notices setting out the manner in which the authority will apply substantive and procedural elements of the law and sticking to the guidelines as much as possible.

VIII. 4 JUDICIAL COMPETENCE

- There should be the training of judges in competition matters or setting up a specialized tribunal to help a small group of judges develop expertise
- Appeals on the decisions of Competition Authorities should be restricted to significant errors of law or fact.

IX. CONCLUSION

Competition has long been recognized as a prerequisite to sustain economic growth. Businesses which operate in a competitive environment usually attain an optimum level of efficiency which benefits consumers with lower prices and greater product choices. Therefore, the competition policy will assist competitiveness in Rwanda by identifying those aspects that harm consumer welfare, add unnecessary costs, entail anti-competitive practices, or distort the economy. In addition, an appropriate national competition and consumer protection law and enforcement body will position the country for continued growth and development.
Competition Policy reflects the prevailing socio-political ideology of the government. Competition Law and Policy does not stand alone. The prevailing socio-economic ideology and public policy are determinant factors in the application of a competition policy. It is imperative that government truly and consistently accepts the principles of competition in all of its spheres - the judiciary, the executive and the legislature – for competition law and policy to be effectively implemented.