



Overview of the 2024 Competition Act

Background

The Competition Act, 2024 ("the Act"), marks a significant development in Uganda's competition law landscape. It aims to promote fair competition, protect consumer interests, and facilitate economic growth by addressing anti-competitive practices and regulating mergers and acquisitions.

The Act addresses a wide range of anti-competitive practices including agreements that restrict competition, abuse of dominant positions (*practices by firms who holds significant power or control in a particular market to the detriment of their competitors and consumers*) and the effects of mergers and acquisitions on market competition (*the Act scrutinizes these corporate activities to ensure they do not harm competition*). It uniquely incorporates public interest considerations such as employment and economic stability into its assessments. This transparency is intended to ensure that all relevant perspectives are considered before decisions are made.

Oversight - The Ministry of Trade, Industry and Cooperatives plays a crucial role in enforcing the Competition Act.

The Ministry is responsible for overseeing the implementation of the Competition Act and this includes establishing a framework for regulatory compliance and ensuring that businesses adhere to competition laws.

A **Technical Committee on Competition and Consumer Protection** will assist the Ministry in its enforcement duties. This committee is tasked with investigating anti-competitive practices, reviewing merger applications, providing expert opinions on competition matters, promoting fair competition, and collaborating with regional competition authorities.

Prohibitions: The Act explicitly prohibits anti-competitive practices such horizontal cartel conduct such as price-fixing, market sharing, bid-rigging, and certain vertical agreements like exclusive supply arrangements. Abuse of dominance, which includes unfair pricing strategies, limiting production, and exclusionary tactics like predatory pricing.

Inquiries and Enforcement the Ministry, is further empowered to (a) inquire into complaints of anti-competitive conduct, (b) order cessation of such activities by enterprises and (c) levy prescribed penalties/fines on violation.

Mergers and Acquisitions- entities planning mergers or acquisitions must notify the Ministry. The Ministry evaluates potential adverse effects on competition and has the authority to approve or reject these transactions.

On 19th April, 2024, Uganda made a noteworthy advancement in its regulatory landscape with the enactment of the Competition Act, 2024 ("the Act"). The Act introduces a framework aimed at fostering fair competition, protecting consumer interests, and driving economic growth by addressing anti-competitive practices and regulating mergers and acquisitions.



Penalties- Violations of the Act can result in significant penalties, including fines or imprisonment depending on the severity of the offense.

Challenges and Implementation

Concerns have been raised about the dual role of regulation and government by the Ministry of Trade that administers the Act through the new Technical Committee set up under it, as well as potential political influence.

One of the key hallmarks of the Act is that it includes "public interest" considerations as part of competition analysis, which can weigh in upon merger approvals and market practices provided they are not anticompetitive to a significant degree. Potential bureaucratic delays and regulatory approvals, particularly linking to public interest assessments, may pose hurdles against the enforcement of the Competition law.

Operationalisation of the Act

The Competition Regulations are expected to be released later this year to operationalize the Competition Act, 2024 in Uganda. These regulations will provide crucial details regarding the processes and documentation required for approvals related to mergers, acquisitions, and joint ventures under the Act.

Key Aspects of the Upcoming Regulations

- **Approval Process:** The regulations will outline the specific steps that companies must follow when seeking approval for mergers or acquisitions. This includes detailed documentation that must be submitted to the Ministry of Trade, which is responsible for enforcement.

- **Timeline for Review:** Once a notification is received, the Ministry is mandated to conduct an inquiry within 120 days to assess whether the proposed transaction would adversely affect competition in the market

- **Documentation Requirements:** The regulations will specify what types of documentation are necessary for different types of transactions, ensuring clarity for businesses navigating the approval process

The introduction of these regulations will be significant as they will complement the Competition Act.

The anticipated regulations will help fill in gaps left by the Act itself, particularly regarding operational details that businesses need to comply with. This move is expected to enhance regulatory clarity and foster a more competitive business environment in Uganda, ultimately benefiting consumers through better prices and services.

Regional Competition Authorities

It should be noted that the Act does not account for coordination with regional competition frameworks, such as the COMESA regime. As a result, parties may need to submit notifications to both the Ministry and regional competition authorities, including the COMESA Competition Commission. According to regional practices, it is expected that the Ministry will defer jurisdiction to regional regulators like the COMESA Commission or the East African Community competition framework (once established), particularly when such regional thresholds are met. This approach aims to prevent duplication and excessive regulation.



Conclusion

The Act provides for a comprehensive legal framework to serve the interest of fair competition and consumer protection in Uganda. In dealing with both anti-competitive practices as well as the dynamics surrounding mergers and acquisitions, the Act has put in place a regulatory environment for conducting business which will position Uganda on an imperilled ground to compete much more effectively in the global economic arena.

The Competition Act is a significant stride on the part of Uganda to reform its competition regulation as it introduces public interest considerations into their framework.

While it aligns with regional trends in addressing anti-competitive practices, its unique focus on socio-economic factors sets it apart from the more traditional frameworks seen in Kenya, Rwanda, and Tanzania. Nevertheless, the success of this Act will depend greatly on how it gets enforced and the regulatory body remains autonomous.

OUR TEAM

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