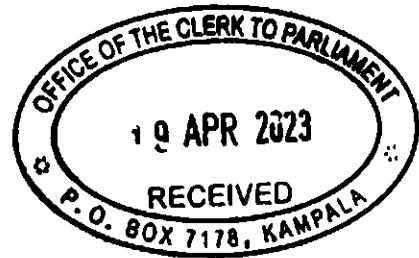




PARLIAMENT OF UGANDA



REPORT OF THE COMMITTEE ON TOURISM, TRADE AND INDUSTRY ON THE COMPETITION BILL, 2022

Handwritten signatures and initials scattered across the page, including names like 'Kine', 'Judy', 'EDM', and 'Musa'.

Office of the Clerk to Parliament,

March, 2023

1.0 INTRODUCTION

Rt. Hon. Speaker and Hon. Members,

The Competition Bill, 2022, was read for the First Time on 30th November, 2022 and referred to the Committee on Tourism, Trade and Industry for consideration in accordance with Rule 129 (1) of the Rules of Procedure of Parliament. The Committee considered the Bill according to Rule 129 (2) (3) and (4) of the Rules of Procedure of Parliament and now reports as follows:

2. 0 POLICY AND PRINCIPLES OF THE BILL

The policy behind the Bill is to promote and sustain fair competition in markets in Uganda; to prevent practices having an adverse effect on competition in markets in Uganda and for related matters.

The primary goal of the Bill is to control anti-competitive behaviour of firms that has a negative impact on competition in Uganda's market. Furthermore, the Bill seeks to encourage and maintain market competition, safeguard the interests of consumers, and safeguard market freedom in the markets in Uganda.

2.1 DEFECTS IN THE EXISTING LAWS

Uganda has no specific law that controls anti-competitive behaviour of Firms in the markets in Uganda. A few sectors like banking and energy have competition provisions in the laws regulating them. Such provisions are restricted to those sectors and are not comprehensive enough for the purposes of competition law. The Bill seeks to provide a comprehensive set of principles to regulate competition in all sectors.

2.2 REMEDIES PROPOSED TO DEAL WITH THE DEFECTS

The Competition Bill, 2022 seeks to provide for:-

- a) Establishment of a comprehensive legal regime on competition in Uganda.
- b) Avoiding certain activities in the market that hurt the businesses or consumers or both sectors and curb the practices violating the ethical behaviour or the market.

EDM

- c) Sustainability of competition in the market and considers the interests of the consumers and allows the participants of the Ugandan market to trade with freedom.
- d) Promotion of competition between enterprises and leaves the market unbound by the manipulation of stronger trading enterprises.
- e) Regulation of anti-competitive agreements, abuse of dominance, mergers and acquisitions.

3.0 BACKGROUND

The first Bill on competition was developed in 1998 but was never enacted into law. In the absence of such legislation, sector regulators such as the Uganda Communication Commission, Bank of Uganda, and Electricity Regulatory Authority have attempted to control unfair trading practices and general consumer protection in the respective sectors by establishing regulations for the purpose. These have, however been insufficient and grossly inadequate for competition regulation in the country since provisions in such regulations are restricted to those sectors.

The absence of a Law to regulate competition in the country has caused various threats to Uganda's free market economy that can only be adequately addressed by effective trade sector regulation and or in a coherent manner.

3.1 Background to the Competition Bill, 2022

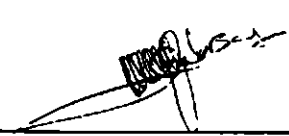
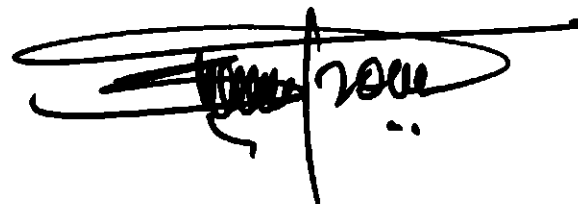
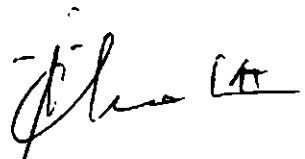
Article 21 of the Protocol on the Establishment of the East African Customs Union provides for the requirement by Partner States to prohibit any practice that adversely affects free trade including any agreement, undertaking or concerted practice which has, as its objective or effect, the prevention, restriction or distortion of competition within the East African Community. As such the East African Community has a vision to promote economic integration through ensuring that there is fair competition.

All the Member States are obliged to adopt individual policies and laws pertaining to achieving the above vision. The enactment of a Competition Law in Uganda is key in the realisation of the said vision since other Member States including Kenya and Tanzania have Competition laws while Rwanda has in place the Rwanda Inspectorate Competition and Consumer Protection Authority.

For regional integration, market surveillance in the East African Community is buttressed by Section 6 of the EAC Standardization, Quality Assurance, Metrology and Testing Act (SQMT) Regulations 2013 that are intended to enhance the operationalization of the EAC Standardization, Quality Assurance, Metrology and Testing Act (SQMT) of 2006. It is on this basis that the Competition Bill was formulated.

4.0 MANDATE OF THE COMMITTEE IN REFERENCE TO THE BILL

The Sectoral Committee on Tourism, Trade and Industry derives its mandate from Article 90 of the Constitution of the Republic of Uganda¹, and accordingly, Rules 156², 159³, 187⁴ and 189⁵ of the Rules of Procedure of Parliament. These provisions enjoin the Committee with the authority and power to, among others, discuss and make recommendations on bills laid before Parliament.




¹ Article 90(1) provides that Parliament shall appoint committees necessary for the efficient discharge of its functions. In 90(2), Parliament shall, by its rules of procedure, prescribe the powers, composition and functions of its committees.

² Rules 156(1) & (2) reiterate the above constitutional provisions.

³ As all other committees, its general functions, according to rule 159 include: assessing and evaluating activities of Government and other bodies (in para. (c)), carrying out relevant research in the committee's respective field (in para. (d)), and reporting to Parliament on its functions (in para. (e))

⁴ Rule 187(1) provides for the existence of Sectoral Committees of the House, and in sub-rule (2)(b), there shall be a Sectoral Committee on the Tourism, Trade and Industry sector.

⁵ Specifically, as a Sectoral committee, rule 189 charges it with functions that include: to examine and comment on policy matters affecting the Ministry of Trade, Industry and Cooperatives and the Ministry of Tourism, Wildlife and Antiquities (in para. (a)); to initiate or **evaluate action programmes of the said ministries and their sectors and to make appropriate recommendations on them** (in para. (b)); to monitor the performance of Ministries, Departments and Agencies (MDAs) (in para. (e)); to monitor Government compliance with approved plans and programmes (in para. (f)), and to monitor the progress on implementation of the Sustainable Development Goals (SDGs) made by the tourism, trade and industry sector (in para. (g))

In effect, on 30th November, 2022, the Competition Bill was read for the first time and was referred to the Committee on Tourism, Trade & Industry for consideration by the Rt. Hon. Speaker of the Parliament of Uganda, in accordance with Rule 129(1) of the Rules of Procedure of Parliament. The Committee executed her mandate by carefully and critically analysing the provisions of the Bill and making recommendations for the consideration of Parliament.

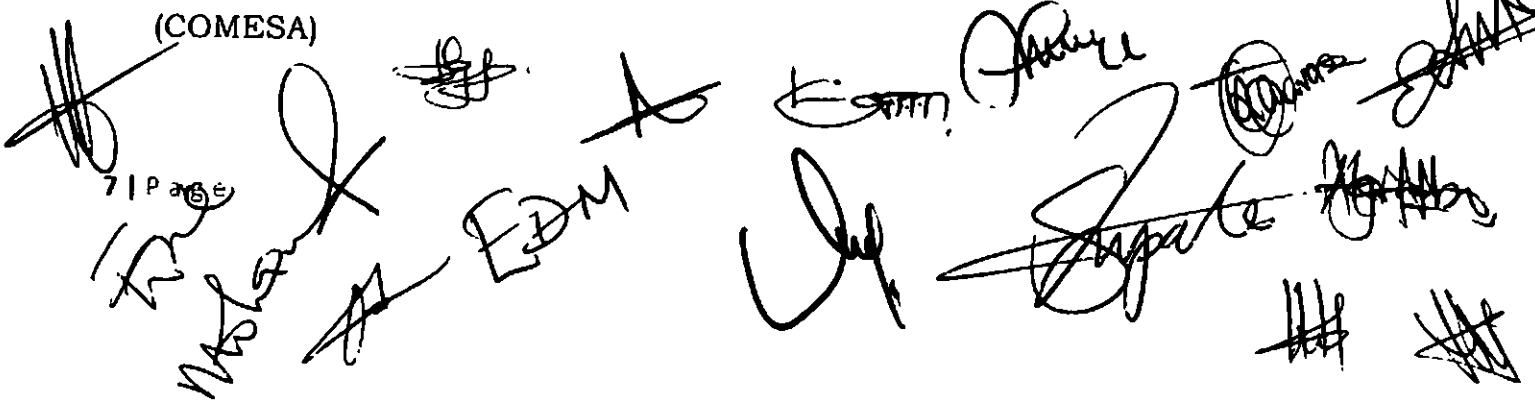
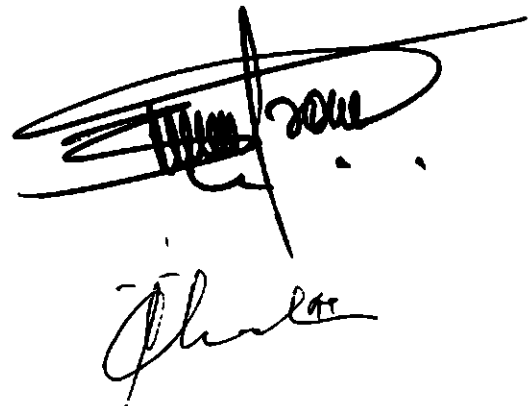
5.0 METHODOLOGY

The Committee employed the following methods of work;

5.1 Meetings

During the consideration of the Bill, the Committee held consultative meetings with the following stakeholders;

1. Ministry of Trade Industry and Cooperatives
2. Ministry of Health
3. Ministry of Energy and Mineral Development
4. Ministry of Agriculture, Animal Industry and Fisheries
5. The Uganda National Chamber of Commerce and Industry
6. The Financial Intelligence Authority
7. Private Sector Foundation (PSF)
8. Uganda Law Society (ULS)
9. Uganda Law Reform Commission (ULRC)
10. Uganda Communication Commission (UCC)
11. Uganda Manufacturers Association (UMA)
12. MTN Uganda
13. Airtel Uganda
14. National Organisation of Trade Unions (NOTU)
15. Uganda National Bureau of Standards (UNBS)
16. National Drug Authority
17. The Secretariat for the Common Market for Eastern and Southern Africa (COMESA)



7.0. COMMITTEE OBSERVATIONS AND RECOMMENDATIONS:

7.1 GENERAL OBSERVATIONS

The Committee made the following General Observations on the Bill:

1. Uganda has never had a National Competition Law.

The Competition Law is timely because Uganda has never had a national competition law. Despite being developed in 1998, the first Bill was never made a Law. In the absence of such legislation, the regulation of competition has been applied on a sector-specific basis. The key sectors have been; telecommunications, electricity, insurance, banking, energy, among others. One of the key defects in the current regulatory approach to competition in Uganda is that sectoral regulation is not comprehensive to cover all matters related to competition in the country.

2. Positive aspects of the Bill

The Bill seeks to provide for protection of consumers because it provides for fairness and level playing fields for each of the participants in the market which are important for its sustainability and advancement. When there is perfect competition in the market, the consumer is sovereign, as his/her welfare is increased.

The Competition Bill 2022 aims at fostering competition, not stopping it, by regulating it and making sure that the activities of business entities do not have an adverse impact on the market and the economy. The Bill's three most important features are; prohibition of anti-competition agreements, abuse of dominant position, and regulation of mergers, acquisitions, and joint ventures.

Some mergers however may reduce competition in a market, usually by creating or strengthening a dominant player. The objective of examining proposed mergers, acquisitions and joint ventures is perfect in curtailing

me
Page 10
EDM
The
#

harmful effects on competition. The Bill also prohibits abuse of dominant position.

3. Consistency with the strategic aspirations of facilitating the growth of the trade sector in the EAC Community:

Uganda is part of the EAC Community, the EAC established the EAC Competition Act in 2006 to deliver mandate that is largely mirrored in the Competition Bill. Kenya, the largest economy in EAC established the Competition Authority of Kenya in 2010, moving in the direct footsteps of the EAC. Therefore the initiative by Government of Uganda to come up with a competition law is consistent with the strategic aspirations of facilitating the growth of the trade sector though in a regulated manner, where all win. Competition is bound to further grow with the deepening of integration. At EAC level, DRC has since joined EAC while Somalia and Ethiopia are anticipated to join.

4. Uganda is an active member of COMESA and part of the COMESA Free Trade Area.

At continental level, Uganda has assented to the Africa Continental Free Trade Area that has created a universal market of US\$21.9billion, which affirms the degree of future competition. Therefore, enacting a Competition Law is an important development imperative for Uganda but most importantly, the effective and efficient implementation of the law is even more important since countries only integrate largely to trade and Uganda shall continue being subject to global competition given the trading regime the country has already signed up to.

5. Threats to Uganda's free market economy:

There are various threats to Uganda's free market economy that can only be adequately addressed by effective trade sector regulation. These threats include abuse of monopoly and market dominance, mergers, cartels, bid rigging, predatory pricing, among others. These actions undermine competitive pricing and drive out small businesses since they are unable to compete. The

Handwritten signatures and notes:
- Large signature on the left side.
- "11 | Page" written below the signature.
- "EDM" written at the bottom center.
- Various other illegible signatures and initials scattered across the bottom of the page.

Competition Bill is critical to govern domestic markets in the interest of the general populace.

6. Facilitating growth of the trade sector in a regulated manner:

The Bill is consistent with the strategic aspirations of facilitating the growth of the trade sector in a regulated manner. On one hand, the bill aims to discipline behaviour of large Firms especially transnational corporations, which sometimes exhibit a tendency to corner markets; on the other hand, it can promote production efficiency among local firms by promoting a level playing field. The Bill will also protect transnational corporations from being exploited by dominant domestic firms especially the State owned because markets are seldom perfect and are sometimes vulnerable to abuse by dominant players.

7. Regulation of mergers:

In 2015, a wave of mergers hit Uganda with the intention of out-competing other firms doing related business. Regulation of mergers creates room for small firms to increase their threshold in production and deters big enterprises from out-competing the small firms from the market through merging. Therefore regulation of such mergers protects smaller firms from being taken advantage of by other firms.

7.2 SPECIFIC OBSERVATIONS ON THE BILL:

7.2.1 PART 1- PRELIMINARY

1. The Bill is for an Act entitled, "Competition Act". The Committee notes that the Bill seeks to promote and sustain fair competition in the markets in Uganda and to prevent practices having adverse effect on competition in markets.

Under part 1 of the Bill, there is provision for several exemptions. According to the Bill as proposed by the Government, the Competition law does not apply to agreements arising out of international obligations, any person or enterprise performing a sovereign function on behalf of Government.

[Handwritten signatures and initials at the bottom of the page, including "Edm", "Grove", "Ecom", "Subson", "Phala", "Agh", "JWA", "H", "JWA"]

The proposed law further mandates the Minister to exempt any enterprise from the application of the law if it is necessary for national security or public interest.

Committee Observations:

The Committee observes that the exemptions granted under clause 1(2)a) is redundant. This is so since there is enacted the East African Community Competition Act, 2006 which deals with the extra-territorial anti-competitive practices in the Community. The COMESA, SADC among other regional blocks also have elaborate provisions on extra-territorial anti-competitive practices.

The Committee further observes that the exemption in sub-clause (2)b), is too broad and subject to abuse. There are several companies wholly or partly owned by the Government that are exercising sovereign functions and earn profit. Examples cut across all sectors of the Economy including education and health. It would therefore be unfair for other private players to compete with the Government while it is exempted.

Under Part1, clause 1 (3)(b), the power given to a minister to issue a Statutory Instrument to exempt any class of enterprises from the anti-competitive agreements under this Bill, is likely to be abused by individuals in the system who will influence the State to give them preferential treatment in the market and grant them unconscionable agreements in the name of promoting and enhancing development and value addition in production.

The Committee further observes that the provision is unnecessary in view of the exemptions already awarded to the Government in the same clause in cases of exercising of a sovereign function.

All the different jurisdictions in the East African Block and COMESA allow for the application of the Act on all economic activities.

A collection of handwritten signatures and initials in black ink, located at the bottom of the page. The signatures vary in style, with some being highly stylized and others more legible. One signature on the left includes the number '13' and the word 'PAGE'. Other initials include 'EDM' and 'JLH'.

Committee Recommendations:

- (i) **The law should apply to all economic activities within Uganda if it is for economic gain. The legislation should apply to all persons including the government, state corporations and local authorities in so far as they engage in trade.**
- (ii) **The exemptions, if any, should be on a case-by-case basis and not by Statutory Instrument. In the alternative, the Committee recommends that the Government be given preferential treatment as opposed to exemptions.**

7.2.2 PART II OF THE BILL- ADMINISTRATION

2. Part II of the Bill provides for the Administration of the Act. It provides that the Ministry responsible for Trade is in charge of implementation of the law on competition. To properly perform the functions stipulated, the Ministry is to be assisted by a Technical Committee on competition and consumer protection. The Technical Committee shall comprise persons knowledgeable in competition and consumer matters from Ministries, Departments and Agencies of Government, the private sector and academia.

Committee Observations:

The Committee noted that the Bill gives a very wide mandate to the Ministry; implementation of both consumer protection and competition matters, but does not provide a corresponding structure to ensure that all issues competition are adequately addressed. It is important to note that the Ministry has other roles and so may not prioritize competition matters. To ensure that trade regulation is effective, there is need to have a Statutory Authority that effectively discharges its duties.

A collection of handwritten signatures and initials in black ink, located at the bottom of the page. The signatures vary in style, with some being highly stylized and others more legible. One signature on the left is written vertically. In the center, there are initials that appear to be 'EDM'. Other signatures include 'Philo', 'Sugale', and several others that are partially obscured or less distinct.

The Committee observed that the section appears to give the Ministry of Trade powers over all government agencies in issues of competition even in the different sectors where the enabling Acts give the Regulators mandate. The provision is likely to lead to conflict of Government Agencies with the Ministry arising out of a conflict of mandates stemming from the different statutes that establish the Agencies.

It is important to note that our neighbouring countries where competition laws have greatly developed have an Independent Authority in place. Kenya has the Competition Authority of Kenya (under its *Competition Act*, No 12/2010). Tanzania has a Fair Competition Commission (under its *Fair Competition Act*, No 8/2003) and Rwanda has the Rwanda Competition and Inspectorate Authority (under its *Law N° 36/2012 relating to Competition and Consumer Protection*).

The Committee further notes that the Bill provides that the Technical Committee on competition and consumer protection shall be constituted by the Minister by Statutory Instrument. The Statutory Instrument under this provision shall provide for the appointment, composition, functions, meetings, and remuneration of the Technical Committee. The Committee observed that this may be compromising for the Committee since it is the Minister who is to be advised.

The Committee observes that the principles for the Competition Bill were approved over 10 years ago with a view to establish an Authority for consumer protection and competition. The Bill however got to Cabinet at a time of rationalisation of Government Agencies and was returned with a Government Directive that the implementation mechanism of the law be revised to be put under the Ministry. The consequence of the rationalisation policy is that Government Ministries shall in effect develop policies and also implement. According to the Bill, the Ministry is to be assisted by the Technical Committee to be composed of persons knowledgeable in competition and consumer matters.

The bottom of the page is filled with numerous handwritten signatures and initials in black ink. Some of the legible initials include 'EDM' and 'Supate'. There are also some scribbles and lines that appear to be part of the signatures.

Notwithstanding the rationalisation policy of Uganda, the Committee is cognisant of the fact that some Authorities shall remain, for instance, URA and UWA. This is a clear indication that there are exceptions to the rationalisation policy. The Committee is of the view that the exemption should also apply to competition matters because they are very technical.

The Committee observes that the policy of rationalisation stems from the need to curb Government expenditure but all the stakeholders that made an input to the Bill were of the view that an independent Authority would be best placed to implement the matters of competition and consumer protection.

The implementing body should ensure that it develops appropriate procedures for public sensitization on advocacy and competition awareness. This will help in building and sustaining a competition regime, supported by a high level of institutional trust.

The Committee strongly believes that to ensure that trade regulation is effective and efficient for competitiveness, administration of the Act should be carried out by an independent Authority.

Recommendations on part II of the Bill

The Committee recommends as follows:

- (i) **Like the practice is in the different countries that have implemented a Competition Act, an independent self-financing Commission should be created to oversee competition matters. This is premised on the fact that competition matters are cross cutting and as such there is need for an autonomous institution that has specialized persons to handle all competition matters. Therefore, the Administration of the Act should be carried out by a specialised and independent Commission that will ensure that trade regulation is effective and efficient. The Commission should employ persons with appropriate skills and expertise. The oversight or supervisory roles should be reserved for the Ministry.**

[Handwritten signatures and initials are present at the bottom of the page, including 'Molani', 'EDM', and several other illegible signatures.]

benefits. While companies combining forces and creating mergers or joint ventures can expand markets and bring benefits to the economy, some mergers and acquisitions may reduce competition. Notable also is that combining the activities of different companies may allow the companies, for example, to develop new products more efficiently or to reduce production and distribution costs.

COMMITTEE OBSERVATIONS:

The Committee observes that;

An enterprise is deemed to be dominant if it possesses a substantial level on market power and can act without taking into consideration the reaction of its consumers or competitors. The Bill prohibits Organisations with dominant positions from abusing that position.

The abuse of dominant position may constitute; directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions, limiting production, markets or technical development to the prejudice of consumers; applying dissimilar conditions to equivalent transactions with other trading parties; making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of the contracts; and conduct designed to exclude competitors (including predatory pricing, refusal to deal, refusal of access to essential facilities, among others).

Clause 10 (3) (a), states that *'to determine whether or not an enterprise enjoys a 'dominant position', the ministry shall take into account whether the enterprise has a market share of over thirty five percent or such other percentage as the minister may, by statutory instrument, prescribe'*. The Committee learnt that there was no market survey carried out that led to the prescription of the 35% threshold. The Ministry did not carry out an independent study but relied on other jurisdictions. This raises a lot of concern because the Ministry did not use any formula to come with the 35% threshold in the Ugandan market.

Handwritten signatures and initials:
- Vertical signature on the left margin: *Macmillan*
- Various signatures and initials at the bottom of the page, including *EDM*, *Amura*, and several illegible scribbles.

The Committee observed that dominance may be arising in different forms and ways depending on the kind and location of the market. It would therefore have been prudent of the Ministry to carry out an independent survey and to prescribe a threshold that is in line with the Ugandan jurisdiction.

Recommendation:

The Committee recommends that the threshold for dominance be revised taking into consideration the unique characteristics of the Ugandan market.

7.2.4 PART V - MERGERS, ACQUISITIONS AND JOINT VENTURES

4. A merger is a combination of two firms which subsequently forms a new legal entity under the banner of one corporate name while an acquisition is when a company purchases another outright.

COMMITTEE OBSERVATIONS:

The Committee noted that the Bill is silent in relation to the period for making determination in relation to a proposed merger. Having no time limit might lead to fraud. The Committee is further concerned that most local firms require nurturing before being exposed to external competition. Competitive pressure for very small production units does not motivate efficiency but rather collapses it.

Reference is made to Section 12A of the Zambian Act which provides for considerations to be taken into account in mergers, including public interest, possibility of mergers resulting into technological, efficiency or other procompetitive gain for a firm (s). Further, Section 11 of South Africa's Act clearly categorizes mergers in small, intermediate and large and the Act later provides for the functionality of the same.

The Committee notes that the Bill as proposed does not provide for cross boarder relations and Uganda's obligations. In this regard, it poses a question as to cross boarder challenges, one of them being the COMESA, which has the

[Handwritten signatures and initials are present at the bottom of the page, including names like 'Muganyizi', 'Edna', 'Theresa', 'Supate', and 'John'.]

COMESA Competition Commission (CCC). There are no transition provisions in the Bill for the application and implementation of the regulations in the common market.

It is important to note that Uganda is a signatory to several Treaties, Protocols and Agreements that include; the African Continental Free Trade Area (AFCFTA), East African Community and COMESA. Uganda is bound by her international commitments made at continental and Regional frameworks, but the short title of the Competition Bill only makes reference to Uganda; 'An Act to promote and sustain fair competition in markets in Uganda; to prevent practices having adverse effect on competition in markets in Uganda'.

The Committee observed that the law has to be made in consonance with Uganda's commitments. For instance, when it comes to mergers, regulations are intended to supersede the jurisdiction of national competition laws where a merger falls into the COMESA Competition Commission ambit. Furthermore, where a Ugandan company within two or more COMESA States seeks to merge with another Ugandan company with a presence in two or more COMESA Member States, the companies would be required to notify both the ministry and CCC.

Recommendations:

The Committee recommends as follows:

- (i) **The Competition Law of Uganda should be harmonized with regional agreements to which Uganda is a signatory to avoid enacting a law that would curtail Uganda's international relations.**
- (ii) **Uganda being a Partner State to the EAC, the objective of its competition law should be aligned with the EAC because the EAC competition is based on the respective countries' Acts and international best practices. Alignment of objectives means that**

The bottom of the page contains several handwritten signatures and initials in black ink. On the left, there is a large, stylized signature that appears to be 'mae'. Below it, there are several smaller signatures and initials, including 'EDM', 'James', and 'John'. Some of these are accompanied by horizontal lines, possibly indicating approval or a signature line. The handwriting is varied and appears to be from multiple individuals.

the EAC countries can only differ in detail and implementation in far as supporting the EAC competition law.

- (iii) For mergers/acquisitions to be authorised there should be a balance, the advantages of the merger should outweigh the disadvantages.***
- (iv) The Competitions Commission created under the Act should be empowered to ensure that mergers, acquisitions and Joint ventures between systemically entrenched companies or enterprises are not allowed because such would pose a big risk to the consumers and the economy. For example, the mergers of strong players in the banking industry like Stanbic Bank and Centenary Bank would create an imperfect competition in the market.***
- (v) There should be discretion to merge for some of the local firms that are struggling to reach profitable level of production and the result of which merger will be insignificant to the market.***
- (vi) There should first be empirical research conducted to ensure that only potentially anticompetitive transactions are subject to control. Consideration should be given to time frames for merger review.***

8.0 CONCLUSION

The Competition Bill focuses on specific dimensions of public interest, and this makes it possible to consider matters such as employment, specific industry development and small business development which will play a very significant role in the long-term process of developing the nation's market. Making markets work better with appropriate intervention to guide market forces to support broader development priorities is essential in economic development.

Handwritten signatures and initials at the bottom of the page, including 'Moses', 'Edm', 'Aduka', 'Jopals', and 'Chico'.

PROPOSED AMENDMENTS TO THE COMPETITION BILL, 2022

CLAUSE 1: APPLICATION

Clause 1 is amended —

(a) By substituting for sub-clause (1) the following—

"1. Application

(1) This Act applies to all economic activity within or having an effect within Uganda.

(2) This Act is binding to the Government in so far as the Government or an enterprise owned wholly or in part by the Government, engages in trade or business for the production, supply, or distribution of goods or the provision of a service within a market that is open to participation by other enterprises.

(b) In sub-clause (2) by deleting the word **"and"** appearing in paragraph (a) at the end of the sentence and substituting for paragraph(b), the following—

(3) This Act does not apply to—

(b) concerted conduct designed to achieve a non-commercial socio-economic objective or similar purpose.

(c) by inserting immediately after paragraph (b) the following new paragraphs;

"(c) an agreement or conduct relating to intellectual property rights including the protection, licensing, or assignment of rights under, or existing by virtue of a law relating to copyright, design rights, patents, or trademarks;

(d) an agreement relating to the remuneration, terms, or conditions of employment of employees and to which employers are a party;

(e) activities of a trade union and other association directed at advancing the terms and conditions of employment of members;

The bottom of the page is filled with numerous handwritten signatures and initials in black ink. Some legible names include 'M. J. J.', 'Edm', 'Jugate', and 'Phel'. There are also several sets of initials and scribbles, some of which appear to be crossed out or corrected.

(f) the business of any enterprise exercising a statutory monopoly that precludes the entry of another enterprise into the relevant market in Uganda except that—

(i) the enterprise shall not enter into an agreement that has the purpose of restricting competition;

(ii) the conduct of the enterprise shall not, by itself or in conjunction with another enterprise, amount to an abuse of a dominant position; or

(iii) where the enterprise is desirous of entering into a merger, acquisition, or joint venture the enterprise shall be in compliance with the provisions of this Act relating to mergers, acquisitions, and joint ventures.

(d) By substituting for sub-clause (3) the following—

“Notwithstanding subsection (3), the Commission may apply the provisions of this Act to an agreement or conduct, where it has reasonable grounds to believe that the agreement or conduct involves a practice that is prohibited under this Act or disproportionately restricts or prevents competition.

Justification

- a. The substitution in sub-clause (1) is to provide for a wider scope of applicability of the Act for all economic activities which may have an adverse effect on competition in the Ugandan market.
- b. The substitution in sub-clause (2) is to provide for specificity in as far as exemptions are concerned since the provision which was prescribing for the exemption of any sovereign function from application of the Act was ambiguous and subject to misinterpretation.
- c. The substitution in sub-clause (3) is to provide for powers of the commission to investigate any practice even when exempted under the Act where the Commission has reason to believe that an enterprise is engaging in an anti-competitive practice.

Handwritten signatures and initials:
- *mac*
- *EdM*
- *Agaba*
- *Kiri*
- *Jugale*
- *Shah*
- *to*
- *to*
- *to*

- d. The practice in the COMESA and the East African Community is that Governments of Partner states are not exempted from the application of the competition law when conducting business in the same market.

NEW CLAUSE: OBJECT OF THE ACT

Insert a new clause immediately after clause 1 as follows —

The object of this Act is to—

- (a) promote the efficiency, adaptability and development of the Ugandan economy;
- (b) provide consumers with competitive prices, and product choices;
- (c) promote employment and advance the social and economic welfare of Ugandans;
- (d) provide opportunities for the participation of Ugandans in world markets and recognise the role of foreign competition in Uganda;
- (e) guarantee that all enterprises have an equitable opportunity to participate in the economy;

Justification

To provide for objectives of the law in relation to competition.

CLAUSE 2 : INTERPRETATION

Clause 2 is amended—

- (a) by inserting the following new definitions in their appropriate alphabetical order —

“anti-competitive practice or agreement” includes a practice or agreement which involves the taking of a decision or engaging in any concerted action or practice, in respect of production, supply, distribution, or control of goods, or the provision of services, which causes or is likely to cause an adverse effect on competition;

The bottom half of the page is covered with numerous handwritten signatures and initials in black ink. Some legible initials include 'Mab', 'J. Paul', 'Edm', 'Frie', 'EDM', and 'Ch'. There are also several scribbled-out marks and lines.

"bid rigging" means an agreement, decision or understanding between enterprises involved in the same manufacturing, trading or service rendering activity which has the effect of eliminating competition for bids or which adversely affects or manipulates the bidding process;

"competition" means the striving or potential striving of two or more persons or enterprises engaged in the production, distribution, supply, purchase, or consumption of goods and services in each market in Uganda against one another which results in greater efficiency, high economic growth, increasing employment opportunities, lower prices and improved choices for consumers;"

"Commission" means the Competition and Consumer Protection Commission established under section 3 of this Act;

"concerted action or practice" means a practice that involves some form of communication or coordination between competitors falling short of an actual agreement but which replaces their independent action and restricts or lessens competition between them;

"countervailing market power" means the bargaining power of the purchasers in the economy;"

Dominant position" means a position of economic strength enjoyed by an enterprise individually or collectively which gives it the power to behave independently of its competitors, customers and consumers and in particular to foreclose another enterprise from competing in the relevant market.

"exclusive distribution agreement" means an agreement between a distributor company and a supplier company that grants the distributor exclusive rights to sell the supplier's goods or services;"

The bottom of the page contains several handwritten signatures and initials. On the left, there is a large, stylized signature that appears to be 'muc'. Below it, there are several other signatures, some of which are more legible, including 'Edm' and 'Charles'. There are also some scribbles and initials scattered across the bottom right area.

“exclusive supply arrangement” means a legal agreement between two parties in which one party imposes restrictions on the other party’s freedom to make choices with whom or where they do business;”

“horizontal agreement” means an agreement between enterprises each of which operates, for the purpose of the agreement, at the same level of the market and would normally be actual or potential competitors in that market;

“market” means a market in Uganda or a substantial part of Uganda and refers to the range of reasonable possibilities for substitution in supply or demand between kinds of goods or services and between suppliers or customers, or potential suppliers or customers, of those goods or services.

“predatory pricing” means a strategy where firms sell their products below cost to drive competitors out of the market;

“price squeezing” means a pricing practice of an enterprise that is operating in an upstream market or a downstream market, and charges its consumers the upstream prices, which do not allow such consumers to compete in the downstream markets;”

“refusal to deal” means an undertaking which denies supplying another undertaking with its product or service and includes not only blatant refusal, but also subtle refusal which conditions the supply on unreasonable conditions, such as unacceptably high prices;”

“resale price maintenance” means an agreement between a supplier and a dealer whose object or effect is, directly or indirectly, to fix a

The bottom of the page is filled with various handwritten signatures and initials. On the left, there is a large signature that appears to be 'moe' with a vertical line through it. Below this are several other signatures, some of which are more stylized or scribbled. In the center and right, there are several initials and names, including 'EDM', 'James', and 'John'. There are also some circular marks and other illegible scribbles.

minimum selling price to be used by the dealer when re-selling goods to customers;

"tie-in arrangement" means an often illegal agreement by one party to sell a product or service only on condition that the buyer will also purchase another different product or service or will not purchase the product or service from any other supplier or will adhere to some other restriction;"

" Tribunal " means the Competition and Consumer Protection Tribunal established under this Act;

" turnover " means the latest audited gross sales of an enterprise;

" vertical agreement " means an agreement between enterprises each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain and relates to the conditions under which the parties may purchase, sell or resell certain goods or services;

Justification

- The insertion of new definitions is for clarity.

Part II ADMINISTRATION

Replace the subtitle with the following—

PART II— COMPETITION AND CONSUMER PROTECTION COMMISSION.

CLAUSE 3 : ADMINISTRATION

Clause 3 is amended by substituting it with the following—

"3. Establishment of Competition and Consumer Protection Commission.

- (1) There is established the Competition and Consumer Protection Commission of Uganda.
- (2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name and, may do, enjoy, or suffer anything that may be done, enjoyed, or suffered by a body corporate.
- (3) The Commission shall consist of the following persons who shall be appointed by the President with the approval of Parliament—
 - (a) A chairperson who shall be a person with at least 10 years of experience and knowledge in competition and consumer protection matters, trade, economics, business administration or law, nominated by the President.
 - (b) A deputy chairperson who shall be a person with at least 10 years of experience and knowledge in matters relating to competition and consumer protection, nominated by the President;
 - (c) The Commissioner in charge of trade within the Ministry or his or her representative;
 - (d) One person nominated by the private sector;
 - (e) One person nominated by trade unions;
 - (f) Two persons with at least five years experience in the field of competition and consumer protection nominated by the President.
- (4) Members of the Commission shall be persons of high moral character and proven integrity and possess considerable experience in, and a record of commitment to, matters relating to the promotion of competition or consumer protection.

4. Independence of Commission

The Commission shall, in exercise of its functions, be independent and shall not be subject to the direction or control of any person or authority.

m...
m...
m...

[Handwritten signature]

[Handwritten signatures and initials]
 29 | Page
 EDM
 Finance
 [Various other illegible signatures and initials]

5. Seal of Commission

(1) The seal of the Commission shall be—

- (a) in such form as the Commission may determine;
- (b) applied in such circumstances as the Commission may determine, subject to any written law; and
- (c) kept under the custody of the Secretariat.

(2) Judicial notice shall be taken of the seal of the Commission and any document sealed with the seal shall be admissible in evidence.

6. Terzure of office of members of Commission

(1) A member of the Commission shall hold office on a full-time basis for four years and is eligible for reappointment for one more term.

(2) A member of the Commission may at any time resign his or her office in writing addressed to the President.

(3) A member of the Commission may be removed from office by the President—

(a) for inability to perform the functions of his or her office arising out of infirmity of body or mind;

(b) for misbehavior or misconduct;

(c) for incompetence;

(d) where the member is absent without prior communication to the Chairperson for more than four consecutive meetings of the Commission, or is absent from Uganda for more than twelve consecutive months;

(e) where the member is or becomes bankrupt or insolvent; or

(f) where the member is convicted of an offence involving dishonesty, fraud or moral turpitude.

[Handwritten signatures and scribbles are present across the bottom of the page, including a large signature on the left and several smaller ones on the right.]

(4) A member of the Commission shall not be removed from office—

(a) under paragraph (3) (a), unless the Medical Board certifies that the person concerned is unable to perform the functions of the Commission;

(b) under paragraphs (3) (b) to (d) unless the person concerned is notified in writing and given an opportunity to defend himself or herself.

(5) Where a member is removed from office under this section, the President may appoint another person in accordance with section 5 to replace that member and the person appointed shall hold office for the remainder of the term of the member removed.

(6) Where a member is removed from office under this section, the member shall continue acting in that office until another member is appointed.

7. Remuneration and allowances of members of Commission.

Emoluments of the members of the Commission shall be prescribed by Parliament and shall be a charge on the Consolidated Fund.

8. Functions of the Chairperson of Commission.

(1) The Chairperson of the Commission shall—

(a) be the head of the Commission;

(b) preside over or chair all meetings of the Commission;

(c) be responsible for the general direction of the affairs and administration of the Commission; and

(d) monitor and supervise the work of the Secretariat.

(2) The Vice-Chairperson shall deputize for the Chairperson and perform such other functions as the Chairperson or the Commission may assign

mac

[Handwritten signatures and initials]

11
12
13

14
15

16
17

9. Members of Commission to relinquish offices.

(1) A person holding any of the following offices shall relinquish that office on appointment as a member of the Commission—

- (a) a member of Parliament;
- (b) a member of the East African Legislative Assembly;
- (c) a member of a local government council;
- (d) a member of the executive of a political party or organization at all levels;

or

(f) a public officer.

(2) This provision shall not apply to the commissioner in charge of trade or his or her representative.

10. Secretariat of Commission.

The Commission shall have a secretariat headed by an Executive Director who shall be appointed by the Minister on the recommendation of the Commission, on terms and conditions specified in his or her instrument of appointment.

11. Executive Director

(1) The Executive Director shall be the accounting and chief executive officer of the Commission and a full-time employee of the Commission.

(2) The Executive Director shall be a person of high moral character and proven integrity, and who has qualifications and experience in competition and consumer protection matters, economics, trade, or law.

(3) A person shall not be appointed Executive Director where he or she —

(a) is an undischarged bankrupt;

[Handwritten signatures and initials are present at the bottom of the page, including 'Mwaka', 'ZDM', 'James', and others.]

- (b) Has been convicted of an offence under this Act or an offence involving fraud or dishonesty by any court in Uganda or elsewhere;*
- (c) has been convicted of an offence and sentenced to imprisonment of six months or more by a court in Uganda or elsewhere; or*
- (d) is a public officer, a member of Parliament, a Minister or a member of a local government council.*

12. Functions of Executive Director

(1) Subject to this Act and to the general supervision and control of the Commission, the Executive Director shall-

- (a) initiate and implement the policies and programmes of the Commission;*
- (b) be responsible for the proper management of the property of the Commission;*
- (c) manage the staff of the Commission;*
- (d) co-operate with lead agencies and organisations in matters related to the competition and consumer protection;*
- (e) develop an economic, efficient and cost effective internal management structure of the Commission;*
- (f) provide advice as required on all matters which fall within the area of the Commission' responsibility;*
- (g) develop and oversee an operating plan to guide the Commission in performing its functions; and*
- (h) perform any other duty necessary for the implementation of this Act as may be assigned to him or her by the Commission.*

(2) The Executive Director is, in the performance of his or her functions, answerable to the Commission.

(3) The Executive Director shall be an ex-official of the Commission and Secretary to the Commission assisted by staff of the Commission who shall be appointed by the Commission on the terms and conditions specified in the instrument of appointment.

mic

33 | P. 145

EDM

Handwritten signatures and initials are scattered across the bottom of the page, including one that says 'EDM' and another that says 'Jugale'.

13. Tenure of office of Executive Director

(1) The Executive Director shall hold office for four years and is eligible for re- appointment for one more term.

(2) The Executive Director shall cease to hold office where he or she-

- (a) resigns;
- (b) is declared or becomes insolvent or has made an arrangement with his or her creditors; or
- (c) has been convicted of an offence and sentenced to a term of imprisonment for six months or more by a competent court in Uganda or outside Uganda without the option of a fine.

(3) The Executive Director may be removed from office for-

- (a) abuse of office;
- (b) inability to perform the functions of his or her office arising from infirmity of body or mind;
- (c) misbehaviour or misconduct; or
- (d) incompetence.

14. Other officers and staff of the Commission

(1) There shall be officers and staff of the Commission as may be necessary for the effective performance of the functions of the Commission.

(2) The officers and staff of the Commission shall be appointed by the Commission on terms and conditions as the Commission shall determine.

max
EDM
Justice
Subs
COM
ph...

15. Protection from liability of members and officers of the Commission

(1) An officer or member of the Commission or a person acting on the directions of the Commission is not personally liable for any act or omission done or omitted to be done in good faith in the exercise of functions under this Act.

(2) An officer or member of the Commission shall not disclose any information, which he or she may have obtained while discharging his or her duties under this Act.

(3) A person who ceases to be a member of the Commission or a member of staff of the Commission shall not disclose any information, which he or she may have obtained in the course of his or her employment for a period of ten years.

(4) A person who contravenes this section commits an offense and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both.

(6) The Commission may engage the services of consultants, experts, or advisers to assist it in the discharge of its functions.

16. Meeting and procedure of Commission

(1) The Commission shall meet for the discharge of business at least once in every three months at such time and place as the Commission may determine and the Chairperson shall convene all the meetings.

(2) The Chairperson may, at any time, convene a special meeting of the Commission and shall convene a meeting within fourteen days if requested to do so in writing by at least three members of the Commission.

(3) Except for a special meeting referred to in subsection (2), notice of a meeting of the Commission shall be given in writing to each member at least fourteen working days prior to the date of the meeting.

[Handwritten signatures and scribbles covering the bottom portion of the page, including names like 'Chairman', 'J. K. ...', and '...']

(4) The Chairperson shall preside at every meeting of the Commission and in the absence of the Chairperson the Vice Chairperson shall preside; in the absence of both the Chairperson and the Vice Chairperson, the members present shall elect one of their number to preside at the meeting.

(5) The quorum for a meeting of the Commission shall be three members, and all decisions at a meeting of the Commission shall, as far as possible, be arrived at by consensus.

(6) Where on any matter consensus cannot be obtained, the matter shall be decided by a majority of the votes of the members present and voting and in case of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) The Commission may invite any person who, in the opinion of the Commission, has expert knowledge to attend and take part in any discussion or meeting of the Commission on any matter with respect to which his or her advice is required, but shall not have the right to vote at that meeting.

(8) The Commission may act, notwithstanding the absence of a member or any defect in the appointment or qualification of a member or any vacancy, in the office of a member.

(9) A member of the Commission who is in any way directly or indirectly interested in any matter before the Commission shall disclose the nature or extent of his or her interest at a meeting of the Commission, and any disclosure made shall be recorded in the minutes of that meeting.

(10) A member who makes a disclosure at a meeting of the Commission shall not participate in any deliberation or take part in any decision of the Commission with respect to that matter.

(11) Subject to the provisions of this Act, the Commission may regulate its own procedure.

The bottom of the page contains numerous handwritten signatures and initials in black ink. Some of the legible initials include 'EDM', 'Anne', 'L. H.', 'C. H.', 'J. H.', 'K. H.', and 'M. H.'. There are also several scribbled-out signatures and a large, vertical scribble on the left side of the page.

JUSTIFICATION

- a. The proposed amendment for the establishment of an independent Commission is based on best practice across the globe and is the only effective means of implementing the law on competition and consumer protection.
- b. The Bill under Part 2 and section 3 proposes that the Ministry responsible for Trade will be in charge of the administration of competition and consumer protection in Uganda. According to clause 6 of the Bill, there is to be established, by the Minister, a technical Committee which shall be mandated to give technical guidance to the Minister in implementation of the law. If approved by Parliament, the proposal empowers the Minister to constitute the technical Committee, provide for its functions, mandate, meetings, remuneration etc. As such, this technical Committee would be a creation over which Parliament has no say and yet established by the Minister to advise and guide the Minister. The Committee observes that this is the beginning of conflict in as far as implementation of the law is concerned and lack of capacity would be a creature of the law.
- c. Whereas the Committee is aware that the Government of Uganda has embarked on a rationalization policy to merge Ministries, Agencies and Departments as a means of effective governance and reduction of Government spending, the proposal for a competition and consumer protection commission is a matter of ensuring service delivery, effective governance and increment of the non-tax revenue base. It is therefore in line with the objectives of Government policy on rationalization.
- d. It is the considered opinion of the Committee that the Government's use of the rationalization policy as a justification not to establish the Competition and Consumer Protection Commission as was envisaged at the onset, is misconceived and anticipatory. The proposal is distinguishable because the implementation of this law will be futile under the Ministry of Trade given its mandate and issues of conflict of interest already envisaged.
- e. According to several stakeholders that interfaced with the Committee, issues of competition and consumer protection are cross-cutting in all sectors of the economy. As such, implementation of the law under the Ministry of Trade would amount to making the Minister an overall regulator for all sectors of the economy on matters of competition. The

Handwritten signature

Handwritten signature

37 | Page

Handwritten signatures and initials: M. S. F. (M), EPM, Finance, J. J. (J), and others.

Minister responsible for Trade would therefore be highly conflicted and not in position to effectively implement the law.

- f. Further still, the available capacity in the Ministry cannot effectively implement the very wide mandate of regulation of issues under the proposed Bill. As such, there is a need to establish an autonomous body to implement the Competition and consumer protection laws once enacted.
- g. It is also pertinent to note that the COMESA Rules on COMESA Revenue Sharing of Merger Filing Fees envisages the establishment of a Competition Authority/ Commission by each Member State to which any monies due to the Member State is remitted.
- h. According to Rule 8 of the Common Market For Eastern And Southern Africa (COMESA) Rules on COMESA Revenue Sharing of Merger Filing Fees, the Commission retains fifty percent of the Common Market merger filing fees and is supposed to distribute the remaining fifty percent among the relevant Competition Authorities in the designated Member States.
- i. The share of the Common Market Merger filing fees for each relevant Competition Authority in the designated Member State is supposed to be proportionate to the value of the turnover in each Member State relative to the total value of the turnover in the Common Market.
- j. Since 2013 when the COMESA Commission was established, Uganda as a member state has not claimed its entitlement under the Rules on COMESA Revenue Sharing of Merger Filing Fees to this effect, Uganda is now owed approximately \$1.5 Million (one million and five hundred thousand dollars). Arising from the fact that Uganda does not have a competition authority, the Country could not lay claim to the said monies as required by law. There is an urgent need to establish the Competition and Consumer Protection Commission so that Uganda can utilize this money to implement the law on competition.
- k. The Competition and Consumer Protection Commission is intended to be the competition authority recognized under the Rules on COMESA Revenue Sharing of Merger Filing Fees so that Uganda can start benefiting directly. This money can be used to partly finance the Commission as well.

Handwritten signature

Handwritten signatures and initials: "JUNE", "EDM", "Jugale", "2014", "HPT", "K"

1. Additionally, the Competition and Consumer Protection Commission shall be self-financing and shall be collecting merger filing Fees, fines, and penalties, among other funds. This will be a recognizable contribution to the Consolidated Fund. The establishment of this Commission is urgent and serves to expand the Government resource envelope and should therefore be supported.

- m. Finally, an independent and autonomous establishment gives confidence to the entire economy including investors. This importance should outweigh the Government's plan to rationalize and to promote independence and avoid conflict of interest in view of the mandate of the Ministry responsible for Trade.

- n. The Committee therefore implores Parliament, to approve the establishment of the Competition and Consumer protection Commission of Uganda.

CLAUSE 4: FUNCTIONS OF MINISTRY

Clause 4 is amended by substituting for the word "Ministry" in the subtitle the word "Commission" and wherever it appears in the clause.

Justification

It is a consequential amendment arising from the establishment of a Competition and Consumer Protection Commission.

CLAUSE 5: REFERENCE OF COMPETITION MATTERS TO MINISTRY IN CERTAIN CASES

Clause 5 is amended by—

- (a) substituting for the word "Ministry" in the sub-title with the word "Commission" and wherever it appears in the clause.

- (b) deleting the words "or proposed to be taken" appearing immediately after the words "decision taken".

Handwritten signatures and initials:

39 | PAGE

EDM

Various other illegible signatures and initials.

Justifications:

- a. **The amendment is a consequential amendment arising from the establishment of the Competition and Consumer Protection Commission.**

- b. **To remove the ambiguity caused by the referral of a matter to the Commission where a decision has not yet been made by the concerned statutory authority.**

CLAUSE 6: TECHNICAL COMMITTEE ON COMPETITION AND CONSUMER PROTECTION

Clause 6 is deleted.

Justification

It is a consequential amendment arising from creating an independent commission responsible for implementing matters of competition and consumer protection.

CLAUSE 7: POWERS OF MINISTRY

Clause 7 is amended by—

- (a) substituting for the word "**Ministry**" the word "**Commission**" wherever it appears in the clause;
- (b) deleting the words "**after consultation with the technical committee**" in sub-clause (a).
- (c) deleting the word "**Treaty**" appearing immediately after the word "**Community**" in sub-clause (c).

one

three

four

five

six

40 Page

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

FDM

[Handwritten signature]
[Handwritten signature]
[Handwritten signature]
[Handwritten signature]

Justification

- a. It is a consequential amendment arising from the creation of a competition and consumer protection commission and the deletion of the technical Committee on Competition and Consumer protection.
- b. To correct a typographic error.

PART II - PROHIBITION OF ANTI-COMPETITIVE PRACTICES AND AGREEMENTS

CLAUSE 8 : PROHIBITION OF ANTI-COMPETITIVE PRACTICES AND AGREEMENTS

Clause 8 is amended —

- (a) in subclause (1) by substituting it with the following;

“A person shall not enter into an agreement which is anti-competitive or engage in anti-competitive practices.”

- (b) In sub-clause (3) by substituting for the words **“an agreement, decision, concerted action or practice has an adverse effect on competition or is likely to have an adverse effect on competition where that agreement, decision, concerted action or practice”** the words **“ a horizontal agreement is anti-competitive where”**.

- (c) In sub-clause (4) by deleting the words **“an agreement, decision, concerted action or practice between persons at different stages or levels of the production chain in different markets, in respect of production, distribution, sale or price of or trade in goods or provision of services including”** the words **“a vertical agreement involving”**.

- (d) In paragraph (d) by replacing the word **“and”** with the word **“or”**.

[Handwritten signatures and initials are present at the bottom of the page, including names like 'A', 'EDM', 'James', and 'Suzanne'.]

(e) In sub-clause (4) by substituting for the words **"is an agreement, decision, concerted action or practice agreement in contravention of subsection (1)"** the words **"is anti-competitive and prohibited under this Act"**

(f) By deleting sub-clause (5).

(g) In sub-clause (6) by substituting for the word **"Ministry"** the word **"Commission"** wherever it appears in the provision.

(h) By deleting sub-clause (7).

Justification

- a. The proposed amendment in (a) is a consequential amendment following the definition of an anti-competitive agreement or practice and for purposes of clarity. The Committee, while interfacing with stakeholders, observed that the provisions as initially drafted were not easily understood and proposed that they be redrafted in a manner that is easily understood by the general citizenry.
- b. The proposed amendments in (b) and (c) are consequential amendments following the use of the terms horizontal or vertical agreement and for purposes of clarity.
- c. The deletion of the definition of "bid-rigging" in (f) is because the definition of the word "bid-rigging" has been transferred to the main definition section.
- d. In (e) it is a consequential amendment following the definition of "anti-competitive practice".
- e. In (g), it is a consequential amendment following the establishment of the Competition and Consumer Protection Commission.
- f. In (h), it is a consequential amendment following the exemption of agreements dealing with intellectual property rights under clause 1 of the Bill.

Handwritten signatures and initials:
42 / 10 15 11
EOM
House
Fapala
Jh...
[Other illegible signatures]

PART IV – PROHIBITION OF ABUSE OF DOMINANT POSITION

CLAUSE 10: ABUSE OF DOMINANT POSITION

Clause 10 is amended—

- (a) By deleting sub-clause (2);
- (b) In sub-clause (3) by substituting for the word “**Ministry**” the word “**Commission**”
- (c) By substituting for sub-clause (3) paragraph(a) with the following —

“(c) thirty percent or more of particular goods or services are supplied or acquired by one enterprise, or sixty percent or more of particular goods or services are supplied or acquired by not more than three enterprises or such other percentage as the Minister may, upon the recommendation of the Commission, by statutory instrument, prescribe.”

- (d) In paragraph (1) by substituting for the word “**department**” the word “**commission**”

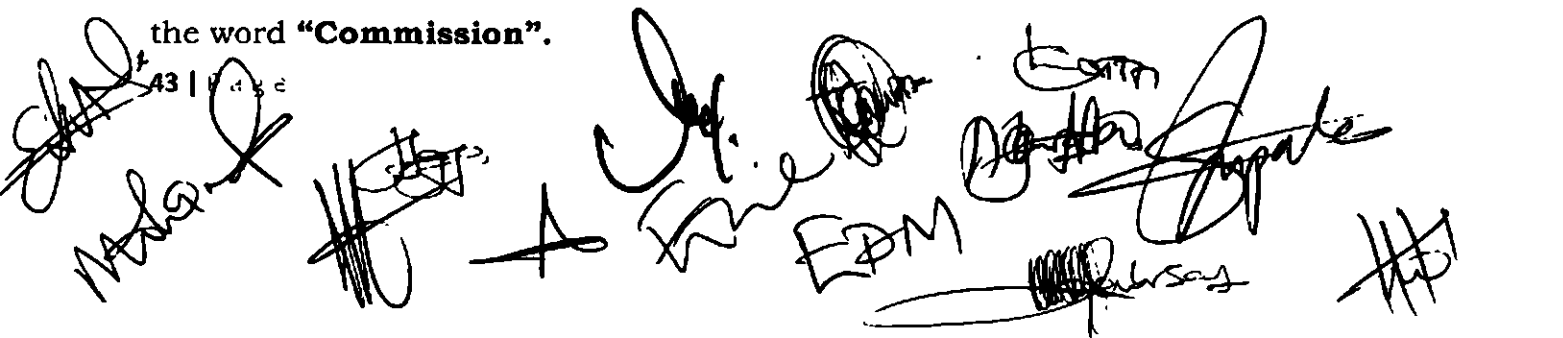
Justification

- a. To provide for a more specific threshold while determining the dominant position in the Ugandan market and require the Minister to consult the Commission and issue a statutory instrument upon recommendation of the Commission.
- b. It is a consequential amendment arising from the establishment of a Commission.

CLAUSE 13: INQUIRY INTO ABUSE OF DOMINANT POSITION

Clause 13 is amended in paragraph (1), by substituting for the word “**Ministry**” the word “**Commission**”.

43 | Page



Justification

The amendment in paragraph (1) is a consequential amendment following the establishment of a Commission.

PART V- MERGERS, ACQUISITIONS AND JOINT VENTURES

CLAUSE 14: NOTICE OF MERGER, ACQUISITION AND JOINT VENTURE

Clause 14 is amended—

(a) In sub-clause (1) by substituting for the word **“Ministry”**, the word **“Commission”**;

(b) By inserting a new sub-clause immediately after sub-clause (1) as follows

—
“The Minister shall, on the recommendation of the Commission, by statutory instrument, prescribe the threshold to be applied for the purposes of subsection (1)”

(c) In subclause (5) by substituting for the word **“Ministry”** the word **“Commission”** and inserting the words **“in one hundred and twenty days”** immediately after the word **“market”** appearing at the end of the sentence.

(d) In sub-clause (6), by substituting for the word **“Ministry”** the word **“Commission.”**

(e) In subclause (7) by replacing the word **“Ministry”** with the word **“Commission”** wherever it appears in the provision and deleting the words **“by the Minister by regulations”**.

(f) In sub-clause (8), by deleting paragraph (b)

(g) In sub-clause (9), by substituting for the word **“Ministry”** the word **“Commission”**.

The bottom half of the page is heavily annotated with handwritten signatures and initials. On the left side, there is a vertical signature that appears to read 'mae'. Below it, there are several scribbled-out signatures. In the center and right, there are several large, legible signatures, including one that looks like 'Favre' and another that looks like 'J. Fine'. There are also many smaller initials and scribbles scattered throughout the bottom section, including the letters 'EDM' and 'L-2017'.

Justification

- a. The substitution in (a) is subsequential to the creation of the Competition and Consumer Protection Commission.
- b. The insertion in (b) is to provide for a threshold for mergers, acquisitions, and joint ventures required to give notice to the Competition and Consumer Protection Commission.
- c. The amendment in (c) is to provide for the timeline within which the Commission should consider notice for the merger, or acquisition of a joint venture.
- d. In (d), it is a consequential amendment following the prescription of one hundred and twenty days (120) as the period for consideration of a merger, acquisition, or joint venture.
- e. The deletion in (f) is to correct a typographic mistake.
- f. The amendments in (a), (c), (d), (e), (g), are consequential amendments arising from the creation of a Commission.

CLAUSE 15 : POCEDURE FOR INQUIRING INTO MERGERS, ACQUISTIONS AND JOINT VENTURES

Clause 15 is amended in sub-clauses (1), (2), (3) and (4) by substituting for the word "**Ministry**" the word "**Commission**" wherever it appears in the provision.

Justification

- The amendment is a consequential amendment arising from the establishment of a Commission.

CLAUSE 16: FINDINGS AND ORDERS OF MINISTRY UPON INQUIRY

Clause 16 is amended by substituting for the word "**Ministry**", the word "**Commission**" wherever it appears in the provision and in sub-clause (3), by

[Handwritten signatures and initials]

EDM

[Vertical signature on right margin]

substituting for the words "the time prescribed by the Minister by regulations", the words "fourteen days".

Justification

- a. This is a consequential amendment following the establishment of the Commission.
- b. To prescribe for a timeline within which a merger should take a decision on conditions imposed by the Commission.

CLAUSE 17: FAILURE TO GIVE NOTICE

Clause 17 is amended by substituting for the word "Ministry" the word "Commission" and substituting for the words " on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both", the words "to pay a fine not exceeding ten percent of its annual turnover;"

Justification

- a. The substitution is a consequential amendment arising from the creation of a competition and consumer protection commission.
- b. To provide for a suitable penalty based on annual turnover of an enterprise.

CLAUSE 18 : FALSE STATEMENTS OR COMMISSION TO FURNISH MATERIAL INFORMATION

Clause 18 is amended in paragraph (b) by substituting for the words "two hundred and fifty currency points" the words "one thousand two hundred and fifty".

Justification

To provide for a more deterrent penalty for utterance of false statement.

misc

[Handwritten signatures and initials]

46 | Page

[Handwritten signatures and initials]

EDM

[Handwritten signatures and initials]

PART VI- INQUIRIES AND RELATED MATTERS

CLAUSE 20: PROCEDURE FOR MAKING INQUIRIES

Clause 20 is amended—

- (a) by substituting for the word “**Ministry**” and the word “**Minister**” with the word “**Commission**” wherever it appears in the provision.
- (b) In sub-clause (3) by substituting for the words “**the time prescribed by the Minister by regulations**”, the words “**one hundred and twenty days**”.

Justification

- a. The amendment is to provide for the timelines for conclusion of inquiries.
- b. The further amendment is consequential to the creation of a Competition and Consumer Protection Commission.

CLAUSE 21: ORDERS IN RELATION TO ABUSE OF DOMINANT POSITION AND ANTI-COMPETITIVE AGREEMENTS AND PRACTICES

Clause 21 is amended by substituting for the word “**Ministry**” and the word “**Minister**” wherever they appear in the provision, the word “**Commission**”.

Justification

It is a consequential amendment arising from the creation of a Commission.

CLAUSE 22: OFFENCES IN RELATION TO FURNISHING OF INFORMATION

Clause 28 is amended in paragraph (c) by substituting for the words “**thirty-six**” the words “**two hundred and fifty**”.

Justification

To make the provision more punitive for offences in relation to furnishing information.

Handwritten signatures and initials:
- Large signature on the left margin.
- Multiple signatures and initials scattered below the justification section, including one that says "EDM".

CLAUSE 25: PROTECTION FROM LIABILITY

Clause 25 is amended by substituting for the word "Ministry" the word "Commission".

Justification

It is a consequential amendment arising out of the establishment of a Commission.

CLAUSE 26: DUTY TO DISCLOSE INFORMATION

Clause 26 is amended—

- (a) In sub-clause (1) by substituting for the word "Ministry" the word "Commission".
- (b) in sub-clause (2) by substituting for the words "one hundred", the words "two hundred and fifty" and by substituting for the words "four" the word "three".

Justification

- The amendment is to make the penalty more punitive and also consequential to the creation of the Commission.

INSERTION OF NEW PART.

THE COMPETITION AND CONSUMER PROTECTION TRIBUNAL

Insert a new part immediately after clause 26 as follows-

me

Page

Edm
June
Chandra
Free
EDM
June
Chandra
Free
EDM

"ESTABLISHMENT OF COMPETITION AND CONSUMER PROTECTION TRIBUNAL

(1) *There is established the Competition and Consumer Protection Tribunal which shall consist of the following part-time members appointed by the President, on the recommendation of the Judicial Service Commission.*

- (a) a legal practitioner of not less than ten years legal experience, who shall be the Chairperson;*
- (b) a representative of the Attorney-General; and*
- (c) three other members with experience of at least five years and knowledge in matters relevant to this Act.*

(2) The vice-chairperson of the tribunal shall be appointed by the President from among the four other members of the Tribunal.

(3) A person shall not be appointed as a member of the Tribunal where the person—

- (a) is an undischarged bankrupt;*
- (b) is insane or of unsound mind;*
- (c) is in lawful custody or the person's freedom of movement is restricted under any law in force within or outside Uganda; or*
- (d) has been convicted of an offence under any law.*

Term of office of member of tribunal

(1) A member of the Tribunal shall hold office for a period of four years from the date of appointment and may be re-appointed for a further term of four years.

(2) The President may appoint alternate members of the Tribunal referred to in section 27 (c) who shall have, and may perform, the functions of a member during a member's absence.

[Handwritten signatures and scribbles, including names like "J. T. ...", "E. ...", "J. ...", "A. ...", "B. ...", "C. ...", "D. ...", "E. ...", "F. ...", "G. ...", "H. ...", "I. ...", "J. ...", "K. ...", "L. ...", "M. ...", "N. ...", "O. ...", "P. ...", "Q. ...", "R. ...", "S. ...", "T. ...", "U. ...", "V. ...", "W. ...", "X. ...", "Y. ...", "Z. ..."]

Vacation of office of Member of Tribunal

(1) The office of a member of the Tribunal shall become vacant—

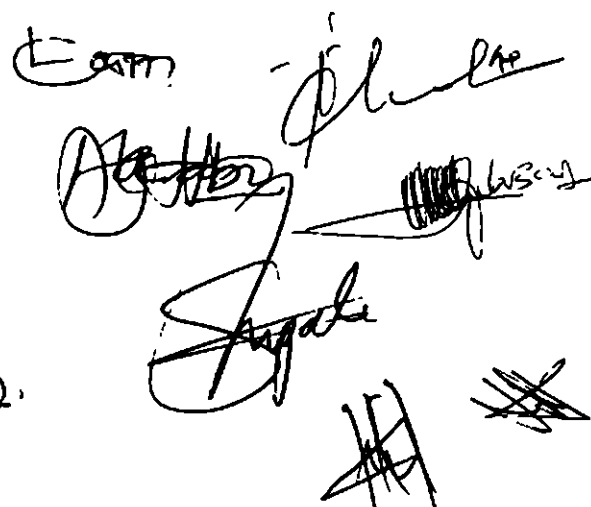
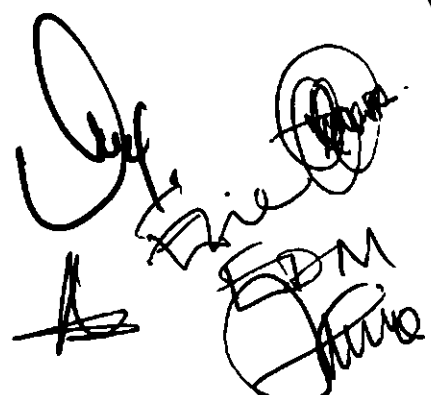
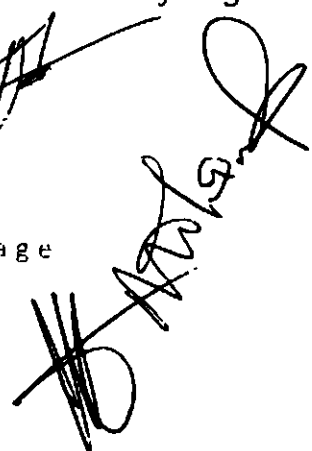
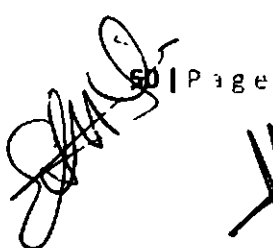
- (a) upon the member's death;
- (b) if a member is absent without reasonable excuse from three consecutive sittings of the Tribunal of which the member had notice;
- (c) if the member is removed by the President;
- (d) if the member is adjudged bankrupt;
- (e) if the member becomes mentally or physically incapable of performing the duties of a member;
- (f) if the member is convicted of an offence under any law and sentenced therefor to imprisonment for a period exceeding six months; or
- (g) in the case of a member referred to in paragraphs (a) and (b) of subsection (1), where that member ceases to practise as a legal practitioner on disciplinary grounds confirmed by the Law Council of Uganda.

(2) If a vacancy occurs in accordance with subsection (5), the President may appoint a new member in accordance with subsection (1), but the member shall hold office only for the unexpired period of the term.

Jurisdiction of the tribunal.

(1) The tribunal shall have jurisdiction to hear and determine all matters relating to competition and consumer protection arising from decisions made by the Commission or the Minister under this Act.

(2) For the avoidance of doubt, the jurisdiction of the tribunal does not include the trial of any criminal offence.



Powers of the tribunal.

(1) The tribunal shall in the exercise of its jurisdiction under this Act have all powers of the High Court.

(2) For the purposes of this section the law applicable to a civil action in the High Court shall, with the necessary modifications, apply to proceedings before the tribunal.

(3) Judgments and orders of the tribunal shall be executed and enforced in the same manner as judgments and orders of the High Court.

(4) Any person aggrieved by a decision of the tribunal may within thirty days from the date of the decision or order, appeal to the High Court.

(5) The law applicable to appeals from the High Court in civil matters shall, with the necessary modifications or the written adjustments as the Chief Justice may direct, apply to appeals from the Commission to the tribunal and from the tribunal to the Court of Appeal.

Functions of Tribunal

The functions of the Tribunal are to —

(a) hear a reference or an appeal made from the Commission to it under this Act; and

(b) perform such other functions as are assigned to it under this Act or any other law.

Quorum of Tribunal

(1) Three members of the Tribunal shall form a quorum.

[Handwritten signatures and scribbles covering the bottom half of the page, including names like 'Maclean', 'J. Fine', 'EDM', 'Prince', 'Egan', 'Albino', and 'HWA']

- (2) Any question at a sitting or meeting of the Tribunal shall be decided by a majority of the votes of the members of the Tribunal at the sitting or meeting and in the event of an equality of votes, the person presiding at the sitting or meeting shall have a casting vote in addition to that person's deliberative vote.
- (3) A party to a hearing of the Tribunal may be represented by a legal practitioner or, if the party so elects, by any other person or in person.
- (4) A decision of the Tribunal shall be in the form of a reasoned judgment and a copy thereof shall be supplied to each party to the proceedings and to every person affected by the decision.
- (5) If a person is present at a meeting of the Tribunal at which any matter is the subject of consideration, and in which matter the person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, disclose the interest and shall not, unless the Tribunal otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.
- (6) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.
- (7) The Tribunal may, for the purpose of any proceedings, use such assessors or experts as the Tribunal may determine.
- (8) The Tribunal shall cause to be kept a record of its proceedings.

Proceedings of the Tribunal

(1) The Tribunal may—

[Handwritten signatures and scribbles covering the bottom half of the page, including names like 'Edm', 'HWA', and 'HWA' with various initials and marks.]

(a) order the parties or either of them to produce to the Tribunal such information as the Tribunal considers necessary for purposes of the proceedings; or

(b) take any other course which may lead to the just, speedy, and inexpensive settlement of any matter before the Tribunal.

(2) The Tribunal may summon witnesses, call to produce, or inspection of, books, documents, and other things, and examine witnesses on oath, and for those purposes, the Chairperson is authorised to administer oaths.

Powers of chief justice to make rules

(1) The Chief Justice may, by statutory instrument, make rules relating to -

(a) the manner and form for lodging of appeals before the tribunal;

(b) the mode of summoning persons before the Tribunal;

(c) the form and manner of service of a summons requiring the attendance of a witness before the Tribunal and the production of any book, record, document or memoranda; and

(d) the procedure to be followed and rules of evidence to be observed in proceedings before the Tribunal.

(2) Rules made under this section may provide—

(a) that before any matters are referred to the Tribunal they shall, in such manner as may be provided by the rules, have been brought before and investigated by the Commission in this respect;

(b) for securing notices for the proceedings and specifying the time and manner of the proceedings; and

[Handwritten signatures and scribbles covering the bottom half of the page, including a large signature on the left and several smaller ones on the right.]

(c) for securing that any party to the proceedings shall, if that person requires, be entitled to be heard by the Tribunal.

JUSTIFICATION

To establish a competition and consumer protection tribunal of the Commission.

CLAUSE 27: APPEALS

Clause 27 is amended by substituting it for the following-

- (1) An appeal shall lie against any order made by the Commission to the tribunal.
- (2) An appeal under this section shall be made within thirty days from the date of the decision or order appealed against.
- (3) An appeal shall lie against any order made by the tribunal to the Court of Appeal.

Justification

To provide for the appeals process of decisions of the Commission and the Tribunal.

INSERTION OF NEW PART

Insert a new part immediately after part five to provide as follows —

“ FUNDS OF THE COMMISSION AND THE TRIBUNAL

Funds of the Commission

- (1) The funds of the Commission shall consist of-
 - (a) monies appropriated by Parliament for the purposes of the Commission; and

Handwritten signature

Handwritten signature

Handwritten signature

Handwritten signature

Handwritten signature

Handwritten signature
EDM

Handwritten signature

Handwritten signature

Handwritten signature

(b) grants or monies donated to the Commission with the approval of the Minister responsible for finance.

(2) The Commission shall, in the performance of its functions under this Act, comply with the Public Finance Management Act.

Funds of the tribunal.

The funds of the tribunal shall consist of—

- (a) money appropriated by Parliament from time to time for enabling the tribunal to perform its functions;
- (b) grants, gifts or donations from the Government or other sources acceptable to the Minister and the Minister responsible for finance; or
- (c) funds provided to the tribunal by the Commission.

JUSTIFICATION

To provide for funds of the Commission and the Tribunal

Insertion of new clause

Insert a new provision immediately after clause 27 as follows—

Leniency programme

(1) The Commission may operate a leniency programme where an enterprise that voluntarily discloses the existence of an agreement that is prohibited under this Act, and co-operates with the Commission in the investigation of the practice, may not be subject to all or part of a fine that could otherwise be imposed under this Act.

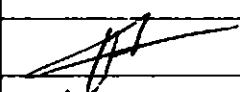

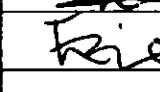

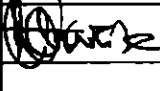
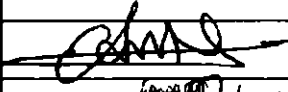

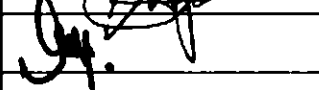
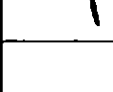
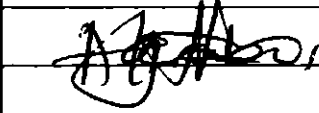
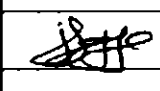

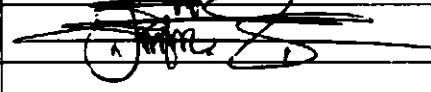
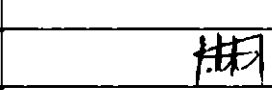
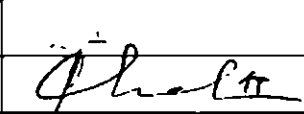
(2) The details of a leniency programme under subsection (1), shall be set out in guidelines of the Commission.

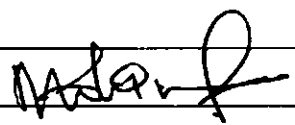


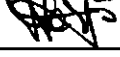
Justification

To provide for a leniency program for the Competition and Consumer protection Commission.

The bottom of the page contains numerous handwritten signatures and initials in black ink. Some are large and stylized, while others are smaller and more legible. One signature appears to be 'EDM'. There are also some scribbles and marks that are difficult to decipher.

**SIGNATURE SHEET FOR THE REPORT OF THE SECTORAL COMMITTEE ON
TOURISM, TRADE AND INDUSTRY ON THE COMPETITION BILL, 2022**

No.	Name	Party	Signature
1.	Hon. Mwine Mpaka Rwamirama	NRM	
2.	Hon. Catherine Lamwaka	NRM	
3.	Hon. Afidra, Ronald Olema	NRM	
4.	Hon. Aleper, Margaret Aachilla	NRM	
5.	Hon. Amero, Susan	INDEP	
6.	Hon. Amooti, Bright Tom	NRM	
7.	Hon. Atukwasa, Rita	INDEP	
8.	Hon. Awor, Betty Engola	NRM	
9.	Hon. Businge, Harriet Mugenyi	NRM	
10.	Hon. Edakasi, Alfred Elalu-Olale	NRM	
11.	Hon. Gafabusa, Richard Muhumuza	NRM	
12.	Hon. Isabirye, David Iga	FDC	
13.	Hon. Kalwanga, David Lukyamuzi	NUP	
14.	Hon. Kayemba, Geoffrey Ssolo	NUP	
15.	Hon. Kemirembe, Pauline Kyaka	NRM	
16.	Hon. Kirabo, Agnes	NRM	
17.	Hon. Koluo, Joseph Andrew	INDEP	
18.	Hon. Koyokyenga, Oliver	NRM	
19.	Hon. Mbwatekamwa, Gaffa	NRM	
20.	Hon. Mugole, David Stephen Mauku	NRM	
21.	Hon. Mushemeza, Elijah Dickens	INDEP	
22.	Hon. Nayebale, Sylvia	NRM	
23.	Hon. Odero, Godfrey Were	INDEP	
24.	Hon. Ogwal, Cecilia Atim	FDC	
25.	Hon. Okello, Geoffrey Charles	DP	
26.	Hon. Osoru, Mourine	NRM	

27.	Hon. Ssentayi, Mohamad	NRM	
28.	Hon. Ssimbwa, Fred	NUP	
29.	Hon. Timuzigu, Michael Kamugisha	NRM	
30.	Hon. Wanyama, Michael	NRM	
31.	Hon. Wakayima Hannington	NUP	
32.	Hon. Mwijukye Francis	FDC	
33.	Hon. Kato Muhammad	NRM	
34.	Hon. Lutaaya Geoffrey	NUP	