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Navigating Uganda's New Competition Landscape:

A Guide to the Competition Act 2023's Key Developments and Implications

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Introduction

Uganda's long-awaited Competition Act, 2023 was assented to by H.E Yoweri Kaguta Museveni on 06/02/24, and marks a significant step towards establishing a comprehensive competition legal regime in the country.

This article aims at providing an overview of the major considerations and key developments that the law introduces on Uganda's economy, stakeholders, and consumers.

Objectives of the Competition Act

The law seeks to address four main groups of business competitive behaviour namely:

1. Horizontal restrictive relationships which include cartel arrangements (mainly arrangements between firms to maintain and control prices)
2. Vertical arrangements which include exclusive distribution agreements, geographical limitations on activities, price fixing arrangements and tied dealings;
3. Abuse of market dominance by monopolies and large firms, and;
4. Regulation of mergers and acquisitions to ensure that they do not impair overall competitive conditions in the market.

By targeting these behaviours, the law aims at promoting fair competition, preventing anti-competitive practices, and protecting consumer welfare.

Key Highlight

The law establishes a technical committee (the "Technical Committee") under the Ministry of Trade, Industry and Cooperatives to be the competition regulatory body to oversee competition matters, rather than creating an independent statutory body.

Potential Implications of the law, for Uganda's Economy and Consumers

The implementation of the law could have far-reaching implications for Uganda's liberalized economy and consumers for example:

- (A)** It will promote fair competition in the market. This could lead to lower prices in the market, better quality goods and services, and ultimately, increased consumer welfare. This could allow Ugandans to enjoy more choices for goods and services at competitive prices without compromising on quality.
- (B)** It will safeguard consumers from unfair practices such as misleading advertising, price fixing, and other unethical tactics employed by some businesses, and this will empower people to make informed market choices.

(C) The law is also welcomed to the extent that it is a pull factor for investment and boosting Uganda's economic growth. By establishing clear rules that foster healthy competition, the country is set to become a more attractive destination for investors. This translates to more job opportunities, innovation, and overall economic prosperity.

Challenges and Considerations

Despite its potential benefits, the Competition Act 2023 faces certain challenges and considerations.

- 1.** The government's approach of adopting a "Technical Committee" under the Ministry of Trade, is different from established international practice, as it does not establish an autonomous statutory authority to oversee, promote, and enforce compliance with the Competition Act. Therefore, the lack of an autonomous statutory authority to oversee competition matters, raises questions about the independence of the "Technical Committee" and its potential ability to enforce competition law independently of political and private-sector influence.
- 2.** There is need for alignment of the operations of the "Technical Committee" with those of independent sector regulators such as Uganda Communications Commission, Electricity Regulatory Authority, Insurance Regulatory Authority, Bank of Uganda, Petroleum Authority of Uganda, and others that enforce competition regulation at sector-specific level, as well as regional competition law regimes that bind Uganda such as the COMESA (Implementation) Act and the EAC Competition Act. The failure to align operations, may allow bad faith or frivolous complaints to be made to the committee and delay approval processes elsewhere in the sectors or region, and this may contrast with the need for clear exemptions and a cooperative mechanism with sector regulators, as seen in other countries such as Kenya and South Africa.
- 3.** The Act mainly outlines crucial principles yet its effectiveness hinges on detailed regulations and guidelines yet to be issued by the Ministry of Trade. This lack of supporting rules poses a significant challenge, potentially rendering the Act unenforceable in practice. To unlock its true potential and foster a fairer, more competitive market, the Minister must enact comprehensive regulations. These regulations should provide clear institutional and legislative structure, ensuring the Act's smooth implementation and offering certainty for businesses.
- 4.** The Competition Act leaves a potential regulatory gap for emerging areas like intellectual property (IP). While IP grants creators and inventors exclusive rights to their work, allowing them to control and benefit from it, this can also lead to market power and dominance. In turn, this dominance can potentially stifle innovation, harm competition if abused, and ultimately be detrimental to consumers. Therefore, it is crucial for the Minister's regulations to address this gap and establish clear guidelines for IP within the context of competition law.

Conclusion

Conclusively, the Competition Act 2023 represents a significant milestone in Uganda's efforts to establish a competition law regime. While the Act holds the potential to promote fair competition, protect consumers, and attract investment, it also presents challenges that require careful consideration, as highlighted in the above article.

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