

# REPUBLIC OF RWANDA



MINISTRY OF TRADE AND INDUSTRY

## Rwanda Competition and Consumer Protection Policy

Kigali, July 2010

## Contents

<b>1. Issue</b>	<b>3</b>
<b>2. Context/background</b>	<b>3</b>
<b>2.1 Competition and COMESA</b>	<b>4</b>
<b>2.2 Competition and the EAC</b>	<b>4</b>
<b>3. Vision and objectives</b>	<b>5</b>
<b>3.1 Vision</b>	<b>5</b>
<b>3.2 Objectives</b>	<b>5</b>
<b>4. Analysis</b>	<b>6</b>
<b>4.1 Functions of the Implementation/Enforcement Institution</b>	<b>6</b>
Investigations	6
Enforcement	6
<b>4.2 Institutional Structure Option 1: Stand alone</b>	<b>7</b>
<b>4.3 Institutional Structure Option 2: MINICOM Department</b>	<b>8</b>
<b>5. Preferred option: Option 2 – MINICOM DEPARTMENT</b>	<b>10</b>
<b>6. Stakeholders' views</b>	<b>10</b>
<b>7. Implementation plan</b>	<b>10</b>
<b>8. Financial implications</b>	<b>12</b>
<b>9. Legal implications</b>	<b>12</b>
<b>9.2 Regulatory overlap with utilities industries</b>	<b>13</b>
<b>9.4 Regulatory overlap with the EAC</b>	<b>14</b>
<b>10. Impact on business</b>	<b>14</b>
<b>11. Impact on equality, unity and reconciliation</b>	<b>14</b>
<b>12. Handling plan (communication plan)</b>	<b>15</b>

## **1. Issue**

One of the important functions of Government is to create an enabling environment in which enterprises operate. 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 consumers and producers.

As economies move progressively towards increased liberalisation, certain undesirable business practices can emerge which act as a hindrance to development and economic growth. The absence of a competition and consumer protection policy in Rwanda has created opportunities for some sectors of the business community 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 penalise those industries in Rwanda that have large shares of the market. Large and strong companies can enjoy economies of scale that enable them to minimise costs and withstand both domestic and foreign competition. On the other hand, such firms can occasionally practice anti-competitive behaviour. It is important to ensure that consumers are adequately protected from firms, whether large or small, which engage in collusion that is designed to prevent competition.

Competition policy is complementary to trade liberalisation. The consumer welfare and developmental benefits resulting from trade and investment liberalisation, 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 realised unless business firms are prevented from imposing restrictions on competition.

In the light of Rwanda's commitment to a liberalised economy, there is a need for a fair and equitable environment where producer and consumer can maximise 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. In the light of this, it is therefore imperative for Rwanda to develop this Policy ensuring the supporting legislation, infrastructure and regulations.

## **2. Context/background**

Since 1995, a bold programme of socio-political reforms, aimed at improving justice, governance, human resource development and democratisation has been implemented in Rwanda. This has been in parallel with economic reform. Important changes that have been made include privatisation 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 modernise its legislative and regulatory framework for trade and investment, with the aim of fostering a modern and competitive private sector. The emergence of a viable private sector to serve as the principle engine of the economy is key to Rwanda's development. It is in this context that Rwanda's economy is expected to become "private sector led" by 2020.

This Competition Policy is formulated with the aim of contributing to wider government EDPRS strategy of strengthening the policy, institutional and legal framework under

which the private sector operates. The development of the Competition Policy is crucial to the creation of the proper market conditions for private sector development. Furthermore, firms facing competitive pressures in the national context are more likely to survive in the extremely competitive international context. Promoting competition at home in Rwanda is therefore the best long-term strategy to promoting Rwandan firms abroad.

### ***2.1 Competition and COMESA***

The current context of 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 European Union are and will increasingly expose 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 behaviour in Rwanda that would have been forbidden in their home countries.

COMESA is formulating and implementing a regional competition policy. The policy shall be consistent with the 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<sup>1</sup>. Existing national competition policies shall be harmonised and brought in line with the regional policy to ensure consistency, avoid contradictions and provide a regionally predictable economic environment. Rwanda's Competition Policy is a necessary complement to COMESA's regional competition policy.

### ***2.2 Competition and the EAC***

The East African Legislative Assembly enacted an East African Community Competition Act in 2006. The Sectoral Council Trade, Industry, Investment and Finance recently adopted the EAC Competition Regulations 2009 for the soon to be established EAC Competition Authority.

Article 4 (1) of the EAC Act provides that it shall apply to all economic activities and sectors having cross border effects. 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 Directorate General for Competition works with national competition authorities in enforcing competition rules within the region.

However, departing from EU practices where national authorities have parallel competence and are expressly empowered to make determinations based on precedents set in EU case law, 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 findings based on the EAC Act, thus reinforcing the need for partner states to set up their own competition law, policy and authorities.

---

<sup>1</sup> Under the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

Furthermore, the EAC Competition Authority and EAC Court of justice will not be a court of appeal above national competition authorities – since the EAC Authority is only allowed to pass judgement on cases involving cross-border economic activity, that is involving more than one country.

It is also important to note that the Competition Policy 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.

### **3. Vision and objectives**

#### ***3.1 Vision***

The vision of this Competition Policy is to:

*Incorporate the interests of consumers, emerging entrepreneurs, and existing firms, through the promotion of free and active competition in Rwandan markets; protecting the ability of our large corporations to penetrate international markets, just as we must allow foreign investors to do business in Rwanda; promoting transparency, greater national competitiveness, and the facilitation of entry into markets all within a context that seeks to promote the growth and development of Rwandan enterprises.*

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.

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.

#### ***3.2 Objectives***

The Competition and Consumer Protection policy has the following specific objectives:

- To provide consumers with competitive prices and product choices at the best possible quality.
- To ensure 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 organisational innovation.
- To enhance the competitiveness of Rwanda enterprises in world markets by exposing them to competition within the country.
- To create a conducive environment to foreign direct investment in the country.

- To promote economic efficiency and enhance consumer choice, encouraging the development of Rwanda's economy.

#### **4. Analysis**

The main role of the Rwanda Competition and Consumer Protection Policy is to promote fair competition, providing consumers access to products and services at competitive prices and better quality and to create an environment, which is conducive to investment.

This section appraises the various options for the implementation of the Competition law and policy.

##### ***4.1 Functions of the Implementation/Enforcement Institution***

For the effective implementation of the Competition Law and Policy, there is need for an institutional framework to regulate, monitor, investigate, control and prevent acts or behaviour, which are likely to adversely affect competition and fair trading in Rwanda. This would include the following more specific functions:

###### ***Advocacy***

- To encourage and promote competition in all sectors of the economy.
- To provide information for the guidance of consumers regarding their rights under the Competition and Consumer Protection Act.
- Outreach activities to educate the public at large about the benefits of competition, for example, consumer awareness seminars, outreach newsletters etc
- To cooperate with other national, regional and international competition Authorities.
- The review of existing and proposed laws and regulations, including possible sources of public restraints on competition e.g. sectoral regulation, trade policies and investment policies.
- Providing suggestions and advice on government policies and measures that promote anti-competitive practices or inefficiencies.
- Developing continuous dialogue with key decision makers participating in regulatory proceedings, particular sector regulators.

###### ***Investigations***

- To investigate, discourage and prevent restrictive business practices in the market.
- To carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of business so as to determine whether any enterprise is carrying on anti-competitive trade practices.
- To carry out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger.

###### ***Enforcement***

- To reduce barriers to entry into any sector of the economy or to any form of economic activity.

- The formulation, co-ordination, implementation and administration of government policy in regard to economic competition.
- Ordering interim measures suspending a practice that restricts competition and consumers rights.
- As a result of its investigations, to make orders or issue directives aimed at preventing, prohibiting or punishing anti-competitive practices or abuse of consumers.
- To make orders or issue directives regarding mergers, as to whether they constitute a violation of the Competition and Consumer Protection Act.
- 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.

#### ***4.2 Institutional Structure Option 1: Stand alone***

For this option, the Commission would be created as a stand-alone entity. This is the typical model for competition enforcement and regulation in most countries. This option would entail the setting up of an independent, effective body for the enforcement and implementation of Rwanda's Competition Policy. The institution would have administrative and financial autonomy.

A Board of Directors would strategically govern the work of the Commission. There would be a Management Team in charge of the day-to-day management activities of the Commission. The Chief Executive Officer or Commissioner will have four Directors heading the four Directorates of the Commission - Administration, Advocacy, Investigations, and Enforcement, shall head the Management Team of the Commission.

It is likely for the extremely technical nature of the work, external consultancy services would be required for specific investigations, particularly large mergers and acquisitions.

#### ***Advantages***

- The independence of the stand-alone Commission could enable it to carry out its activities more efficiently.
- The specialised nature of the agency guarantees that its resources and energies will be focused on competition regulation.
- The Commission could be a light body, using consultants to bring results.
- It is in line with the UNCTAD model law on Competition enforcement as well as international and regional best practices.

#### ***Disadvantages***

- The stand-alone Commission is likely to be expensive. Extra resources will be required for the institution to operate at the same level of work as a Department

### ***4.3 Institutional Structure Option 2: MINICOM Department***

This option would entail the Commission acting as an additional department within the Ministry of Trade and Industry. The Chief Executive Officer would be a Director General, a Director or a co-ordinator, leading the Department and reporting to the Permanent Secretary of the Ministry.

A Department of Competition Regulation and Enforcement within the Ministry of Trade and Industry could assume a number of the responsibilities of the current ‘Internal Trade’ Department and therefore could see a shift in some staff from that Department to the new ‘Commission’.

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.

#### ***Advantages***

- It would be simpler and cheaper to set up than a stand-alone body.
- It would not require its own administration Director and staff as it would use the administration infrastructure within place in the Ministry.
- If kept as a relatively autonomous body within the Ministry, it could eventually be made a stand-alone entity when sufficiently resourced.

#### ***Disadvantages***

- The Directorate would have to compete for funding and priority status with the many other functions within the Ministry.
- The lack of autonomy may compromise the execution of its duties.
- There may be perceived conflicts of interest with the other work under the remit of the Minister for Trade and Industry.
- Not consistent with international best practice.

Table 1 shows the advantages and disadvantages of each of the two options. It also makes an estimate of the number of staff or external consultancy that could be affordable for each option, given the expenditure likely on infrastructure and administration and given that staff costs would be higher for an independent commission than for staff of MINICOM. Annex 1 shows how this calculation was made in more detail.

***Table 1: Comparative analysis of options***

	<b>Advantages</b>	<b>Disadvantages</b>	<b>Need in infrastructure</b>	<b>Number of staff affordable</b>
<b>Option1: A stand-alone</b>	In line with international best practice	Expensive option Most time-	Administrative Building for rent	1 CEO 4 Directors



<b>Commission</b>	No conflicts of interest within the organisation	consuming to set up	ICT Equipment	0 Additional
<b>Option2: A Department within MINICOM</b>	Significant crossover between the work of MINICOM's Internal Trade team and the Consumer Protection remit of the Commission  Less costly option due to infrastructure already in place  Less costly staff	Potential for conflicts of interest  Difficult to remain autonomous within a Ministry  Competition for priority with other MINICOM priorities  Lower remuneration may attract less skilled staff	ICT Equipment	1 CEO 3 Directors 7 Additional or 64 days of external consultancy

The option of a stand alone Commission would be expensive. There would be set up costs in terms of administration and accommodation. In order for the Commission to be able to carry out its remit effectively, a larger sum would be required than the existing allocation in the MINICOM medium term expenditure framework (MTEF), either from Government allocation or from supporting donor funding.

**Table 2: Additional financing required for commission if accommodation taken into account**

	<b>Existing Finance</b>	<b>Existing allocation</b>	<b>Extra needs</b>	<b>Additional financing required</b>
<b>Option1: A stand-alone Commission</b>	2009-2010 - 35.2m Rwf 2010-2011 - 39.4m Rwf 2011-2012 - 44.3m Rwf	ICT Equipment 1 CEO 4 Directors 42 days of external consultancy	50 days of external consultancy per year	14.2m Rwf per year

As shown in Table 1, the high cost of administration would leave very little resources for running expenses, particularly if this was to require consultancy expenditure for investigations. Savings could be made by housing the Commission within the existing MINICOM building or with RDB, at around 12 million Rwf. The calculations in Table 2

show what the existing allocation could afford<sup>2</sup> if accommodation is taken care of. It shows that in order to ensure an effective Authority, 14.2m Rwf more per year are required.

If the Authority were to have its own accommodation, 26.2m Rwf per year would be required.

## **5. Preferred option: Option 2 – MINICOM DEPARTMENT**

The Preferred Option for this policy is the establishment of the Competition department within the Ministry of Trade and Industry. While an independent stand alone Commission is the ideal option, which is reflected, in international practice, a number of challenges do not make this option feasible for the moment. This policy therefore advocates the establishment of the MINICOM Competition department until such a time that adequate capacity and resources are developed in Rwanda for a stand alone, independent commission.

This option allows Rwanda to reap the immediate advantages of a Competition department in the Ministry of Trade without foreclosing the establishment of an independent Commission or the upgrading of the department into a full blown Commission further down the line. It also enables Rwanda to gradually develop the capacities necessary to establish a full Competition Commission in the future.

## **6. Stakeholders' views**

Representatives of all stakeholder groups involved in the policy were consulted during the policy making process. The inputs from these consultations have been incorporated into the Competition and Consumer Protection Law as well as the policy. Key inputs relating to the effective implementation of the Competition and Consumer Protection policy were received from BNR, RURA and RBS. In particular, stakeholders were engaged on the institutional arrangements for areas of shared responsibility with sector regulators.

## **7. Implementation plan**

### ***Policy Implementation Plan***

<b>Programme</b>	<b>Activities</b>	<b>Responsible</b>	<b>Timeframe</b>
<b>Staffing of the Competition Enforcement</b>	Recruitment and Training of Department Coordinator and Department Staff	MINICOM	September 2010

<sup>2</sup> External consultancy assumed to cost \$500 per day.

<b>t Department</b>			
<b>Advocacy Activities</b>	<p>To encourage and promote competition in all sectors of the economy.</p> <p>To provide information for the guidance of consumers regarding their rights under the Competition and Consumer Protection Act.</p> <p>Outreach activities to educate the public at large about the benefits of competition, for example, consumer awareness seminars, outreach newsletters etc</p> <p>To cooperate with other national, regional and international competition Authorities.</p> <p>The review of existing and proposed laws and regulations, including possible sources of public restraints on competition e.g. sectoral regulation, trade policies and investment policies.</p> <p>Providing suggestions and advice on government policies and measures that promote anti-competitive practices or inefficiencies.</p> <p>Developing continuous dialogue with key decision makers participating in regulatory proceedings, particular sector regulators.</p>	MINICOM	September 2010 onwards
<b>Investigation Activities</b>	<p>To investigate, discourage and prevent restrictive business practices in the market.</p> <p>To carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of business so as to determine whether any enterprise is carrying on anti-competitive trade practices.</p> <p>To carry out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger.</p>	MINICOM & RURA	September 2010 onwards
<b>Enforcement Activities</b>	<p>To reduce barriers to entry into any sector of the economy or to any form of economic activity.</p> <p>The formulation, co-ordination, implementation and administration of government policy in regard to economic competition.</p> <p>Ordering interim measures suspending a practice that restricts competition and consumers rights.</p> <p>As a result of its investigations, to make orders or issue directives aimed at preventing, prohibiting or punishing anti-competitive practices or abuse of consumers.</p>	MINICOM & RURA	September 2010 onwards

	<p>To make orders or issue directives regarding mergers, as to whether they constitute a violation of the Competition and Consumer Protection Act.</p> <p>Imposing sanctions where necessary in accordance with law related to competition and consumer protection.</p> <p>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.</p>		
--	---	--	--

## 8. Financial implications

The current provision for Competition enforcement and regulation within the MINICOM medium term expenditure framework (MTEF) is set out below. Without any specific reallocation of resources from MINECOFIN, it should be assumed that this is the amount of resources with which to set up the Competition department and begin enforcement activities. Where possible, additional donor funding will be secured to fund the activities of the Competition department.

**Table 2: Funding for Commission under MINICOM's MTEF**

MTEF year	Operation Funds
2009-2010	35.2m Rwf
2010-2011	39.4m Rwf
2011-2012	44.3m Rwf

## 9. Legal implications

The Rwanda Competition Law and Consumer Protection Policy will be anchored by new legislation, the Competition and Consumer Protection Act. The Act aims at encouraging competition in the Rwandan economy by prohibiting anti-competitive trade practices; and regulating and monitoring monopolies and concentrations of economic power in order to strengthen the efficiency of production and distribution of goods and services in Rwanda.

In addition, the Act will repeal the existing laws that have been guiding the application and enforcement of Competition policy in Rwanda. The laws to be repealed is "Ordonnance Législative" n°41/63 of 24th February 1950 concerning repression of unlawful competition.

In reducing restrictive business practices, the Government shall by statute under the new Competition and Consumer Protection Act:

- 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 will 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.

## ***9.2 Regulatory overlap with utilities industries***

While the new Act does not exclude any sector of the Rwandan economy, a number of the sector regulators have also been given powers to regulate competition in their respective sectors. For example, the 2001 Act establishing an Agency for the Regulation of Certain Public Utilities (RURA Act) provides in Article 5 (3) that RURA shall continually promote the interest of users and potential users of the goods and services provided by utilities so that there is effective competition when competition is introduced in each utility sector and protection of users from abuses of monopoly positions is ensured due to the fact that certain Public utility sectors have a monopoly over the market.

From this it is apparent that there is a clear overlap of responsibilities between the Competition department and the Regulatory agency. In addition, Articles 40-50 of the RURA Act provide for the powers of the RURA Regulatory Board in enforcing competition. The key provisions (Article 40) include the power to investigate and terminate anti-competitive conduct as well as to impose sanctions in respect of anti-competitive conduct. It also includes a requirement to inform the Minister determined by the President of the Republic proof of any anti-competitive conduct; the measures taken and the sanctions which have been applied.

While the RURA Act does not state that the Minister has a veto over the Regulatory Board's determinations on competition enforcement, it does suggest that the Regulatory Board does not have complete independence in terms of competition issues and that

consequently it would still have to defer in some ways to the Minister of Trade and Industry in terms of competition enforcement, even in the regulated sectors.

The policy implication of this therefore is that there is legal scope for the Competition Department (through the powers vested in the Minister of Trade and Industry) to exercise jurisdiction on competition issues over regulated sectors. As recommended earlier, the exercise of this jurisdiction should be done through a co-operation procedure or memorandum of understanding to ensure that there is coherence and consistency in the application of competition law and policy over key sectors of the Rwanda economy.

#### ***9.4 Regulatory overlap with the EAC***

As noted earlier, 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.

Even though Rwanda is subject to the EAC Competition Act, there is a clear distinction between the application of the local competition legislation and the application of the EAC competition legislation. While the Rwanda Act applies to economic activities within Rwanda, the EAC Act shall apply to all economic activities and sectors having cross border effects. There is therefore the scope for the regional competition authority to function alongside with national authorities. This is similar to the practice in the European Union.

However, it is not clear that the national courts will be able to apply the regional Competition Bill because the language of the EAC Bill gives the EAC Competition authority exclusive original jurisdiction in the determination of the violations of the Act.

### **10. Impact on business**

Competition Policy refers 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. Competition policy is a regulatory tool that limits the conduct of economic actors to ensure that the benefits of competition are not frustrated by the erection of private barriers to trade.

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. Therefore, the ultimate outcome of the competition and consumer protection policy is to provide a fair business climate in Rwanda. The impact on business will therefore depend on the degree to which they violate competition law. If not, they will surely benefit from the improved efficiencies and prevention of anti-competitive practices.

### **11. Impact on equality, unity and reconciliation**

The competition and consumer protection policy in its nature promotes equality by providing fair business framework in which economic operators are offered the same opportunities and chances to compete each other. By offering economic agents the same

conditions or a level playing field for business, unity and reconciliation can follow so long as the implementation of policy is efficient and effective.

**12. Handling plan (communication plan)**

The Competition Department, once set up, will generate the communication for the new policy. The advocacy experts in the new department should therefore undertake dissemination of the final policy and its implications.