



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY

Official Report of the Proceedings of the East African Legislative Assembly

48TH SITTING – FIRST ASSEMBLY: SECOND MEETING – FOURTH SESSION

Tuesday, 8 March 2005

The East African Legislative Assembly met at 2.30 p.m. in the Chamber of the Assembly, Ngorongoro Wing, Sixth Floor, and AICC Complex in Arusha

PRAYER

[The Speaker, Hon. Abdulrahman Kinana in the Chair]

The Assembly was called to Order.

COMMUNICATION FROM THE CHAIR

The Speaker: Honourable Members, I am not sure if we have the quorum (*the Clerk ascertains the quorum*) I am afraid we do not have the quorum, but I am advised that the Speaker does not see, and so I will proceed to make my communication from the Chair.

1. Procedural Matters

Honourable Members, I would like to make the following communication regarding our sitting of today Tuesday, 8 March 2005.

WHEREAS, Clause (1) of Article 55 of the Treaty provides that the meetings of the Assembly shall be held

That the Assembly shall hold a sitting today Tuesday, 8 March 2005 and on

at such times and places as the Assembly may appoint;

AND WHEREAS sub-rule (1) of Rule 12 states that “Sittings shall, unless the Speaker otherwise directs, ordinarily commence at 9:00 o’clock in the morning up to 1:00 o’clock in the afternoon, and resume at 4:00 o’clock in the evening and conclude at 6:00 o’clock in the evening on Tuesdays, Wednesdays and Thursdays;

NOW THEREFORE, the Speaker, having taken cognisance of the foregoing, and yet having regard to the nature of the business to be transacted by the Assembly, has in the exercise of the mandate vested in the Speaker pursuant to the provisions of sub-rule (8) of Rule 11 directed as follows: the subsequent days I have appointed, commencing at 2:30 p.m. in the afternoon and concluding when all the

business laid down on the Order Paper has been disposed of.

2. Guest of the Assembly

Honourable Members, I would like to introduce you to the Hon. Austin Mtukula, a Member of Parliament from the National Assembly of Malawi. He is seated in the Speaker's Gallery. He is here on behalf of SADC Parliamentary Forum to discuss the possibility of establishing the Southern and Eastern African Association of Parliamentary Committees on Health (SEAPACOH). While here he will exchange views with the Chairperson of the General Purpose Committee and other Members on the proposed association. On your behalf, I wish him an enjoyable stay in Arusha – *(Applause)*.

BILLS

SECOND READING

The East African Community Competition Bill, 2004

Dr. John Koech (Member of the Council of Ministers): Mr. Speaker, I think today I will be making my maiden speech – *(Applause)* - and this has been a very great occasion because I am coming up with a very important Bill. So, I would like to move the East African Community Competition Bill, 2005 for Second Reading.

Mr. Speaker, it is with great pleasure that today I address this second sitting of the Fourth Session of the East African Legislative Assembly. This Sitting, like the other one which was held on 14 December 2004, is important as it is bearing on the indicative programmes of the East African Community Customs Union. The outcome of this Sitting will facilitate the enactment of the East

African Community Competition Bill into law. Like the Customs Management Act, this Bill will usher in our region a new dimension in trade liberalisation and development.

Mr. Speaker, allow me to point to this honourable House that since the launching of the EAC Customs Union on 31 December 2004, there has been progress in such matters as sensitising the Customs authorities, the business community and other stakeholders on the changes generated by that development. All efforts to address a few hiccups expected on the change in the magnitude of the Customs Union are underway. The Directorate of Customs and Trade is fully operational now. It is against this background that the Competition Bill is being read the Second Time.

Mr. Speaker, on 29 December 2004, following determination by this honourable House that this Bill being urgent be introduced without publication, this Bill was read for the First Time. Since then, in accordance with the requirements of the Rules of Procedure of the House, the Bill has been duly published.

Mr. Speaker, the preparation of the Bill took longer than anticipated; the intention was to have the law in place by 1st of January this year. However, we should not be oblivious of the fact that in legislating for trade liberalisation in the Community as it is now, the Partner States are embarking on fresh grounds. In that case, ensuring consensus on most points of policy underlying the proposed legislation was deemed to be very important. These unforeseen circumstances notwithstanding, I again urge the Legislative Assembly to expedite the consideration of this Bill. I believe that the honourable Members will, in the

spirit of fast-tracking the integration process, appreciate the circumstances in which the East African Community Customs Management Bill has been introduced.

I would like to express my appreciation to the Committee on Communications Trade and Investment which, given its usual thorough consideration of the work pertaining to the Customs Union, has studied the Bill in detail. It is my sincere belief that the work of the Committee will facilitate the improvements and deeper consideration of this Bill with a view to logically advancing it through the Third Reading and to rise for an effective piece of legislation. It is through well-articulated legislation that the foundation of the Customs Union will be built and sustained.

Mr. Speaker, allow me to remind this House that the EAC Partner States have, for the purpose of strengthening their economic, social, cultural, political, technological and other ties for fast, balanced and sustainable development, agreed on the establishment of the EAC Customs Union and a common market as the transitional stages to and integral parts of the Community thereof, subsequently a monetary union and ultimately a political federation

Over the last five years, these projections have guided the Partner States' policy on rationalisation and harmonisation. This remains our blueprint for enhancing regional integration. In this regard, the Council of Ministers has been guided by the EAC Development Strategy 2001-2005 to enhance trade liberalisation and development and adoption of an East African trade regime with a customs union and a common market. It is under this guise and strict conformity

to the provisions of the Treaty that the Partner States negotiated and concluded a Protocol on the establishment of an East African Customs Union. The Protocol, which came into force in November 2004, provides for policy on the following aspects of trade liberalisation and development:

1. Customs administration
2. Trade liberalisation
3. Trade matters including competition
4. Export promotion schemes
5. Special economic zones such as free ports and exception regimes
6. Measures to address imbalances arising out of the establishment of the Customs Union.
7. Mechanisms of handling trade arrangements with countries and organisations outside the Customs Union and for a common customs law of the Community.

Mr Speaker, the Competition Bill now before the House and other relevant legislation will be the bedrock for this law.

Mr Speaker, at its sixth meeting held on 29 November 2003, the Council of Ministers considered the report of a consultancy study on the Competition Bill and recommendations thereof. The Council took into account these recommendations against all other relevant considerations such as our level of development, our financial abilities as Partner States and our institutional setup as a regional organisation. On this basis, the Council adopted an East African competition policy.

This policy articulates compensation as the foundation of an economic system

that leaves the allocation of scarce resources and production and distribution of goods and services to market transactions rather than to state regulations - “competition” is defined to be a process of rivalry between market players - and then explains the positive economic functions and effects of competition in terms of allocative, productive and dynamic efficiency, especially for the industrial development of the East African Community.

In the East African Community, competition is expected to thrive in a deregulated and decentralised economy, adjust procedures to consumer’s needs and wants for the promotion of economic development and progress, and for distribution of income and wealth according to the economic performance.

The policy also addresses systematic limits of competition which may lead, under certain conditions such natural monopolies, externalities, public goods or asymmetric information, to market failures that may especially warrant state regulations or market players’ effective activities. It focuses on competition as a process of rivalry to ensure that available resources are used in a way which maximises the wealth of the people.

Mr. Speaker, at its ninth meeting held on 24 November 2004, the Council of Ministers, upon the recommendation of the Sectoral Council on Legal and Judicial Affairs, approved the enactment of the East African Community Customs Management Bill and the East African Community Competition Bill. These two Bills translated the Community’s policy on trade liberalisation and development, which is epitomised by the enactment

of the Customs Union Protocol into law.

The principle object of the EAC Competition Bill is to promote and protect fair competition in the EAC to provide for consumer welfare and to establish an institutional framework for this purpose. Once enacted into law, this Bill, together with the East African Community Customs Management Act will strengthen the foundation for the Customs Union. It will be a foundation which will largely supersede similar national systems in matters pertaining to competition.

Mr. Speaker, permit me to highlight to this august House the salient details of the East African Community Competition Bill.

The Protocol on the Establishment of the East African Community Customs Union provides *inter alia* for trade related aspects of trade liberalisation and development, including competition.

In this regard, the Protocol in its Article 21 provides that:

1. “The Partner States shall 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 Community.

2. The provision of paragraph 1 of the Article shall not apply in the case of:

- (a) any agreement or category of agreements between undertakings;

- (b) any decision by association of undertakings; or
 - (c) any concerted practice or category of concerted practises which improves production or distribution of goods, promotes technical or economic development, or which has the effect of promoting consumer welfare and does not impose any restrictions inconsistent with the attainment of the objectives of the Customs Union, or has the effect of eliminating competition.
3. The implementation of this Article shall be in accordance with the East African Community competition policy and law.”

The objectives of the competition policy and practice in the Community are therefore to:

(a) enhance the welfare of the people in the Community by:-

- i. protecting all market participants’ to compete by prohibiting anti-competition practices;
- ii. protecting the opening of Partner States’ markets against the creation of new barriers to interstate trade and economic interchange by market participants;
- iii. guaranteeing equal opportunities in the Community to all market participants from the Community, and especially in small and medium sized enterprises;
- iv. guaranteeing a level playing field for all market participants

in the Community by eliminating any discrimination by Partner States on the basis of nationality or residence;

- v. providing consumers access to products and services within their Community at competition prices and of better quality;
- vi. providing incentives in producers within the Community for the improvement of production and products through technical and organisation innovation;
- vii. promoting economic integration and development in the Community.

(b) enhance the competitiveness of Community enterprises in world markets by exposing them to competition within the Community;

(c) create an environment which is conducive to foreign direct investment in the Community;

(d) bring the Community’s competition policy and practices in line with international best practices;

(e) strengthen the Partner States’ role in relevant international organisations.

It is these features that explain the contents of the Bill.

Mr Speaker, in Part I, the Bill provides for the short title of the proposed Act, its objectives and applicability to all economic activities and sectors except cases of persons acting in their capacities as consumers, collective industrial bargaining and sovereign Acts of the Partner States.

Part II of the Bill provides for restraints by enterprises. Provision is made for legislation on prohibition of concerted practises among competitors, customer exploitation, mergers and acquisitions. It also makes provision for protection of consumers against exploitation.

Part III makes provision for the prohibition of state subsidies, the manner of granting subsidies and the areas in respect of which such grants are not allowed.

Part IV provides for procedure for the enforcement of the competition policy. This part therefore addresses the managing of activities stipulated within the policy and the law, including handling of complaints and enforcement of remedies and sanctions.

Part V provides for the institutional framework necessary for the implementation of the competition law as stipulated in the Act. To this extent, it establishes an East African Community Competition Committee within the institutional framework of the Community.

Mr. Speaker, the Council of Ministers is of the conviction that this Bill serves the general purpose of the Community and the specific purposes of the Customs Union now in its nascent stage. As the Community grows, and taking into account the outcome of the fast-tracking process, there is no doubt that this law and other legislation could in future be looked at again. This will appropriately take place after the law has been tested. I therefore urge this Honourable House to consider this Bill against the realities of our times and the circumstances in which the Partner States are constrained to operate before a political federation is established.

Mr Speaker, I must congratulate the honourable Members of this House for the work they have done since the coming up of the EAC – (*Applause*). Today is my first time to be here, but during the short time that I have had to interact with members, I have found out that they have played a very crucial role in ensuring what we have achieved to date. It shows their initiatives and participation. I know that as they have come for this session, they must have read this Bill, discussed it among themselves and I know that the Committee on Communications, Trade and Investments has looked into all the clauses and already has seen how it can go along with this Bill.

Mr. Speaker, the EAC is still at its initial stages of development, and I think we have moved a long way. Where we have reached now, I think we must commend ourselves and accept that we have succeeded in many ways. I think it is good to keep the momentum and make sure that we move ahead and ensure that the EAC does not only become a reality, but also that it is going to serve the interest of our people.

We were one before, and we had problems, but thank God for the foresight of our presidents. They saw that there was a need to revive the Community for us who are living now and for posterity. And I see, Mr Speaker, that at this stage of our development, some of us who happen to have grown during the time when we were one in East Africa need to speed up the processes of integration so that when the next generation who might not have seen what it means to be East African come, the Community would have been established, because I know that they may not be the ones to implement the integration of the EAC. So, it is upon these Members of

Parliament to ensure that the integration process proceeds unimpeded, and that all the necessary laws are put in place so that we reap the success of the Customs Union and also of the Bill before us.

Mr. Speaker, we all know that when we are starting something new like the Customs Union, we face a lot of practical implementation problems, and if we are not careful, we can easily make very hasty judgements and say that we may not be moving. The Customs Union is only two months old, and a baby of two months does not even recognise how the world is moving. So I think it is the same with the Customs Union. At two months, a baby just smiles, and I think the Customs Union is just smiling right now – (*Laughter*) - the way my brother here is smiling. So, I think we need to welcome that smile, we move along and we make sure that it becomes successful.

What I am trying to say is that in spite of the implementation problems that we have, we are moving, and I think that when we come to enact laws, we also need to consider the context under which we are operating. When we have negotiations from the Partner States, it is a question of give and take, and sometimes we may not succeed as a Community in getting what we want. But so long as we are moving, then I think we are on the right track. We may not achieve what we may see as ideal at this time, but as we move I think we shall be able to see our achievements and make the necessary changes with time.

So, against this background, Mr Speaker, I would like to appeal to the honourable Members that we consider this Bill within that context, and if possible, make the necessary

conclusion because this Bill will enhance the operationalisation of the Customs Union, and we all need the Customs Union. So I do hope that our deliberations will be geared towards the enactment of this Act and also taking into consideration the context under which we are operating. We are still young, these are the initial stages of our economic integration and we cannot move as fast as we may want to move. But so long as we are moving, then I think we are okay and we are on the right track. The problem of course is only when we are not moving.

When I joined the Community last year, Mr Speaker, and I had not discussed anything about the Community, I was very pessimistic. But when I came to this building, I was impressed. Then I met quite a number of people like my colleagues and others, and I realised that the Community and the economic integration is going to be successful. So, I am now a converted pessimist – (*Applause*).

Even as I speak here, I have a lot of optimism that we shall succeed. So, I think we better move on and get the other pieces of legislation, which will be another milestone towards economic integration. We are also in the process of fast-tracking the political federation, and I believe that this is going to be a reality. The study is here, Mr Speaker, and I think these great people who were here will continue to play a very crucial role in making that dream come true.

Mr. Speaker, with those few remarks, I beg to move that the East African Community Competition Bill, 2004 be read a Second Time.

Counsel to the Community (Mr. Wilbert Kaahwa): Seconded.

(Question put and agreed to)

**REPORT OF THE COMMITTEE ON
COMMUNICATIONS, TRADE AND
INVESTMENT ON THE EAST
AFRICAN COMMUNITY
COMPETITION BILL, 2004**

**The Chairman, Committee on
Communications, Trade and
Investments (Mr George Nangale):**

Hon. Speaker, on 1 December 2004, the Chairperson of the Council of Ministers, Hon. Jakaya Kikwete, introduced in this House Bill No. 10 entitled the “East African Community Competition Bill, 2004.” In accordance with the Rules of the House, the Bill was referred to the Committee on Communications, Trade and Investment for consideration and report to the House.

The Committee convened from 21- 25 February 2005 to consider the Bill. In its programme of work, the Committee made arrangements to consult the Secretariat, as well as other stakeholders like the East African Business Council and the East African Law Society.

The Committee managed to receive representation from the East African Business Council, the East African Law Society and the East African Community Secretariat. The Committee also had the opportunity to discuss its preliminary observations on the Bill with the Hon. John Koech on behalf of the Council of Ministers.

Mr Speaker, the Committee is grateful to all of them, especially the East African Business Council and the East African Law Society for their time and useful input. We trust that this sense and culture of partnership and consultation will only continue to be enhanced as time goes by. The

Committee would however have wished to consult many more stakeholders if time and resources had permitted. It is the considered opinion of the Committee that for practical reasons, in future if EALA Committees require the views of stakeholders, it will be necessary for the Committees to make arrangements to go where the stakeholders are and not vice versa. The best example was during the preparation of the Protocol on the Customs Union.

The Committee successfully received representation from many stakeholders because the Committee made arrangements to meet the stakeholders in their own courtyards, that is, in the capital cities of Nairobi, Dar es Salaam and Kampala.

The policy behind the Bill is articulated in the memorandum to the Bill, although in summary, the Bill seeks to translate the East African Community Competition Policy that was adopted by the Council of Ministers on 13 January 2004 into law.

The EAC Competition Policy has a number of objectives, and it is believed that by enacting this law which aims at promoting fair trade practices and competition within the framework of the East African Customs Union, East Africa will enhance the competitiveness of its enterprises in world markets by first exposing them to competition within the Community.

It is further expected that the law will create an environment which is conducive to foreign direct investment in the Community, bring the Community’s competition policy and practice in line with international best practices and strengthen the role of Partner States in relevant international organizations.

The ultimate goal is to enhance the welfare of the people of East Africa through guaranteeing of equal opportunities to all market participants in a level playing field, and where necessary, by provision of incentives.

Part I is on the objectives of the competition policy and practice. Mr. Speaker, sir, Clause 3 of the Bill seeks to articulate the objectives of the Competition Policy and practice in the Community.

In Clause 3 (a) (ii), one of the objectives is stated as follows:

“Protecting the opening of Partner States’ Markets against creation of new barriers to interstate trade and economic transactions by market participants”

All our efforts at regional integration are driven by the desire to create competitiveness. This inevitably involves the dismantling of all - and not only new - barriers to the exchange of goods, services and capital within the region. Therefore, Clause 3 (a) (ii) as it is now is in fact in conflict with the general principle of a Customs Union where all barriers to trade are in fact eliminated.

In Clause 3 (c), it is stated that the other objective is to:

“Create an environment which is conducive to Foreign Direct Investment (FDI) in the Community.”

The Committee noted that the notion of FDI’s may have become increasingly important in the last decade as part of the new world economic order created by multilateral

institutions. It should however be remembered that for East Africa as a region, FDI’s have been dwindling over the years, or if not, there has been a reverse in the flow of capital with more capital flowing out than flowing into East Africa.

The Committee therefore recommends that the law should seek to create a general environment, which is conducive to both local and foreign investment and not one which is apparently discriminatory against local investments.

Mr Speaker, Clause 4 of the Bill seeks to subject application of the law to “Sovereign Acts of Partner States”. The Committee did not comprehend the reasons behind the provisions in sub-clauses 2(c) and (3), which is an apparent contradiction with the provisions of Article 8 (4) and (5) of the Treaty. This legal uncertainty needs to be clarified because it is apparent that most of the legal powers are to be left with Partner States and not with the Community organs.

Part II is on restraints by enterprises. Mr Speaker, in general this part of the Bill seeks to prohibit anti-competitive concerted practices by enterprises by restricting them from engaging in collusive tendencies which are detrimental to other market participants. However, the Committee was of the view that the Bill does not go far enough into addressing the issue of goods subsidized from their countries of origin, for example from the European Union, goods produced cheaply elsewhere, for example China, and alternative goods like second-hand or used goods, for example second hand clothes – *mitumba*- which are all still injuries to local industries.

The law as it is now might in fact encourage dumping within the Community, moreover, the person who contravenes provisions of this section is liable to a fine of not more than ten thousand dollars only.

The Committee is of the view that the fine is not commensurate with the magnitude of the effect the action may cause to the industry. A much more appropriate penalty should therefore be prescribed.

Mr Speaker, Clause 7 makes provision for the Competition Committee established under Part IX of the Bill to grant permission to any person seeking to engage in concerted practice.

In Clause 7(3) the Bill provides that the Committee shall communicate its decision on the application within three months of receipt of such application. It is the considered opinion of the Committee that, three months is too long a period within which a decision has to be made. Efficiency is the benchmark for competitiveness, so if the region aspires to be competitive, then this period should be reduced to, at most, 45 days. This should be the standard time within which the Committee will have to act.

Mr Speaker, in general, Part III seeks to protect consumers from exploitation, as well as protecting small and medium sized undertakings from exclusion to competition by those holding dominant positions in the relevant markets.

In Clause 8 (1) (c), the Bill seeks to disallow discrimination between consumers or suppliers according to non-commercial criteria such as nationality or residence. Much as nationality is easy to understand, the term “residence” should be given an

explicit interpretation under the law. Similarly, the term “small and medium sized undertakings” mentioned in Clause 9 (3) should be defined.

Mr Speaker sir, Part IV is on mergers and acquisitions. Clause 11 (1) seeks to compel the person intending to execute a merger or an acquisition to notify the Committee of such merger or acquisition, failure of which the transaction will be void.

Mr Speaker the Committee, having studied these provisions, recommends as follows:

1. As standard practice, notification of a merger or acquisition should be made by both parties; the one intending to execute the merger or acquisition and the other which is being pursued for merger or acquisition.
2. If the transaction is carried out without notification, the transaction should not only be void but it should also be an offence to do so.
3. A separate and comprehensive law to regulate mergers, acquisitions and monopolies should be enacted as soon as possible.

Part V is on Partner States’ subsidies. Mr Speaker, it is stated in a number of background papers that the East African Community Competition Policy and therefore this Bill have been developed, the activities of which should be determined by the principle of subsidiarity. The Bill therefore seeks to allow Partner States to extend subsidies and exemptions, yet at the same time requires them to guarantee

equal opportunities in the Community to all market participants.

It was easily discernible, under the Customs Management Act, to implant the principle of subsidiarity in the law, but not quite comprehensible under the competition law, which essentially regulates operations of mainly private enterprises. The Committee agrees that it may be necessary for Partner States to grant subsidies in certain strategic areas in public interest, but there is the likelihood that the issue of subsidies will be open to abuse and endless controversy on interpretation of public interest.

A decision should therefore be made as to whether Partner States should be given leeway to offer incentives as Partner States, or to leave the issue of incentives and subsidies to relevant institutions of the Community.

Part VI is on public procurement. Mr Speaker, this part of the Bill seeks to compel Partner States and any other public authority within the Partner States to extend non-discriminatory treatment to all suppliers and or products and services originating from or affiliated with other Partner States. The Bill is however silent as to whether these provisions are intended to apply to the Community as well.

The Committee recommends that the provisions should be extended to the Community and its organs since they also indulge in public procurement.

On the criminal offences created by the Bill, Mr Speaker, under the relevant clauses of the Bill, a number of criminal offences, including those that bear prison sentences are created. However, the Bill does not state under which jurisdiction these offences may be prosecuted. The Committee

therefore recommends that the law should give national courts in Partner states the power to prosecute the above mentioned offences.

Part IX is on the establishment of an EAC Competition Committee. Mr Speaker, this part seeks to establish the EAC Competition Committee whose duty should primarily be to enforce the application of this law. The Bill proposes a membership of three members who shall serve a four-year renewable term. The members are required to be holders of advanced degrees in economics or law. The Competition Committee is to be facilitated by a registrar and there is no mention of any other category of staff.

Mr Speaker, the Committee had an opportunity to peruse the report of experts who prepared the draft policy and law. The study made by the experts recommended the establishment of a very strong EAC Competition Authority which is adequately staffed and financed.

This Authority should be an organ of the Community. They proposed that the decisions of the Authority should be taken by a top level management board. They also proposed that the Authority should be administered by a registrar supported by adequate clerical and secretarial staff, and that its budget should be kept separate from the other EAC organs or institutions.

The experts further proposed that besides enforcement of the law, the Authority should also be competent and capable of undertaking competition advocacy through promotion of public awareness and understanding of competition in the East African region.

Reflecting on the role the Competition Committee is supposed to play in this very competitive and crucial sector where the livelihood of many East Africans will depend, the Committee could not comprehend why the Council of Ministers opted for a very weak body as opposed to that recommended by experts.

The Committee therefore recommends that the Authority, as recommended by the experts, be adopted under the law as opposed to the proposed committee in the Bill if the law is not to remain a dead letter law from the onset – *(Applause)*.

Mr. Speaker, sir, in conclusion, I wish to take this opportunity to thank my colleagues, the Members of the Committee, for their commitment to duty, the evidence of which is the production of this report in yet another record time – *(Applause)*.

The Committee also extends a special word of thanks to our partners, the East African Business Council and the East African Law Society, for their input, which undoubtedly assisted the Committee during consideration of the Bill.

As mentioned in the report, the Committee is of the view that certain amendments of policy nature need to be made in order to improve on the Bill. Other amendments are also suggested, which are not necessarily of policy nature but which seek either to make those particular provisions clearer or to create consistence within the law. The proposed amendments are attached to this report as an Annex. At the appropriate stage in the course of passage of this Bill, I intend, on behalf of the Committee, to move those amendments. Mr. Speaker, I beg to table the report – *(Applause)*.

The Speaker: The Motion is now open for debate.

Ms. Rose Waruhiu (Kenya): Mr Speaker, I would like to join my colleagues in welcoming the hon. Koech as a member of this House, and as it is the tradition, we did not interrupt his contribution. We also note that he pleaded and worked very hard for the Council, and he himself has confirmed that he has quickly been sucked into becoming an East African for which we are very happy, and we welcome him heartily – *(Applause)*.

Mr Speaker, it has been our experience that ministers have a duty as Members of the Council, to propagate policy matters and other issues that will advance the Community. And after listening to his comments, we are very sure that we are in good hands. I am sure he will always find a way to balance whatever may be the interests of the Partner State from which he comes with those of the Community.

Mr. Speaker, I am a Member of the Committee on Communications, Trade and Investment, and as is evident from the report we have prepared, we dwelt on many issues, but let me say the following.

First of all, I think we should always ask ourselves what the purpose of any law is. In other words, every law presents its own agenda, and obviously it has a purpose, otherwise it would not be here. And in my very humble opinion, Mr Speaker, I think one purpose of the Bill, which we should look at as Members of the Legislative Assembly, is to project the region of East Africa as a region which accepts the free market economy and therefore has embraced a policy and a law to foster the growth of its economy.

I know that there are my colleagues around this table whose feelings about a free market economy may become evident, but we are proceeding, as is stated in the study, under the assumption that all our three countries have adopted this as a policy, otherwise it would not be possible to operate at the East African level unless we can confirm that our own Partner States have embraced this policy. And it is only talking about the free market economy.

Those who read economics know that in theory we used to talk about free competition, which only exists in economics books, but a free market economy does accept that there is responsibility for fair trade. But you can have both: you can have fair trade and you can have competition.

I do not particularly like the word 'rivalry' which has been used both in the objectives of the Bill and in the study. I think it is to accept that competition around all issues is healthy because it requires those who are performing to improve their performance because they know that somebody else will get into the market.

So, for the comfort of those who have been uneasy with the idea of a free market economy, we are proceeding, as I have said, Mr Speaker, on the assumption, as the Minister assured us, that there has been adoption by Council of a policy within East Africa. So any investor who wants to arrive in East Africa with his or her money is coming to a region which, by passing this Bill, has announced to the world that there is a market economy.

The second purpose which to me is important and which I would like to mention is that by passing the law, we

are of course accepting that business can also be carried out under the rule of law. We are requiring that enterprises that are working in this region will operate under the rule of law. And this Bill has been drafted to regulate the conduct of businesses, and it is doing so by removing the role of government so that the sector is left to operate on its own. So, the outcome, Mr Speaker, of this Bill is to encourage growth and development in this region by encouraging investment. That is a very simple way of understanding it.

I would however like to say that sometimes when we sit in this Chamber and pass Bills, you wonder who is speaking for the smaller investor, or the person with little money. And that is why you will find that we have suggested, as a Committee that while there should be emphasis on foreign direct investment, there should be clear responsibility on how to encourage local investors. And it is up to us also to go and promote the idea of East Africans themselves doing business, and not to always think of foreign investments.

Mr Speaker, the minister - and also the Chairperson of the Committee on Communications, Trade and Investment - have dwelt on the objectives of the Bill, but again I would like to say one or two things.

First of all, the minister has assured the House that there has been a policy behind this Bill, and, as provided in the Treaty, all the work that we do in this region is always summarised as promoting development and progress. We are therefore accepting that by allowing free market and by levelling the playing field, we shall promote development and progress in the region. Mr Speaker, we can only do that if the other players within the

economic sector are part and parcel of this Bill.

We have had discussions with the East African Business Council, we listened to their views and they welcome the idea of a law, but they feel that this law has not provided for adequate compensation for them, although we did not make a tacit amendment to this particular clause that we are looking out so much for anything that they may be doing wrong. I think it is an attitude of lawmaking in this region that you always think of the offender and the business people do not feel that there is enough compensation for those who are playing fair.

We left it open because - I am told that if business people find one line of business difficult - that they are business people because they are able to find an alternative business to enter, and that therefore because they have been left to a free market, if they find that certain things are too stringent, they will always find another line of business. But I had one issue which I think the Chair raised, that is coming out of the Customs Union and the new increase in tariffs.

If we are really passing laws that are going to promote development, we must also look at how the majority of our people are going to be affected. While we agree that big business can look after itself, we have actually not provided for how to look after small business. And in this case, we paid some attention to traders themselves. I know that comes under the Customs Union, but these two Bills, we were told, are supposed to move in tandem.

Mr Speaker, I do not know whether Members are aware that since the Customs Union came into effect, there

has been great destabilisation, for instance, of traders whose goods were in transit. In other words, when we debated the Customs Management Bill, we were under the impression that time would be provided; that there would be notice that this has now become a law, so as players in this sector, you should know that this law will come into effect by a certain date, and so you should prepare yourselves.

I am saying this because it has been the concern of this House for a long time that there has not been enough sensitisation; that there has not been enough preparation of the business people wherever they are. The Community must invest money to sensitise the stakeholders and the major players. This is provided for. If you look at the activities of the Community, particularly the Secretariat, they are supposed to carry out activities to prepare the business community. After all, we have all agreed that the Community is private sector driven.

We were amazed at the kind of input we got from the East African Business Council. I think they have asked for more time to even make more submissions. If people like the East African Business Council who are so organised are really not ready with their input into this Bill, then there is very serious concern. I think in debating or passing these Bills which affect the Business Community, time has to be provided to give the private sector time to adjust to whatever law we are passing. We want to avoid the kind of backlash we are getting at the moment with the Customs Union.

Recently when I was back in Nairobi I found that the traders, who are mainly women who trade in what is called *mitumba* or second-hand clothes, have

now resorted to taking to the streets. I am not sure whether they have sought audience with the Minister in charge of the East African Community or the Minister responsible for Trade. I have seen the same kind of appeals going on in Tanzania. If a law is to take effect and you give people less than 24 hours notice, then you create those kinds of difficulties.

So I am saying several things: One is that the law we pass must be sensitive to who the major players are, and I am saying when we do that it seems we take care of big business; we must find a way of reaching out to also the small players. I know that the minister did say that there is purpose and intent in here to take care of the small and medium scale operators, but unless I am unable to understand the law, there is a section in this Bill which says that there is an exception provided. I do not know whether that is the one he says will take care of the small business people. I think in his response it will be important for us to see where in fact we are putting the small and medium scale enterprises.

Mr Speaker, I am talking generally about policies in the region because much as we have tried as an Assembly to get ourselves informed between the studies which are done by experts and the policy decisions which seem to be taken at another stage, we have not, in the three and half years we have been here, been able to enter that arena. In other words, we would read a study, see the recommendations and then we get the Bill, maybe two or three years later, and the two are not in tandem. We are therefore very constrained really to understand what it is that is in the interest of the Partner States, and we have to restrict ourselves to what is in the interest of the EAC. I think that

is why this Assembly was created. Otherwise we would not be here.

We are duty bound, as Members of the East African Legislative Assembly, to look at every Bill with the eyes of an East African. And the more East Africans we can recruit, the better we shall be.

So, I want to say one thing before I come to my final point, and it is that the purpose of us coming together within the Treaty, or the purpose of us passing any legislation is to achieve development, and I think I have dwelt on that at length, although I was referring maybe just to operators within business. But this Bill somewhere also says it has a purpose which is to improve the distribution of income and wealth. And there are words at the end, which maybe my friend hon. Kanyomozi may not have seen, that we are distributing income and wealth according to performance – (*Laughter*). But, as I said earlier, we are moving only on the assumption that our three countries have accepted a free market economy.

Now, coming to our very serious recommendation, which applies to Part X, which is from Article 37 onwards almost to the end, this one in the Bill is headed “the East African Community Competition Committee.”

Mr Speaker, I wish I could refer Members to the study, which is quite long; 146 pages, and it is entitled “Study prepared for the East African Community Secretariat”, and they are very distinguished East Africans who prepared this report which is dated December 2002. Members of the Assembly were also fortunate very soon after in meeting these distinguished East Africans who were led by an experienced team leader and

what they all had in common was how they came from institutions in our three Partner States where they are responsible for issues of competition or for handling issues of monopolies. So, they were not just university professors.

I have nothing against university professors; I am just trying to show the difference that we have had seminars where we invite scholars from the region but in this case we actually met with practitioners and heads of the relevant institutions in our three countries. (*Power fluctuation*) Mr. Speaker, I think there is sabotage here; it is only applying to the rest of the House – (*Laughter*).

With that diversion, Mr Speaker, I was saying that I am going into the background because the minister has appealed that we should pass the Bill as it is, and we are going to the background to indicate to him that our intentions were based on recommendations of people who work for the Partner States and whose recommendations have been accepted in most of the other views.

In other words, you get a group of consultants, they lay the ground for you, they give the principles on which to base policy, they continue to tell you how the policy should look like, they continue to tell you what the challenges are for the three Partner States, and then they continue to explain how you should organise yourselves and set up the right structure to manage this particular policy and law. We therefore feel that the recommendations on the setting up of an authority which is independent, which has its own budget and which can work in the interest of business looks to us to have been the natural conclusion to this study.

It is therefore our recommendation to the House that as the study is the basis on which this Bill has been prepared, we have not seen how now setting up that small Committee but leaving the functions as defined - and they are very heavy functions and serious responsibilities that can only be carried out by an independent body - we are yet to see why there was a change on that. We have also not found the reasoning behind this change.

I am saying this, Mr Speaker, because the experience we have in the Community is that if you want a certain committee to meet, then you have to summon them and say there will be a meeting in Arusha of the East African Community Competition Committee. Depending on how busy those people are, these meetings may never take place. But we are really looking for a reason; what is this pre-occupation with committees in Arusha? (*Applause*)

It is a very simple question, because in this particular case it is very clear that we need a body which is fulltime resident and with authority. They cannot just wait to be called when there is a crisis. They need to be here because they should be leading the field! They are the ones who actually will have foresight and see where the law is not working and what kind of problems to anticipate.

We cannot always be problem oriented. The purpose of the authority is not just to deal with disputes; it is to advance all these aims and objects of this Bill. It even has to look for ways of improving the field and also to understand how the Partner States are faring in this work. You will find, Mr Speaker, that the Committee has made a very detailed recommendation;

although I can say that we picked it directly from the study because it made sense and it looked relevant.

Mr. Speaker, what I would like to say is that our own experience so far in this Community is that there is always this feeling that we must move slowly; actually the word is “gradually”. It is contained in the Treaty so nobody can be accused of contravening the Treaty if they say we move gradually and cautiously. But, Mr Speaker, this changed, we thought, last year when the presidents or the Summit decided that that thinking was now out of date and we could now fast-track! I know that “fast track” is not a verb, but it has now become a verb. It is a combination of an adverb and a noun. But it is a new word which means “to move fast”.

So, I want to say two things: One has to do with the kind of Secretariat we have and the kind of institutions we are building at the Community headquarters. If in fact the foundation was that we move cautiously and gradually, then we could understand the kind of Secretariat and technical staff we have had at the headquarters of the East African Community.

The new words I found in another report are that we now need a ‘robust’ and ‘vigorous’ Secretariat. So, I do not know if the robust and vigorous Secretariat will include the new authority on the Competition Bill, and it will take back its own duty in terms of the Customs Union management and take the views of this House into consideration, but certainly I think this Bill was drafted before ‘fast track’ came into place. It is dated 1 December 2004, but I first saw it doing the rounds in our pigeon holes long before the ‘fast track.’

So the mood has changed, and we are ready to pass the Bill, but we want to pass a Bill that will help, not just the Community but also the Partner States, and most of all, it will promote speed within the management of business and will improve investment, create more jobs and more income. We cannot always manage with caution and only manage when we have a problem. We need a fulltime body whose mandate is very clear. With those few words, I beg to support – (*Applause*).

Mr. Calist Mwatela (Kenya): Mr Speaker, I will endeavour to be very brief. First of all, I congratulate the minister for making his maiden speech, and for moving for the second reading of the Bill. I have taken note of all the good things he has said about the Assembly, and I think that on behalf of the rest of the members, I thank you, hon. Minister, for recognising that this Assembly has been working very hard towards the integration of East Africans.

I would also like to thank the Chairperson and the Committee on Communications, Trade and Investments for the good work they have done in producing this report in record time. Indeed, I think they were under a lot of pressure because they were working up to this afternoon to get this report ready. So, thank you very much Chairperson and your Committee for availing the report.

Mr. Speaker, I would like to centre my contribution on one area, and that is the area of the Authority, which has been dealt with quite well by hon. Rose Waruhiu. But before I get there, I think it is important to appreciate that the private sector in East Africa - and indeed in the rest of the world - is becoming increasingly important for the people.

Without it in East Africa, for example, where would our governments get revenue from? It is these people who pay taxes and those taxes help us run our governments and provide services for East Africans. We therefore need to support the private sector in whatever we enact so that we have a vibrant private sector. We will collect more revenue and will be able to provide better services to East Africans in the process. And this Bill is intended to do exactly that; to help the private sector do its job properly.

Looking at the Bill from that angle, you do not therefore understand why we cannot have a serious management team here in Arusha, or if we decide, in a different place, but a management team to ensure that there is fair competition amongst businesses in East Africa. Those who do business know that the most frustrating thing is to realise that somebody else has undue advantage; that kills business!

I think the reasons being used for refusing to have an authority are very flimsy. I have heard some people mentioning the question of costs; that it is an expensive thing and therefore people need to move gradually, as we have been told, but these activities do take place in the relevant Partner States! They cost money and we have officers being paid to do these activities. We want to have a central authority here and we want that money to come here. It will be enough to run the authority, and more economically.

This business of being cautious and at the same time thinking that we want to integrate will not work. It is important for us to realise that we must make sacrifices, including surrendering some of our sovereignty.

I do not know whether it is surrendering because I remember hon. Marando telling me one day that actually we have reversed the thinking that we will lose our sovereignty. In fact, it is not the case. When you combine three sovereignties, you get a bigger sovereignty not a smaller sovereignty! (*Applause*) So, our Partner States should start thinking that way, that we are combining our sovereignties so that we have a bigger sovereignty. We will be more powerful and we will think well because we will have three heads instead of one and so on. We will also solve our problems faster because we will have triple energy instead of single energy.

So, Mr Speaker, I would beg the Council of Ministers, through hon. Koech, to reconsider the idea of having a committee. I believe the committee will have its members back in the Partner States and whenever they have a meeting is when you call them; one member from each state. I think we are not serious when we do things like that. I would ask the hon. Minister to appeal to the other ministers so that we adopt what the study had recommended; a proper authority to run the affairs of the competition process properly.

Mr. Speaker, I would like to mention one thing, and probably make a request to the honourable minister along this same line because, here we are trying to integrate East Africans along business, but when you talk about political federation, there is politics inside and there is also economics inside it.

Mr Speaker, we would want them to start thinking very seriously about what is provided in the Treaty under Article 5(1) and Article 123(3) (c), on the issue of co-operation in the

political arena so that even within the political arena, we should start giving some lead towards fair competition within politics. I think we have a duty to take the lead and say, in East Africa this how we want politics to be carried out. I think we have a duty as the body representing East Africans!

We should also have political competition so that there is fair play, because when we are talking about this Competition Bill, we are talking about businesses within the Partner States competing fairly, and businesses within the Community competing fairly - interstate as well as within states. And whereas we have not yet come to inter state politics, we have within state politics, so why can we not start setting rules for political competition? Mr Speaker, it is possible – *(Laughter)* - and we should start taking the lead.

There are a number of things we can do as a start. I would beg the hon. Minister to consider one of them, and that is setting up an East African Community Electoral Commission – *(interjections)* - Mr Speaker, I am not out of order because this is competition – *(Laughter)*.

Mr Speaker, unless we do these things in tandem, we look at economics and look at politics and the social aspects; all these things must move together if we have to arrive at a federation in the year 2013. We have to look at these things together. With these many remarks, I support the Motion.

Mr. Wandera Ogalo (Uganda): Thank you very much, Mr. Speaker, for giving me the opportunity to contribute to this Motion.

There are certain obstacles for us when we come to debate Bills in this House. Mr Speaker, the Minister did justify

the Second Reading of this Bill. He gave a thorough expose of why he brought this Bill, and also the Chairman of the Committee has brought us a report, which he has read here. But I think that in order for us to have a meaningful debate, it is necessary that Members have sufficient time to prepare themselves.

Mr Speaker, sir, I have just got this report of the Committee here and I am supposed to have read through it while the debate is going on and be able to contribute to it. It is not fair to the House and to the people of East Africa – *(Applause)*. If it is necessary, we should find methods of giving more time to the Committee so that we have sufficient time to be able to understand what they are recommending to us and then we can be able to debate and meaningfully contribute to the debate!

Mr. Speaker, sir, if we do not do that, we will find that in future we shall only be having Members of the Committee coming to debate their report - *(Interjection)* -

Mrs. Waruhiu: On a point of order, Mr. Speaker, is the hon. member in order to impute that he has not had time? The Bill was read for the First Time, it became property of the House and Members were supposed to educate themselves any way they know. They do not have to wait for the report. Is he in order? Is he incapable of reading the Bill on his own until the Committee brings a report? *(Laughter)*

The Speaker: I think the hon. member is in order because he has read the Bill but he has just got the report of the Committee a few minutes ago.

Mr. Wandera Ogalo: Thank you for the very wise ruling. And if I would draw the attention of the Member to

Rule 68(3) of our Rules, which says that after the presentation of the report of the Committee, “A debate shall then ensure on the merits and principles of the Bill on the basis of explanatory memorandum and the report from the Committee”. So really, I need time to read!

Mr Speaker, sir, leaving that aside, and turning to the Bill – (*Interjections*) - I have read the Bill, hon. members. Mr Speaker, sir, the objectives of the Competition Policy and Practice is mentioned in Clause 3 of the Bill. That I take is the guiding principle of the Bill, and I notice that the main import of that clause is to protect freedom to compete by prohibiting anti-competitive practices, and further under Clause 3(iv), to guarantee a level playing field for all market participants in the Community by eliminating any discrimination by Partner States on the basis of nationality or residence.

Mr. Speaker, so it appears to me that the principle of the Bill is to promote competition and move away from anti-competitive practices. Therefore I would expect that the body of the Bill would be in line with those policies and principles. If at the end of the day we find that the body of the Bill negates those very principles, then there is something very wrong with the way the policy has been structured.

Mr Speaker, one of the matters I came across here is the sovereignty of the Partner States. The fact that it appeared from the Bill to say that this Act shall not apply to the sovereignty of the Partner States therefore means that we are now allowing Partner States to curtail the very thing that we are propagating.

The other matter is the subsidies in the national interest. They are saying that when a country feels that its national

interests are threatened, then it can engage in anti-competitive practises. In my humble submission, Mr Speaker sir, it would appear to me that in allowing a lot of flexibility to Partner States to interfere with the competition, we are at the same time negating the very principles we are purporting to be legislating for.

I have seen somewhere in this Bill something about regulation allowing that the states may place restraints on competition on specific sectors or industries if anti-competitive conduct is required by that Partner State. It therefore means that a Partner State can even enact legislation which goes against competition and we would have authorised them by our law to do so. It is very worrying, Mr Speaker, to me to find that whereas the object is to promote competition, the body of the Bill seems to be going against that policy.

Mr. Speaker, sir, I have also seen in this Bill somewhere where there is supposed to be some allowance for concerted practises if the market share of whoever is engaging in that concerted practise does not exceed ten per cent. What mechanism do we have in place to determine market shares in East Africa? Who will be there to determine whether these two people who are agreeing are below ten percent? It is liable to abuse! We do not have the data and the technology. It seems to me that there was still some more work which should have been done on this.

Mr. Speaker, sir, on the policy of the Bill of prescribing penalties like six months imprisonment or ten thousand dollars, I notice that abuse of market dominance, for example, that whole part, there is creation of offences and those offences really include people

who can manipulate the market for gain. And for the sentence, of course we have to go back to Clause 46 which prescribes ten thousand dollars or six months. But, Mr Speaker sir, what happens to a company which deliberately does any of the things which are prohibited under Part III? He is able to mint millions of dollars and goes to pay a fine of only ten thousand dollars! Has there been any thinking in the policy of the necessity to levy some kind of percentage on this money which has been earned, or have we thought that it is not necessary, they will go away with their wrongly earned profits and just move away? It is not deterrent at all!

Mr Speaker, sir, hon. Waruhiu referred us to a report of experts, but unfortunately we do not have that report. I believe she meant the Members of the Committee on Communications, Trade and Investment, but the point I want to make here is that if some experts have after a thorough study come to the conclusion that the Authority is the best way to manage competition, I think it would just follow, Mr Speaker, that that would be the best way because we are building in this Bill mechanisms: We give with one hand and take with the other; we allow the Partner States to continue suppressing competition!

Now, if we do not have in place a mechanism which will make sure that these Partner States are controlled, the whole question of competition will not arise. So, a Committee of three which in the Bill is given three months to make a decision, when a businessman is talking about importing or exporting his flowers and he has to wait for your decision for three months; for what? He will find other ways! It would be too late.

So Mr Speaker sir, I find it difficult to understand why this good decision of an authority to be able to take care of these problems is being resisted by the Council of Ministers. I would have thought that the Council would actually be in the forefront of supporting it – (*Applause*) - because the Council is for East Africa. If we are to move, we would expect that while the Partner States, while the people who trying to keep the powers within the Partner States are doing so, the Council would be coming together with us, coming together with our Committee to push for East Africa!

So, Mr Speaker, sir, I would plead with the hon. minister that instead of insisting on this Committee, which in my view really negates the whole essence of this Bill, if it is necessary that the hon. minister and our Committee should have further dialogue on this and explore more on this question, they should do so, so that really we have a Bill which makes sense. In as much as we have been informed that actually even what has been prepared for us here by way of amendment was removed from that report and brought here, it is necessary to have time to look at this more.

Mr. Speaker, sir, I would plead that if it is possible with the Minister and our Committee, they should go back and look at this concept. What is the essence of this Bill? If you do not have an authority here in Arusha to put the Partner States in place, they will stall the whole process and they will fail it! (*Applause*) And Mr Speaker, I submit that if we enact this legislation with the Committee of three people, one from each Partner State, meeting in an ad hoc way and answerable to some desk officer in Dar es Salaam, Kampala or Nairobi, that man who is here

purporting to manage competition will most likely be actually bringing what his state wants here. He will be here to simply propagate what the state wants – *(Interjection)*.

Somebody is reminding me that this is actually what really happens. We have what is called the Finance and Administration Committee; this committee which comes here not to speak East Africa but to speak the language of their Partner States. We have seen this for the last three years, and this is another Finance and Administration Committee; it will come here for that purpose!

So to me, Mr Speaker, I think we shall be doing disfavour to the people of East Africa if we sit here and believe that by putting in place this committee of three people we shall be able to control or manage competition; not when we have built in subsidies and regulations for Partner States to engage in anti-competitive practises. With due respect, it will be a waste of time to do so.

Mr. Speaker, in conclusion, I just want to make two points: One point is on the format of this Bill, just by way of a query to the Counsel to the Committee on how he views Article 62(3) of the Treaty in relation to what is provided here. The article says: “Every Bill that is submitted to the Heads of State under Paragraph 2 of this Article shall contain the following words of enactment...” and the mandatory words are put there; what you should say. I wonder whether he could consider pointing out how it relates to this Bill.

Secondly, in Rule 68(3) of our Rules of Procedure about an explanatory memorandum to the Bill which would assist us, I do not know whether

Clause 3 is the explanatory memorandum to this Bill, or there was supposed to be a Bill – *(interjection)*. No, this is not an explanatory note; this is a memorandum of policy, objectives and reasons for the Bill. That is different from what I am talking about.

Mr Speaker, sir, with those few remarks, I beg to withhold my support for this Motion.

Mr. Mabere Marando (Tanzania): *Mheshimiwa Spika*, first I thank you for giving me the Floor immediately after the hon. Member who has been on the Floor because what I am going to say arises from his remarks about the study being the background on which the Committee proposes amendments on Part 10 of this Bill.

Before I go there, I must also congratulate the hon. Minister for being able to have made it to Arusha today to be with us to hear our concerns with a view that they will be seriously taken into account. And now that both Somalia and Darfur are settling down, I am sure we are likely to see more of the hon. Minister because the pressure on his docket will have been reduced – *(Applause)*.

Mr. Speaker, sir, I would like to give an explanation on the study which my hon. friend Waruhiu talked about. The Committee on Communications, Trade and Investment sought and obtained a report of a study which was commissioned by the Community way back in the year 2002 on the policy and proposed law on competition. This is the study that hon. Waruhiu was referring to, and it was availed to us when we came here. It is a huge thing and we delved into it and understood the policy behind this Bill.

That is why, in the report of the Committee, as the chairperson well stated, we find some discrepancies both in the study and the Bill as proposed. But not only that, Mr Speaker sir, for the information of the honourable Members of the Assembly who are not Members of the Committee, in the year 2003, legal experts from the Partner States also met for several days here in Arusha after having received the study. You may remember that those who did the study were people, as well-stated by my good friend here, from the practising desks from our Partner States relating to enforcement of fair trade, competition laws and monopolies, led by an expert we had imported all the way from Germany.

Of course we must remark on record that we know very well that these studies are very expensive and a lot of Community funds are put in them, so good reason must be found to depart from them once monies are spent on the same – (*Hear, hear*). But as I was saying, after that study, legal experts from the Partner States, in addition to the experts on monopolies and competition who had done the study earlier, also came here, looked at the study, made their own contributions and again made recommendations on the nature of the authority that is going to administer the law.

They agreed with the report of the experts, they agreed with the contents of the study. Mr Speaker, sir, the annex to the report of the Committee on Communications, Trade and Investments, from pages 15-23, our proposed clauses 37 to 45, Mr Speaker, all that is lifted from the report of the study as supported strongly by the legal experts from our Partner States.

The assumption, Mr Speaker sir, is that both our local experts and the Germans considered the question of costs to be incurred on the establishment of the authority to administer the law. In addition to that, the assumption is that our legal experts before coming from Nairobi, Kampala and Dar es Salaam had been strongly briefed also on the question of costs, and when they were making these recommendations about the establishment of a strong authority to administer this law they must have taken all the exigencies into account. Now the question is, who changed it, and why? That is the question.

We are seeking an explanation from the Council of Ministers; what was the background for the change? Cost cannot be the issue because all these experts cannot just come with these recommendations without having considered costs unless they are lazy, and I am not sure that they are not lazy. And why did we seek their expertise, as my good friend is saying, if we cannot trust them and adopt their views, why did we pay for the study and why did we incur the expenses of bringing down to Arusha our legal experts here to sit down and consider these things?

Mr Speaker, sir, I do not know if you did have occasion to look at both documents; one is a big volume called “A Compendium on the Recommendations on the Competition Law”. We have read that in our committee, and we hold very strong views, Mr. Speaker, that we should not be here to pass a statute for the sake of passing a law – (*Applause*). We should pass a statute which will have effect to administer the law, effect to enforce the law properly, and this cannot be an authority of two persons called on ad hoc basis from our capitals to Arusha whenever there is something that

attracts the attention of anybody – *(Applause)*.

Mr Speaker, I will give a practical example here: Two or three years back our brewery companies in Kenya and Tanzania made their own managerial decisions. Kenya Breweries and Tanzania Breweries were competing. Each one had established a factory. Tanzania Breweries had established a brewery in Thika near Nairobi to establish brands that were manufactured in Tanzania and East African Breweries from Nairobi had also established a factory in Moshi. Now those of us who drink beer in Tanzania were happy because the prices were going down.

Because there was competition, prices were reducing by a few cents so that we had better and cheaper beer. And then, Mr Speaker, sir, these people organised between them and said they did not want this competition. So, they sat somewhere in Nairobi and Dar es Salaam and said we in Tanzania are taking over the Moshi plant and you in Kenya take over the Thika plant, and that was to our detriment – *(Interjection)*.

Mr. Jared Kangwana (Kenya): Mr. Speaker, I would like to inform my Learned Friend that the two in fact did not sit in Nairobi, they actually sat in London. The reason being that the ownerships of those two companies, one based in Tanzania and the other one based in Kenya respectively are by South Africans and Britons. And so the intervention, Mr Speaker, as point of information, was even from outside the region.

Mr. Mabere Marando: I thank my hon. Friend for that very useful and healthy information. That, Mr Speaker, calls for a strong body wielding a stick

to say “No, you cannot do this!” So, under Clause 4(1) of the Bill, the law is clear that this Act shall apply to all economic activities and sectors having cross-border effect. Now, the Competition authority in Dar es Salaam, its jurisdiction is within the borders of Tanzania, and the same applies to the body in Kenya. So what happened with respect to the brewery companies was cross-border!

So, if we are forming a committee of three people – *(Interjection)* – bribable three people? No, I did not say that – *(Laughter)*. If we are to form a committee of three people who are to be called on ad hoc basis, without the capacity to monitor, without the structural ability to investigate, without a system, Mr Speaker, sir, we are not going to be effective; it is a joke! We are passing a law just for the sake of passing a law; for publicity and propaganda – *(Applause)*. On our part as the Assembly, our curriculum vitae will include that we have passed ten statutes instead of nine, but useless!

Mr Speaker, sir, we are humbly asking our good friends in the Council, as the executive, let them listen to the voice of East Africa which is represented here that this Bill in so far as Part X stands is very inadequate. As a good friend of mine remarked in the morning, the Committee being formed here is completely incapable of enforcing the functions that are spelt out in the law itself. While we are giving it very important functions, we are forming a body that will be incapable of enforcing those functions.

In our Rules of Procedure, there is a provision which gives my good friends powers to withdraw the Bill and re-submit it later. Rule 31(a) provides for adjournment of debate; they may move that the debate be adjourned to make

them reconsider, as my good friend Hon. Ogalo has just said. Reconsider this thing afresh. The question of costs can always be taken care of because we vote the Budget anyway. Thank you very much Mr Speaker.

Ms. Irene Ovonji-Odida (Uganda: Thank you hon. Speaker, I would like to join my colleagues who have spoken to add my concerns to those which were voiced by the Committee on Communications, Trade and Investment which I belong to now, to the hon. Minister this morning.

I think a number of Members have emphasised the importance of the body which will be charged with implementing this law and policy on competition, and I do not need to add to that. As was said by hon. Marando, both the study and the high level experts recommended a strong structure to implement the Competition law and policy.

The hon. Minister himself has read to us the statement of policy in the memorandum at the end of the Bill, and when you look at that statement on Page 27, it is very clear about the importance of competition in enabling the East African Community to achieve its objectives of integration, particularly within a Customs Union and a Common Market. In fact, it is mentioned here, and the hon. Minister read it that competition is viewed as a corner stone of the Customs Union. If it is that important, and we do believe that it is, it is important that we give it due effect. Because of this, it is very difficult for me to support the proposals in the Bill as it stands with respect to the body that shall have regulatory power over competition.

This morning when the Committee met with the minister, I highlighted a

number of clauses in the Bill. If you look at clauses 7, 9, 10 and various parts of the Bill, they elaborate in great detail functions of this regulatory body. In Clause 7, for example, relating to concerted practice, a person – this is a company for example - shall not engage in concerted practice such as that which hon. Marando and other beer drinkers were prejudiced by – (*Interjection*). Yes, that was a concerted practice which adversely affected beer drinkers in the Community. And under that clause, two entities which intend to engage in a concerted practice will have to apply to this committee before they reach such an agreement.

If you go through this Bill, you will see that in Part III, for example, under “Abuse of Market Dominance”, there are certain practices that business entities are not supposed to engage in when they have a dominant position in the market. And who or what is supposed to regulate them from those kinds of practices, including matters such as price squeezing under Clause 9 and price fixing under Clause 10? It is this body! This is the same body that is also supposed to oversee mergers and acquisitions: When entities wish to merge or to acquire a new entity they will have to notify this committee and this committee is supposed to do certain things before it gives permission for such an undertaking to proceed.

So, clearly when you look at the functions which this Bill has still retained, and these are functions that were derived on the basis of the study and the meeting of the high level experts that hon. Marando referred to, you can see that there are a lot of functions that this body is going to have to carry out, that this body is going to discharge in order to regulate

competition, which we all acknowledge is a cornerstone of our economic integration project. Therefore, there is a disconnect between the functions as retained in this Bill and the body as proposed in the very same Bill. And for this reason, as a committee, we strongly requested that this matter be revisited by the Council.

I must say, if the issue is cost, because this is the issue that was put to us, it is possible to deal with that in a phased manner. What we are saying is that you cannot create a structure that is limited and incapable of implementing its functions. What we can do is to create it in this law and then have a phased introduction. You do not have to recruit all the staff at the same time but you will have provided for them in the legislation.

Are we going to return every other year and pass a new Bill because the members of staff can now be recruited? Will we return here and say now we pass an amendment to this Bill to expand the body of the Committee? No! What we are saying is that we wish to legislate for a longer period. So we need to envisage the kind of structure we will need for the next ten to 20 years and legislate accordingly. And then for the implementation of that, for the actual recruitment, that can be phased in and budgeted for accordingly. So, the issue of cost can be dwelt with accordingly.

Finally, I would like to stress here the importance of the role of the organs of the East African Community. What was quite apparent in our discussions today is that when the individuals come from the Partner States, they carry forward the sentiments and positions of the Partner States, but it is incumbent on the organs of the East

African Community, which I must say include the Council of Ministers, to look much more at the interests of the region. Without that push from the regional bodies, this hold over power, this hold over resources and this control from the Partner States will not be let go of.

So we urged, and I do urge, that the hon. Minister and his colleagues look at this issue as East African ministers, as Members of the Council of Ministers of the East African Community first and look ahead towards the East African Community needs as a regional structure. What it means is for the Partner States to give up some of those powers and allow the centre to begin to take control and to drive this process forward.

So, in view of that, I would support what has been put on the Floor by my colleagues and request that we find a way out of this to have some changes made on this Bill, especially with respect to the Authority before we proceed to discuss it. I thank you.

Dr. Harrison Mwakyembe (Tanzania): Thank you very much Mr. Speaker. Taking into account the fact that the three Partner States of Tanzania, Kenya and Uganda are all signatories to the Paris Convention for the Protection of Industrial Property which obliges us to ensure effective protection against unfair competition, and the fact that the Bill before us does exactly the opposite, and taking into account the serious recommendations made by the Committee on Communications Trade and Investments here, as well as the invaluable contributions by Members of this House which virtually calls for a total overhaul of this Bill, I am motivated, Mr Speaker, to move a Motion under Rule 31(a) of our Rules

of Procedure to adjourn this debate with a view to giving the Council of Ministers enough time to consider our views and those of the experts referred to by hon. Marando here for their incorporation into this very important Bill. Mr. Speaker, I request for your guidance – (*Interjections*).

The Speaker: Hon. Mwakyembe, could you repeat what you said please?

Dr. Mwakyembe: Mr. Speaker, Sir, I am guided by Rule 31 (a) of our Rules of Procedure which state as follows:-

“The following motions may be moved without notice: - any motion by way of amendment to a question already proposed by the Speaker. A Motion for the adjournment of the House;

(a) any motion of adjournment of a debate.

I cited this Rule 31(a) so as to give the Council of Ministers more time to work on this very important Bill.

The Speaker: The hon. Members’ proposal is within the Rules of Procedure, and I think a decision has to be made on it. But before that decision is made, I would want to hear the opinion of the other Members if there are any.

Mr. Jared Kangwana (Kenya): Hon. Speaker, I presume the opinions you are seeking are on the debate that was on-going and not on the Motion of Adjournment. I seek your guidance Mr Speaker.

The Speaker: It is on the Motion for adjournment of debate.

Ms. Rose Waruhiu: Mr. Speaker, I think we have the Minister who did the

Second Reading, the House is debating and there has been no indication that the Minister is not ready to respond so I think we are rushing. Maybe after the Minister has received the arguments that are coming from the Floor, he may be willing to proceed. I do not think we can pre-judge the decision.

The Speaker: Well, a motion has been tabled here and it is for the House to decide but not the Minister.

Mr. Calist Mwatela: Mr. Speaker, sir, I beg to second the Motion – (*Applause*).

(*Question proposed*)

Mr. Med Kaggwa (Uganda): Mr Speaker, sir, the Rule does not say it is the mover of the Motion to seek for the adjournment. My interpretation is that anybody can move the motion. So it is within the ambit of hon. Dr. Mwakyembe.

The Speaker: If there is no contrary opinion, I would like to put the Question. I believe the CTC is happy about it.

The Counsel to the Community (Mr. Wilbert Kaahwa): Hon. Speaker, as you know, I am always very happy when it comes to legislating on matters pertaining to the progression of the East African Community and its objectives.

Hon. Speaker, Rule 31 as has been read out by my hon. Friend Dr. Mwakyembe provides for motions which may be moved without notice, and one of them is a Motion for the adjournment of the House. So, this Motion before you now is properly before the House. As far as your ruling is concerned, I may not delve into those depths.

(Question put and agreed to)

The Speaker: Before I adjourn this House, I have two announcements to make. One, the hon. Minister would like to meet the following Members of this House immediately after adjournment of the House: hon. Mwatela, hon. Kaggwa, hon. Waruhiu and hon. Ogalo. Are you interested to know the contents of the meeting?

Hon. Members: Yes!

Mr. Speaker: That is a preserved top secret. They will be meeting in Committee Room B immediately after the adjournment.

Secondly, the hon. Minister is requesting to have an informal meeting with the honourable Members of this House tomorrow at 10.00 a.m. and the Speaker has granted that request. So we meet tomorrow at 10.00 a.m. here in the Chambers of the Assembly.

Finally, after I adjourn the House, I request all of you to remain seated while I go and un-robe. There will be a meeting between all of you present in this House and myself.

ADJOURNMENT

Mr. Speaker: The House is adjourned to tomorrow at 2.30 p.m.

*The House rose at 4.45 p.m. and
adjourned until 2.30 on Wednesday, 9
March 2005*