

THE EAST AFRICAN COMMUNITY

BILL SUPPLEMENT

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THE EAST AFRICAN COMMUNITY COMPETITION
BILL, 2004:

ARRANGEMENT OF CLAUSES

PART I
PRELIMINARY PROVISIONS

Clause

1. Short title and commencement.
2. Interpretation.
3. Objectives of competition policy and practice.
4. Application of Act.

PART II
RESTRAINTS BY ENTERPRISES

5. Prohibition of anti-competitive concerted practices.
6. Exemptions.
7. Committee to issue permission for concerted practice.

PART III
ABUSE OF MARKET DOMINANCE

8. Consumer exploitation.
9. Exclusion of competitors.
10. Vertical distribution agreements.

PART IV
MERGERS AND ACQUISITIONS

11. Notification of mergers and acquisitions
12. Coming into effect of mergers and acquisitions.
13. Anti-competitive mergers and acquisitions.

PART V
PARTNER STATE SUBSIDIES

14. Partner State may grant subsidy.
15. Notification and determination procedure.
16. Prohibition of certain Partner State subsidies.
17. Exemptions.

PART VI
PUBLIC PROCUREMENT

18. Prohibition of discrimination.
19. Tendering procedures.
20. Aggrieved bidder may lodge complaint with Committee.

PART VII
ENFORCEMENT PROCEDURE

21. Non application of prohibitions.
22. Prevention of violation of the Act.
23. Committee to obtain information.
24. Complaints.
25. Confidentiality of documents, etc.
26. Remedies and sanctions.
27. Publication.

PART VIII
CONSUMER WELFARE

28. False representations.
29. Unconscionable conduct in consumer transactions.
30. Committee to publish dangerous goods, etc.
31. Product safety standards and unsafe goods.
32. Product information standards.
33. Compulsory product recall.

- 34. Liability in respect of unsuitable goods.
- 35. Liability for defective goods causing injury or loss.
- 36. Unidentified manufacturer.

PART IX

THE EAST AFRICAN COMMUNITY COMPETITION COMMITTEE

- 37. Establishment of the Committee.
- 38. Members of the Committee.
- 39. Vacation of office by member of the Committee.
- 40. Rules of procedure of the Committee.
- 41. Registrar.
- 42. Powers of the Committee.
- 43. Funding of the Committee.
- 44. Jurisdiction of the Court.
- 45. Reporting.
- 46. General penalty.
- 47. Regulations.

**A BILL
for an Act
ENTITLED**

THE EAST AFRICAN COMMUNITY COMPETITION ACT, 2004

An Act of the Community to promote and protect fair competition in the Community, to provide for consumer welfare, to establish the East African Community Competition Committee and for related matters

ENACTED by the East African Legislative Assembly as follows-

PART I

PRELIMINARY PROVISIONS

1.-(1) This Act may be cited as the East African Community Competition Act, 2004.

Short
title and
commence-
ment

(2) This Act shall come into force on such date as the Council may, by notice in the Gazette, appoint.

2. In this Act unless the context otherwise requires-

Interpre-
tation

"acquisition" means any acquisition by an undertaking of direct or indirect control of the whole or part of one or more other undertakings, irrespective of whether the acquisition is effected by merger, consolidation, take-over, purchase of securities or assets, contract or by any other means;

"agreement" means any agreement, arrangement or understanding between two or more persons, whether or not it is in writing or intended to be enforceable by legal proceedings;

"bid-rigging" means a form of collusive tendering in procurement or project contracts which results, or has potential to result, in anti-competitive effects in the bidding process;

"Committee" means the East African Community Competition Committee established under section 37 of this Act;

"competition" means the process whereby two or more persons-

- (a) supply or attempt to supply the same or substitutable goods or services to persons in the relevant market; or
 - (b) acquire or attempt to acquire the same or substitutable goods or services from persons in the relevant market;
- "competitor" means actual or potential competitor;
- "concerted practice" means any agreement, arrangement or understanding, formal or informal, written or oral, open or clandestine, between competitors;
- "consumer" means any person who purchases goods or services from an undertaking for consumption and includes any person who uses such goods or services with the approval of the buyer irrespective of whether the purchase or use is for personal or commercial use ;
- "Court" means the East African Community Court of Justice established by Article 9 of the Treaty;
- "cross subsidisation" means the internal transfer within an undertaking of profits resulting from one line of business to a less profitable line of business;
- "dollar" means the United States dollar and includes the equivalent in the currency of the Partner States;
- "dominant position" means a position of economic strength enjoyed by one undertaking individually or by more undertakings collectively which enables them to prevent effective competition being maintained in the relevant market by giving the undertaking or undertakings the power to behave to a material extent independently of its or their competitors, customers and consumers and in particular to foreclose other undertakings from competing in the relevant market;
- "merger" means an amalgamation or joining of two or more firms into an existing firm or to form a new firm;
- "price squeezing" means a pricing practice of an undertaking which is operating in an upstream market as well as in a downstream market, and charges its consumers in the upstream market prices, which do not allow such consumers to compete in the downstream market;
- "predatory pricing" means the setting of prices for goods or services below costs; prices below average variable costs are presumed to be predatory; prices below average total costs, but above average variable costs, are predatory;
- "relevant market" means the area of competition between undertakings determined in accordance with section 5(5);

“subsidy” has the meaning assigned thereto in the Protocol on the Establishment of the East African Community Customs Union; “undertaking” means any private or public entity, including natural and legal persons and affiliated groups of companies under joint control, irrespective of their legal form carrying on any business.

3. The objectives of the competition policy and practice in the Community shall be to-

Objectives
of
Competition
policy
and
practice

- (a) enhance the welfare of the people in the Community by-
 - (i) protecting all market participants’ freedom to compete by prohibiting anti-competitive practices;
 - (ii) protecting the opening of Partner States’ markets against the creation of new barriers to interstate trade and economic transactions by market participants;
 - (iii) guaranteeing equal opportunities in the Community to all market participants in the Community, and especially to 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 the Community at competitive prices and better quality;
 - (vi) providing incentives to producers within the Community for the improvement of production and products through technical and organisational 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 practice in line with international best practices;
- (e) strengthen the Partner States' role in relevant international organisations.

Applica-
tion of
Act

4.-(1) This Act shall apply to all economic activities and sectors having cross-border effect.

(2) This Act shall not apply to-

- (a) any conduct of persons acting in their capacity as consumers;
- (b) collective industrial bargaining;
- (c) sovereign acts of the Partner States;

Provided that this Act shall apply with respect to acts contemplated in Part V and VI of this Act.

(3) This Act shall not apply to restraints on competition imposed by and resulting from a Partner State's regulation of specific sectors or industries to the extent that the anti-competitive conduct is required by such regulation.

PART II RESTRAINTS BY ENTERPRISES

Prohibi-
tion of
anti-
competi-
tive
concerted
practices

5.-(1) Subject to section 6, a person shall not engage in concerted practice if that practice has, or is intended to have, an anti-competitive effect in the relevant market

(2) Without prejudice to the generality of subsection (1) a person shall not engage in the following practices-

- (a) collusion by competitors to fix prices;
- (b) collusive tendering and bid rigging;

- (c) collusive market or customer allocation;
- (d) quantitative restraints on investment, input, output or sales;
- (e) barring competitors from access to the market or from access to an association or arrangement which is essential for competition;
- (f) concerted practice restricting movement of goods within the Community.

(3) Any concerted practice by undertakings restricting exports to or imports from foreign countries is prohibited, if it is intended to have anti-competitive effects on the relevant market within the Community or on access of Community undertakings to exports or imports.

(4) A person who contravenes this section commits an offence and shall be liable to a fine of not more than ten thousand dollars.

(5) For the purposes of this Act, the area of the relevant market shall be determined by the substitutability of goods or services for consumers in light of their intended use, characteristics and prices as well as by the substitutability of different sources of supply located in different regions.

Exemptions.

6.-(1) Section 5(2) (d) and (f) shall not apply to any concerted practice among competitors whose combined market share does not exceed ten per centum of the relevant market.

(2) Subject to subsection (4), section 5 shall not apply to-

- (a) joint research and development;
- (b) specialisation of production or distribution;
- (c) standardisation of products or services.

(3) The Committee may exempt any other category of concerted practice, provided the concerted practice is limited to objectives which lead to an improvement of production or distribution and whose beneficial effects, in the opinion of the Committee, outweigh its negative effects on competition.

(4) The exemptions under subsections (2) and (3) shall be applicable only, if the combined market share of the parties involved in the concerted practice does not exceed twenty per centum of the relevant market and the agreement relating to the concerted practice does not contain any of the restrictions listed in section 5(2).

Committee
to issue
permission
for
concerted
practice

7.-(1) A person shall not engage in a concerted practice unless the Committee has issued to that person permission in that respect.

(2) A person intending to engage in a concerted practice shall apply to the Committee in accordance with the regulations.

(3) The Committee shall communicate its decision to the applicant within three months of the receipt of the application.

(4) A person who contravenes subsection (1) commits an offence and shall be liable to a fine of not more than ten thousand dollars.

PART III ABUSE OF MARKET DOMINANCE

Consumer
exploita-
tion

8.-(1) An undertaking holding a dominant position in the relevant market shall not-

- (a) directly or indirectly impose unfairly high selling or unfairly low purchasing prices or other unfair trading conditions;
- (b) limit production or technical development and innovation to the prejudice of consumers;
- (c) discriminate between consumers or suppliers according to non-commercial criteria such as nationality or residence.

(2) Subsection (1) shall also apply to any undertaking on which small or medium sized undertakings are dependent.

(3) Any person who contravenes the provisions of this section commits an offence.

9.-(1) An undertaking holding a dominant position in the relevant market shall not engage in any practice that excludes, or is intended to exclude, its competitors from the market by means of-

Exclusion
of
competi-
tors

- (a) predatory pricing;
- (b) price squeezing;
- (c) cross subsidisation.

(2) An undertaking holding a dominant position in the relevant market shall not engage in a practice that harms the competitive position of competitors on downstream or upstream markets by-

- (a) a refusal to deal;
- (b) a refusal of access to an essential facility;
- (c) tying arrangements;
- (d) unjustifiably discriminating among customers or suppliers.

(2) Subsection (1) shall be applicable to any undertakings of which small or medium sized undertakings are dependent.

(3) Any person contravening the provisions of this section commits an offence.

10.-(1) An undertaking holding a dominant position in the relevant market shall not engage in a practice whereby-

- (a) the resale prices or conditions are directly or indirectly fixed;
- (b) customers or competitors are foreclosed from access to sources of supply or from access to outlets;
- (c) movement of goods or services between different geographical areas are restricted;
- (d) an intellectual property right is used in any way that goes beyond the limits of its legal protection.

(2) Any person who contravenes this section commits an offence.

PART IV
MERGERS AND ACQUISITIONS

Notifica-
tion of
mergers
and
acquisi-
tions

11.-(1) A person intending to execute a merger or an acquisition shall notify the Committee of such merger or acquisition.

(2) The notification referred to in subsection (1) shall be made promptly upon the conclusion of the agreement in respect of the merger or acquisition.

(3) The notification referred to in subsection (1) shall be made by the undertaking acquiring control through the merger or acquisition.

Coming
into
effect of
mergers
and
acquisi-
tions

12.-(1) A merger or acquisition referred to in section 11 shall not come into effect before its notification to the Committee and the Committee has given its approval of the proposed merger or acquisition.

(2) The Committee shall notify the person concerned under subsection (1) of its decision within three months.

(3) If the Committee has not communicated its decision within the period referred to under subsection (2), the merger or acquisition may be implemented.

(4) Any transaction carried out in contravention of subsection (1) shall be void.

Anti-
competi-
tive
mergers
and
acquisi-
tions

13.-(1) A merger or acquisition shall not be approved by the Committee, if that merger or acquisition leads to the creation, or strengthening of an already subsisting dominant position, and thereby substantially lessening competition in the relevant market.

(2) In determining whether a merger or acquisition may lead to the creation or the strengthening of a dominant position in the relevant market and thereby substantially lessening competition in the relevant market, the Committee shall take into account all relevant competitive factors, and in particular shall consider-

(a) the competitive structure of all markets affected by the merger or acquisition, including the potential competition from both

inside and outside the Community in light of legal or other barriers to entry;

(b) the undertakings in the markets affected, their control of essential facilities, their integration in upstream and downstream markets, and their financial resources;

(c) the competitors and the alternatives available to suppliers and consumers;

(d) any pro-competitive effects of the merger or acquisition which may outweigh the harmful effects on competition.

(3) Where the Committee objects to a merger or an acquisition the Council may, upon appeal by the undertaking or undertakings concerned, approve the merger or acquisition.

(4) The Council may approve a merger or acquisition under subsection (3) only if the Council is satisfied that the merger or acquisition is to fulfil an overriding public interest.

PART V

PARTNER STATE SUBSIDIES

14. A Partner State may, subject to this Act, grant subsidy to any undertaking if it is of the opinion that it is in the public interest to do so.

Partner
State
may
grant
subsidy

15.-(1) A Partner State shall, before granting any subsidy, notify the Committee.

Notification
and
determi-
nation
procedure

(2) Where the Committee considers that the subsidy falls within section 16 or does not fall within section 17, the Committee shall communicate its decision to the Partner State.

(3) If the Partner State is dissatisfied with the decision of the Committee, it may refer the matter to the Court.

(4) Upon determination by the Court that the subsidy is illegal, a Partner State shall recover the subsidy from its recipient.

Exemptions 16.-(1) Subject to section 17, a Partner State shall not grant any subsidy which distorts or threatens to distort competition in the Community.

(2) Without prejudice to the generality of subsection (1), a Partner State shall not grant-

- (a) any subsidy for the promotion of exports or imports between the Partner States;
- (b) any subsidy which is granted on the basis of the nationality of persons or country of origin of goods or services.

17.-(1) Section 16 shall not apply to subsidies granted-

- (a) to consumers of certain categories of products or services, to promote social services;
- (b) for the development of small and medium-sized enterprises;
- (c) for the restructuring, rationalising and modernising of specific sectors of the economy;
- (d) for less developed regions;
- (e) for research and development;
- (f) for the financing of a public sector;
- (g) for the promotion and protection of food security;
- (h) for the protection of the environment;
- (i) for the education and training of personnel;
- (j) for the conservation of the cultural heritage;
- (k) for the compensation of damages caused by natural disasters or by macroeconomic disturbances.

(2) The Council may on the recommendation of the Committee exempt other categories of subsidies.

(3) In granting any exemption under this section, the Council shall take into account-

- (a) the materiality of the subsidy for the achievement of its objective;
- (b) the compatibility of the subsidy with the objectives of the Community, including the opening of Partner States' markets; and
- (c) the establishment of a competitive environment in the Community.

(4) The Council shall determine the duration of every exemption of subsidy granted under this section.

PART VI PUBLIC PROCUREMENT

18.-(1) The Partner States and any public authority in the Partner States shall with respect to any law, regulations, procedures or practice regarding public procurement, extend non-discriminatory treatment to all suppliers and to all products or services originating from or affiliated with other Partner States.

Tendering
procedures

(2) Technical specifications laying down the characteristics of the products or services to be produced shall not be prepared, adopted or applied with a view to, or with the effect of, creating obstacles to trade between Partner States.

19.-(1) A Partner State shall apply transparent, accessible and non-discriminatory tendering procedures.

(2) Tenders shall be awarded on the basis of the criteria and requirements in the tender notice or documentation and in accordance with the Partner States' legislation. Aggrieved bidder may lodge complaint with Committee.

20.-(1) A bidder aggrieved by any tendering procedure may lodge a complaint against that process to the Committee.

(2) Upon receipt of a complaint regarding any tendering procedure the Committee may evaluate the compatibility of any tendering procedure with sections 18 and 19 of this Act.

(3) The Committee shall inform the Partner State concerned of its findings together with any recommendations regarding any improvements to the procedure to make it compatible with sections 18 and 19 of this Act.

PART VII

ENFORCEMENT PROCEDURE

Non
applica-
tion of
prohibi-
tions

21.-(1) Upon application by an interested party or by a Partner State, the Committee may at any time certify that there are no grounds for applying the prohibitions provided for under this Act.

(2) The Committee may at any time carry out investigations where it is of the opinion that the facts upon which it made the decision referred to in subsection (1) are false or inaccurate.

Preven-
tion or
rectifica-
tion of
violation
of the
Act

22. Where the Committee is of the opinion that there is sufficient reason to believe that this Act has been or is about to be violated, it may after informing the parties or the Partner State involved, take the necessary measures to prevent or rectify such violation. \ Committee to obtain information

23.-(1) A Partner State or an undertaking shall provide such information as the Committee may request.

(2) Where a request by the Committee under subsection (1) is not complied with within the time specified in the request, the Committee may require that the information be availed within such further period as the Committee may specify.

(3) Where a Partner State fails to comply with the request by the Committee under subsection (2), the Committee shall refer the matter to the Council.

East African Community Competition

24.-(1) Any Partner State or person may file a complaint with the Committee against a Partner State or any person for a breach of the provisions of this Act.

Complaints

(2) A Partner State or person dissatisfied with the decision of the Committee under subsection (1) may appeal to the Court.

25.-(1) The Committee, its employees or agents shall not disclose any information acquired in the course of performing their functions under this Act

Confidentiality of documents, etc.

(2) Any employee or agent of the Committee who contravenes this section commits an offence and shall be liable to a fine of one thousand dollars or to imprisonment to a term of not more than six months or both.

26.-(1) Any contract or agreement in violation of this Act shall be void. (2) Where a merger or acquisition has been implemented contrary to the provisions of this Act, the Committee shall order its divestiture.

Remedies and sanctions

27. -Any decision of the Committee shall be published in the *Gazette*.

Publication

PART VIII
CONSUMER WELFARE

28. An undertaking shall not, in connection with the supply or possible supply of goods or services or in connection with the promotion of goods or services-

False representations

- (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;
- (b) falsely represent that services are of a particular standard, quality, value or grade;
- (c) falsely represent that goods are new;
- (d) falsely represent that a particular person has agreed to acquire particular goods or services;

- (e) falsely represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits;
- (f) falsely represent that the person has a sponsorship, approval or affiliation;
- (g) make a false representation with respect to the price of goods or services;
- (h) make a false representation concerning the availability of facilities for the repair of goods or of spare parts for goods;
- (i) make a false representation concerning the place of origin of goods;
- (j) make a false representation concerning the need for any goods or services; or
- (k) make a false representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

Unconscionable
conduct
in
consumer
transac-
tions

29. -(1) An undertaking shall not, in connection with the supply or possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.

(2) Without limiting the matters to which the Committee may have regard for the purpose of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person, the Committee may have regard to-

- (a) the relative strengths of the bargaining positions of the undertaking and the consumer;
- (b) whether, as a result of conduct engaged in by the undertaking, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the undertaking;

- (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer in relation to the supply or possible supply of the goods or services; and
- (e) the price at which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from another supplier.

(3) An undertaking shall not be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a person by reason only that the person institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.

(4) For the purpose of determining whether an undertaking has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person-

- (a) the Committee shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
- (b) the Committee may have regard to conduct engaged in or circumstances existing before the commencement of this Act.

(5) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use.

(6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.

East African Community Competition

Committee
to
publish
dangerous
goods,
etc.

30.-(1) The Committee shall publish, in at least two newspapers of national circulation in each of the Partner States, a notice containing one or both of the following-

- (a) a statement that goods of a kind specified in the notice are under investigation to determine whether the goods may be injurious to public health;
- (b) a statement of possible risks involved in the use of goods of a kind specified in the notice.

(2) Where the investigation referred to in subsection (1) has been completed, the Committee shall as soon as practicable, in a notice published in at least two newspapers of national circulation in each of the Partner States announce the results of the investigation.

(3) The notice referred to in subsection (2) shall state what action, if any, is proposed to be taken in relation to the goods.

(4) The Council may issue a notice of ban on any goods specified in the notice.

Product
safety
standards
and
unsafe
goods

31.-(1) An undertaking shall not supply goods that are intended to be used, or are of a kind likely to be used by a consumer, if the goods are of a kind-

- (a) in respect of which there is a prescribed consumer product safety standard, which do not comply with that standard;
- (b) in respect of which there is in force a notice under this section declaring the goods to be unsafe goods; or
- (c) in respect of which there is in force a notice under any other law imposing a ban on the goods.

(2) An undertaking shall not export goods, the supply in the Community of which is prohibited by subsection (1), unless the Council has, approved the export of those goods.

(3) An undertaking intending to export goods under this section shall apply to the Council.

(4) A person who suffers damage by reason of a contravention of this section by an undertaking shall be deemed to have suffered the loss or damage by the supplying of the goods.

32. -(1) An undertaking shall not supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed unless the person has complied with the consumer product information standard in relation to those goods.

Product
information
standards

(2) The Council may, by regulations prescribe, in respect of goods of a particular kind, a consumer product information standard consisting of requirements relating to-

- (a) the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
- (b) the form and manner in which that information is to be disclosed on or with the goods; as are reasonably necessary to give persons using the goods information as to the quantity, quality, nature or value of the goods.

(3) A person who suffers damage by reason of a contravention of this section by an undertaking shall be deemed for the purpose of this Act to have suffered the loss or damage by the supplying of the goods.

(4) Any person who contravenes any provision of this Part, without prejudice to any civil action that may lie, commits an offence and shall be liable to a fine not exceeding ten thousand dollars.

33. -(1) The Committee shall take the action set out in subsection (2), where-

Compu-
lsory
product
recall

- (a) a person supplies goods that are intended to be used, or are of a kind likely to be used, by a consumer; and
- (b) (i) it appears to the Committee that the goods are of a kind which may cause injury to any person; or

Offences
by, or in
relation to
officers

- (ii) the goods are of a kind in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard; or
 - (iii) the goods are goods of a kind in relation to which there is in force a notice under section 31(1)(c) ; and
- (c) it appears to the Committee that the undertaking has not taken satisfactory action to prevent the goods from causing injury to any person.

(2) Where the Committee is of the view that subsection (1) applies it shall require the undertaking concerned to do one or more of the following-

- (a) recall the goods within such period as the Committee may specify;
- (b) disclose to the public, or to such category of persons as may be specified, one or more of the following-
 - (i) the nature of defect in, or dangerous characteristic of, the goods in question;
 - (ii) the circumstances under which the use of the goods is dangerous; or
 - (iii) procedures for disposing of the goods in question;
- (c) inform the public, or category of persons, within such period as the Committee may specify, that the undertaking undertakes to do the following as may be appropriate -
 - (i) except where the notice identifies a dangerous characteristic of the goods, repair the goods;
 - (ii) replace the goods;
 - (iii) make a refund to any person to whom the goods were supplied the price at which the goods were sold.

34. -(1) Where-

- (a) an undertaking supplies goods manufactured by that undertaking to another person who acquires the goods for re-supply;
- (b) a person (whether or not the person who acquired the goods from the undertaking) supplies the goods (otherwise than by way of sale by auction) to a consumer;
- (c) the goods are acquired by the consumer for a particular purpose that was expressly or by implication, made known to the undertaking, either directly, or through the person from whom the consumer acquired the goods or a person by whom any prior negotiations in connection with the acquisition of the goods were conducted;
- (d) the goods are not reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied; and
- (e) the consumer or a person who acquires the goods from, or derives a title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not reasonably fit for that purpose; the undertaking shall be liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the undertaking in a court of competent jurisdiction.

(2) Subsection (1) does not apply-

- (a) if the goods are not reasonably fit or the purpose referred to in subsection (1) by reason not being an act or default of the undertaking;
- (b) where the circumstances show that the consumer did not rely, or that it was unreasonable for the consumer to rely, on the skill or judgment of the undertaking.

35. Where an undertaking supplies goods manufactured by it and the goods have a defect which occasions injury or loss, then the undertaking shall be liable to compensate the individual for the loss suffered.

Uniden-
tified
manufa-
cturer

36.-(1) Where person who wishes to institute action does not know the manufacturer of the goods in question the person may serve on the supplier of the goods a written request for the particulars relating to the manufacturer of the goods.

(2) Where the supplier has not given to the person requesting information under subsection (1), the information requested within thirty days, the person who supplied the goods shall be presumed to be the manufacturer thereof.

PART IX

THE EAST AFRICAN COMMUNITY COMPETITION COMMITTEE

Establish-
ment of
the
Committee

37. There is established the East African Community Competition Committee.

Members
of the
Committee

38.-(1) The Committee shall consist of three members, one member from each Partner State.

(2) The members of the Committee shall be appointed by the Council on the recommendation of the Partner States.

(3) Each member of the Committee shall serve for a term of four years and shall be eligible for reappointment for a further term of four years.

Licensing
of internal

(4) Members of the Committee shall, on a rotational basis, appoint from among themselves a chairperson who shall serve for one year.

(5) A person shall be qualified for appointment to the Committee if that person is a holder of an advanced degree in economics or law and has at least ten years experience in the area of economics or law.

(6) The members of the Committee shall be paid such allowances as the Council may determine.

39. The office of a member of the Committee shall become vacant if the member-

Vacation
of office
by
member
of the
Committee

- (a) resigns by giving a three months notice to the Council;
- (b) is removed from office for gross misconduct or inability to perform the functions of his or her office due to infirmity of body or mind.

40. The Committee may prescribe rules for the conduct of its affairs.

Rules of
procedure
of
Committee

41.-(1) There shall be a Registrar of the Committee.

(2) The Registrar shall be appointed by the Council.

(3) The terms and conditions of service of the Registrar shall be determined by the Council.

(4) The Registrar shall hold an advanced degree in law and possess such professional experience as the Council may specify.

(5) The Registrar shall not be removed from office except by the Council for gross misconduct in the course of performing his or her duties or for inability to perform the functions of his or her office due to infirmity of body or mind.

42.-(1) In the performance of its functions under this Act, the Committee shall have powers to-

- (a) investigate and to compel evidence, including the search and seizure of documents;
- (b) hold hearings;
- (c) impose sanctions and remedies;
- (d) engage in competition advocacy and consultations;
- (e) collect data, undertake studies and publish reports;
- (f) co-operate with regional and international organisations and with foreign competition authorities.

(2) Any person who wilfully fails to comply with an order of the Committee with respect to availing any information or production of any document or appearing before the Committee proceedings commits an offence and shall be liable to a fine not exceeding five thousand dollars or to imprisonment for a term of not more than six months or both.

Funding
of the
Committee

43. The Committee shall be funded from the budget of the Community.

Jurisdiction
of
the Court

44. Any question with respect to any action of the Committee under this Act or anything done with respect to the Committee under this Act shall be determined by the Court.

General
penalty

45.-(1) The Committee shall submit, through the Secretary General, to the Council an annual report.

(2) The Council shall publish the report submitted to it in the Gazette.

(3) The Committee may publish such other reports, as it considers necessary.

46. Any person who commits an offence under this Act for which no penalty has been prescribed shall be liable to a fine of not less than ten thousand dollars or to imprisonment for a term of not less than six months or both.

Regulations

47. The Council may make regulations generally for the better carrying into effect of the provisions of this Act.

Memorandum of Policy, Objects and Reasons for the Bill

1.0 STATEMENT OF POLICY

The East African Community Partner States have, for purposes of strengthening their economic, social, cultural, political technological and other ties for their fast, balanced and sustainable development agreed on the establishment of an East African Customs union and a Common Market as transitional stages to and integral parts thereof, subsequently a Monetary Union and ultimately a Political Federation.

In this regard, the Council of Ministers has been guided by the East African Community Development Strategy (2001 – 2005) to enhance trade liberalisation and development, among other sectors. The key cornerstone of this strategy is the development and adoption of an East African Trade Regime with a Customs Union and a Common Market. Among the cornerstones of the Customs Union is competition.

At its 6th Meeting held on January 13th, 2004, the Council of Ministers adopted an East African Competition Policy.

This policy articulates competition as the foundation of an economic system that leaves the allocation of scarce resources and the 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 provide for a deregulated and decentralised economy, for the adjustment of producers to consumers' needs and wants, for the promotion of economic development and progress and for the distribution of income and wealth according to economic performance. The policy also addresses the systemic limits of competition which may lead, under certain conditions (such as natural monopolies, externalities, public goods, or asymmetric information), to market

failures that may exceptionally warrant state regulation of market players' economic 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.

The Protocol on the Establishment of an East African Community Customs Union, which was signed on March 2nd, 2004 and which has since been ratified by the Partner States provides, *inter alia*, for trade related aspects of trade liberation and development including competition.

The Protocol also 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 this 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 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' freedom to compete by prohibiting anti-competitive 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 Community, and especially to 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 the Community at competitive prices and better quality;
 - (vi) providing incentives to producers within the Community for the improvement of production and products through technical and organisational 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 practice in line with international best practices;
 - (e) strengthen the Partner States' role in relevant international organisations.

This Bill seeks to translate the EAC Competition Policy into law.

2.0 PRINCIPAL OBJECT

The principal object of the East African Community Competition Bill is to promote and protect economic competition in the East African Community, to establish an East African Competition Committee and for related matters.

3.0 CONTENTS OF THE BILL

3.1. PART I

Part I 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 capacity as consumers, collective industrial bargaining and sovereign acts of the Partner States.

3.2. PART II

Part II provides for restraints by enterprises. It legislates on prohibition of concerted practises among competitors, customer exploitation and mergers and acquisitions. It also makes provision for protection of consumer against exploitation.

3.3. PART III

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

3.4. PART IV

Part IV provides for procedure for the enforcement of the competition policy. It addresses the managing of activities stipulated within the policy

and the law including handling of complaints and enforcement of remedies and sanctions.

3.5. PART V

Part V provides for the institutional framework necessary for the implementation of the competition law as stipulated in the Act. It establishes an East African Community Competition Committee within the institutional framework of the Community. It provides for its functions and its powers. It also addresses the finance and staffing of this committee and the manner in which it is expected to discharge its functions.

DATED this 24th day of November 2004

HON JAKAYA M KIKWETE, (MP),
*Minister for Foreign Affairs
and International Co-operation
United Republic of Tanzania*

*Chairperson
East African Community Council of Ministers*

