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ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
SCHOOL OF LAW

**The Legal and Institutional Framework for Consumer
Protection in Ethiopia**

By: Dessalegn Adera

Advisor: Zekarias Keneaa (Associate Professor)

**Addis Ababa
June 2011**

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**Submitted in Partial Fulfillment of the Requirements for the
Master of Laws Degree at the School of Law, Addis Ababa
University**

**Addis Ababa
June 2011**

Approval Sheet by the Board of Examiners

The Legal and Institutional Framework for Consumer Protection in Ethiopia

I here by certify that this is my original work. Works of others included in this thesis are properly cited.

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**Addis Ababa
June 2011**

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Acknowledgement

First and foremost, my thank goes to the Almighty, Jesus and His Mother, St. Mary, as they are always by my side.

Second, I would like to extend my deepest gratitude to my advisor Professor Zekarias Keneaa. His fatherly and scholarly approach is immense. He scarified his precious time in commenting the paper. His comments were constructive.

Next, the turn is to my parents, my uncles, Aklilu Teka and Mengistu Tadesse, for their whole embracing support. I am also indebted to thank Ato Yohanness W/gebriel for his friendly cooperation in availing me of relevant materials. The same to Ato Biru Aboma. Last but not least, I would like to thank Yalew, Wondimagegn, Endalew, Aschalew, Tesfaye and Mekete for their moral support.

Abstract

The legal protection for consumers from abuse by market actors has passed several stages of development. The earliest protection was based on laws of contract and extra contractual liability. But these private law mechanisms have not been adequate enough in protecting consumers' interests. Due to this, later on, consumer protection began to be based on criminal law, competition law and regulatory laws of different nature, as well. However, still, the protections based on these laws have their own limitations. To supplement the limitations of these private and public laws in consumer protection, countries began to enact a separate consumer protection regime.

Ethiopia enacted a Trade Practice and Consumer Protection Law in 2010 with the same objectives of protecting consumers in the market place. The legal regimes of this law include the scope of application of the law which applies to any transaction in goods and services. Beside this, the rights of consumers and obligations of business persons are basic substantive characteristics of this law. Turning to its institutional framework, the Trade Practice and Consumer Protection Authority is established to adjudicate cases on the violations of the law. The Ministry of Trade shall investigate violations of the law and bring cases for adjudication before the Authority. At regional level, Regional Consumer Protection Organs and Regional Trade Bureaus have the role of the Authority and the Ministry respectively. The law also recognizes the role of federal and regional courts in the enforcement of the law. Beside these bodies recognized by the Trade Practice and Consumer Protection Law, Organs for National Quality Infrastructure and the Food, Medicine and Health Care Administration and Control Authority are the main regulatory bodies that have direct role in consumer protection.

It is important to note the effect of this newly enacted law on regulatory bodies in general and on basic laws of contract and extra contractual liability, as well. The law, based on whether it is properly implemented or not, would certainly have its own positive and negative effects on business persons, and on the over all protection of consumers.

Introduction

Since long times before, consumers purchase goods and services from the market. But, since then, consumers have been prone to defective purchases. This led to the need to protect them. The earliest protection accorded to consumers was based on the law of contract. The law of contract protects consumers by availing themselves of the right to claim warranty against suppliers for defects in goods and services they purchased. However, these claims based on the law of contract have been limited only against immediate sellers. Consumers were not able to get remedy for any damage arising from defect in manufacturing. This problem, particularly, exacerbated following the expansion in production and chain of distribution that put consumer at several removes from manufacturers. Due to these, the law of extra contractual liability became applicable. This law entitles consumers to bring a claim against manufacturers for defects in their goods with out the need to have privity.

However, these private laws based protections of consumers suffer from several limitations. Consumers may not have the capacity to enforce their rights for several reasons. Problem of access to justice, ignorance of the law, cost of litigation and others are some of the problems. Recognizing these, governments went on to apply criminal law to punish those improper market conducts affecting consumers. But criminal law has also its own limitations as it has nothing to do with compensating consumers for any harm they incur.

Later on, competition and regulatory laws began to be employed for consumer protection. Competition laws have their own roles to play in consumer protection by promoting competition and preventing anticompetitive practices. When markets are competitive, consumers would have access to wider choices of products and services at a competitive price. Regulatory laws also help protect consumers by regulating quality, safety, labeling and packaging of products, among others. However, still, these latter laws, as well, have their own limitations in consumer protection. As they focus on the supply side of the market, they may not provide adequate protection to consumers who are from the demand side.

These limitations of the above private and public laws in protecting consumers led many countries of the world to enact a separate consumer protection regime that would supplement the limitations.

For similar reasons, Ethiopia enacted the Trade Practice and Consumer Protection Law under Proclamation No.685/2010.

The main focus of this paper is, therefore, to discuss the legal and institutional framework of this newly enacted law. Moreover, there would also be discussion on the role of some regulatory bodies in consumer protection. Though these regulatory bodies do not necessarily form part of the institutional framework under the Trade Practice and Consumer Protection Law, discussions on these organs are very essential as their activities are more directly related to the protection of consumers than the activities of any other regulatory bodies do. Moreover, the activities of these regulatory bodies can be taken as essential as, if not more essential as some of them, the activities of those organs that form the institutional framework under the Trade Practice and Consumer Protection Law. Discussions would also be made about the impact of the law on regulatory bodies, on basic laws of contract and extra contractual liability, on business persons and on the over all protection of consumers.

Chapter one of the thesis will discuss about the proposal of the paper in general. Thus the background of the paper, statement of the problem particularly issues to be worked on the legal and institutional framework would be indicated. Besides, the scope of the study, objectives, significance, research methodology and limitations of the study would be highlighted.

Chapter two of the thesis is designed to help the reader better understand the substantive rules and institutions of the new law, the Trade Practice and Consumer Protection Proclamation No.685/2010. Accordingly, under this chapter, a general overview would be made on the laws of contract and extra contractual liability, criminal law, competition and regulatory laws vis-à-vis

consumer protection. After discussing the essence of these private and public laws, emphasis would be made on discussing their role in consumer protection. In relation to the role of contract law in consumer protection, the free will of parties to a contract, the warranty based protections, as well as remedies for non-performance of contract would be emphasized. The fault based and strict liability rules and the issue of compensation under extra contractual liability law would also be discussed along with their role in consumer protection.

Moreover, the essences of criminal law, competition and regulation would be dealt with along their role in consumer protection.

And, under each subtopic, the limitations of these private and public laws in consumer protection would be shown. This chapter, therefore, aims at showing the defects of these various laws in protecting consumers' interests.

The third chapter would deal with the legal regime of the new Trade Practice and Consumer Protection Proclamation No.685/2010. In this part of the thesis, the writer would begin by defining who a "consumer" is and by discussing the need for consumer protection. Discussion would also be made on the experiences of some other countries in consumer protection, as well as on general experiences on the independence of competition authorities. Finally, after a brief over of Ethiopian experience in consumer protection, the rationale behind and objectives of the new Trade Practice and Consumer Protection Proclamation No.685/2010, its scope of application, and the rights of consumers as well as the obligations of business persons under it would be elaborated.

Chapter four is devoted to the institutional framework for consumer protection. Special emphasis would be given to implementation institutions of the law. In this regard, the Trade Practice and Consumer Protection Authority, the Ministry of Trade, Regional Bureaus and Regional Consumer Protection Organs, Regional and Federal Courts, and the Police and Prosecution would be treated. Beside these, regulatory bodies whose activities are more directly related with consumer protection would also be the subject of discussion. Problems in relation to

enforcement mechanisms and institutions would be indicated under the same chapter.

Chapter five assess, and some times predicts, the effects of the Trade Practice and Consumer Protection Proclamation No.685/2010 on regulatory bodies, on basic laws of contract and extra contractual liability, as well as on business persons and on the over all protection of consumers.

Finally conclusion and recommendations would be made.

CHAPTER ONE

1. Proposal of the Paper

1.1 Back Ground

“The saddest part of the story is that an error or defect in manufacturing or marketing can affect millions of consumers; besides in a densely populated urban society, one person’s free choice –for example the unwitting purchase of a defective and potentially dangerous automobile may cause another’s misery.”(Encyclopedia Americana)¹

While manufacturers and market actors are expected to act honestly in the interest of consumers, they may either intentionally or negligently supply defective and unsafe products to the market. These acts of manufacturers and market actors would affect the society at large. Taking these in to account, the earliest protection was extended to consumers through the law of contract.

Earlier, as the sale of goods and services was made on a face to face negotiation between the buyer and the seller, protection of consumers’ interests by the law of contract was believed adequate². During this time the purchase was made more or less directly with the producer as the stage of production and distribution was not as such networked. Moreover, in this pre- industrial era, the principle was of caveat emptor-the buyer has the necessary knowledge to choose his wants and has contract with the producer and the effect of his mistake in making the right choice is insignificant³.

However, later on, with the broke out of industrialization and the subsequent division of labor, mass production and emergence of multiple chains of production and distribution, the remedy of warranty, which was based on the principle of privity of contract proved inadequate⁴. These situations put

¹ Quoted in Amha Tesfay, Consumer Protection in Ethiopia, Addis Ababa University, Faculty of Law, (unpublished), 1998,p.2

²A.James Barnes and Terry Heardhead, Law for Business(7th ed) MC GrawHill Company, Inc., USA 2000,p.8

³ Ibid.

⁴ Id.,p.340

consumers at several removes from the manufacturers. Those who have not had contractual relationship with manufacturers could not bring any action against the latter for any injury they incur in using their products⁵. The changes in the way goods are sold and the accompanying problem as a result of inadequacy of warranty based liability led to changes in the law providing more protection to consumers. Countries began to develop their own laws that hold manufacturers liable for their products. This development in the legal protection of consumers emerged due to changes in society's concept of who can best bear the responsibility for quality of goods⁶. This is consumers' protection based on the laws of extra contractual liability. Manufacturers could no longer insulate themselves from liability for injury incurred by consumers. So a manufacturer or producer would be liable for any injury incurred by ultimate consumers. But extra contractual liability protection of consumers also proved inadequate. The protection is based on individual actions and producers may easily avoid that.

Such inadequacy of the private laws protection and the complexity of consumer and supplier relationship led countries to apply competition and regulatory laws of different nature⁷. The pursuit of competition law plays a significant role in consumer protection by enhancing competitiveness in the market which in turn benefits consumers by availing better quality, wider choices of products at competitive prices. In pursuit of these, competition law regulates anticompetitive market acts such as abuse of monopoly, merger and collusive agreements⁸. In addition to these, different regulatory laws such as those relating to quality regulation, safety regulation as well as regulation of labeling and packaging have been employed to protect consumers⁹. Not only these, criminal laws have also been used as one means of protecting consumers by imposing punishment on market actors.

⁵ Barness and Hearhead, Supra note 2, p.294

⁶ Ibid

⁷ Geraint Howells and Stephen Weatherill, Consumer Protection Law, (2nd ed), Ashgate publishing company, USA, 2006, p.49

⁸ Id.p.571

⁹ Ibid

However, the protections by these laws still suffered from limitations. Regulation and competition do not address the demand side of the market. These laws could not enhance the bargaining power of consumers. Criminal law requires the proof of beyond reasonable doubt. It has also nothing to do with compensating consumers for any injury they suffer as a result of using defective products. On account of these, countries moved on enacting a separate consumer protection law.

In Ethiopia, the legal regime for consumer protection passed the same line of development. For long, as there was no codified consumer protection law, the protections accorded to consumers have been based on the conglomeration of both public and private laws such as laws of contract, tort, penal, and regulatory laws of different nature. As indicated above, all these type of laws do not guarantee adequate protection to consumers.

Up to August 16, 2010, there was no integrated and separate consumer protection law in Ethiopia. In august 2010, however, the legislature came up with a proclamation which provides for Trade Practice and Consumer Protection Proclamation No.685/2010. One step is forwarded. The legal and institutional framework has been in place since then. The law clearly establishes the legal and institutional framework in protecting the interests of consumers. The scope of application of the law, the rights of consumers as well as the obligations of business persons have been provided. A Trade Practice and Consumer Protection Authority has been established, along with other organs, to enforce the law.

1. 2. Statement of the Problem

As the topic of the thesis is “The Legal and Institutional framework for consumer protection in Ethiopia,” the following issues on the legal regime and the institutional framework will be raised and resolved as much as possible.

1.2.1. What are the objectives of this law?

1.2.2 What is the scope of application of the law in general?

1.2.3 The criminal punishment imposed against traders goes up to twenty years terms of imprisonment and a fine of two million birr. Is it a reasonable punishment?

1.2.4 What is the general impact of the law on regulatory bodies, on basic laws of contract and extra contractual liability, on business persons and on the over all protection of consumers?

1.2.5. How far the law grants structural and functional autonomy to the Trade Practice and Consumer Protection Authority?

1.2.6. The institutional framework of the law does not have place for private organs in its enforcement. Moreover, the law is silent about the right to appeal against the decisions of regional consumer protection organs. Would these not affect the proper enforcement of the law?

1. 3. The Scope of the Study

The whole study mainly focuses on the legal and institutional frame work of the consumer protection law as stipulated under the Trade Practice and Consumer Protection Proclamation No. 685/2010. However, the study will also deal with, though not in detail, some regulatory bodies whose activities are more directly related with consumer protection than any other regulatory bodies' activities do.

For purpose of clarity, foreign experiences on legal and institutional framework for consumer protection would be considered. Accordingly, the experiences of South Africa, Kenya, USA, and France as well as general experiences on the independence of competition authorities would be taken.

As far as the geographical limit of the study is concerned, the relevant information would be collected from Federal, Addis Ababa and Oromiya regions government organs and other private and public institutions in Addis Ababa.

1. 4. Objectives of the Study

Proclamation 685/2010, which provides for trade practice and consumers' protection, is issued on August 2010. There is no research work done so far on the legal regime and institutional framework of this law. The major objective of this thesis is, hence, to exhaustively study and analyze the law in general. For the sake of clarity and completeness, experience of foreign countries would be

considered. The paper is not simply a theoretical analysis. To this end, another objective is also devised. It tries to assess the institutional machinery designed to implement the law and its adequacy. The paper will also try to discuss on some regulatory bodies whose activities are more directly related to consumer protection than any other regulators do. Lastly, possible recommendations would be forwarded on the findings of the study as a whole.

1. 5. Significance of the Study

As this study is the first of its kind in dealing with the legal and institutional frame work for consumer protection, it would open the door for further research on consumer protection regime as a whole.

1. 6. Research Method

This research method will make use of both primary and secondary sources. Primary sources to be studied include the Trade Practice and Consumer Protection Proclamation No.685/2010 and some other relevant laws. Secondary sources include interviews, books, journals, unpublished materials, reports, news papers and bulletins and cyber sources. To show the challenges and prospects of the law, regard would be had on concerned government and private organs.

1. 7. Limitation of the Study

The newly established organ, the Trade Practice and Consumer Protection Authority, is not yet functional. There is no as such a case to analyze. Due to this, absence of case analysis is the limitation of this paper.

CHAPTER TWO

2. General Overview on the Laws of Contract, Extra Contractual Liability, Criminal law, Competition and Regulation vis-à-vis Consumer Protection

2.1. Introduction

In this chapter, the writer deals with various legal regimes that pertain to consumer protection. First, the writer will try to present relevant issues about the law of contract vis-à-vis consumer protection. Thus, by discussing the essence of contract law both in general and under Ethiopian law in particular, the role of contract law in consumer protection will be highlighted. Emphasis would be given to the role of freedom of consent, warranty and other remedies for non-performance of contract such as forced performance, damage, and cancellation in consumer protection.

Besides these, the role of extra contractual liability law in consumer protection would be discussed along with a brief over view about its essence, development and its bases of liability. Similarly, the relationship between criminal law and protection of consumers' interests is another issue that will be taken in to consideration. Discussion will also be made on the role of competition law in protecting consumers' interests. How competition law helps bring competitive process in the market to the benefit of consumers would be the main point of discussion in this regard. Moreover, the writer will discuss the interface between regulation and consumer protection.

Finally, whether or not these various legal regimes are adequate enough in protecting consumers' interests will be considered. The writer tries to show, under different subtopics, the limitations of these various legal regimes in consumer protection. The limitations of private law in general as well as the limitations of law of contract and extra contractual liability in particular would be considered. The same holds true with respect to limitations that are related to criminal law, competition and regulation.

2.1.1 Contract

2.1.1.1 The Essence of Contract

Contract is a legally backed agreement between or among contracting parties, to create, vary or extinguish an obligation. It is a consensual undertaking as the consent of parties is one of the prime elements in the relationship. Ethiopian law similarly defines contract as “contract is an agreement where by two or more persons as between themselves create, vary or extinguish obligations of a proprietary nature¹⁰.” This definition clearly provides that contract is made either to create new obligations, or to vary or extinguish already existing obligations. It also provides that obligations created, varied or extinguished shall have economic value. The law, accordingly, excludes contracts of status such as marriage, betrothal, and adoption from the scope its application¹¹. These latter types of contracts do not involve obligations having economic value.

For a contract to be valid, there are essential requirements that must be fulfilled. The first requirement is the free consent of parties to the contract. Parties to the contract should give their consent freely. In this respect, the Civil Code under article 1679 provides that “a contract shall depend on the consent of the parties who define the object of their undertakings and agree to be bound by.” Accordingly, parties have to clearly define their respective obligations and express their agreements to be bound by.

The second essential element for the validity of contract is the form under which it is made. The general principle of contract law is that parties have the freedom to make their contract in any form they wish. They can make it orally, by conduct or in writing. But when there is a requirement by the law for a contract to be made in a special form, that has to be complied with as the failure to live up to the requirement affects the validity of the contract¹². The third important

¹⁰ The Civil Code of the Empire of Ethiopia of 1960, Negarit Gazeta, Proclamation No. 165 of 1960, 19th year, No.2, art. 1675

¹¹ Though the law says contracts in general, its scope of application has been limited to contracts having proprietary nature. See *Id.*, Book IV, Title XII

¹² Unless other wise provided, contract law does not require a special form and parties are free to determine the form of their contract. But when a special form is provided by law, such form shall

requirement for the formation of valid contract is the capacity of parties to the contract. Parties should have legal capacity to enter in to contractual relationship. The fourth element for the formation of valid contract is the object of the contract. In principle, parties are free to determine the obligations they undertake. However, the object of the contract shall not be illegal, impossible, or immoral. Where the object of the contract is immoral, illegal, impossible, or insufficiently defined, the contract would be invalid¹³. Hence, it is only when all these requirements are fulfilled that a contract would be valid in the eye of the law.

2.1.1.2 Laws of Contract and Consumer Protection

As indicated earlier one of the basic feature of contract law is its recognition of the autonomy of contracting parties. Parties to a contract would not be bound unless they have expressed their consent freely. It is only in transactions to which they have expressed their consent that parties would be bound by. When an offer is made by one party, the other party would not be bound by the offer unless he expressed his consent. It is also provided under Ethiopian law that silence would not be deemed as an acceptance where offer is made¹⁴. Such protects consumers, as contracting parties, from being bound by a transaction to which they have not consented to.

The law of contract also protects contracting parties from duress, fraud and mistake. When a contracting party is forced to enter in to a contractual relationship with out his consent, he can avail himself of the protections of contract law. The Ethiopian contract law, in this respect, clearly provides for the invalidation of a contract on the ground of duress subject to the fulfillment of the requirements in relation there to¹⁵. Once a party proves to the satisfaction of the

be observed and the failure to comply with the special prescription of the law would render the contract a mere draft. Id., Art. 1719 and 1720(1)

¹³ The law of contract provides that a contract is of no effect where the obligations of the parties or one of them relate to a thing or fact which is impossible and the impossibility is absolute and insuperable; where it appears to be unlawful or immoral that the obligations assumed by one party be related to the obligations of the other party. Id., art.1715 (2) and 1716(2)

¹⁴ Id. Art. 1682

¹⁵ It is provided that duress may be a ground for invalidation of contract on account of duress where the acts of duress led a party to believe that he or one of his ascendants or descendants or

court of law that the duress was imminent and impressive to a reasonable person, he would not be bound by as the contract would be rendered invalid.

When there is a mistake or misunderstanding on the part of a contracting party in entering in to the contract, contract law protects the mistaken party. When there is a mistake, it is difficult to say that there is free will of the mistaken party to the contract. As the law still tries to balance between the freedom of will and the public interest for security of transaction, it is not every mistake, however, that the law recognizes as a ground for invalidation¹⁶. The mistake has to be fundamental and such that the party who invokes it would not have entered in to the contract had he known the mistake at the time of entering in to the contract. Moreover, contracts law gives protection to a contracting party where the terms of a contract are substantially more favorable to one party than to the other¹⁷. In transaction we do not always expect equal benefit to all parties. But when one of the parties to a contract is unduly benefitted at the expense of the other party, the law renders it as unconscionable contract¹⁸.

In addition to these, a contracting party is entitled to the protection of the law when fraud is committed against him, in entering in to the contract, by the other contracting party. When there is fraud, it is presumed that the party against whom the fraud is committed has wrongly appreciated the subject matter or the object of the contract.

But it is not every fraud that the leads to avoidance of contractual relationship. The law requires a contracting party to show to the effect that he would not have entered in to the contract had it not been for the deception committed by the

his spouse were threatened with a serious or imminent danger to life, honor, person or property; where the duress is such that it can impress a reasonable person and such determination is made having regard to the age, sex and position of the parties concerned. There is no difference whether the duress is committed by contracting party or third party. Id., Arts.1706 and 1707(1)

¹⁶The party who invokes his mistake shall establish that he would not have entered in to the contract, had he known the truth and the mistake must be fundamental having regard to the good faith and to the circumstances in which the contract was made. Id., Arts.1697 and 1698

¹⁷ Id., Art.1710

¹⁸ Unconscionable is invalidated where the consent of the injured party was obtained by taking advantage of his want, simplicity of mind, senility or manifest business inexperience. Id., Art. 1710(2)

other party¹⁹. Therefore, consumers, as contracting parties, have these protections of contract law in transactions they enter in to with market actors.

2.1.1.2.1 The Warranty Based Protection

One of the mechanisms by which the law protects the interests of contracting parties is through the instrumentality of warranty. Warranty may be either contractual or legal. Contractual warranty comes in to picture where the seller undertakes towards the buyer by making representations concerning the quality, quantity, condition, description, and usage of goods²⁰. The critical element for the creation of contractual warranty is that the seller makes a statement of fact or promise to the buyer concerning the goods that become part of the bargain between them²¹. Legal warranties, on the other hand, arise whether or not the seller undertakes to give warranty.

The Ethiopian contract law also provides for the right to warranty to a buyer²². The warranty that a buyer is entitled pertains to the quality, nature, quantity or particular usage of the subject matter of the transaction. In relation to these, the law provides that warranty is due where the seller delivered to the buyer part only of the thing sold or a greater or lesser quantity than he had undertaken in the contract to deliver; where the seller delivered to the buyer a thing different to that provided in the contract or a thing of different species; where the thing does not possess the quality required for its normal use or commercial exploitation; where it does not possess the quality required for its particular use as provided expressly or impliedly; or where the thing does not possess the quality or specifications provided expressly or impliedly in the contract²³. Where warranty is due, the buyer may demand replacement where the sale relates to a thing in respect of

¹⁹Where a fraud is committed by a third party, the party who has been deceived has to show that the other contracting party knew or should have known of the fraud on the making of the contract and took advantage there of. Id., Art. 1704(2)

²⁰ Gaylord A.Jentz, and Roger LeRoy Miller, West's Business Law(6th ed), West Publishing Company, USA, 1994, P.430

²¹ James Barnes and Terryhead, Supra note 2, p.282

²² The Civil Code, Supra note 10, title XV, Chapter One, Contracts Relating to Assignment of Rights, Sale

²³ Id., Arts.2288 (a), 2288(b) and 2289

which a purchase in replacement conforms to commercial practice or such purchase can be effected with out inconvenience or considerable expense²⁴. Moreover, the buyer may demand the delivery of missing part or quality of a thing or else demand the defects be made good²⁵. So consumers, as buyers, have the right to these warranty based protections.

2.1.1.2.2. Other Remedies of Contract Law

There are also remedies that a contracting party can demand when the other party fails to perform his obligations. A party who is affected by non-performance of a contract by the other party may demand specific performance of the contract, its cancellation, and damage. Specific performance is a remedy that requires the defaulting party to perform the contract as per its terms. However, a party who invokes specific performance has to show that the other party failed to perform his obligations; that the performance of the contract is of special interest to him and that it could be performed with out affecting the personal liberty of the defaulting party²⁶.

Cancellation is another remedy for a contracting party affected by the non-performance of a contract. The party affected by non-performance of a contract may require a court to cancel the contract or himself cancel it as the case may be. But a party who demands cancellation has to show to a court of law that the other party has not or not fully and adequately performed his obligations with in the agreed period of time and such has affected the essence of the contract in such a way that he would not have entered in to the contract with out the term which the other party has failed to execute being included²⁷.

In both cases of cancellation and forced performance, a party may demand the payment of damage. The law is clear enough in saying that damage arising out of non-performance may be demanded in addition to the enforcement or cancellation of a contract²⁸. Hence, consumers, as contracting parties, have the

²⁴ Id., Art.2330

²⁵ Id., Art.2332

²⁶ Id., Arts.1776 and 2329

²⁷ Id., Arts.1784, 2336 and 1785(1)

²⁸ Id., Arts. 1790, 1799-1802 and 2360-2361

right to these remedies in case where the other party fails to perform the contract.

2.1.2 The Law of Extra contractual liability

2.1.2.1 The Essence of the Law of Extra Contractual Liability

During the 19th century and before, the liability rules for defective products were very much to the manufacturers' advantage²⁹. This was the era of caveat emptor (let the buyer beware), and the principle of no liability with out privity, and no liability with out fault was the order of the time³⁰. During this time, persons who were injured by a defective product and who did not have privity of contract with the manufacturer were forced to remain under the rule of caveat emptor which requires the buyer to examine, judge and test the product for himself³¹. At that time, consumers with out privity (contractual relationship) with the manufacturer took the risk that a product was of adequate quality and that it meet the expected consumer safety requirements³². Unless there was a privity between the manufacturer and buyer of goods, the buyer used to assume any injury that results from the usage of the product. The manufacturer could not be found negligent in construction or design of the product under consideration. Certain features of the 19th century economy, however, made that century's pro-defendant liability rules less hard on the plaintiff than would otherwise have been the case³³. Chains of distribution tended to be short, so the no- liability -out side-privity defense could not always be used. Because goods tended to be simple and less complex, and buyers sometimes could even inspect them on the spot³⁴.

²⁹ Michael B. Merzger, Business Law and the Regulatory Environment: Concepts and Cases(8th ed), Richard D. Irwin Inc., USA,1992, p.419

³⁰ During this time as there was no liability with out fault, consumers as a plaintiff frequently faced problems in proving the defendants negligence because the necessary evidence was under the defendants control. And the doctrine of "no liability out side of privity of contract" often prevented plaintiff from successfully suing a party with whom they had not directly dealt with. Ibid

³¹ Roger E.Meiners and Franles L. Edwards, Managing in the Legal Environment (3rd ed), West Publishing Company, USA, 1996, p.191

³² Ibid

³³ Merzger, Supra note 29, p.420

³⁴ Ibid

However, later on, with the development of complex process of production and distribution, there came to be a less need to protect manufacturers from liability for defective goods³⁵. The emergence of long chains of distribution was meant that consumers often do not deal directly with the party ultimately responsible for defects in products they buy³⁶. Moreover, with the development of corporate based economy, consumers have been less able to bargain on equal terms with such parties in any event³⁷. The growing complexity of goods has also made buyer inspection more difficult³⁸. Due to all these developments, product liability law has moved from its earlier caveat emptor emphasis to a stance of caveat venditor (let the producer and seller be ware)³⁹. Following this new developments, the manufacturers of goods became liable for any defect in goods they put in to the market⁴⁰. The manufacturers could no longer avail themselves of the defenses of privity and caveat emptor.

The imposition of such legal liability on manufacturers is known as extra contractual liability. Extra contractual liability goes beyond contractual promises, and imposes standards of quality and performance on manufacturers⁴¹.

Manufacturer, therefore, must produce products using proper care to eliminate foreseeable harm, or they risk being found liable if a consumer is injured by a defective product⁴². When looked at from an economic point of view, extra contractual liability rules provide an incentive for producers to take cost-effective measures to prevent defects that may harm consumers⁴³. Moreover, some of the limitations inherent in the law of contract can be addressed through the law of

³⁵ Meiners and Edwards, Supra note 31

³⁶ Ibid

³⁷ Merzger, Supra note 29

³⁸ Ibid

³⁹ Underlying this shift toward caveat venditor is the belief that sellers, manufacturers,, and their insurers are best able to the economic costs associated with the product defects, and such parties can often pass such costs in the form of higher prices. Thus the economic risks associated with defective products have been effectively spread through out society, socialized. Ibid.

⁴⁰ Neil Story and Lynn M.Ward, American Business Law and the Regulatory Environment, South Western Publishing Company, USA, 1989, p.473

⁴¹ Howells and Weatherill, Supra note 7, p.8

⁴² Ibid

⁴³ Peter Cartwright, Consumer Protection and the Criminal Law: Law, Theory and Practice, Cambridge University Press, UK, 2001, p.15

tort⁴⁴. The extra contractual liability of manufacturers may be based on the theories of negligence, misrepresentation or strict liability⁴⁵. It is similarly provided under Ethiopian law that extra contractual liability may be based on fault or strict liability⁴⁶.

2.1.2.2 Bases of Extra Contractual Liability

2.1.2.2.1 Fault Based Liability

One of the sources of extra contractual liability is fault. Fault based liability arises from an act committed either negligently or after a malice aforethought. An act is said to be committed negligently where a person fails to exercise a degree of care that a reasonable, prudent person would have exercised under the same circumstances. If a manufacturer fails to exercise due care to make a product safe, a person who is injured by its product may sue the manufacturer for negligence⁴⁷. The manufacturer is expected to exercise due care in designing the product, selecting the materials, using the appropriate production process, assembling the product and placing adequate warnings on the label informing the users of dangers of which an ordinary person might not be aware⁴⁸. The duty of care also extends to the inspection and testing of any purchased components that are used in the final product sold by the manufacturer⁴⁹. An action based on fault does not require privity of contract between the injured plaintiff and the defendant manufacturer⁵⁰. It does not matter whether or not the buyer dealt directly with the manufacturer⁵¹. The manufacturer's duty of care extends to all persons who might foreseeably be injured if the manufacturer does not exercise

⁴⁴ For example, the consumer who is given a defective product by a friend and suffers injury will have a right of redress against the producer of that product in the law of tort, either under the tort of negligence or strict liability. Ibid

⁴⁵ Ibid

⁴⁶ The Civil Code, Supra note 10, Art. 2027

⁴⁷ Frank B. Cross Roger and Leroy Miller, West's Legal Environment of Business: Text, Cases, Ethical, Regulatory, International and E-commerce issues(4th ed), west Thomson learning, 2001 , p.281

⁴⁸ Ibid

⁴⁹ Miller and Jentz, Business Law Today(8th ed), Thomson West, USA,2008,p.483

⁵⁰ Ibid

⁵¹ Ibid

its duty of care⁵². Consumers, hence, as plaintiffs have to prove that the manufacturer or the distributor or the defendant has a duty of care which he failed to comply with and that the actual loss and injury was directly caused by the failure of the defendant to exercise due care⁵³. Misrepresentation is still another source of fault-based liability. When a fraudulent misrepresentation has been made to the user or consumer and that such misrepresentation results in injury, an action may be brought against the manufacturer or distributor⁵⁴.

2.1.2.2.2 Strict Liability

Strict liability, as one aspect of extra contractual liability, has had its greatest growth since the early 1960s when a common law court ruled on the leading case of *Green Man V Yuba Power Products* that:

“A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being⁵⁵.”

Where negligence cannot be proved and there is no possibility to rely on warranty, an injured plaintiff may rely on strict liability as a basis for recovering damages. Strict liability in extra contractual liability is imposed when a defective product has caused injury or when injury results from a justifiable reliance on a material misrepresentation of the quality of a product⁵⁶. The liability is strict because the plaintiff need not prove fault (negligence or fraud) on the part of the defendant. The liability is also in extra contractual for the existence of the liability doesn't depend on the existence of warranty. Unlike that of negligence which focuses on the behavior of the manufacturer, strict liability focuses on the nature

⁵² It is foreseeable that the ultimate consumer of goods might be hurt if goods are not properly designed or built. Likewise disclaimers in contracts are usually not effective to shield a manufacturer or seller against liability for fault of negligence to consumers. Usually such clauses are held to be against public policy. Barnes and Morehead, *Supra* note 21, p.300

⁵³ J. David Reitzel and Donald P. Lyden, Contemporary Business Law: Principles and Cases(4th ed) MC GrawHill, USA, 1990, p.355

⁵⁴ Jentz and Miller, *Supra* note 20, p.446

⁵⁵ Retzel and Lyden, *Supra* note 53, p.373

⁵⁶ *Ibid*

of product, and not on the character of the defendant⁵⁷. The defendant is liable no matter how careful or reasonable he may have been in his conduct⁵⁸.

There are rationales for imposing strict liability against a manufacturer. The production, distribution, packaging, origin and advertising of goods have become more complex and uncertain to the consumer world⁵⁹. And hence, consumers need protection. Manufacturers and distributors should not also escape liability for faulty products simply because they are not in privity of contract with the ultimate users of the products⁶⁰. Moreover, it is difficult to prove the negligence of the manufacturer⁶¹. Short of strict liability, the plaintiffs recovery would be conditioned on proof of certain elements which are either impossible to prove or expensive to prove⁶². More than consumers, manufacturers are in a much better position to distribute loss due to defective products as a cost of doing business, either by raising prices or by procuring insurances⁶³. Imposing strict liability on manufacturers has also the objective of policing their operations more carefully and so that they would make fewer defective products⁶⁴.

All these justifications for imposing strict liability were summed up in a certain court case as follows:

There are two reasons for imposing strict liability on manufacturers. They may be summarized by the phrases "incentive" and "risk allocation". A manufacturer is in the best position to discover defects or dangers in his product and to guard against them through appropriate design, manufacturing and distribution safeguards, inspection and warnings. A rigorous rule of liability with enhanced possibilities of large recoveries is an

⁵⁷ But under warranty and strict product liability in tort, if the product is defective and causes harm, then the defendant is liable no matter how careful or reasonable the behavior. A fundamental distinction is that negligence is fault based and defendant centered, while warranty and strict product liability in tort are non-fault-based and product centered. Story and Ward, Supra note 40

⁵⁸ Ibid

⁵⁹ Reitzel and Lyden, Supra note 53, p.374

⁶⁰ Ibid

⁶¹ Daniel Behailu, Consumer Protection Under the Ethiopian Law of Extra Contractual Liability, Addis Ababa University, Faculty of Law, (Unpublished), 2003, p.103

⁶² Ibid

⁶³ Reitzel and Lyden, Supra note 53, p.484

“incentive” to maximize safe design or “deterrence” to dangerous design, manufacture and distribution...a second approach has been variously expressed as loss distribution, risk allocation or enterprise liability. Regardless of safety measures taken by manufacturers and distributors, accidents and injuries will inevitably occur which can be fairly said to have been wholly or partly caused by some defective characteristics of the product involved. Accidents and injuries, in this view, are seen inevitable and statistically foreseeable cost of the product’s consumption or use⁶⁵.

Strict liability for defective products is also provided under Ethiopian law. Under Art.2085 of the Civil Code, it is provided that manufacturers are liable for the damage caused by the goods they produce. Accordingly, manufacturers who sell goods to the public for profit are liable for any damage resulting from normal use. The liability of manufacturers is strict. There is no need to prove their conduct. Though the liability of the manufacturer is strict, there are situations where the manufacture may not be held liable⁶⁶. The manufacture is not liable where the defect which has caused the damage is such that it could have been discovered by the customary examination of the goods and where the damage is caused by abnormal usage. The manufacturer has thus to prove that the defect which has caused damage could have been discovered by customary examination of the good or/and that the damage is caused by abnormal use of the product. In addition to this, the manufacturer may relieve him by proving that the plaintiff was a contributory negligent; that the product was not used for its intended purpose and the product was abused or altered which rendered it unsafe.

2.1.2.3. Remedies under the Law of Extra Contractual Liability (Compensation)

Article 2028 of the Civil Code of Ethiopia provides “whosoever causes damage to another by an offence shall make it good.” The law provides for the liability of

⁶⁴ Ibid

⁶⁵ Story and Ward, Supra note 40, p.502

⁶⁶ The Civil Code, Supra note 10, arts. 2085(2) and 2086(2)

any one who causes damage due to his fault. Whether a person is legally capable or not doesn't matter in relation to his liability towards the victim.

The main objective of compensation is to put the victim in the position in which he was before the occurrence of the damage. The damages that the law awards may be either material damage or moral damage. Material damage relates to the pecuniary damage of a person such as financial loss that includes loss of profit, expenses of medical treatment or generally losses that affect the financial interests of the victim.

Material damage may be either present or future. The former is the victim's current loss while the latter relates to the loss of the victim in the future. Under Ethiopian law both present and future damage are employed in determining the extent of compensation that the victim needs to be awarded⁶⁷. In determining the extent of compensation for the victim, art. 2091 of the Civil Code is clear enough in saying that compensation shall be equal to the damage suffered by the victim. In other words, the tort-feasor is expected to make good all the damage suffered by the victim. However, this principle of awarding of equal amount of compensation to the damage sustained has certain exceptions. Article 2097 provides that the victim may not claim compensation for the damage he has suffered in so far as, by acting in reasonable manner, he could have avoided or limited the damage. Moreover, the victim is entitled only to partial compensation where the damage is partly due to his fault. Article 2101 still provides for the reduction of the compensation to be paid by a person who caused the damage which, in consequence of unforeseeable circumstances, expanded beyond what could reasonably be expected. The mode of compensation, as a matter of principle, is monetary compensation, and the exceptions are other modes of compensation⁶⁸. The compensation may be either in lump sum or on the basis of maintenance allowance. In case of fatal accidents, however, as art.2095 (2) indicates, compensation shall be in the form of maintenance allowance.

⁶⁷ Art.2090, 2092 of the Civil Code

⁶⁸ Id., Arts. 2118-2123 provide for other modes of compensation

2.1.3. Limitations of Contract and Extra contractual Liability Laws in Consumer Protection

2.1.3.1. Limitations of Private Law in Consumer Protection in General

It is not difficult to construct a powerful argument that a legal system based exclusively on individual action by consumer against trader bears no useful relation to an economy of mass production and extended distribution and marketing chains. The pursuit of such distinct goals as the correction of market failure and fairness within a market order cannot be fully achieved under a system based purely on private law⁶⁹.

As a market failure is rampant and thus perfect market does not exist in reality, it is clear that private laws on which it is based suffer from limitations that make them inadequate for protecting consumers⁷⁰. Private laws cannot discipline the market to the advantage of the consumers⁷¹. One of the characteristics of the perfect market is that economic actors, including consumers, have “perfect information” about the nature and value of commodities traded⁷². In reality, however, private laws can not help consumers protect themselves from information asymmetry in that they know less than the other party (generally the supplier) and will frequently suffer from some information imperfections⁷³. Private laws, as such, have limitations in sharpening the messages expressed by consumers about market operations and producer behavior⁷⁴. Another main limitation of private law is that it relies upon the victim for its enforcement. A rational individual will not enforce the law unless the expected benefit exceeds the expected cost, and in many cases private enforcement of consumers rights

⁶⁹ Howells and Weatherill, Supra note 7, p.49

⁷⁰ Through absence of competition markets may fail. If the market is to function effectively, it is important that no individual firm or group of firms has sufficient power to influence price. However, “the notion that rival suppliers must dance to the consumers’ tune is false where the consumers’ influence is thwarted because of lack of competition.” Then a law is necessary to avoid entry unfair competition, entry barriers, cartels and abuse of dominant positions. Cartwright, Supra note 43, p.19

⁷¹ Ibid

⁷² Ibid

⁷³ Id., p.20

⁷⁴ Id., p.50

will be prohibitive⁷⁵. Expensive court litigation, stringent court procedure, ignorance of the law, cost of witness hearing and bargaining costs are some of the prohibitions⁷⁶. In this case, a consumer who has contracted with a foreign trader may encounter even larger problems in enforcing his rights⁷⁷. When a consumer is forced to take legal action in a country different from the one in which he lives, he will often incur considerable travel costs and costs for accommodation in order to submit and defend his claim⁷⁸. In addition, the case may be heard in a different language than the consumer's, which may cause problems even to a consumer who is sufficiently proficient in the other language to conclude a contract in that language, but often not sufficiently to appear in court⁷⁹. In many cases, a consumer who is forced to bring proceedings in a foreign country will not enforce his rights⁸⁰.

Such qualifications to the role of private law in safeguarding the interest of consumers are deepened by the practical problems of securing access to justice⁸¹. The reluctance of consumers to go to court and the absence of effective recourse to representative actions together shelters producers from the consequences of their failure to fulfill consumers' demand and expectation, while also denying consumers the practical enjoyment of their legal rights⁸². These various reasons on the limitation of private laws sharpen the policy perception that an effective program of consumer protection in the modern market must embrace public law too⁸³.

⁷⁵ Id., p.17

⁷⁶ Ibid

⁷⁷ Center for the Study of European Contract Law, Individual Private Enforcement of Consumer Rights in Civil Courts in Europe, Working Paper Series, No.2010/01, p.13.

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Howells and Weatherill, Supra note 7, pp.50-51

⁸² Ibid

2.1.3.1.1 The Limitations of Contract Law in Protecting Consumers

In addition to the general limitations of private laws shown earlier, contract law has its own limitations in protecting consumers' interests. The major limitation of contract law is that consumers who have not had privity (contractual relationship) with the manufacturer may not have a remedy against the latter for any injury sustained as a result of using the product⁸⁴. This deficiency of contract law has posed more problem on consumers as modern marketing has typically put consumers at several removes from the manufacturer⁸⁵. The possibility of consumers to directly enter in to contract with manufacturers is very rare as there are several actors from point of production to point of direct supply to consumers⁸⁶. Hence, unless the consumer himself has purchased the defective goods from the producer, he or she has no cause of action against the producer for breach of warranty⁸⁷. On account of these, purchasers of defective goods can sue only the immediate seller and not the manufacturer, with whom there is no contract. And in most cases, consumers make contract with retailers and immediate suppliers far removed from the producer⁸⁸. Even worse, it will be even impossible to sue the retailer, for example, if he has become insolvent or cannot be traced, and so the consumer may be left with out remedy⁸⁹. Moreover, retailers, particularly those who are mobile, and who know that they could not be traced, may not be interested in having a permanent customer and knowingly sell defective goods in the market⁹⁰.

⁸³ Ibid

⁸⁴ Id., P.49

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ The doctrine of privity of contract states that, in general, a contract cannot confer rights or impose obligations on some one who is not party to that contract. For example, a consumer cannot generally sue a manufacturer in contract for producing faulty goods (vertical privity), nor can he sue a retailer in contract for supplying faulty goods which were not purchased by him (horizontal privity). There has been criticism of the doctrine and both academic and judicial support for reform. Cartwright, Supra note 43

⁸⁸ Barnes and Morehead, Supra note 2, p.294

⁸⁹ Cartwright, Supra note 43

⁹⁰ Ibid

2.1.3.1.2 The Limitations of the Law of Extra Contractual Liability in Protecting Consumers

In addition to the limitations that we saw earlier for private laws in general, the law of extra contractual liability has also its own unique limitations. One of the principal limitations of the law of extra contractual liability is that it does not allow recovery for pure economic losses⁹¹. Another limitation of this law is the difficulty to prove acts of the tort-feasor⁹². Acquiring proof of negligent design or of negligent manufacturing process may require examination of the defendant's manufacturing facilities and processes⁹³. The defendant may not allow access to necessary information and otherwise acquiring it, if possible at all, can be costly⁹⁴. The plaintiff still faces the difficulty of dealing with a variety of possible defenses raised by the defendant. The defendant may prevail by proving that the plaintiff knew of the defect, understood the danger and voluntarily assumed the risk⁹⁵. Still, as a result of the defense of contributory negligence by the defendant, the plaintiff may even be completely barred from recovery for injuries sustained as a result of negligence on his part⁹⁶.

2.1.4 The Essence of Criminal Law

Criminal law is part of public law. It is a law dealing with the punishment of criminal acts. Criminal acts are those acts which are prohibited and made punishable by law. The criminal act may consist of the commission of what is prohibited or the omission of what is prescribed by law. The criminal act is said to be complete only when its legal, material and moral ingredients are present⁹⁷. This is to mean that there should be a law that prohibits the commission or

⁹¹ If a consumer buys a defective washing machine the consumer will be able to recover damages from the supplier in contract. If the washing machine had been given to the consumer as a present, he would not be able to seek redress, either from the supplier or the manufacturer. This is because the consumer is not part of a contractual relationship, and there is no general right in tort to recover damages for the cost of putting a product right, which is classified as pure economic loss. See *Id.*, p.16

⁹² Reitzel and Lyden, *Supra* note 53, p.356

⁹³ *Ibid*

⁹⁴ *Ibid*

⁹⁵ Miller and Jentz, *Supra* note 20, p.484

⁹⁶ Barnes and Morehead, *Supra* note 2, p.301

⁹⁷ The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No.414/2004, Art.23

omission of an act; the suspect must have either committed or omitted those particular acts; and there should be either intention or negligence on the part of the perpetrator in the commission of the criminal act.

One of the main objectives of criminal law is the deterrence of a certain criminal conduct. The law through imposition of punishment aims to prevent the future commission of the act by the perpetrator or other potential offenders. Criminal law in doing so aims at protecting the society from such undesirable acts.

2.1.4.1 Criminal Law and Consumer Protection

As one of the objectives of criminal law is the protection of society from perpetrators of criminal acts, it has many things to do with consumer protection. The need for the protection of consumers have been clearly given due recognition under the criminal law of Ethiopia. The criminal law, in this case, aims at deterring the commission of crimes that are harmful to the consumers' health and safety. Criminal law has clearly criminalized those harmful conducts so as to protect the interest of consumers. Accordingly, a person(whether physical or legal) who intentionally manufactures food stuffs or products unfit for human consumption; or who intentionally manufactures goods which contain injurious or damaged ingredients is punishable with imprisonment for not less than six months or with a rigorous imprisonment for not less than five years and fine in serious case⁹⁸. Moreover, adulteration of goods or foods in such a way that endanger public health is punishable with imprisonment for not less than five years and fine in serious cases⁹⁹. The law still imposes the same level of punishment on those who intentionally stores, offers for sale, exports, and imports, receives, or distributes such injurious products¹⁰⁰. The law has also provided for rigorous imprisonment of not less than seven years where the person deliberately manufactures, adulterates, sells, distribute medicaments, dietetic products or tonics, the defective manufacture or adulteration of which can have dangerous effects¹⁰¹.

⁹⁸ Id., Art. 527

⁹⁹ Id., Art.527 (1) (a).

¹⁰⁰ Id., Art.527(1)(b))

¹⁰¹ Id., Art. 527(2)(b)

It is not only intentional (deliberate) conducts that criminal law tries to discipline. Negligent acts of manufacturing, storing, offering for sale, exporting, importing, and distributing of injurious products still entail liability. In this regard, the law provides for simple imprisonment not exceeding six months or fine where the crime is committed negligently¹⁰². In doing so the criminal law plays its role in protecting consumer from adulteration of food stuffs and defective manufacturing, storing and distributing of goods by disciplining and deterring such undesirable acts of manufacturers and distributors.

But criminal law, from the perspective of the consumer protection, has its own limitation. Firstly, criminal law requires proof of beyond reasonable doubt to make the manufacturer criminally liable. Unlike civil cases, whose standard of proof is of preponderance of evidence, proof of criminal cases is stringent. Moreover, the manufacturer is liable criminally for adulteration and defective manufacturing only when acts of negligence or fault are proven on his part. Proof of negligence and fault is still by itself very difficult. Secondly, criminal law has nothing to do with compensating victims of defective or adulterated goods and food items. As a result of using a defective product, the consumer may have sustained injury and loss. For these, criminal law could not be of help.

2.1.5 Competition

2.1.5.1 The Essence of Competition

Broadly defined, competition, in a market-based economy, refers to a situation in which firms or sellers independently strive for the buyer's patronage in order to achieve particular business objectives such as profits, sales or market shares¹⁰³. In a much similar way, competition has also been taken as the striving or potential striving of two or more persons or organizations engaged in production, distribution, supply, purchase or consumption of goods and services in a given market against one another which results in greater efficiency, high economic

¹⁰² Id., Art. 527(3))

¹⁰³ World Bank and OECD, A Framework for the Design and Implementation of Competition Law and Policy, 1998,p.1

growth, increasing employment opportunities, lower prices and improved choice for consumers¹⁰⁴. Hence, competition is a competitive rivalry that takes place between and among firms through price, quantity, service quality, or a combination of these and other factors that consumers may value. Competition by itself encompasses competition policy and competition law. Competition policy consists not only of competition law enforcement, but also of trade liberalization and deregulation in the interest of consumers' welfare and the general public¹⁰⁵. The way competition laws are enforced and the appropriateness of the enforcement; the process of liberalization and deregulation through privatization are, as such, the concern of competition policy¹⁰⁶. Competition law is also a law of general application as it applies to all sectors of economic activity unless special exemptions are provided¹⁰⁷. Unless, the competition law itself or any other legislation provides to the effect that certain economic activities are exempted for a certain policy reason, competition law, as a matter of principle, applies to all economic activities and actors¹⁰⁸.

Competition forces firms to become efficient and producers to offer a greater choice of products and services to consumers. In a competitive market economy, price (and profit) signals tend to be free of distortions and create incentives for firms to redeploy resources from lower- to higher-valued uses¹⁰⁹. However, firms also have the incentives to acquire market power, that is, to obtain discretionary control over prices and other related factors determining business transactions¹¹⁰. Such market power may be gained by limiting competition through erecting barriers to commerce, entering in to collusive arrangements to restrict prices and out put, and engaging in other anticompetitive business

¹⁰⁴ Rwandan Ministry of Trade and Industry, Rwanda Competition and Consumer Protection Policy, 2008, p.4

¹⁰⁵ UNCTAD, Model Law: The Relationships between a Competition Authority and Regulatory Bodies, including Sectoral Regulators, retrieved on March 2011 from: <http://www.unctad.org/en/docs/c2clp23&c1.en.pdf>, p.4

¹⁰⁶ World Bank and OECD, Supra note 103, p.86

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹ Ibid

¹¹⁰ Ibid

practices¹¹¹. These examples of imperfect competition are generally viewed as market failures that result in inefficient allocation of resources and adversely affect industry performance and economic welfare. Such market failure enables sellers to deliberately reduce output so as to extract higher prices at the expense of consumers and society in general¹¹².

The most common objective of competition policy is the maintenance of the competitive process or of free competition, or the protection or promotion of effective competition¹¹³. This is an act of preventing unreasonable restraint on competition. In doing so, competition protects the market by striking down or preventing those private, and where possible, business restraints that adversely interfere with the competitive process. Here competition disciplines the conduct of the firms to act in a manner compatible with the objectives and principles of competition policy and law by preventing and sanctioning anticompetitive acts of business. Thus through providing a level playing field, competition improves economic efficiency and stimulates innovation and growth and as result maximizes the welfare the welfare of the society through lower prices, higher quality and a more variety of products choices¹¹⁴.

Though initially, the primary objective of competition policy and law was the maintenance and promotion of effective competition and countering restraints of competition, it has, in recent years, however, been expanded significantly to include lessening the adverse effects of government intervention in the market place¹¹⁵. Other commonly expressed objectives of competition policy are

¹¹¹ Ibid

¹¹² Ibid

¹¹³ Though this is the most important objective of competition law and policy, the objective of competition is also associated with freedom of trade, freedom of choice, and access to markets. It is also related with freedom of individual action and securing economic freedom. Ibid

¹¹⁴ Josef Drexel and Laurence Liot, Economic Theory and Competition Law, (Edward Elgar Publishing Limited, Great Britain, 2009), p.47

¹¹⁵ For instance in Italy and Canada competition laws have been applicable to both public and private firms; firms supplying public services or operating a monopolistic position are exempted from the competition law only within the limits of the mission attributed to them. World Bank and OECD, Supra note 103, p.2

prevention of abuse of economic power and thus protection of consumers and of producers who want the freedom to act in a competitive manner; and achievement of economic efficiency, defined broadly so as to encourage allocative and dynamic efficiency through lowered production costs and technological change and innovation¹¹⁶. Attaining economic efficiency so as to maximize consumer welfare is still another objective¹¹⁷. Moreover, improving access and opening markets by reducing barriers to entry through deregulation, privatization, tariff reduction, or removal of quotas and licenses are, too, specifically highlighted as important objectives in the administration of competition policy in several industrial countries¹¹⁸.

2.1.5.2 Competition and Consumer Protection

The impacts of anticompetitive acts of market actors on consumer protection have been stated as:

The violations of competition law such as price fixing and related horizontal restraints, anti competitive mergers, unreasonable vertical restraints, and predatory pricing impose the supply of options by imposing restrictions on the variety of prices and products that the free market would offer to consumers. The competition law by banning these benefits the consumer. Price fixing and other illegal horizontal restraints artificially restrict the array of price options the competitive market would otherwise provide. Price fixing prevents consumers from choosing the best price that would otherwise have been available. Mergers are other traditional competition violations that have effects on the range of options available to consumers, both directly in the short term, and indirectly in the long term. An anticompetitive horizontal merger can directly eliminate significant competition by diminishing options with respect to price, product quality, or variety. It can also have the long run or indirect effect of making industry wide collusion easier or more

¹¹⁶ Id.,p.4

¹¹⁷ Id.,p.3

¹¹⁸ Ibid

probable, thus leading to the elimination of still more options that consumers might prefer. Non-price restraints, such as exclusive dealing and exclusive territories have similar effects, often significantly restricting down stream firms in the choices that they can offer to consumers. Predatory pricing similarly interferes with the array of options that a competitive market would present. Predatory pricing occurs when a firm prices goods below costs in hopes of deriving rivals out of the market, discouraging entry of new firms and or extending the firms monopoly power. Predatory low prices are good for consumers only in the short run. In the long run, such prices threaten to eliminate firms that are providing alternatives that consumers would actually prefer. The consumers thus loss the option of purchasing better or more competitively priced products¹¹⁹.

When anticompetitive practices prevail in the market, producers would not tune to the interests of consumers. Consumers would be at the mercy of producers as they would not have a say in the market place. The market would fail to provide quality and safe products. As the number of producers and suppliers would be limited, they would abuse their monopoly power. Since consumers have no where to go to look for the same product, they would simply remain using products that are of low quality. Similarly, consumers would also be vulnerable for exorbitant prices, as few producers would abuse their dominant position. The consumers will have no option to look for other competitive prices and better quality on similar products. The need of consumers for safety, quality and competitive prices would be endangered in markets dominated by anticompetitive acts of market actors.

¹¹⁹ W.Averit and Robert H.Lande, Consumer Choice: The Practical Reason for Both Antitrust and Consumer Protection Law, Loyala Consumer Review, Vol.,No.1, 1998, p.47

This calls for competition law. As we have seen earlier, one of the main objectives competition law is the maintenance of competition in the market place. In doing so, competition disciplines the structural and behavioral problems such as price fixing, abuse of dominance, cartels, collusive agreements and mergers. This would make market actors play a fair game that promotes innovation and efficiency in production and distribution of goods and services. Market actors would be geared towards qualitative improvement in manufacturing and distribution. When the market is operating in such an efficient manner, it would be responsive to consumers' signals by availing the best possible choices of quality, lowest prices and adequate supplies, thus leading to increased consumer welfare. Moreover, when the market is efficient, consumers would have an unimpaired ability to make decisions in their individual interests. And producers would respond to collective interests of consumers¹²⁰. This is because, producers would have internal incentives to further consumer policy objectives by, for instance, developing a relationship for quality or attracting consumers away from rivals by availing the necessary information to minimize switching costs¹²¹.

Just like consumer protection law, competition law has, at its root, the recognition of an unequal relationship between consumers and producers¹²². Though competition law vows to enhance consumer welfare accordingly, unlike consumer protection law, it addresses this goal from the supply side¹²³.

¹²⁰ Consumer Protection and Competition Policy, retrieved on March 21, 2011, from: http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v1/11v1_ch11.pdf, p.246

¹²¹ . OECD, The Interface Between Competition and Consumer Policies, Policy Roundtables, 2008, p.8

¹²² Supra note 120

¹²³ Besides this there are some differences between competition and consumer policy. Consumer policy is more diverse than competition policy. It is more than just making markets work; it includes, for example, preventing and redressing fraudulent conduct, and protecting consumers from unsafe products. Enforcement of consumer policy is typically more dispersed as well. Enforcement of competition policy tends to be concentrated in a single competition agency, though others may have some role, such as sector regulators and, in some countries, private parties through lawsuits. There also may be a single agency charged with enforcing a consumer protection law, but other government bodies, ministries of commerce or industry, sector regulators and in some countries regional and local governments are also active. And often NGO consumer organizations are involved in forming consumer policy. Competition cases are typically fewer in number and broader in scope, affecting entire markets. Consumer cases are more numerous and more narrowly focused, sometimes involving a specific practice by a single

Generally speaking the positive impact of competition law in consumer protection can be summarized as:

A society based on the model of perfect competition in the market would secure the best of all possible worlds for the consumer. The consumer, indeed, is dominant. He or she exercises the power of commercial life or death over suppliers in the shape of his or her purchasing decisions. The consumer will be supplied according to his or her purchasing decisions. The consumer will be supplied according to his or her preference and, for society generally, there will be no waste of resources. From the consumer stand point, we might characterize a perfect market as one where there is no such thing as an unsafe product or even a poor quality product. There are simply products of different types from which the consumer can choose. Increased demand will in theory lead to an increase in price, but a corresponding increase in supply will quickly restore equilibrium between supply and demand. By contrast, in the absence of competition, inefficiency will prevail. Consumers will not be able to express their preference by sending messages via choice among competing products or services. Items may be produced which are not wanted, because the absence of competitive process obstructs the transmission of messages¹²⁴.

However, competition law has also its own limitation in consumer protection. It is not only the existence of sufficient number of producers and suppliers that has to be taken in to consideration. Their existence alone may not go that much in enhancing the welfare of consumers. Because, it is not only the supply side that matters to the consumers' world. The demand sides of consumers have also to be taken in to account. It is so because absence of perfection on the demand-

business. Competition and consumer agencies also have different tools at their disposal for dealing with violations of their respective laws. The instruments available to competition agencies are more blunt: fines or prohibition of anticompetitive conduct, for example. The remedies available to consumer agencies can be more targeted and specific measures designed to improve information flows to consumers, for example. OECD, Supra note 121

¹²⁴ Howells and Weatherill, Supra note 7, p.1

side may be accompanied by flaws on the supply side¹²⁵. It is not only when the market actors are playing a fair game that consumer's interest would be enhanced but also when the consumer has sufficient knowledge and information to decide about market operations¹²⁶. For this, consumers should have the notion about price and quality options. The consumer also needs to be protected from misleading advertisements and other misleading conducts of market actors¹²⁷. It is not the competition law that provides sufficient protection to such market failures. For all these, there is a need to discipline the producers to the effect that they act honestly and openly providing the necessary disclosures and warning as a material fact for transaction¹²⁸. More is that competition policy and law may not provide redress for damages consumers may have incurred¹²⁹. In addition to these, we have to note that consumer protection may not always be the prime objective of competition policy and law¹³⁰. It may have several other objectives that it gives priority. Competition law may leave consumer protection as a marginal, if none at all, of its objectives¹³¹. All these demand the existence of consumer protection law that fills the gaps we have under the competition law.

2.1.6 Regulation

2.1.6.1 The Essence of Regulation

Regulation is all about the relationship between government and business. It pertains to the various instruments by which Governments impose requirements on business enterprises and citizens. It accordingly embraces laws, formal and informal orders, administrative guidances and subordinate rules issued by all levels of government, as well as rules issued by non-governmental or professional self-regulatory bodies to which Governments have delegated

¹²⁵ Id.,p.3

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸ David Boies and Paul R.Verkuil, Public Control of Business: Cases, Notes and Questions, Little Brown and Company, Toronto, 1997,p.96

¹²⁹ Ibid

¹³⁰ UNCTAD, Consumer Protection, Competition, Competitiveness and Development, accessed on March 21, 2011 from: <http://www.unctad.org/en/docs/c1em17d3.en.pdf>, p.6

¹³¹ Ibid

regulatory powers¹³². It is the making and enforcing of rules by government organs that are intended to affect the behavior of economic actors¹³³. Through regulation government agencies control the activities of economic agents that, if not controlled, will be performed sub-optimally or outside individual and collective bargaining¹³⁴. Regulation is also taken as intentional restriction of some ones choice of activity by any entity not directly involved in the performance of that activity¹³⁵. Through regulation governments can pursue different types of objectives. Economic regulation, social regulation and administrative regulation are among the three main categories of government intervention in pursuit of its objectives¹³⁶. Social regulation covers health, safety, and environmental quality and specifies how particular goods and services will be designed, produced, and sold¹³⁷. Economic regulation includes government requirements which intervene directly in market decisions, such as pricing, competition, and market entry or exit¹³⁸. Administrative regulation includes paperwork and formalities through which governments collect information and intervene in individual economic decisions¹³⁹.

Regulatory systems can be categorized as government regulation, self regulation and market¹⁴⁰. Government regulation exists when governmental institutions make and sanction rules for the market by deriving their authorities from the

¹³² UNCTAD, Model Law on Competition, UNCTAD series on issues in Competition Law and Policy, 2007,p. 9

¹³³ The concept of regulation is also analyzed in centered and decentered approaches. The centered approach couples regulation exclusively with government while the decentered one uncouples it from there. The decentering idea is expressed in a number of ways. It is expressed as internal fragmentation of the governmental tasks of regulatory policy formation and implementation; as a proposition that governments do not, and should not, have a monopoly on regulation but that regulation does, and should, occur with in and between social actors outside the government; as decoupling of regulation from government to self-regulators and the post-regulatory regulation of self regulation; as restraint of governmental action by the pressure of non-governmental actors; as shrinking of the size of government through power decentralization. See Solomon Abay, Designing the Regulatory Roles of Government in Business: The Lessons from Theory, International Practice and Ethiopia's Policy Path, J.Eth.L., Vol. XXIII, No.2,2009, p.67

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ UNCTAD,Supra note 105,p.7

¹³⁷ Ibid

¹³⁸ Ibid

¹³⁹ Ibid

government¹⁴¹. Its subject matter may be social, by focusing on such concerns as protecting citizen or worker health and safety, accomplishing environmental and aesthetic goals or promoting civil rights objectives, or economic, by focusing on legally enforceable guidelines and direction that are regarded as means for legitimate commercial endeavor¹⁴². The other type of regulatory system is self regulation. Self regulation refers to soft law including unilateral rules and standard of firms, bilateral arrangements between firms and the government, collective arrangement between firms, or collective arrangement among the government, firms and other actors¹⁴³. Self regulation exists when private sector agencies make rules, and sanction failures by disciplinary actions, by deriving their authorities from acceptance of the rules by their members and delegation¹⁴⁴. Self regulation is, as such, understood as a system of private ordering. It is an undertaking and standard of performance that firms voluntarily impose upon themselves. Many argue that self regulation is generally the preferred form of regulation. It is said to be more flexible and impose lower burden on business¹⁴⁵. In fact, there is little evidence that self regulation is cheaper for business or more effective for consumers¹⁴⁶. Self regulation is often introduced without being subject to the public policy development process or regulatory impact statements¹⁴⁷. Too often, it is applied to industries that are manifestly unsuited to such an approach¹⁴⁸. Self regulation is often characterized by lack of effective enforcement mechanisms which produces the worst of both worlds – it imposes a burden on compliant businesses while the non-compliant ignore it or “free ride”¹⁴⁹. Finally self regulation is supposed to be more flexible than government

¹⁴⁰ Solomon, Supra note 133

¹⁴¹ Id.,p.69

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ Ibid

¹⁴⁵ Regulation, accessed on March 23, 2011, from:

http://www.australiancollaboration.com.au/factsheets/Regulation_FactSheet.pdf ,p.2

¹⁴⁶ Ibid

¹⁴⁷ Ibid

¹⁴⁸ Ibid

¹⁴⁹ Ibid

regulation but there is little evidence to support this assertion¹⁵⁰. Moreover, the market itself can also be taken as a regulatory system as it governs individual behavior and the structure of opportunity sets within which choices are made¹⁵¹. It is a regulatory system where private powers operate¹⁵². In a market regulatory system, the market itself is assumed to regulate the conduct of its actors to the required optimum level¹⁵³.

There are both economic and non-economic rationales for government regulation. The economic rationale for regulation is that the market exhibits a type of market failure such that if left on its own, it (the market) will not produce an efficient outcome¹⁵⁴. There are several reasons why this may be the case. One of the principal reasons is that the market exhibits a natural monopoly which would open the door for abuse¹⁵⁵. In such a case, governments need to regulate the abuse of monopoly and protect the competition process. The other type of market failure is associated with externalities. Certain types of economic activity exhibit external effects that can be either negative or positive¹⁵⁶. The free market system does not internalize these externalities¹⁵⁷. Hence, the government must step in to protect the interest of the public as a whole. Finally, there are social obligations that the government must tend to provide. Services such as electricity, water, telephone and basic transportation are considered public services to which all citizens are entitled¹⁵⁸. These social service obligations are closely associated with the concept of "universal service" or "universal access"¹⁵⁹. As the provisions of these services are based on a purely social goal,

¹⁵⁰ Ibid

¹⁵¹ Solomon, Supra note 133, p.69

¹⁵² Ibid

¹⁵³ Ibid

¹⁵⁴ A Government's Role in Regulation in the 21st Century Economy, accessed on March 25, 2011 from: <http://www.thaiscience.info/journals/Article/A%20government's%20role%20in%20regulation%20in%20the%2021st-century%20economy.pdf>, p.3

¹⁵⁵ Ibid

¹⁵⁶ Ibid

¹⁵⁷ Id., p.7

¹⁵⁸ Ibid

¹⁵⁹ Ibid

rather than a commercial goal, it is incompatible with the free market¹⁶⁰. In this case, the government will have to intervene to ensure that such services are provided in a manner that is consistent with the goal of service universality¹⁶¹. So, there are many reasons why the government has to step in where markets fail to produce the desirable outcome.

Once recognized, the specific nature of government regulation has also been analyzed through three dominant theories namely the public interest theory, the capture theory and the economic theory¹⁶². The public interest theory, which was dominant until the 1970s argued that government regulation, is a response to public demand for correction of inefficient and inequitable practices of the actors in an unregulated market¹⁶³. It is assumed that markets are always apt to failure if left unregulated, and that government can act efficiently¹⁶⁴. This theory calls for governments to rectify situations of market failure caused by imperfect competition, market disequilibria, missing markets (caused by hidden or asymmetric information, high transaction costs, externalities, public goods) or market outcomes that are undesirable for social reasons¹⁶⁵.

The capture theory, on the other hand, argued that regulated parties capture government regulation through time so that regulation serves their interest instead of the public interest¹⁶⁶. It argued that regulation is a response to demand of regulated parties who want to escape competition and obtain government

¹⁶⁰ Ibid

¹⁶¹ Ibid

¹⁶² Solomon, Supra note 133, p.84

¹⁶³ Ibid

¹⁶⁴ Ibid

¹⁶⁵ This theory assumes that the market outcome represents a failure of some sort, and the market is not capable of fixing the problem itself, that the government is capable of fixing that failure so that the optimal efficient outcome will be achieved that the benefits of doing so will outweigh the additional costs created by the intervention. In summary, public interest theory can be said to assume that the regulatory regime will both aim for and achieve economic efficiency. Relaxing these assumptions leads to the concept of regulatory failure, a concept that is not always considered in regulatory decisions. Public interest theory also fails to predict how the public interest is translated through political institutions into a decision, who will be regulated and who will receive the benefits or bear the costs, or the form of the regulation. See Kevin Guerin, Encouraging Quality Regulation: Theories and Tools. Accessed on March 25, 2011, from: [http://www.brad.ac.uk/irq/documents/archive/Encouraging Quality Regulation New Zealand Treasury.pdf](http://www.brad.ac.uk/irq/documents/archive/Encouraging%20Quality%20Regulation%20New%20Zealand%20Treasury.pdf), p.6

protection of their interests¹⁶⁷. Accordingly, regulation comes to serve the interest of those regulated. This regulatory capture is said to occur where, due to industry control of information, the effects of repeated interactions and career opportunities, the regulator comes to serve the interest of the regulated¹⁶⁸.

The economic theory, which grew beginning the early 1970s, argued that government regulation is the result of the forces of demand and supply between politically effective economic interest groups and the government¹⁶⁹. It argued that government regulation is nothing but supply of rules of behavior to the economic interest groups in consideration of the support the politicians may get from the groups and that the demand for regulation comes from the groups that seek the economic benefits the government can provide through regulation¹⁷⁰.

However, recently, there has been a clear trend towards decreasing the government's role in economic activities. There have been various reasons for this. The most important of all these is the regulatory failures that have been observed so far as a result of capture theory¹⁷¹. The theory posits that because the regulated company is likely to have superior information, as it is involved in the regulated economic activity, it can easily manipulate the regulator to its own advantage¹⁷². Consequently, the regulator ends up protecting the producer rather

¹⁶⁶ Ibid

¹⁶⁷ Ibid

¹⁶⁸ This can be through direct subsidies, entry restrictions or tariffs, controls on substitutes, or price fixing. Issues include why the industry cannot prevent the creation of the regulator in the first place, why regulation imposes burdens on industry in favor of others, or why costly regulation is accepted. Id., p.7

¹⁶⁹ Solomon, Supra note 133, p.85

¹⁷⁰ All the three theories have, however, also suffered from criticism. The public interest theory was criticized for basing regulatory action on the fluid concept of public interest, for failure to fully explain the way public demand is transferred in regulatory action and for lack of empirical evidence supporting the public interest hypothesis. The capture theory was criticized for linking regulation to the interest of the regulated parties only and for lack of complete explanation of the mechanism by which the regulated parties succeed in influencing the regulator despite the presence of more empirical evidence to its hypothesis than to the public interest hypothesis. The economic theory was criticized for assuming that interest groups are able to influence regulatory policies directly and denying the truth that such ability depends on the design of the political process and the precise form of administrative organization in a country. Ibid

¹⁷¹ Supra note 154, p.2

¹⁷² Ibid

than the consumer¹⁷³. The second reason for a regulatory failure arises from the fact that the regulator itself is not perfect¹⁷⁴. Another problem in relation to regulation is the existence of regulatory barriers to competition. Such regulatory barriers may be related to market entry and exit such as introduction of uncommon norms and standards, subsidization and prolongation of monopoly rights, exclusion of certain activities from the scope and coverage of competition laws¹⁷⁵.

So as to do away with these problems, efficient regulatory principles have been recommended to be adopted built upon non-discriminatory, simple and transparent standards¹⁷⁶. Accordingly, the role of regulator have to be concentrated only on regulating markets where monopolies prevails; where externalities exist and where there is a need to provide public services¹⁷⁷. Apart from this, the private sector has to assume the role of the operator in the market¹⁷⁸. And the regulator shall be one that has a well-defined mandate to serve the interest of the public; have a clearly specified set of regulatory rules, such that its decisions can be monitored and challenged if need be, and is sufficiently independent of but at the same time, be accountable to the government¹⁷⁹.

In Ethiopia, economic regulation has had its root since the imperial regime¹⁸⁰. In the post 1991 period, the newly established government of the Federal Democratic Republic of Ethiopia, along with the on going privatization and economic reform, established several sectoral regulators with various regulatory functions. The sectoral regulators have been established in the form of ministries, authorities, agencies, commissions and offices as regulators of the market for the

¹⁷³ Ibid

¹⁷⁴ Ibid

¹⁷⁵ UNCTAD, Supra note 105, p.8

¹⁷⁶ Id.p.10

¹⁷⁷ supra note 133, p.4

¹⁷⁸ Ibid

¹⁷⁹ Ibid

¹⁸⁰ Solomon, Supra note 133, p.109

supply of goods and services¹⁸¹. In each sector of the economy, the particular laws provide for requirements that firms and business persons have to comply with before their engagement in the production and provision of goods and services to the public.

The compliance requirement begins from getting the required permit before engagement in that particular service or production sector concerned. The regulation still continues during the operation of the business activity. Exits from the production goods and provisions of services are also regulated. So in each sector of the economy, entry, operation and exit are regulated. By regulating the conducts of business persons accordingly, regulation helps to protect the interests of the general public and hence the consumer.

In addition to the particular rules we have in each sector of the economy, as indicated above, we have also a proclamation on commercial registration and business licensing¹⁸² as an important regulatory legislation that applies to all commercial activities in all sectors of the economy. The preamble of this proclamation shows that one of the objectives is to improve the commercial registration, implementation and business licensing and issuance systems in a way that will promote free market economy; to attain economic development, and to follow up the elimination of impediments that befall the lawfully engaged business community. From the preamble, we can understand that the law aims at promoting the free market system. And as noted earlier, the promotion of competitive market is not only to the benefit of the business community but also to the benefit of the world of consumers, too.

The commercial registration and business licensing proclamation also mandatorily provides that no person shall engage in any commercial activity which requires business licenses without being registered in a commercial register¹⁸³. The registration and licensing process helps to regulate the market

¹⁸¹ For instance, the Ministry of Health as regulator of the health and related services, Ministry of Trade as regulator of trading activities, the Quality and Standard Authority as a standard setter for quality of goods and services, the Food, Medicine Administration and Control Authority as regulator of food and medicine production, import and distribution etc...

¹⁸² The Commercial Registration and Business Licensing Proclamation No. 686/2010

¹⁸³ Id., Art.6 (1)

system so that it is possible to assure its proper performance by supervising the entry and exit of business persons.

2.1.6.2 Regulation and Consumer Protection

Consumer protection is a matter of regulation between market and government¹⁸⁴. Through setting standards of production and distribution of goods and services, regulation plays a key role in consumer protection. Safety regulations, quality regulations, labeling and packaging regulations are the most important regulations that pertain to the protection of consumer rights¹⁸⁵. In safety regulations, producers are required to live up to the level that is required before their goods are delivered to the market¹⁸⁶. In quality regulations, producers and service providers would be required to refrain from producing or providing substandard goods and services to the public¹⁸⁷. The requirement of packaging and labeling also helps too much in consumer rights protection. When goods are properly packed, they would be kept from damage and ruin so that they would still remain normal and intact for consumption. The labeling of goods is also very important in that it informs the consumer how to use, when to use as well as the date of manufacturing and expiry.

In this regard, the Ethiopian government has enacted a proclamation that regulates the standards of production, import and distribution of food and medicine as well as the standard of health institution¹⁸⁸. As the preamble to this proclamation shows, this regulatory law is enacted with the view to protect the public from health risks emerging out of unsafe and poor quality food and medicines. The proclamation also vows to avert health problems due to substandard health institutions and, incompetent health professionals. A subsidiary law for the implementation of this regulatory law further reinforces the objective of the law as protecting the health of consumers by ensuring food

¹⁸⁴ Andreas Maurer, Consumer Protection and Social Models of Continental and Anglo-American Contract Law, *Indiana Journal of Global Studies*, Vol.14, No.2, Indiana University Press, 2207, accessed in march from: <http://www.jstor.org/stable/10.2979/GLS.2007.14.2.353> , p.355

¹⁸⁵ Ibid

¹⁸⁶ Ibid

¹⁸⁷ Ibid

¹⁸⁸ The Ethiopian Food, Medicine and Health Care Administration and Control Proclamation No. 661/2009

safety and quality as well as the safety, efficacy, quality and proper use of medicines, among others¹⁸⁹. Regulation not only requires compliance to the standards of quality, safety, labeling and packaging of goods and services, but it also imposes criminal liability for the failure to comply with these standards. And through imposition of such penalties, regulation ensures compliance to standards.

Moreover, regulation helps consumer to be adequately informed through disclosure rules so that they can understand the price and quality of goods that are offered to them. This would make it easy for them to translate their preferences in to the market actions¹⁹⁰. The role of regulation, in this regard, is of particular importance in countries where consumers are not as such aware of their rights¹⁹¹. In addition to this, regulation works for the interest of consumers through the protection of competition. As already discussed, in the absence of competition, the free market may fail to efficiently allocate resources in accordance with consumer preferences. When market fails, anticompetitive practices such as abuse of dominance, restriction of production and charging exorbitant prices will be the order. In such situations, regulation may be employed either generally or on an industry by industry basis to correct market failures resulting from the exercise of monopoly powers¹⁹².

Price regulation, in case of inflation, is also important for the protection of consumers' interests. Inflation affects the consumers as it entails the decline in the purchasing power of currency. When there is inflation on consumer goods, regulators may impose a price cap as a temporary means to protect consumers' interests. However, such measure is, in most cases, taken as a temporal measure for it has adverse effect on competition and also not a reliable means of protecting consumer rights in the long run¹⁹³.

¹⁸⁹The Ethiopian Food, Medicine and Health Care Administration and Control Authority Establishment Council of Ministers Regulation No. 189/2010

¹⁹⁰ Boies and .Verkuil, Supra note 128, p.98

¹⁹¹ Ibid

¹⁹² Ibid

¹⁹³ Ibid

CHAPTER THREE

3. Consumer Protection: The Legal Regime

3.1 Introduction

In this part of the paper, the writer deals with the meaning of consumer, the need for consumer protection, the experience of some other countries in relation to consumer protection, Ethiopia's experience in consumer protection, and the newly enacted Trade Practice and Consumer Protection Law. This newly enacted Ethiopian Trade Practice and Consumer Protection Law is the first of its kind in Ethiopia. This is because there was no an integrated consumer protection law in the country.

Regard, under this chapter, therefore, would be made to the rationale and objectives of this law, the scope of its application, the rights of consumer as well as the obligations of traders as provided under it. Along with discussing the legal regimes under consideration, attempts would be made to pinpoint the legal defects together with the possible gap closing recommendations.

3.2 The Meaning of Consumer

When we talk about the legal and institutional framework for consumer protection, it is essential to define who a "consumer" is. The Black's Law Dictionary defines consumer as "a person who buys goods and services for personal, family or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes¹⁹⁴." The definition provided above indicates that firstly, a consumer is a natural person. Hence, the term consumer in this sense excludes legal persons. Secondly, a consumer buys goods and services. Thirdly, the goods and services in transaction shall be for personal, family or household use with out intention for resale. This means that the goods and services should not be destined for resale or for business purposes. So, according to this definition, it is only when all these elements are fulfilled that a person is taken as consumer.

¹⁹⁴ Bryan A. Garner(Ed.), Black's Law Dictionary, (9th ed), A. Thomson Reuters Business, USA, 2009, P.358

The repealed Ethiopian Trade Practice Proclamation No.329/2003¹⁹⁵ also tried to define consumer as “any person who buys goods or services for personal consumption.” This proclamation, unlike the one provided by Blacks’ Law Dictionary, had simply defined a consumer as any person without specifying it as a natural person. But it clearly indicated that the buying of goods or services had to be for personal consumption. On the other hand, the recently enacted Ethiopian Trade Practice and Consumer Protection Proclamation No. 685/2010 defines consumer as “a natural person who buys goods and services for his personal or family consumption, where the price is being paid by him or another person and not for manufacture or resale¹⁹⁶.” The definition provided by this newly enacted law is more clear and qualitative than the definition provided by the now repealed Trade Practice Law. Accordingly, for a person to be considered as consumer and hence be entitled to accorded protection, the person has to be a natural person. Legal persons are automatically excluded from the sphere of protection by consumer protection law. The natural person who buys goods or services has also to use them for personal or family consumption. When the law says personal, it is clear as it refers to the person of the buyer of goods or services. However, as to what constitutes the family of the buyer of goods or services can be determined by reference to the family code of Ethiopia¹⁹⁷. In both cases, therefore, a buyer is considered as a consumer whether the goods or services are used for personal or family consumption. It does not matter whether the price for the goods or services is paid by him or another person. The law has still clearly provided that the goods or services bought by the natural person should not be geared for manufacture or resale. When a buyer, rather than availing for his personal or family consumption, destines the goods or services for resale or manufacture, he is not considered as a consumer in the legal sense of the term. Hence, in simple terms, consumer is the ultimate user of goods and services for his personal or family consumption. These definitions of who a

¹⁹⁵ Art 2(5) of the Trade Practice Proclamation No. 329/2003. This law has been repealed by the recently enacted Trade Practice and Consumer Protection Proclamation No. 685/2010

¹⁹⁶ Art.2 (4) of the Trade Practice and Consumer Protection Proclamation No.685/2010

¹⁹⁷ The Revised Family Code of 2000, Federal Negarit Gazeta, Proclamation No.213/2000

“consumer” is bring the issue of consumer protection into picture. And consumer protection is generally seen as a set of activities aimed at safeguarding the interests of purchasers of goods and services for their personal or family consumption¹⁹⁸. This is achieved through a set of laws and policies aimed at ensuring social justice, equity and fairness in the relationship between business persons and consumers.

3.3 The Need for Consumer Protection

One of the principal reasons that led governments to protect consumer interests is the perceived imbalances in economic terms, educational levels and bargaining powers that consumers usually face¹⁹⁹. There is a conventional big gap between the world of consumers and the world of business persons. Consumers are, in most cases, less informed and have less economic and bargaining power compared to business persons. Unless such difference in economy, information and bargaining power is balanced, business persons may abuse the imbalance to the detriment of consumers. Business persons may be tempted to mislead consumers about the goods and services they provide, unfairly exploit consumers, and supply fake and hazardous products to the market. It is to strike a balance in these imbalances that governments need to protect consumers.

Moreover, the need for consumer protection arises to protect the health and well being of consumers by disciplining the conduct of greedy traders²⁰⁰. Unless there is a law that takes the health of consumers in to account, business persons may not have regard to the health and well being of consumers in their transaction with the latter.

Governments may also need to protect consumers for the promotion of better economic development²⁰¹. This is based on the assumption that consumers’

¹⁹⁸ Alofi Niue, , Consumer Protection, Forum Secretariat, July2000, retrieved on April 20, 2011from:
<http://www.forumsec.org.fj/resources/uploads/attachments/documents/FEMM%202000%20Consumer%20Protection.pdf>, p.3

¹⁹⁹ Ibid

²⁰⁰ Ibid

²⁰¹ Ibid

protection can play a role in enhancing fair market practices. When consumers are protected, they would have the power to send signals to businesses persons. The latter would then be forced to respond to the demands of the former. Business persons would try to attract consumers by providing better products and services at a competitive price compared to their rivals. In the rush to provide better goods and services, competitors would focus on research, development and innovation of goods and services. These bring better and new products and services to the market and hence enhance economic and social development. This, as indicated earlier, can be achieved only when consumers are informed, powerful enough in bargaining power, in selecting goods and services, and are able to switch to other business persons when they are not happy with the goods and services provided by others.

Finally, the need for consumer protection comes due to the failure of private law mechanisms to adequately protect the interests of consumers²⁰². Contract and extra-contractual based protections that are dependent upon individual enforcement mechanisms have proved inadequate. This problem has, particularly, been exacerbated due to the technological and economic developments and the accompanying expansion and complexity of chain of production, distribution, and due to the emergence of bulk of similar products and services in the market. At this stage, the power of consumers to discipline the conducts of producers and suppliers is very minimal. So governments need to resort to a consumer protection agenda through the provision of consumers' rights and the accompanying obligations of business persons.

3.4 Experiences of Some Jurisdictions

3.4.1 Introduction

When we talk about the experiences of some jurisdictions, it is essential to bear in mind that the discussions would focus both on substantive regimes and institutional frameworks there of. The jurisdictions for discussions are selected based on their relevance to the Ethiopian situation, for example the South

²⁰² See the discussion on the limitations of private laws in protecting the interests of consumers under Chapter Two

Africa's experience has been taken in to account in the enactment of this Trade Practice and Consumer Protection Law, and based on their well developed experiences. Accordingly, the experiences of South Africa, USA, France and Kenya would be discussed. In addition to these, there would also be discussion on general experiences in relation to the independence of competition authorities. Discussions on general experiences on the independence of competition authorities have importance for, in our case, matters of competition and consumer protection are entrusted to the same organ. So discussions on the independence of competition authorities are essential in this regard. It is also important to note that effective competition enforcement is an important element for consumer protection. This is so when competition authorities are independence.

3.4.2 The South African Experience

In South Africa, consumers' rights are protected by various acts consolidated under the Consumers' Protection Act of 2008. This act provides extensively for various rights of consumers. Accordingly, consumers have the right to protection against discriminatory marketing practices²⁰³. Consumers have the right to select suppliers, the right to cooling off period after direct marketing, the right to cancel advance reservation, booking or order, the right to choose or examine goods and the right to return goods when they are found defective or unsafe²⁰⁴. The act also provides for the right to information in plain and understandable language, the right to disclosure of price of goods or services and the right to product labeling and trade description²⁰⁵. Moreover, consumers have the right to be protected from false or misleading representation and fraudulent and deceptive acts and misleading advertisements²⁰⁶. Under procedural rights, consumers have the right to be heard and obtain redress, to make complaint to concerned organ in case of

²⁰³ South African Consumer Protection Act, 2008, retrieved in April 20, 2011 from: <http://www.dti.gov.za/ccrd/cpact09.pdf>, Part A, Art.8

²⁰⁴ Id. Part C, Arts.13-21

²⁰⁵ Id. Part D, Arts.22-28

²⁰⁶ Id. Part E, Arts.29-39

violation of their rights, and the right to seek alternative dispute resolution for cases, as well²⁰⁷.

Institutionally, there is an investigation commission that makes investigation in case violations of consumers' rights upon its own initiation or when complaints are lodged²⁰⁸. There are also consumer courts in each province to which the investigation commission refers cases for adjudication²⁰⁹. As part of its institutional framework, the South African Consumer Protection Act clearly recognizes the role of civil societies in consumer protection. Particularly, accredited consumer protection groups are entitled to initiate class actions before courts of law²¹⁰. In South Africa, there is also a National Consumer Commission established as an organ of state within the public administration but as an institution outside the public service responsible for the enforcement of the consumer protection act²¹¹.

3.4.3 The United States' Experience

In the United States, there are several federal, state and local organs dedicated to the protection of consumers²¹². The laws dedicated to the protection of American consumers are also diverse and in depth in their protection²¹³. Among the various laws dedicated to the protection of consumers, the law of credit reports, law of credit disclosure, and law of debt collection are very important for protecting American consumers from fraud and deceptive practices in the credit industry²¹⁴. The protection for American consumers ranges from face-to-face purchase to online purchase of goods and services as well as to unfair lobbying on consumers by sellers of goods and services²¹⁵.

²⁰⁷ Id. Arts.63-71

²⁰⁸ Id. Arts.72-75

²⁰⁹ Ibid.

²¹⁰ Id. Arts.77-78

²¹¹ Id.Art.85

²¹² Jilian G.Brady, Consumer Protection in Unites States: An Overview ,Loyola University, School of Law, 2008, retrieved on April 20, from:
<http://www.oecd.org/dataoecd/58/29/2485827.pdf>, p.17

²¹³ Ibid

²¹⁴ Ibid

²¹⁵ Ibid

Institutionally, American consumers are protected from fraud and unfair business practices through cooperation of national, state, and local governmental and private actors. Those actors both protect consumers and equip them with the knowledge they need to protect themselves²¹⁶. Although U.S. mechanisms for consumer protection often exist separately from each other, it gains in depth and variety²¹⁷. The principal, but not the only, consumer protection agency at the federal level is the United States Federal Trade Commission established as an independent federal agency²¹⁸. The Federal Trade Commission consists of the Bureau of Competition, the Bureau of Consumer Protection, and the Bureau of Economics²¹⁹. The Federal Trade Commission works alone, and in concert with other federal agencies, to administer a wide variety of consumer protection laws. The overall goal is to afford consumers a deception-free marketplace and provide the highest-quality products at competitive prices²²⁰. The Federal Trade Commission is currently dedicated to achieving the goals of protecting consumers by preventing fraud, deception, and unfair business practices in the marketplace and maintaining competition by preventing anticompetitive business practices²²¹.

The Federal Trade Commission derives its consumer protection jurisdiction primarily from Section 5(a) of the Federal Trade Commission Act, which prohibits “unfair or deceptive acts or practices in or affecting commerce²²².” In addition to its authority under Section 5(a), the Federal Trade Commission has enforcement and administrative powers under forty six other statutes, thirty-seven of which relate to the Federal Trade Commission’s consumer protection mission²²³. Among these laws are credit-related acts, such as the Truth in Lending Act, Fair

²¹⁶ Ibid

²¹⁷ Id.,p.2

²¹⁸ Id.,p.3

²¹⁹ Ibid

²²⁰ Ibid

²²¹ Ibid

²²² Id.,p.4

²²³ Ibid

Credit Billing Act, Fair Credit Reporting Act, and the Equal Credit Opportunity Act, as well as industry-specific acts, such as the Petroleum Marketing Practices Act, and the Comprehensive Smokeless Tobacco Health Education Act of 1986, and additional laws relating to consumer privacy such as the Do-Not-Call Registry Act of 2003, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003²²⁴. The Federal Trade Commission uses its investigative authority to uncover deception, unfair activities, or violation of any statute under which it has authority²²⁵. Upon completion of an investigation, if the Federal Trade Commission has reason to believe that a violation exists, and that enforcement is in the public interest, it may issue a complaint to the violating person, partnership, or corporation²²⁶. An administrative hearing will be held in front of an Administrative Law Judge, and if the actions at issue are deemed a violation, the judge may recommend entry of a cease and desist order²²⁷. Cease and desist orders are the Federal Trade Commission's primary tools to stop anti-consumer practices. If a party violates a cease and desist order, the Federal Trade Commission is authorized to seek civil penalties and restitution before court of law for consumers who are harmed²²⁸. A party may appeal against the order to the Federal Appellate Court, and eventually to the Supreme Court of the United States. If neither party appeals against the order, it becomes final within sixty days of being issued²²⁹.

There are also divisions under the Bureau of Consumer Protection dealing with various acts of consumers' protection. These divisions include Advertising Practices, Financial Practices, Marketing Practices, Privacy and Identity Protection, Planning and Information, Consumer and Business Education, and Enforcement²³⁰. The Division of Advertising Practices works to prevent false advertising claims, particularly when the claims affect the health and safety of

²²⁴ Ibid

²²⁵ Id.,p.5

²²⁶ Ibid

²²⁷ Ibid

²²⁸ Ibid

²²⁹ Ibid

consumers or cause economic injury to them²³¹. In addition to advertising claims regarding dietary supplements, this division deals with supervision of weight loss of products, alcohol, tobacco products, marketing of food items, violent movies, as well as music and electronic games to children²³². The Division of Financial Practices specifically protects consumers from fraud or deceptive practices in the financial services industry. Credit card offers, mortgage practices, and debt collection practices are all covered by this division²³³. The Division of Marketing Practices addresses the marketing of products and services over the Internet, the telephone, or through the mail²³⁴. The newest division, the Division of Privacy and Identity Protection, protects consumers' personal information from being used improperly, and works to ensure that companies with access to that information keep it secure²³⁵. The Division of Planning and Information manages the Consumer Response Center and the Consumer Sentinel database²³⁶. The Consumer Response Center receives and addresses consumer complaints via the phone or mail, while the Consumer Sentinel is a central database that analyses complaint data to better understand and prevent fraud and identity theft²³⁷. On its part, the Division of Consumer and Business Education seeks to equip consumers with skills to protect themselves by disseminating information to consumers through a myriad of media, including print, broadcast, and electronic outlets²³⁸.

In addition to these federal organs for the protection, there are also mechanisms at state level dedicated to consumer protection. In most of the fifty states, State Attorney Generals are charged with enforcing state consumer protection laws²³⁹. As consumer advocates for their state populations, Attorney Generals may file lawsuits on behalf of consumers, investigate possible violations, issue injunctions

²³⁰ Id.,p.7

²³¹ Ibid

²³² Ibid

²³³ Ibid

²³⁴ Ibid

²³⁵ Ibid

²³⁶ Id.,p.8

²³⁷ Ibid

²³⁸ Ibid

²³⁹ Id.,p.10

to terminate ongoing illegal activity, obtain restitution on behalf of consumers, bring criminal cases when authorized by law, and make rules to govern trade practices²⁴⁰. In addition to investigatory and enforcement powers, most state consumer protection statutes allow Attorney Generals, or other state regulatory or enforcement agencies, to create rules that advise businesses of prohibited and acceptable business practices²⁴¹.

It is still important to note that, in US, private actors and nonprofit entities also play an important role in consumer protection. One of these private actors is the Citizens Utility Board that represents the interests of residential utility consumers in their respective states or regions²⁴². Another important organ is the Consumer Federation of America that advocates for consumers to state and federal legislative and regulatory bodies and carry out consumer education²⁴³. There are also consumers unions that educate consumers about their rights²⁴⁴. The Institute for Consumer Antitrust studies is another non-partisan and independent academic center designed to explore the impact of antitrust enforcement and consumer protection law on the individual consumer and the public, and to shape public policy in these areas²⁴⁵. The National Consumer Law Center is another non profit organ that advocates on behalf of low-income individuals who have been harmed by deception, fraud, or unfair practices²⁴⁶. There is also a Public Citizen, as a non-partisan organization, that represents consumers' interests before the executive, legislative, and judicial branches of U.S. government²⁴⁷.

3.4.4 The French Experience

France has given protection to consumers by enacting a consumer code that incorporates different areas of laws dealing with consumer information and the conclusion of contracts, the conformity and safety of products and services,

²⁴⁰ Ibid

²⁴¹ Id.,p.12

²⁴² Id.,p.18

²⁴³ Ibid

²⁴⁴ Ibid

²⁴⁵ Ibid

²⁴⁶ Id.,p.20

²⁴⁷ Id.,p.20

credit and indebtedness, as well as the role of consumers' associations and consumer related institutions²⁴⁸.

In France, the Ministry for the Economy, Industry and Employment is responsible for the development and implementation of the consumer protection policy²⁴⁹.

The French Competition Authority and other regulatory bodies have also direct role in consumer protection activities. The Competition Authority, which aims at controlling anticompetitive practices such as cartels and abuse of dominance positions as well as merger and acquisitions, monitors the market to the benefit of consumers²⁵⁰. There are also different watchdogs that protect consumers' interests in different sectors of the economy such as finance and insurance, energy, communication, and health²⁵¹. France has also its special agencies that have a significant role for consumer protection through regulation of quality and safety of food and health products²⁵².

Moreover, there are many national consumer organizations dedicated to the protection of consumers. The National Consumer Council, as an assembly of consumer organizations, and other stakeholders are the principal organs in this regard²⁵³. The National Consumer Council aims to facilitate confrontation and dialogue between the collective interests of consumers and users and the representatives of suppliers, the public services and the authorities responsible for enforcement of the competition law²⁵⁴. The Consumer Complaints Board receives complaints arising from the sale of goods or the provisions of services by businesses persons to natural persons for their private use²⁵⁵. It is still important to note that, in France, any approved consumers association may bring joint actions on behalf of consumers²⁵⁶.

²⁴⁸ Consumer Protection in France, retrieved on April 12 from:
http://ec.europa.eu/consumers/empowerment/docs/FR_web_country_profile.pdf, p.2

²⁴⁹ Ibid

²⁵⁰ Ibid

²⁵¹ Ibid

²⁵² Id., p.5

²⁵³ Ibid

²⁵⁴ Ibid

²⁵⁵ Ibid

²⁵⁶ Ibid

3.4.5 The Kenyan Experience

In Kenya, the rights of consumers are enshrined in a number of parliamentary Acts, all of which are consolidated under the 2007 Consumer Protection Bill²⁵⁷. These different parliamentary acts are designed to ensure that consumers are provided with full information, including the price and quality, of any product or service that they may wish to purchase, and to ensure that these products are safe and meet international standards²⁵⁸.

With respect to the institutional framework, there is an authority known as Kenyan Consumers' Protection Authority responsible for the enforcement of consumer protection acts. The Authority has elected members from various government organs, the civil society and consumer protection associations²⁵⁹. The Authority has the power to carry out, promote or participate in consumer education programs and activities, disseminate consumer information and provide advice to consumers about their rights and responsibilities under appropriate laws²⁶⁰. It is also empowered to create or facilitate the establishment of conflict resolution mechanisms on consumer disputes, investigate any complaint received on violation of consumer rights, and where appropriate, refer the complaint to the competent authority and ensure that action may be taken by the competent organ against the violations. Moreover, it has the power to formulate and submit to government organs policy and legislative proposals in the interests of consumers²⁶¹.

3.4.6 General Experiences on the Independence of Competition Authorities

A review of the concepts and practices of the independence and accountability of competition authorities shows that there is a nuanced application of these

²⁵⁷ The Kenyan Consumer Protection Bill, 2007, accessed on April 12 from: [http://kenyalaw.org/klr/fileadmin/pdfdownloads/Bills/2007/The_Consumer_Protection_Bill_2007.p](http://kenyalaw.org/klr/fileadmin/pdfdownloads/Bills/2007/The_Consumer_Protection_Bill_2007.pdf)

df, Art.42

²⁵⁸ Ibid

²⁵⁹ Id., Art.107(1)

²⁶⁰ Id., Art.109(1)

²⁶¹ Id., Art.109(1)

concepts across countries²⁶². Legal, administrative, political and economic factors explain differences in application and most likely make the pursuit of a single standard for independence and accountability undesirable²⁶³. Independence is variable and it is often more useful to speak in terms of degrees of independence rather than absolute independence²⁶⁴. It is difficult to define it in quantitative terms and difficult to measure, as well. Consequently, there is no single standard for independence which countries must adopt. However, it is possible to have more or less of it both in formal terms and actual practices²⁶⁵.

A competition authority that has formal independence is usually established as an independent institution not physically located in a government ministry²⁶⁶. The trend across most jurisdictions in both developed and developing regions is to establish competition enforcement regimes comprising separate institutions that have substantial administrative autonomy from traditionally vertically-integrated ministries²⁶⁷. In addition this, there are other indicators of the independence of competition authorities. Some of these relate to the conferring of operational independence of the authority by prescribing its functions, powers, and the manner by which members of management and staff are to be appointed, their tenure and removal, and how they are to be financed and the prescription of how they relate to the executive and legislature²⁶⁸. The existences of these attributes are supposed to assure organizational autonomy of competition authorities.

The mode of appointment of competition officials, as indicated above, has many things to do with independence. It is generally said that the appointment of competition officials by a minister is less conducive to independence than appointment procedures that provide for the participation of representatives of

²⁶²The UNCTAD Secretariat, Independence and Accountability of Competition Authorities, 2008, retrieved on April 15 from:

http://www.unctad.org/en/docs/c2clpd67_en.pdf, p.1

²⁶³ Ibid

²⁶⁴ OECD Global Forum on Competition, Optimal Design of a Competition Agency, 2003, retrieved on April 19 from:

<http://www.oecd.org/dataoecd/58/29/2485827.pdf>, p.5

²⁶⁵ Id.p.6

²⁶⁶ The UNCATD Secretariat, Supra note 262

²⁶⁷ OECD Global Forum on Competition, Supra note 264 ,p.6

more than one government branch²⁶⁹. In addition, it is assumed that competition officials who cannot be removed from office except by legal procedures have less of an incentive to please those who appointed them²⁷⁰. However, actual practice is varied. In some jurisdictions, the minister whose portfolio includes competition policy appoints the chief executive of the authority and the members of the commission²⁷¹. In others, the minister appoints the board of commissioners with or without endorsement from a higher authority, and the commissioners then appoint the chief²⁷². And in others, the minister submits nominations for appointment by the country's president, prime minister, cabinet of ministers or Parliament²⁷³. In most cases, even though ministers might be the appointing authority, as a check and balance, the members and chief executives cannot be dismissed except with causes stipulated by law²⁷⁴. In relation to appointment, many competition laws establish qualifications and other criteria that members should have, including in some cases minimum age requirements and the requirement that consumer groups and professional associations be represented on the board, among others²⁷⁵.

The means of budget allocation has also its own impact as far as the independence of competition authorities is concerned. A process whereby the legislature allocates an annual budget to a competition authority, giving it the discretion to apportion it to various uses, is perceived to grant a high degree of budgetary autonomy to the authority²⁷⁶. However, in some cases, competition authorities fall under the portfolio of parent ministries for financial, administrative and reporting purposes, such that the authority's budget request is routed through the parent ministry for approval by the finance ministry and

²⁶⁸ Id.,p.5

²⁶⁹ Id.,p.8

²⁷⁰ Ibid

²⁷¹ Ibid

²⁷² Ibid

²⁷³ Ibid

²⁷⁴ Ibid

²⁷⁵ Ibid

²⁷⁶ The UNCTAD Secretariat, Supra note 262,p.7

Parliament²⁷⁷. In this case, the authority's budget is part and parcel of the parent ministry's allocation and is released at the ministry's discretion. In other cases, the competition authorities themselves directly submit their budget proposal to the parliament²⁷⁸. This latter way of budget allocations gives competition authorities the maximum level of independence²⁷⁹.

Moreover, the degree of freedom which a competition authority has in its daily business of enforcing competition law and taking decisions is usually interpreted to mean that a competition authority is not subject to routine direct supervision by government organs and has been granted all the necessary power to fulfill its tasks²⁸⁰. Such an authority would thus have the discretion to set its own priorities as to the identification and investigation of competition cases and the pursuit of competition complaints²⁸¹. It would also have the discretion to decline to investigate cases where it considers the motives of the complainant suspicious²⁸². Unlike this, ministerial departments are constrained as they would be subject to ministerial priorities and political interference²⁸³.

In addition to enforcement functions, the existences of advocacy functions also reflect the independence of competition authorities. Other than business persons and the general public, government organs as a whole are key targets of competition advocacy²⁸⁴. Accordingly, the ability of a competition authority to freely comment on and recommend improvements in public policy, regulation and legislation is an attribute by which the operational independence of competition authorities could be assessed²⁸⁵. For this, many laws give competition authorities

²⁷⁷ Ibid

²⁷⁸ Ibid

²⁷⁹ Ibid

²⁸⁰ OECD Global Forum on Competition, Supra note 264, p.6

²⁸¹ Ibid

²⁸² Ibid

²⁸³ Ibid

²⁸⁴ OECD Global Forum on Competition, Supra note 264, p.10

²⁸⁵ Ibid

the responsibility of advising government organs about the impact of the latter's actions, laws and policies on competition²⁸⁶.

However, it has to be noted that, as part of government machinery, and utilizing public funds, competition authorities may be subject to administrative accountability in line with the rules of their respective countries²⁸⁷. Financial audits and annual reports are among the main instruments of accountability²⁸⁸.

3.5 Ethiopian Experience

3.5.1 Historical Background

In Ethiopia, for long, there has been no codified consumer protection law. The protections accorded to consumers have been based on various private laws such as the law of contract and extra contractual liability law, and public laws including the criminal law and regulatory laws of different nature. The laws of contract and extra contractual liability under the Civil Code protect consumers from contract-based and tort-based harms in using goods and services. The various prescriptions under the Commercial Code dealing with company formation, dissolution and liquidation has also many things to do with consumer protection. Laws relating to regulation of internal trade, financial operation such as those relating to banking and insurance, standard setting and determination have also been some other areas of laws in protecting consumers' interests. However, these protections, as discussed under chapter two, are not adequate enough in consumer protection.

Following the process of liberalization and deregulation in the post 1991, the Federal Democratic Republic of Ethiopia introduced the Trade Practice Proclamation No. 329/2003. The objectives for the enactment of this law were, among others, securing fair competitive process through the prevention and elimination of anticompetitive and unfair trade practices, safeguarding the interests of consumers through the prevention and elimination of any restraints

²⁸⁶ Ibid

²⁸⁷ Id.,p.11

²⁸⁸ Ibid

on the efficient supply and distribution of goods and services²⁸⁹. It was under this law that issues of consumer protection got direct recognition for the first time. But this law failed to address issues of consumer protection in the way it should have had. In its substantive content and institutional framework, the law was too inadequate and deficient to protect the mounting interests of consumers²⁹⁰. It is having these in mind that the government moved to enact the new Trade Practice and Consumer Protection Law under proclamation No.685/2010. It is this new law which is the main subject of discussion in this thesis.

3.5.2 The New Legal Regime on Consumer Protection

3.5.2.1 The Rationale Behind and Objectives of the Law

3.5.2.1.1 Introduction

Every law has its own rationale and objectives. Needless to say, the Trade Practice and Consumer Protection Law has also its own rationale and objectives to accomplish. As can be understood from the preamble of the proclamation and the whole provisions of the law, the following are the major rationale and objectives that this law aims to fulfill.

3.5.2.1.2 Protecting Consumers' Rights, Health and Safety

As consumers usually face imbalances in terms of economic power, information, and bargaining power, it is through an accessible legal support that consumers' interests can be enhanced²⁹¹. Consumer protection law, in this regard, aims at shaping the nature of consumer transactions, trying to improve market conditions for effective exercise of consumer choice and providing remedies in case of violations²⁹². Due to absence of integrated consumer protection law, consumers in Ethiopia have for long been victims of irresponsible marketing of goods and services²⁹³. These problems have been particularly exacerbated following the introduction of free market economic policy. Since then, Ethiopian consumers

²⁸⁹ Art. 3 of the Trade Practice Proclamation No.329/2003

²⁹⁰ There were no substantive provisions that provide for the rights of consumers and the obligations of business persons. The investigative commission was a mere department of the ministry of trade and was not independent.

²⁹¹ Consumer International, consumer protection in Greece and Spain, accessed on April 21 from: <http://www.consumersinternational.org/media/302124/balancing%20the%20scales%20part%20iii-%20consumer%20protection%20in%20greece%20and%20spain.pdf>, p.7

²⁹² Ibid.

have been victimized by unsafe food supply, sub-standard and inferior quality products²⁹⁴. Adulterations of food stuffs and medicines as well as selling of expired food items and medicines have also been major threats for consumers²⁹⁵. There have still been problems on quality and safety of imported products, as well as on imported and locally made food items that are related to the daily need of consumers²⁹⁶. Adulterations of products have been made by adding deleterious and poor quality ingredients²⁹⁷. Adulteration is also made on other products through complete or partial substitution of their contents by less valuable elements which resemble as if they were of quality²⁹⁸. The adulteration, some times, goes to the extent of adding poisonous substances that are harmful to health.

It is not only the problem of quality and safety that consumers have been facing. There are also multiple problems of falsification of balances and measurements in the retail markets on which the majority of consumers rely²⁹⁹. A substantial number of measurements instruments and balances that are used for the sale of consumer goods have been found inappropriate³⁰⁰. These problems in measurement instruments and balances are either intentionally made by traders to make huge profit or they are there due to defects in the instruments and

²⁹³ Daniel, Supra note 61, p.74

²⁹⁴ Eyosyas Demissie, Legal Aspects of Food Stuffs and Drug Adulteration and Their Regulatory Mechanisms Under Ethiopian Law, Addis Ababa University, Faculty of Law, (unpublished), 2006, p.35

²⁹⁵ Daniel, Supra note 61, p.75

²⁹⁶ Interview with Ato Taye Challa, Expert, Modern Trade Practice Division, Addis Ababa Trade and Industry Development Bureau, on April 15, 2011; Interview with Dr. Minale Arega, Board Member, the Ethiopian Consumers Protection Association, on April 17, 2011; Interview with Inspector Getnet Teketelew, Crime investigation Team, Addis Ketema police department, on April 16, 2011; The Ethiopian Conformity Assessment Organization, The 9 months Report, p.3. The major limitation in relation to these and other problems of consumers is that there is no a well organized quantitative data.

²⁹⁷ Ibid. The major food stuffs said to have been subject to adulteration include cooking oil, pepper flour, butter and milk products, among others.

²⁹⁸ Eyosyas, Supra note 294

²⁹⁹ Interview with Ato Taye Challa, Expert, Modern Trade Practice Division, Addis Ababa Trade and Industry Development Bureau, on April 15, 2011; Interview with Ato Nasser Hussein, market study expert, Oromiya Trade and Market Development Bureau, on May 1, 2011; Interview with Ato Biru Aboma, Trade Practice and Consumer Protection Expert, Ministry of Trade, on May 1.

³⁰⁰ Ibid

balances themselves³⁰¹. Due to the frequent problems witnessed in this regard, consumers have lost confidence on traders.

Mislabeling, changing the country of origin of goods, and faking expiry dates of products are still the problems that Ethiopian consumers are confronting³⁰². The labeling of products is not made in the way they should have been. Changing the place of origin of imported products from countries that have not good reputation in manufacturing them to those countries that have good reputation has been widely practiced by importers of consumer goods so as to wrongly impress the consumers³⁰³. There also exist many instances of faking expiry dates of industrial products, medical products, perfumes, packed foods and drinks³⁰⁴.

Moreover, consumers have been subject to shortage of consumer goods. Though there are natural scarcities on some consumer goods, the problem has been exacerbated due to the existence of artificial scarcity in the market³⁰⁵. Many traders, especially wholesalers and distributors, have been engaged in hoarding goods in order to sell later on when the prices there of soar up³⁰⁶. Consumers have also been subject to arbitrary price hikes. The price of consumer goods in the past has been inflated unfairly and arbitrarily³⁰⁷. One of the principal reasons for this is that the prices of goods and services are not determined based on market principles but on artificial reasons whose sources are unknown³⁰⁸. As there is no business ethics among traders, the latter arbitrarily increase the price

³⁰¹ Ibid

³⁰² Interview with W/rt Asnaketch Alemu, Inspection and Surveillance Expert, Ethiopian Food, Medicine and Health Care Administration and Control Authority, on May 2, 2011; Interview with Ato Yohanness W/gebriel, Director, Arbitral Institute, Ethiopian Chamber of Commerce and Sectoral Associations, on April 29, 2011; Ethiopian Conformity Assessment Organizations, 9 Months Performance Report.

³⁰³ Ibid

³⁰⁴ Ibid

³⁰⁵ Interview with Ato Taye Challa, Expert, Modern Trade Practice Division, Addis Ababa Trade and Industry Development Bureau, on April 15, 2011; interview with Ato Biru Aboma, Trade Practice and Consumer Protection Expert, Ministry of Trade, on May 1, 2011.

³⁰⁶ Ibid

³⁰⁷ Gebre Medhin Birega, Preliminary Country Paper of Ethiopia, Capacity Building on Competition Policy in Selected Eastern and Southern African Countries (7Up Project), p.5

³⁰⁸ Ibid

of goods and services as they wish and try to push ethical traders and firms out from the market³⁰⁹.

Generally, consumers in Ethiopia have for long been at the mercy of traders. There was no law that balances the lower bargaining positions of consumers as against the relatively powerful traders. Consumers have had no rights against the traders and traders have had no legal obligations towards consumers. This lack of bargaining power has been particularly exacerbated due to the fact that majority of Ethiopian consumers are illiterate and ignorant and they have no ability to protect themselves³¹⁰.

It is in the prevalence of these problems that the legislature moved to enact the Trade Practice and Consumer Protection Proclamation No.685/2010. These prove the rationale and objectives of the law.

3.5.2.1.3 Preventing Anticompetitive Market Practices

As it was discussed under Chapter Two of the thesis, competition law, through the promotion of the competitive process, favors the interests of consumers and serves to balance the dominance of traders. Effective allocation of goods and services between producers and consumers can be achieved by eliminating constraints and distortions, and by allowing market actors to operate competitively. This is because where there is effective competition, there would be free entry in to and exit from the market, and the consequence of this is higher economic efficiency, greater innovation and enhancement of consumer welfare through wider availability of goods at competitive prices³¹¹.

Though these are the fruits of competition law and competitive market for the protection of consumers' interests, the Ethiopian market has not been competitive enough in protecting the rights and interests of consumers. Rather, due to market anomalies on account of the existence of limited competition in the

³⁰⁹ Ibid

³¹⁰ Interview with Dr. Minale Arega, Board Member, Ethiopian Consumer Protection Association, on April 17,2011

production and service sector and the monopoly of political party favored businesses monopolies, Ethiopian consumers have been victims of price escalation and subtle manipulation, lack of quality goods and services, problems of access to alternative goods and services and restricted bargaining positions³¹². This shows that the problem of Ethiopian consumer comes not only from the mere absence of consumer protection law but from anticompetitive acts of market actors, as well. Lack of the required competition, particularly, in the import market has made impossible the availability of sufficient quantity of goods at competitive prices³¹³. There are also many instances of collusive fixing of prices of goods in the market³¹⁴. This prevents consumers from switching to other competitors when they are not happy with a competitor.

Taking these problems in to account, this newly enacted Trade Practice and Consumer Protection Proclamation No.685/2010 regulates several anticompetitive market acts. One of the anticompetitive practices regulated by the law is abuse of dominance³¹⁵. The law has out rightly declared as abuse of dominance the hoarding or diverting or preventing or withholding of goods from

³¹¹ Consumer International Africa Office, Consumer Protection and Quality of Life in Africa, Annual Report, 2004, p.2

³¹² Gebremedhin Birega, Abebe Asmare and Kibre Moges, Ethiopia,p.13

³¹³ Interview, Supra note 305

³¹⁴ Gebremedhin, Abebe and Kibre, Supra note 312

³¹⁵ It is clear that it is not dominance but abuse of dominance that matters. Before looking in to the issue of abuse of dominance it is better to determine the existence of dominance. There are two ways of determining the existence of dominance. The quantitative and qualitative methods of determination. The qualitative method uses the market condition whereas the quantitative method uses the percentage of market share. It is determined based on numerical expressions. But the law still is silent and not clear whether it is based on quantitative or qualitative determination. The law provides that the council of ministers may determine by regulation the numerical expression of the degree of market dominance. The law has also exceptions to abuse of dominance for broader and higher economic objectives. It is provided accordingly that acts committed by a business person to achieve a legitimate business purpose by ensuring that acts he commits are indispensable and cannot be achieved in such other way such as maintenance of safety and quality of goods; leveling with prices or benefits offered by a competitor; and achieving efficiency and competitiveness are not considered as abuse of market dominance. Moreover, the council of ministers is empowered to indentify by regulation those trading activities that have to be exempted from the application of the foregoing provisions of this chapter one, when it deems such activities are vital in facilitating economic development. See Arts. 7(4), 9 and 10 of the Trade Practice and Consumer Protection Proclamation No.685/2010

being sold in regular channels of trade³¹⁶. The mere fact of hoarding and diverting of goods from the regular channel of trade have been automatically prohibited as anticompetitive practices. This has the effect of protecting consumers as hoarding would create shortage of goods available to the market. When there is shortage of goods in the market, consumers would be affected. On the one hand, consumers would not be able to get goods due to the artificial scarcity. On the other hand, consumers would be subject to exorbitant prices as the shortage of supply would increase the demand which in turn pushes the prices up. Another act of abuse of dominance that the law has prohibited is the direct or indirect imposition of unfair selling price or purchase price³¹⁷. This abusive act occurs when monopolies charge consumers higher prices which are not commensurate with the goods they provide. The regulation of abuse of dominance in this regard is very essential for the protection of consumers' interests.

In addition to these, the regulation of abuse of dominance as a whole has the effect of enhancing the welfare of consumers indirectly through the protection of competition. This is because when competition is protected and enhanced, it would bring about positive effects on the protection of consumers' interests. On the other hand, when market actors are driven out of the market due to abuse of dominance, the market would not provide consumers with a better choice of quality products at competitive prices. Consumers would be an easy prey as they would not have any other competitors to switch to. For these reasons, the law has rightly provided that doing directly or indirectly such harmful acts, aimed at a competitor, such as selling at a price below cost of production, causing the escalation of the costs of a competitor, preempt inputs or distribution channels are prohibited as abuse of dominance *per se*³¹⁸. Moreover, the law prohibits as abuse of dominance *per se* the denying of access, with out justifiable economic reason, by a competitor or a potential competitor to an essential facility controlled by the dominant business person; and the imposition of discrimination, with the

³¹⁶ Id., Art. 8(1)

³¹⁷ Id., Art.8(3)

view to restrain or eliminate competition, between customers in prices and other conditions in the supply and purchase of goods and services³¹⁹. Making the supply of particular goods or services dependent on the acceptance of competitive or noncompetitive goods or services or imposing restrictions on the distribution or manufacture of competing goods or services or making the supply dependent on the purchase of other goods or services having no connection with the goods or services sought by the customer are still prohibited as abuse of dominance *per se*³²⁰.

Other anticompetitive practices that have implications, both direct and indirect, on consumers protection are agreements, concerted practices, and decision of association of business persons that have the object or effect of preventing, restricting or distorting competition³²¹. One of these is the act of collusive fixing prices by business persons in a horizontal relationship³²². The act of fixing prices among business persons in a horizontal relationship will not create a competitive condition for consumers as they could not look for better prices. As all are selling at similar prices, there would be no competitive prices that consumers would look for. When the price is fixed above the competitive level, consumers would be forced to buy at exorbitant prices. This would make it difficult for consumers to get goods and services equivalent to the price they pay. Even the fixing of prices below the competitive level would not be beneficial to consumers in the long run. It is not only horizontal agreement of setting prices that affects the interests of consumers but also vertical agreements that have the object or effect of setting minimum retail prices³²³. When there is setting of minimum retail prices, it clearly affects the interest of consumers. It avoids the possibility for competitive price access.

³¹⁸ Id., Art. 8(2)

³¹⁹ Id., Art. 8(5)(6)(7)

³²⁰ Ibid

³²¹ Id., Art. 11

³²² Id., Art. 13(1)(a)(i)

³²³ Id., Art. 13(b)

Furthermore, the law regulates the issue of merger³²⁴. The rationale behind regulation of merger is the fear of potential abuse of dominance. When firms producing similar and substitute products are merged, there would be less competition. And the firm being the sole controller of the marketing of those particular products may abuse its dominance by escalating prices, and producing poor quality goods.

Generally, it is from these perspectives that the regulation of abuse of dominance, mergers and other anticompetitive practices pertain to the protection of consumers' interests. And the rationale and objectives of the law in this regard hold true.

3.5.2.1.4 Preventing and Eliminating Unfair Competition

The prohibition of unfair competition is another important subject matter in the protection of consumers' rights. Unfair competition is any act that aims at adversely affecting the good will of a competitor. The main focus of the law, as far as unfair competition is concerned, is on the protection of one competitor against unfair acts of another competitor. On the other hand, prohibition of unfair competition has many things to do with the protection of consumers. One of the unfair competition acts that has direct impact on the interests of consumers is the commission of any act by one business person that causes or is likely to cause confusion with respect to another business person or his activities, in particular, the goods or services offered by him³²⁵. When there is confusion as to the identity of producers, the quality, mark and types of goods that they provide, consumers may not be able to choose goods and services they need.

In addition to this, unfair competition may have effect on the interests of consumers when there is comparison of goods and services falsely or equivocally in the process of commercial advertisement³²⁶. Advertisement, as we know, is very important as it is the mechanism by which consumers would be

³²⁴ Merger is defined as situation where two or more business organizations previously having independent existence amalgamate or when such business organizations pool the whole or part of their resources to carry on a certain business. Id., Art.16(1)

³²⁵ Id., Art.21(2)(a)

³²⁶ Id., Art.21(2)(d)

informed about products available in the market. It is also important for business persons as it helps them attract the attention of consumers. Advertisement when made in a fair way is a welcome. The problem comes when the advertisement is false and misleading. Misleading and equivocal advertisement affects not only the interest of traders but also that of consumers. When the advertisement is misleading and equivocal, it affects the interest of consumers as they would be misled about the quality, price, and quantity of goods and services.

3.5.2.2 The Scope of Application of the Law

Every law has its own scope of application. The scope of application of a law determines the extent its application. In this regard, the Trade Practice and Consumer Protection Law has introduced its own scope of application. The law³²⁷ under art. 4(1) states that “this proclamation shall apply to all persons carrying on commercial activities and to any transaction in goods and services with in the Federal Democratic Republic of Ethiopia.” From this provision, we can understand many important elements. Firstly, the law says that it is applicable “to all persons” and this means that all persons whether physical or legal are subject to the application of the law. The next issue in the definition pertains to what is meant by “carrying of commercial activities?” For this, the law has provided that commercial activity is an activity carried on by a business person³²⁸. The question then goes to what is meant by a business person? The law has defined a business person as “any person who professionally and for gain carries on any of the activities specified under article 5 of the Commercial Code of the Empire of Ethiopia of 1960, or who dispenses services, or who carries on those commercial activities designated as such by law³²⁹.” Article 5 of the Commercial Code of Ethiopia, in turn, illustrates those activities of business persons that are deemed commercial. But it has to be noted that, as can be understood from the provisions of the Trade Practice and Consumer Protection Law and the Commercial

³²⁷ The Trade Practice and Consumer Protection Proclamation No.685/2010

³²⁸ Id.,Art.2(6)

³²⁹ Id.,Art.2(5); see also Art.2(2) of the Commercial Registration and Business Licensing Proclamation No.686/2010

Registration and Business Licensing Proclamation, the list under article 5 of the Commercial Code is rather illustrative.

From this definition, one may ask whether the Trade Practice and Consumer Protection Law is applicable to non-commercial activities. Under Ethiopian law, business organizations carry out either commercial or non-commercial activities³³⁰. As far as consumer protection is concerned, it is not only commercial activities but also non-commercial activities matter³³¹. From this point of view, it is essential to consider whether the law applies to those non-commercial activities. The law under art.4 (1) provides that “the proclamation shall apply... to any transaction in goods and services....” This provision of the law is so broad that it can be interpreted as applicable to non-commercial activities, too. So it is possible to say that a person who carries both commercial and non-commercial activities as defined above is subject to the application of the Trade Practice and Consumer Protection Law. Simply stated, the law applies to any transaction in goods and services whether by a business person or a non-business person, a producer, an importer, a wholesaler, a distributor or a retailer. Unlike this, the repealed Trade Practice Proclamation No.329/2003 was applicable only “... to all persons involved in any commercial activity³³².” The *acontrario* reading of this provision shows that the law was applicable only to commercial activities in exclusion of non-commercial ones.

The Trade Practice and Consumer Protection Law also provides under article 4(2) that “this proclamation shall apply to a commercial activity even though conducted outside the Federal Democratic Republic of Ethiopia if its out come has effect in Ethiopia.” Accordingly, any commercial activity, even though conducted outside Ethiopia, would be subject to the provisions of the law as far

³³⁰ For this, read cumulatively Arts.10 (1) (2) and 213(1) of the Commercial Code of the Empire of Ethiopia of 1960.

³³¹ For instance, an activity carried out by an ordinary partnership, and activities carried out by Joint Venture, general partnership, and limited partnership, as civil business originations, could affect the interests of consumers.

³³² The Trade Practice Proclamation No.329/2003, Art.4

as its outcome has domestic effect. But the law is not clear whether this provision pertains to consumer protection in cross-border transactions of goods and services. In today's world, as a result of globalization and increased integration, consumers enter, through various mechanisms, into international transactions of goods and services. With the view to protect the weaker consumer in these cross-border transactions of goods and services, many countries have made applicable their consumer protection regimes, by incorporating principles of choice of law and choice of jurisdictions in private international law as part of their consumer protection regimes, to these transactions³³³.

The vagueness of the Ethiopian Trade Practice and Consumer Protection Law would not have been a problem by itself if there were rules of private international law. It is known that Ethiopia does not have rules of private international law except the provisions of the Civil Procedure Code (arts.456-461) that deal with the recognition and enforcement of foreign judgments³³⁴. In this age of globalization and expansion of cross-border transactions, it is essential to give due protection to Ethiopian consumers as other countries did. Taking into account the need to protect Ethiopian consumers in this regard, the "Draft Proclamation to Provide for Federal Rules of Private International Law" clearly stipulates

³³³ There are various models of private international law in relation to consumer protection. Among the various models applied around the world, the European model, which is also found in USA, Japan, Russia and Korea, promises the greatest benefit for consumers as this model does not exclude a free party choice of law but merely limits the party's freedom to choose the applicable law with the help of the preferential law approach. According to this approach, a choice of law may not deprive consumers from the mandatory provisions of the law of their habitual residence. The preferential law approach, thus, provides for a minimum standard of consumer protection. Since it limits free party choice of law only to the extent necessary it is to be preferred over both the complete exclusion of choice of law to be found in Switzerland and the limitation of the parties' choice to certain laws to be found in Europe in view of insurance contracts and contracts of carriage. It is also important to note the primary instruments in the cross-border protection of consumers. One of these is the Brussels convention on jurisdiction and enforcement of judgments in civil and commercial matters which deal with jurisdiction to adjudicate matters as well as with the enforcement of extra-territorial judgments. The other is the Rome Convention on the Law Applicable to Contractual Obligations, which deals with the determination of which states' substantive law shall be applied in cross-border disputes. See: Giesela Rühl, Consumer Protection in Private International Law, retrieved on April 20 from: http://www.ile-hamburg.de/data/Hamburg_Lectures_Ruehl_Paper.pdf, p.42; Maxime Faille and Roger Tasse, Online Consumer Protection: A Study on Regulatory Jurisdiction in Canada, Office of Consumer Affairs, 2001, retrieved on April 20 from: [http://cmcweb.ca/eic/site/cmc-cmc.nsf/vwapj/online_cns_e.pdf/\\$FILE/online_cns_e.pdf](http://cmcweb.ca/eic/site/cmc-cmc.nsf/vwapj/online_cns_e.pdf/$FILE/online_cns_e.pdf), p.27

consumers' jurisdiction of Ethiopian courts³³⁵. According to the draft, a consumer who is domiciled in Ethiopia may bring proceedings against the other party to a contract either before Ethiopian courts or before courts of the other country in which the other party is domiciled. On the other hand, the other party may only bring proceedings against the Ethiopian consumer before Ethiopian courts³³⁶. In addition to providing for the jurisdiction of Ethiopian courts, the draft, in dealing with choice of law, provides for the application of Ethiopian law on consumer contracts³³⁷. Though they are not enforceable these provisions of the draft are very important as they would have persuasive authority. Hence it is better either to provide in black and white rules of private international law pertaining consumers as part of the consumer protection regime or approve this draft proclamation.

Other issues that need consideration as far as the scope of application of the consumer protection law is concerned pertain to basic utilities and basic goods and services that are subject to decisions of the council of ministers for price regulation. Unlike rules of competition, the rules of consumer protection law are applicable on basic utilities, and basic goods and services that are subject to the decision of the council of ministers to price regulation³³⁸. This, for instance, is to say that suppliers of these goods and services and basic utilities have the duty to fulfill the obligations that business persons, as a supplier of goods and services, have undertaken towards consumers under the law.

Moreover, it is important to note that the application of the consumer protection law is not a bar for civil actions consumers may file on matters of extra contractual liability based on the provisions of the Civil Code of Ethiopia³³⁹. This

³³⁴Araya Kebede and Sultan Kasim, *Conflict of Laws Teaching Material*, Ethiopian Justice and Legal Systems Research Institute, Addis Ababa, (unpublished), 2009,p.42

³³⁵ "Draft Proclamation to Provide for Federal Rules of Private International Law" accessed on April 21, 2011 from: http://data6.blog.de/media/708/4562708_7da2008c33_d.pdf, Arts. 23-25

³³⁶ Ibid

³³⁷ Id.,Art.75

³³⁸ See Arts.4(4) and 2(1)(2) of the Trade Practice and Consumer Protection Proclamation No.685/2010

³³⁹ Id., Art.4 (5)

provision of the law is important as it entitles consumers to lodge a claim against manufacturers with whom they may not have had a contractual relationship.

Finally, one thing has to be noticed. The law provides for its non-applicability to supervisory activities and measures undertaken in accordance with the Food, Medicine and Health Care Administration and Control Proclamation No. 661/2009 art.4(6)³⁴⁰. But it keeps the adjudicatory and enforcement power of the Trade Practice and Consumer Protection Authority intact.

3.5.2.3 The Rights of Consumers

The rights of consumers have been duly recognized under the UN Guidelines for Consumer Protection and under other regional instruments such as the COMESA Competition Regulation. The newly enacted Ethiopian Trade Practice and Consumer Protection Law, on its part, has also sufficiently reiterated several rights of consumers.

The law entitles consumers the rights to get sufficient and accurate information on the quality of goods and services, and not to be obliged to buy for the reason that they looked in to quality and bargain for price³⁴¹. Consumers have the right to be adequately informed about quality, quantity, potency, purity, standard and price of goods and services so that they would be protected from unfair trade practices. They have also the right to be respected by business persons and to be protected from such acts of the business person as insult, threat, frustration and defamation, and the right to be compensated for damages they suffered because of transaction in goods and services³⁴². When goods and services purchased are defective, consumers have the right to report the damage incurred as a result to the Ministry of Trade, and demand the replacement thereof or get refund within fifteen days from the date of their purchase. Consumers may also submit their complaint to the Trade Practice and Consumer Protection Authority for adjudication and compensation³⁴³. Still, they have the right to consumer education³⁴⁴. Education makes them well informed about their rights and able to make sound decisions in the

³⁴⁰ Id., Art.4(6)

³⁴¹ Id., Art.22

³⁴² Id., Art.22

³⁴³ Id., Arts. 22(5), 25(6) and 28

market place. It would help them evaluate and use available information about products and services and identify dishonest acts of traders. Further more, the law provides for the rights of consumers to institute actions for adjudication at the Authority or at regional consumer protection organs³⁴⁵. This is an important right of consumers as it allows them to bring their action in concert. This collective action of consumers would enhance their protection more than individual actions they take. But this has to be taken in line with the procedures described for representative actions under the civil procedure code.

3.5.2.4 Obligations of Business Persons

As it provides for the rights of consumers, the law also imposes obligations on business persons. The obligations that are imposed on business persons are both positive and negative obligations. With respect to positive obligations, business persons are required to display the price of goods and services in such conspicuous place by adding the custom duties, taxes and other lawful fees. They have the duty to affix label on goods that can show its name, gross and net weight, volume, quantity, safety measures for usage, manufacturing and expiry dates as well as the country of manufacturing and name of manufacturer, importer and packer³⁴⁶. It is also their duty to display their trade names in an overt place, and to give relevant information to consumers about goods and services that the latter want to buy³⁴⁷.

One the other hand, business persons are prohibited from making false or misleading advertisements about the nature, component and quality of goods. It is also prohibited for them to make false and misleading advertisements as to the source, weights, volume, method of manufacturing, date of manufacturing and expiry date of goods as well as the identity of the manufacturer, supplier and its

³⁴⁴ Id., Art.22

³⁴⁵ Id.Art.41 (2); It has to be noted that the requirements for class actions as stipulated under art. 37 of Federal Democratic Republic Ethiopia constitution and art.46 of the Civil Procedure Code has to be fulfilled.

³⁴⁶ Id., Arts.23-24

³⁴⁷ Id.,Art.26

trade mark³⁴⁸. The law has still to prohibit changing the country of origin of goods as well as cheating in balances and measurements or in any other measurements contrary to the lawful ones³⁴⁹. Moreover, business persons are prohibited from making misrepresentations about goods of their competitors, applying pyramidal scheme of sale and making any of other unlawful business acts³⁵⁰.

In addition to these, it is the duty of business persons to refrain from acts of hoarding or diverting of goods contrary to regular commercial practices³⁵¹. The rationale behind prohibiting acts of hoarding or diverting of goods from the regular channel of trade is that these acts would create artificial scarcity in the market and thus push the prices of goods up. From this, it is clear to understand that acts of hoarding by business persons would affect the interests of consumers. The issue, in this regard, then is when goods are said to be hoarded or diverted? The law under art.45 provides that goods are presumed to have been hoarded or diverted, where they are designated by the Ministry of Trade as scarce in the market, where the quantity of the goods found in hoarding or being diverted amounts 25% of the capital of the business person and where the goods, in case of imported goods, are not made available for sale with in three months from the date of their entry in to the country. The same holds to imported raw materials of a product. Where the goods are manufactured locally by raw materials imported abroad, they are deemed to have been hoarded, subject to the fulfillment of the previous conditions, where they are not made available for sale with in three months from the date of their production. In case of goods manufactured from locally obtained raw materials, hoarding exists, subject to the previous conditions, where the goods are not made available for sale with in two months from the date of their production. In agricultural products, hoarding exists where the products have not been used for manufacturing with in two months from the date of their purchase by a business person.

³⁴⁸ Id., Art.27

³⁴⁹ Id., Art.30

³⁵⁰ Ibid. See the details under this article.

³⁵¹ Id., Art.45

As it is indicated above, hoarding exists where the value of goods in stock amounts 25% of the capital of the business person. In practice, however, many business persons have faced difficulty in keeping the stock of scarce goods below 25% of their actual capital³⁵². This has been particularly problematic to those traders who entered a reduced capital, not their actual capital, in the commercial register³⁵³. This entry of reduced capital would make it easy for government organs to identify acts of hoarding as the reference point is the capital entered in the commercial register.

The prohibition of hoarding applies not only against business persons but also against consumers³⁵⁴. With respect to the latter, hoarding is deemed to exist where the quantity of goods found to have been hoarded by consumers are beyond their personal or family consumption. This prohibition is based on the rationale that consumers would opt to purchase a large quantity of goods beyond their current need when goods are designated as scarce. And this would push the prices of goods up. It would also create artificial scarcity of goods in the market. And hence these acts of consumers need to be regulated. But what is meant by “beyond that of personal or family consumption” is not clear. As the means of determining the amount of personal or family consumption within a given period of time is not indicated, this may bring a problem in the enforcement of the law.

When a law imposes obligations on a person, it also prescribes sanctions against that person for his failure to comply with it. Similarly, when business persons violate their obligations that we discussed above, the Trade Practice and Consumer Protection Law imposes administrative measures, civil liabilities and

³⁵² According to the study conducted by the Addis Ababa Trade and Development Bureau, a large number of businesses in “Merkato” which are alleged to have a stock of commodities valued in millions, have actually registered a lesser capital they should have entered. Interview with Ato Taye Challa, Expert, Modern Trade Practice Division, Addis Ababa Trade and Industry Bureau, April 15, 2011

³⁵³ Ibid

³⁵⁴ Art.45(1) of the Trade Practice and Consumer Protection Proclamation No.685/2010

criminal penalties against them. With respect to the criminal punishment, the penalty ranges from a fine of fifty thousand birr to two million birr, and from two years to twenty years of imprisonment³⁵⁵. The punishments imposed against business persons have been exaggerated, however. This is because, firstly, the term of imprisonment imposed is much longer than those terms of imprisonment prescribed by the Criminal Code for economic and commercial crimes³⁵⁶. Secondly, business persons in Ethiopia are too petty for these punishments to be imposed against them³⁵⁷. Thirdly, these punishments imposed by the law are also exaggerated when they are seen in comparison with those in other jurisdictions. For instance, in Europe, among the twenty five countries, eighteen countries impose only administrative measures, two countries impose both administrative and criminal measures, and the rest only criminal punishments³⁵⁸. And the criminal punishments imposed in these jurisdictions are very minimal compared to those provided under our law³⁵⁹. Moreover, in Africa countries, such as Kenya, Uganda, and South Africa, those acts which entail criminal liability are few and specific and majority of the violations of the law by traders entail only administrative measures³⁶⁰. The same is true in countries such as India, Singapore, Australia, Indonesia, Korea and China³⁶¹.

³⁵⁵ Id., Art. 49

³⁵⁶ See the punishment for Economic and Commercial Crimes under arts. 716-733 of the Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No. 414/2004

³⁵⁷ Interview with Ato Biru Aboma, Trade Practice and Consumer Protection Expert, Ministry of Trade, interview on May 1, 2011; Interview with Ato Yohannes W/gebriel, Director, Arbitral Institute, Addis Ababa Chamber of Commerce and Sectoral Association, interviewed on April 22, 2011

³⁵⁸ Addis Ababa Chamber of Commerce and Sectoral Association, commentary on the draft of the trade practice and consumer protection law, 2009, p.5

³⁵⁹ Ibid

³⁶⁰ Ibid

³⁶¹ Interview with Ato Yohannes W/gebriel, Director, Arbitral Institute, Addis Ababa Chamber of Commerce and Sectoral Association; Interview with Ato Biru Aboma, Trade Practice and Consumer Protection Expert, Ministry of Trade on May 1, 2011. Addis Ababa Chamber of Commerce and Sectoral Association, Commentary on the Draft of the Trade Practice and Consumer Protection Law, 2009, p.5

CHAPTER FOUR

4. Consumer Protection: The Institutional Regime

4.1 Introduction

Under the previous chapters, this writer tried to discuss the theoretical background of laws relating to consumer protection and their limitations, and the substantive issues relating the new Trade Practice and Consumer Protection Law that pertain to the protection of consumers' interests. In this chapter, the enforcement mechanisms, the respective institutions for enforcement of the law will be given separate treatment. The institutions that are going to be dealt with here under are not only those that are established by the Trade Practice and Consumer Protection Law. Regulatory bodies whose activities are more closely related with the protection of consumers' interests will also be treated. In addition to these, problems associated with enforcement mechanisms will be discussed.

4.2 Implementation Institutions

4.2.1 The Trade Practice and Consumer Protection Authority

4.2.1.1 The Organizational Structure of the Authority

In its organizational structure, the authority is comprised of a director general, to be appointed by the prime minister, judges and a staff³⁶². The director general, as a chief executive officer, organizes, directs and administers the activities of the authority³⁶³. For each division of the adjudicative tribunal, the authority has one presiding judge and two other judges. Though the law ambitiously provides for the establishment of adjudicative tribunals, the law does not specify their number. The requirement of professional qualification, educational background and experiences of judges is not also clearly indicated. These issues have to be clarified by a regulation that would be enacted to enforce the law.

Though the establishment of adjudicative tribunals and the necessary judges there for are important developments, the law fails to give a room, in its institutional framework, to Consumers' Protection Association and private

³⁶² Art. 36 of the Trade Practice and Consumer Protection No.685/2010

³⁶³ Id. Art.37

organs³⁶⁴. Under the repealed Trade Practice Proclamation No.329/2003, the Consumers' Protection Association and private organs were members of the Investigative Commission which was entrusted with the enforcement of that law³⁶⁵. But as indicated above, these private stakeholders are not part of the institutional framework of the new trade practice and consumer protection law. This should not have been the case as these private organs have a role to play in the promotion of consumers' interests.

To begin with, the Consumer Protection Association played its own role in the enactment of the Trade Practice and Consumer Protection Law by submitting proposals for concerned government organs based on the UN Guidelines for Consumer Protection³⁶⁶. During the discussion on the draft of the law, the association proposed at least for the establishment of an advisory board, that comprise the association and other private organs, which would give advice to the Authority on policy matters in relation to competition and consumer protection³⁶⁷. The chambers and civil societies also proposed to the same effect³⁶⁸. On the other hand, the role of consumer protection association, in promoting the interests of consumers, is duly recognized by the Food, Medicine, and Health Control and Administration Authority as the former is a member of the Advisory Board established under the latter³⁶⁹. Moreover, the Consumers' Protection Association is playing its role as a member of the standardization committee under Ethiopian Standard Agency³⁷⁰. As the proper and effective enforcement of the Trade Practice and Consumer Protection Law is directly related with the objectives of Consumers' Protection Association, the role of the

³⁶⁴ When we say consumer protection association, it is to mean the 'Ethiopian Consumers' Protection Association'. This is an association founded in 2001 as an Ethiopian resident charity. Its main objective is to promote and protect consumers' rights in Ethiopia through research based awareness raising, consumer education, training and compliant handling.

³⁶⁵ Art.11 of the Trade Practice Proclamation No.329/2003

³⁶⁶ Interview with Dr. Minale Arega, board member, Consumer Protection Association, April 17, 2011; the UN Guidelines for Consumer Protection as expanded in 1999 give a general guidance for countries to enact laws on issues of consumer protection.

³⁶⁷ Ibid

³⁶⁸ Interview with Yohannes W/gebriel, director, the Arbitral Tribunal, Addis Ababa Chamber of Commerce and Sectoral Association April 29, 2011

³⁶⁹ The Food, Medicine, and Health Care Administration and Control Authority Establishment Regulation No. 189/2010, art.8

latter should have been duly recognized by this law. Moreover, if private organs were given at least an advisory role under the new institutional framework, they could have played a significant role in advocating the interests of their members³⁷¹. They could easily voice the concern of their respective members in the enforcement of the law. This would be of help for government, as well. They could also serve as a counter to potential improper enforcement of the law by the government³⁷². Particularly, in developing countries where competition and consumer protection issues are marginally addressed, the role these organs can play is of paramount importance³⁷³. The experience of many other countries, too, show that private organs, particularly, consumer associations, have a duly recognized role in the enforcement of competition and consumer protection laws³⁷⁴.

4.2.1.2 The Power and Function of the Authority

The Trade Practice and Consumer Protection Authority is entrusted with various functions, administrative and judicial powers. The authority is empowered to take appropriate measures to increase market transparency, and ban the advertisement of goods and services that are inconsistent with health and safety requirements³⁷⁵. It has the power to take administrative and civil measures against business persons in violation of the Trade Practice and Consumer

³⁷⁰ Interview with Fikremariam Arego, Director, Ethiopian Standards Agency, on April 23, 2011

³⁷¹ Interview with Dr. Minale Arega, Board Member, Consumer Protection Association on April 17, 2011; interview with Ato Yohaness W/gebriel, Director, the Arbitral Institute, Addis Ababa Chamber of Commerce and Sectoral Association on April 29, 2011.

³⁷² Ibid

³⁷³ Kibre Moges, Policy-induced Barriers to Competition in Ethiopia, CUTS International, Jaipur, India, 2008, p.20

³⁷⁴ For instance in USA, Kenya, France, South Africa, they are recognized as having a great role. See South African Consumer Protection Act, 2008, retrieved on April 20, 2011 from: <http://www.dti.gov.za/ccrd/cpact09.pdf>, Arts.77-78; Jilian G.Brady, Consumer Protection in Unites States: An Overview (Loyola University, School of Law, Chicago, 2008) retrieved on April 20, from: <http://www.oecd.org/dataoecd/58/29/2485827.pdf>, PP.12-20; Consumer Protection in France, retrieved on April 12 from:

http://ec.europa.eu/consumers/empowerment/docs/FR_web_country_profile.pdf, p.5; The Kenyan Consumer Protection Bill, 2007, accessed on April 12 from: http://kenyalaw.org/klr/fileadmin/pdfdownloads/Bills/2007/The_Consumer_Protection_Bill_2007.pdf, Art.107(1)

³⁷⁵ Art.34 of the Trade Practice and Consumer Protection Proclamation No.685/2010

Protection Law³⁷⁶. Organizing various education and training to enhance the awareness of consumers is another important function of the authority. Moreover, the authority has the power to initiate and advocate policy issues and participate on policy and strategy drafting by government organs³⁷⁷.

The authority has also been granted extensive judicial power. It adjudicates administrative and civil sanctions and orders payment of compensation for damages sustained by complainants³⁷⁸. The authority exercises its adjudicative power on violations of the law, public notices to implement it and on violations of other laws that have relevance to consumer protection³⁷⁹. With the view to carry out its judicial functions, the authority can summon witnesses to appear and testify before its adjudicative tribunals, it can also verify, examine as well as make injunction on acts it pronounces inappropriate³⁸⁰.

These administrative and judicial functions of the authority are important developments of this newly enacted Trade Practice and Consumer Protection Law. This is because the Investigative Commission under the repealed Trade Practice Proclamation No.329/2003 did not have such powers. In particular, the decisions of the investigative commission were subject to approval by the ministry of trade and industry³⁸¹. And the ministry had the power to approve, amend or remand for review any decisions of administrative measures or penalty submitted to it by the commission.

4.2.1.3 The Independence of the Authority

When discuss about an authority entrusted with the enforcement of competition and consumer protection laws, it is very important to take the issue of independence in to account. Where an authority is independent, it can effectively enforce competition and consumer protection laws without any pressure from other government organs. Particularly, effective enforcement of competition law,

³⁷⁶ Ibid

³⁷⁷ Ibid

³⁷⁸ Id.,35

³⁷⁹ Ibid

³⁸⁰ Ibid

³⁸¹ Arts.15-16 of the Trade Practice Proclamation No.329/2003

as discussed under the previous chapters, enhances the welfare of the consumer by providing them with wider choice of goods and services at a competitive price. It has also to be noted that the power of a competition authority includes the making of an advocacy against government policies and laws that would hamper the competitiveness of the market. It is only when they are independent from the influence of government organs that authorities could carry out their function of advocacy effectively.

Moreover, in our case, the functions of competition and consumer protection are entrusted to the same authority, the Trade Practice and Consumer Protection Authority. In fact, the integration is not only at the stage of enforcement but also in substance. Its independence helps the authority to enforce the law effectively and to promote the interests of consumers. It is from these perspectives that the independence of the authority is to be considered.

4.2.1.3.1 The Structural Independence of the Authority

The Trade Practice and Consumer Protection Law establishes the authority as an autonomous federal government organ having its own legal personality³⁸². It is an autonomous organ separated from the Ministry of Trade. This status of the authority is an important development when it is compared to the status of the Investigative Commission under the repealed Trade Practice Proclamation No.329/2003. The Investigative Commission was a mere department of the Ministry of Trade and Industry.

The authority has its own judges, a director general, and the necessary staff as well its own budget³⁸³. It is generally taken that having ones own organizational structure and budget are important indicators of the independence of competition authorities³⁸⁴. Unlike this, the Investigative Commission under the repealed Trade Practice Law had no its own budget nor its own staff. It was rather dependent upon the ministry for its budget and staff.

³⁸² Art.31 (1) of the Trade Practice and Consumer Protection Proclamation No.685/2010

³⁸³ Id. Arts.36 and 54

³⁸⁴ Interview with Ato Biru Aboma, Trade Practice and Consumer Protection Expert, Ministry of Trade, on May 1, 2011

However, there are arguments against and for this organizational set up of the authority. One of the arguments against this holds that the accountability of the authority to the ministry would compromise its independence³⁸⁵. Those with this view prefer the accountability of the authority to the parliament. The other argument is that the appointment of the director general of the authority by the Prime Minister upon the recommendation of the Ministry of Trade would affect the autonomous status of the authority³⁸⁶. Taking the same issue into consideration, in the move for the amendment of the status of the Investigative Commission under the repealed Trade Practice Proclamation No.329/2003, it was recommended that its members and the chairman be appointed by the Parliament rather than by the Prime Minister³⁸⁷.

The third argument is that the governing of the authority by civil service law would constrain its structural autonomy as that may open the door for interference by the Ministry of Trade and other government organs³⁸⁸. Those with this argument prefer a distinct law by which the authority could be governed.

On the other hand, arguments for this structural set up of the authority do not accept the arguments forwarded above. Firstly, the accountability of the Authority to the Ministry of Trade is limited only for administrative activities³⁸⁹. And there is no room for interference in the judicial activities of the Authority as the law has clearly granted it autonomous status³⁹⁰. In fact, accountability is not a problem by itself as accountability is the attribute of every government organ. The issue

³⁸⁵ Interview with Dr. Minale Arega, Board Member, Ethiopian Consumer Protection Association, on April 17, 2011; interview with Yohanness W/gebriel, Director, the Arbitral Institute, Addis Ababa Chamber of Commerce and Sectoral Associations on April 29, 2011. The interviewees cite that as the Ministry is the plaintiff, the Authority may be influenced by.

³⁸⁶ Ibid

³⁸⁷ In countries like Ethiopia where democratic governance is not well established and greater transparency is required, independence of a competition authority is very essential. One important thing in the independence of the commission is that the chairperson should be appointed by the parliament by the parliament rather than by the prime minister. See Kibre, *Supra* note 12, p.21

³⁸⁸ Interview, *Supra* note 24

³⁸⁹ Interview with Ato Biru Aboma, Trade Practice and Consumer Protection Expert, Ministry of Trade, on May 1, 2011

³⁹⁰ Interview with Ato Biru Aboma, Trade Practice and Consumer Protection Expert, Ministry of Trade, May 1, 2011; Interview with Ato Anteneh Mengistu, Legal Expert, Legal Service Department, Ministry of Trade, April 26, 2011

rather lies on balancing independence and accountability. It is also argued that the application of the civil service law is merely for administrative purposes³⁹¹.

Though these are the arguments against and for the structural independence of the authority, there is no problem, at least in theory, on the independence of the authority. This is because, first, the general experiences of countries show that there are no parameters to quantify independence³⁹². Secondly, the degree of independence of competition authorities ranges from those which are least independent in the sense that they form a department of government ministry and thus subject to civil service restrictions on recruitment, central budget allocations, and to those which are the most independent in the sense that they are not only administratively separated from the government but they are also staffed by competition professionals and they do not rely on the ministry for their budgetary allocation³⁹³. From these perspectives, it is possible to say that there is no problem on the independence of the Ethiopian Trade Practice and Consumer Protection Authority. The authority has its own budget, has been conferred with the necessary staff and judges, and is administratively separate from the Ministry of Trade³⁹⁴. When an authority is not dependent for budget allocation on a ministry and when it has its own staff whom it self handles their employment and dismissal, this means that it is an independent authority³⁹⁵. On the other hand, when the budget of a competition authority is allocated by a ministry, the latter may use the budget as a means to influence the day to day activities of the former. The same holds where the ministry is empowered to handle the issues of employment of the staff³⁹⁶.

³⁹¹ Ibid

³⁹² OECD Global Forum on Competition, Supra note, pp.5-6

³⁹³ Haraka Haroye, Competition Policies and Laws: Major Concepts and an Overview of Ethiopian Trade Practice Law, Mizan Law Review, Vol.2, No.1, 2008, p.45

³⁹⁴ See Arts.31,33-35 of the Trade Practice and Consumer Protection Proclamation No.685/2010

³⁹⁵ Interview with Ato Biru Aboma, Trade Practice and Consumer Protection Expert, Ministry of Trade, May 1, 2011.

³⁹⁶ Ibid

4.2.1.3.2 Functional Independence of the Authority

As far as the independence of the Trade Practice and Consumer Protection Authority is concerned, it is not only its structural independence but also its functional independence that needs to be taken in to account. Functional independence of the authority refers to its freedom from interference by government organs in its enforcement of the law.

The Trade Practice and Consumer Protection Law provides that the authority is free from any interference or direction by any person with regard to the cases it adjudicates³⁹⁷. This is an important guarantee for the authority. It enables it to adjudicate cases without any fear of or pressure from government organs. Unlike this, the Investigative Commission, under the repealed trade practice proclamation No.329/2003, had no functional independence. Administrative measures and penalty decisions made by the Commission were subject to approval by the Ministry of Trade and Industry³⁹⁸. The Ministry might approve, amend, or remand for review any of the decisions of the investigative commission.

Even though, these are the letters of the law, there are arguments against the functional independence of the authority, as well. The first argument holds that the appointment of judges of tribunals by the Prime Minister would affect the functional independence of the authority³⁹⁹. The second argument holds that the application of the civil service law on the authority would also affect its functional independence as the law opens the door for interference by the government⁴⁰⁰. However, these are arguments against the functional independence of the authority, it is possible to say that the authority has been

³⁹⁷ Art.33 of the Trade Practice and Consumer Protection Proclamation No.685/2010

³⁹⁸ Art.15(2) of the Trade Practice Proclamation No.329/2003

³⁹⁹ In the move for the amendment of the mode of appointment of judges of the investigative commission under the repealed Trade Practice Proclamation No.329/2003, it was recommended that members of the commission be appointed by the parliament rather than by the prime minister and able to report its performance to the former. See Kibre, Supra note 180; Interview with Ato Yohanness W/gebriel, Director, the Arbitral Institute, Ethiopian Chamber of Commerce and Sectoral Association, April 29, 2011

⁴⁰⁰ Interview with Ato Yohanness W/gebriel, Director, Arbitral Institute, Addis Ababa Chamber of Commerce and Sectoral Associations, April 29, 2011; Interview with Dr. Minale Arega, Board Member, Ethiopian Consumer Protection Association, April 17, 2011

granted sufficient independence. This is because, on one hand, the law has clearly provided for the freedom of the authority from interference in cases it adjudicates. Secondly, this mode of appointment of the judges of the tribunals is not a problem by itself. And the experiences of many countries show to this effect⁴⁰¹.

4.2.2 The Ministry of Trade

The Ministry is empowered to conduct investigations and institute actions at the authority for administrative or civil measures to be taken against the violators of the law⁴⁰². The Ministry has not only a reactive but also a proactive role in that it can initiate investigation by itself through its investigation officers. In conducting investigation, the Ministry is authorized to enter into, search, seal, order the opening of containers, take samples of goods or other materials necessary for investigation or seize documents, take copies of information contained on tape recorders or any other equipment, search business warehouse or any other premise in which goods are stored or services are delivered or related buildings of any business person necessary for the investigation⁴⁰³.

In addition to its investigative power, the ministry has the power, in collaboration with other appropriate organs, to ban the distribution of goods and services that do not fulfill the standards of health and safety; and it can also inspect acts of hoarding or diverting of goods⁴⁰⁴. The Ministry may, still, determine the conditions of distribution, sale and movement of basic goods and services and where necessary order the business person to replenish the stock of the same⁴⁰⁵. Further more, the Ministry has the mandate to study on basic goods and services that shall be subject to price regulation and publish their list by public notice upon approval of that by the council of ministers⁴⁰⁶.

⁴⁰¹ Interview, Supra note 390

⁴⁰² Art.41(3) of The Trade Practice and Consumer Protection Proclamation No.685/2011

⁴⁰³ Id.Art.42

⁴⁰⁴ Id. Art. 44

⁴⁰⁵ Ibid

⁴⁰⁶ Id. Art.46

4.2.3 Regional Trade Bureaus and Consumer Protection Organs

Just as it provides for the Ministry of Trade and Industry, the law empowers Regional Trade Bureaus to conduct investigations on applications submitted to them or upon their own initiation. When conducting investigation, the Regional Bureaus are empowered to enter in to, search, seal, order the happening of containers in, take samples of goods or other materials necessary for the investigation or seize of documents from, seize or take copies of information contained on tape recorders, search the ware house of the business persons⁴⁰⁷. In addition to such investigative power, the Regional Trade and Industry Bureaus have the power to ban the distribution of goods and services that do not fulfill the standards of health and safety, and to inspect any acts of hoarding or diverting of goods⁴⁰⁸.

The law has also to provide for the establishment of Regional Consumer Protection Organs that adjudicate on matters of consumers' rights protection, and for the appointment of judges there to by the presidents of regional states. These regional consumer protections have been granted jurisdiction in connection with commercial activities licensed by their respective regional states or business persons engaged in such commercial activities or commercial activities conducted in their respective regions⁴⁰⁹.

But the problem in relation to regional adjudication of consumers' rights is that the law, on one hand, has left the establishment of consumer protection judicial organs optional, and on the other hand, the law is silent as to the issue of appeal⁴¹⁰. The issue of establishment of consumer protection judicial organ at regional level is of paramount importance as the majority of consumers are regional residents, and majority of them are vulnerable to manipulation for they are illiterate and are not aware of their rights⁴¹¹. The issue of appeal is also very important as judicial review is an important right to get fair results.

⁴⁰⁷ Id.Art.42

⁴⁰⁸ Id.Art.44

⁴⁰⁹ Id. Art.39(2)

⁴¹⁰ Id.Art.39 which provides as to the adjudicative power of regional consumer protection organs is silent about these issues.

⁴¹¹ Gebremedhin, Abebe and Kibre , Supra note 312, p.14

4.2.4 The Federal and Regional Courts

The law ambitiously requires the federal and regional courts to organize trade practice and consumer protection divisions so as to expedite the trade practice and consumer protection adjudications⁴¹². The courts at two levels are also empowered to adjudicate and pass decisions on criminal liabilities arising out of the violation of the law. The Federal High Court is granted with appellate jurisdiction. Any party who is aggrieved by the decision of the authority is entitled to appeal to the court within sixty days from the date of the decision by the authority⁴¹³. However, the law, as indicated above, is silent as to the appellate jurisdiction of regional courts⁴¹⁴. The law should have clearly provided for this as one means of ensuring transparency and justice.

4.2.5 The Police and Prosecution

As the police is one of the responsible organs for the maintenance of peace and order by preventing the commission of crime, the role of the police in prevention of crimes that are related to the manufacturing, preparing, selling, storing, and importing of adulterated food stuffs and products is very essential. Accordingly, in preventing crimes or investigating criminal cases, the police is empowered to arrest suspect and flagrant offenders as well as search with or without warrant. The police accordingly help the prevention of the crime and the prosecution when the crime is committed.

The other important role player in this regard is the public prosecutor who appears behind the scene of prosecuting criminal acts that are committed in violation of the law. When traders are involved in the commission of crime related to the Trade Practice and Consumer Protection Law, it is clear that the police and prosecution would be involved in the investigation and institution of actions against those violators. There is a clear reference by this Law as to the role of the police in that the authority may order it for the execution of civil and administrative decisions; order it to enforce the appearance of witness, the

⁴¹² Art. 48 of the Trade Practice and Consumer Protection Proclamation No. 685/2011

⁴¹³ Id. Art.53

⁴¹⁴ Id. Art.39

discontinuation of an act pronounced in appropriate⁴¹⁵. The role of the public prosecutor is also clearly provided in that the authority may submit its investigation to the public prosecutor in charge of examining and determining cases when it believes that the offences provided in the proclamation are committed⁴¹⁶.

4.2.6 Regulatory Bodies

When we talk about the role of regulatory bodies in consumer protection, it has to be clear from the outset that each regulatory body has more or less its own role in consumer protection. All regulators, whether established in the form of commissions, agencies, authorities, ministries, bureaus or any other form and whether they are in the production, distribution, or service sector, have their own role to play, with various degrees, in promoting and enhancing the welfare of consumers.

However, in this paper, the writer tries to focus only on some regulatory bodies. This is because these regulatory bodies are more concerned with consumer protection than any other regulatory bodies do. Their activities are directly related to the protection of consumers. The activities of these regulatory bodies focus on regulating food, medicine, and quality and safety standardization of goods and services⁴¹⁷. The regulation of these products and services by these bodies are the priority concerns for consumers.

4.2.6.1 Organs for National Quality Infrastructure

One means of protecting consumers' interests is through setting minimum quality specifications and safety standards for both goods and services. As setting standards is not enough by itself for assuring consumer protection, governments need to establish a full quality infrastructure, embracing standardization, conformity assessment, testing, inspection, certification, metrology, and

⁴¹⁵ Id.Art.35

⁴¹⁶ Id. Art.35(4)

⁴¹⁷ See, for instance, The Ethiopian Food, Medicine and Health Care Administration and Control Authority Establishment Council of Minister Regulation No.189/2010; The Ethiopian Standards Agency Establishment Council of Minister Regulation No.193/2010

enforcement⁴¹⁸. These activities of governments in the protection of consumers' interests require the existence of national quality infrastructure. The concept of national quality infrastructure is broad that it refers to systems established for standardization, metrology, conformity assessment and accreditation⁴¹⁹.

Until recently, the Quality and Standards Authority of Ethiopia was the sole responsible national organ to formulate, approve, declare, promote and issue Ethiopian standards for general or specific applications; to establish a national metrological system; to establish and operate national conformity assessment system and doing accreditation activities by establishing and operating testing laboratories for the purpose of assisting conformity of products to relevant requirements, supporting quality promotion and standardization efforts at all levels in the country⁴²⁰. However, the authority has now been replaced by four newly established organs that are responsible for these activities of standardization, accreditation, conformity assessment and metrology⁴²¹. It is the combination of these four organs that form the National Quality Infrastructure.

One of the organs under the National Quality Infrastructure is the Ethiopian Standards Agency which is established as an autonomous federal government office having its own legal personality and accountable to the Ministry of Science and Technology⁴²². The Agency is empowered to develop, approve, publicize

⁴¹⁸ Howells and Weatherill, Supra note 7, p.52

⁴¹⁹ Art.2 (14) of Ethiopian Standards Agency Establishment Regulation No. 193/2010

⁴²⁰ Art.6 of the Quality and Standards Authority of Ethiopia Establishment Proclamation No.102/1998

⁴²¹ See the Ethiopian Standards Agency Establishment Council of Ministers Regulation No. 193/2010; Ethiopian National Accreditation Office Establishment Council of Ministers Regulation No. 195/2010; Ethiopian Conformity Assessment Enterprise Establishment Council of Ministers Regulation No.196/2010; Ethiopian National Metrology Institute Establishment Council of Ministers Regulation No. 194/2010; Art. 15 of the National Metrology Institute Establishment Regulation No. 194/2010 provides that the rights and obligations of the Ethiopian Quality and Standards Authority related to metrology is transferred to the institute; Article 17 of the Ethiopian Standards Agency Establishment Council of Ministers Regulation No.193/2010 provides that the rights and obligations of the Quality and Standards Authority of Ethiopia other than those relating to metrology be transferred to the agency

⁴²² Art.3 of Ethiopian Standards Agency Establishment Regulation No. 193/2010

and implement Ethiopian standards⁴²³. In addition to its own standards, the agency may recognize any standard published by a national, regional, international or any other standardization body as Ethiopian standard when it is relevant⁴²⁴. The Agency has also the power to develop and implement awareness creation strategies for consumers on the benefits of quality and standards of goods and services⁴²⁵. The National Standardization Council established under the Agency determines products for which the use of the national standard mark shall be mandatory; examines and approves mandatory and optional standard requirements proposed by National Technical Committees⁴²⁶.

The second organ with in the National Quality Infrastructure is the Ethiopian National Metrology Institute⁴²⁷. The Institute is empowered to determine and maintain national measurement etalons⁴²⁸; to publish and declare to the public measurement units to be used in the country, symbols of measurement units and national measurement etalons; to support industries in establishing their own calibration laboratories through providing theoretical and practical training and consultancy on metrology; to establish national metrology laboratory and provide calibration services⁴²⁹; and to work in cooperation with the relevant stakeholders to ensure the existence of an integrated support for strengthening the national quality infrastructure⁴³⁰.

In recent months, through accidental inspection it made on butchery, fruit selling shops, retail shops of different nature, and oil shops, the authority found that

⁴²³ Id., Art.6(4)

⁴²⁴ Id.,Art.6(3)

⁴²⁵ Id., Art.6(7)

⁴²⁶ Id., Art.9(2)(3)

⁴²⁷ Art.3 of the National Metrology Institute Establishment Regulation No. 194/2010

⁴²⁸ Etalon means material measure, measuring instrument, reference material or measuring system intended to define, realize, conserve or reproduce a unit or one or more value of a quantity to serve as a reference. Id., Art.2(6)

⁴²⁹ Calibration means the set of operations that establish, under specified conditions, the relationship between values of quantities indicated by a measuring instrument or measuring system, or values represented by a material measure or a reference material and the corresponding values realized by measurement standards. Id. Art.2(3)

⁴³⁰ Id. Art.6

there have been substantial acts of falsification of measurements and balances to the detriment of consumers⁴³¹. And the institute went on to put sticker on those who have complied with balances and measurements. It warned those engaged in these undesired activities and seized the falsified balances and measurements⁴³².

The third organ under the National Quality Infrastructure is the Ethiopian National Accreditation Office which is empowered to provide accreditation service to conformity assessment bodies based on national and international requirements⁴³³. The accreditation office does not directly deal with setting standards for or assessing conformity of products and services to the standards set nor with metrological activities. Its power is rather to provide recognition service to foreign conformity assessment bodies that wish to operate in the country⁴³⁴. Once, it gives accreditation service, the office has still the power to conduct surveillance audit on those bodies that are provided with accreditation and recognition⁴³⁵. Furthermore, the office has the power to issue and implement directives relating to issuance, suspension and revocation of accreditations and recognitions and grievance handling procedures⁴³⁶.

As can be understood from these provisions of the law, the function of the office is supervising the competence of conformity assessment organs whether they meet predefined competency requirements to assess the conformity of products and services to national standards set by the Standard Agency. As results of conformity assessment on products depend on the competency of the organs entrusted with the function of the assessment, the function of the office in this regard is of paramount importance in the protection of consumers' interests. This

⁴³¹ Interview with Ato Mohammed Abdurrahman, Director, National Metrology Institute, April 29, 2011

⁴³² Ibid

⁴³³ The Ethiopian National Accreditation Office Establishment Regulation No.195/2010; Accreditation means evaluation and certification of conformity assessment bodies and management system consultants that they meet predefined competency requirements. See Arts.2(1) and 6(1)

⁴³⁴ Id.Art.6(3)

⁴³⁵ Id. Art.6(4)

⁴³⁶ Id. Art.6(6)

is because the absence of the accreditation would render the conformity assessment organs incompetent and the consequence of which may increase the marketing of goods and services that are not in conformity with the legal standards.

The fourth organ under the National Quality Infrastructure is the Ethiopian Conformity Assessment Enterprise which has the function of organizing robust certification, inspection and testing laboratory services⁴³⁷. By doing this, the Enterprise provides a certificate of conformity to production enterprises or service providers by assessing the conformity of their production processes or service provisions to the relevant national and international standards and legal requirements⁴³⁸. The Enterprise is also empowered to provide certificate of conformity with respect to imported products by assessing their conformity to the relevant national standards⁴³⁹.

It is clear that the Enterprise has a significant role in the protection of consumers' interests as the Enterprise deals with the assurance of the conformity of quality of goods and services to the established standards. Since its establishment, for the last nine months, the Enterprise has provided quality inspection services and provided quality certification for about 5,345 products⁴⁴⁰. It also made quality inspection on 2,394 samples of agricultural, industrial and other products; gave certificate to 58 enterprises, renewal for 108 enterprises and cancellation of certificate of 5 enterprises; and through inspection of the quality of imported products, the enterprise banned the entry of foreign packed food items , electric cables, batteries, paper and paper products amounting to 501,444 kilograms⁴⁴¹.

⁴³⁷ Ethiopian Conformity Assessment Enterprise Establishment Regulation No.196/2010. See Arts.2 and 5.

⁴³⁸ Id. Art.5(1)

⁴³⁹ Id. Art.5(3)

⁴⁴⁰ Ethiopian Conformity Assessment Enterprise, 9 Months Performance Report, March, 2011

⁴⁴¹ Ibid

4.2.6.2 The Ethiopian Food, Medicine and Health Care Administration and Control Authority

As discussed earlier, some of the problems of Ethiopian consumers are related to problems of adulteration of food stuffs and medicines and counterfeiting as well as faking of expiry dates of medical products⁴⁴². To address such problems, the government issued the Food, Medicine and Health Care Administration and Control Proclamation No.661/2009. The principal objectives of this law are, among others, protecting the public from health risks emerging out of unsafe and poor quality food, unsafe and inefficacious and poor quality modern and traditional medicines through licensing, monitoring food and medicine production, distribution, storage, packaging and radiation⁴⁴³.

As having a law with out implementation organ is meaningless, the Food, Medicine and Health Care Administration and Control Authority has been established as an autonomous government organ having its own legal personality⁴⁴⁴. The Authority is constituted of an Advisory Board, a Director General, two Deputy Director Generals and the necessary staff. The Advisory Board, which advises the authority in respect of policy and strategic matters, draws its membership from association of health professionals, higher educational institutions and consumers' protection association⁴⁴⁵.

The Authority has the power to prepare and submit to appropriate organs health and regulatory standards for safety and quality of food, safety, efficacy, quality and proper use of medicines, competence and practice of health professionals, hygiene and environmental health and upon approval ensure the implementation and observance of the same⁴⁴⁶. It is also empowered to issue, renew, suspend and revoke certificate of competence for specialized health institutions, food and

⁴⁴² Eyosyas, Supra note 294, p.40

⁴⁴³ Art.3 of the food, medicine and health care administration and control authority proclamation No.661/2009

⁴⁴⁴ Art.3 of the Ethiopian Food, Medicine and Health Care Administration and Control Authority Establishment Regulation No. 189/2010

⁴⁴⁵ Id.Art.8

medicines processing plants, quality control laboratories, bioequivalence centers, importers and exporters, storages and distributors and trans regional health service institutions⁴⁴⁷. The Authority has also the power to initiate policy and legislation to strengthen the quality of food and medicines, issue the import and export permits for food, medicine, as well as their distribution, sale, use, packaging and labeling, advertisement and promotion⁴⁴⁸. These functions of the Authority rightly address the concerns and interests of consumers.

4.2.7 Problems Associated with Enforcement Mechanisms and Institutions

One of the problems of enforcement mechanisms is the exclusion of private organs and the consumers' protection associations from the institutional framework of the law. Experiences show that the interests of consumers, particularly in developing countries, are better protected by the inclusion of consumers' associations in the enforcement mechanisms of consumer protection laws⁴⁴⁹. For that reason, countries have recognized the role of consumer organizations in the enforcement of these laws. However, such is not the case in Ethiopia. Consumers and the private sector would greatly benefit with the inclusion of their representatives in the institutional framework of the law. A successful advocacy programs also requires the collaboration of civil society, trade associations and consumer protection associations⁴⁵⁰. Particularly, as Ethiopia has for long been subject to centrally planned economic systems, the role of these private organs in promoting advocacy is essential⁴⁵¹.

The second problem is that the establishment of Regional Consumers' Protection Organs is left optional⁴⁵². In fact, one may, on the one hand, say that establishing these organs are the internal affairs of regional states⁴⁵³. It may also, on the other hand, be said that it is not a problem as the authority could establish its

⁴⁴⁶ Id. Art.4(1)

⁴⁴⁷ Art.4 (2) of the Ethiopian Food, Medicine and Health Care Administration and Control Proclamation No.661/2009

⁴⁴⁸ Id. Arts. 4(3), 4(7), 4(10), 4(12), and 4(13)

⁴⁴⁹ The UNCTAD Secretariat, Supra note 262, p.2

⁴⁵⁰ Kibre, Supra note 373, p.24

⁴⁵¹ Id., p.23

⁴⁵² See Art.39 of the Trade Practice and Consumer Protection Proclamation No. 685/2010

branch where necessary to protect the interests of regional consumers⁴⁵⁴. However, the requirement to establish consumer protection organs at regional level should not have been left optional. This is because, first, the majority of illiterate consumers are regional residents. These illiterate consumers are highly prone for exploitation⁴⁵⁵. For this, the establishment of these regional consumer protection organs would promote and enhance the protection of consumers. Secondly, there would be discrepancy in the degree of enforcement of the law at regional and federal level. While the law may be properly and effectively enforced at federal level, it may not be as such at regional levels. This is because regional states may not make the move to establish these consumers' protection organs⁴⁵⁶. Thirdly, consumers at regional levels need the same level of protection, if not more. And for that they should be given access to an appropriate organ that adjudicates on violations of their rights. Fourthly, it would not be easy for the Authority to establish its branches all over the country. Moreover, judges of regular courts may not have the expertise to entertain cases on the violation of the Trade Practice and Consumer Protection Law.

The third problem is that the law is silent about the right of appeal to regular courts on decisions of regional consumer protection organs. It is not clear why the law is silent in this respect. This right to appeal should have been clearly provided for judicial review is an important means of ensuring justice and fairness. This silence of the law on issue of appeal would affect the proper enforcement of the law. It would create a discrepancy in its enforcement at federal and regional levels. Moreover, the delay of the practical operation of the Trade Practice and Consumer Protection Authority is another problem. Given the

⁴⁵³ In fact, it is the internal affairs of Regional States to establish regional government bodies.

⁴⁵⁴ See Art. 32 of the Trade Practice and Consumer Protection Proclamation No.685/2010

⁴⁵⁵ Interview with Dr. Minale Arega, Board Member, Ethiopian Consumer Protection Association, on April 17, 2011

⁴⁵⁶ Interview with Ato Nasser Hussein, Market Study Expert, Oromiya Trade and Market Development Bureau, on May 1, 2011; Interview with Ato Taye Challa, Modern Trade Practice Expert, Addis Ababa, April 15, 2011. There seems no move to establish consumer protection organs at regional levels.

mounting problems of consumers, there should not have been delay in the practical operation of the Authority⁴⁵⁷.

⁴⁵⁷ Interview with Ato Biru Aboma, Trade Practice and Consumer Protection Expert, Ministry of Trade, on May 1, 2011; interview with Dr. Minale Arega, Board Member, the Ethiopian Consumer Protection Association, on April 17, 2011; Interview with Ato Yohaness W/gebriel, Director, Arbitral Institute, Addis Ababa Chamber of Commerce and Sectoral Association on April 29, 2011

CHAPTER FIVE

5. Effects of the Consumer Protection Law

5.1. Introduction

In the previous chapters, the writer tried to discuss the legal regime and institutional framework of Ethiopia's Trade Practice and Consumer Protection Law. In this, chapter, special emphasis will be given to the legal effects this law would have on regulatory bodies, on basic laws of contract and extra contractual liability. Moreover, its would be effect on business persons and on the over all protection of consumers will be elaborated. The challenges and prospects of the law in relation to these would also be predicted.

5.1.1. Effects on Regulatory Bodies

When one talks about the effect of the Trade Practice and Consumer Protection Law on regulatory bodies, it is clear that all regulatory bodies have the duty to cooperate in the enforcement of the law. In fact, this duty of cooperation in the implementation of the law is imposed on all persons whether physical or legal⁴⁵⁸. On regulatory bodies, however, this law imposes an obligation, for its enforcement, beyond mere duty of cooperation that is expected from every person. To this effect, article 43(1) (2) of the Trade Practice and Consumer Protection Proclamation No.685/2010 provides that:

"In the implementation of this proclamation, where it is found out that the provisions of this proclamation are related to duties incumbent upon other government organs by law, the Authority shall concur with other organ which administers the other law. Failing to reach an agreement, the matters shall be decided by the council of ministers. In reaching an agreement, the authority shall always take in to account the objectives of this proclamation."

According to this article, for the proper enforcement of the law, the Authority is empowered to select regulatory bodies with which it needs to concur. The government organs with which the authority has to concur shall be those whose activities are relevant to the enforcement of the provisions of the Trade Practice and Consumer Protection Law. In its decision to concur with other government

organs, the Authority is also required to take in to account the over all objectives of the law. When the request by the Authority is not accepted by other regulatory bodies, the council of ministers is empowered to rule upon the quest. As the council of ministers has the power to issue a regulation for the enforcement of the law, it may further clarify points and manners of concurrence.

From this provision of the law, it is clear to understand that any regulatory body, whose activities are related to the enforcement of the Trade Practice and Consumer Protection Law, may be required to concur, beyond mere cooperation, with the authority for the enforcement of the law. The provision is broad and open and depends on whether the above requirements are fulfilled.

5.1.2. Effects on Basic Laws of Contract and Extra Contractual Liability

As the traditional contract and extra contractual based protections of consumers proved inadequate, governments went on to enact consumer protection laws⁴⁵⁹. So, when a consumer protection law is enacted, one can expect that this law would have its own effect on these basic private laws. It is from this perspective that the effect of the Trade Practice and Consumer Protection Law on the basic laws of contract and extra contractual liability has to be considered.

As far as the effect of Consumer Protection Law on basic laws of contract and extra contractual liability is concerned, it has to be known that its effect is limited only to those transactions that involve consumers⁴⁶⁰. For transactions that do not involve consumers, the consumer protection law does not have any effect on basic laws of contract and extra contractual liability. The main point then is assessing the effect of the law on basic laws of contract and extra contractual liability in transaction involving consumers.

⁴⁵⁸ See Art. 51 of the Trade Practice and Consumer Protection Proclamation No.685/2010

⁴⁵⁹ See the limitations of these laws under Chapter Two dealing with limitations of private laws in consumer protection

⁴⁶⁰ See the definition of 'Consumer' under Art.2 (4) of the Trade Practice and Consumer Protection Proclamation No.685/2010

To this end, the Trade Practice and Consumer Protection Proclamation No.685/2010¹ under art.28 (2) has to provide:

“With out prejudice to warranties on goods or legal or contractual provisions more advantageous to the consumer, where the consumer finds defect in the good, he may demand the replacement of the good or a refund with in fifteen days from the date of purchase of the goods.”

As per the provision of this article, when there is defect, consumers are entitled to demand the replacement of the goods or a refund with in fifteen days from the date of purchase of goods. Alternatively, consumers may avail themselves of any other warranties, legal or contractual provisions if they are more advantageous to them. These alternatively provided remedies of consumers show that the provisions of the Civil Code dealing with warranty for defect of goods are still important in protecting the interests of consumers⁴⁶¹.

In relation to defect in services, the law under art.28 (3) has also to provide that:

“Where the service purchased by the consumer is defective, the business person shall, by the choice of the consumer, deliver the service again to the consumer free of charge or refund the consumer the fee he paid for the service within fifteen days from the date of the purchase of the service.”

According to this sub-article, when the purchased service is defective, business persons are required, at the choice of consumers, either to deliver the service again free of charge or refund consumers the fee they paid for the service with in fifteen days from the date of purchase of the service. This provision of the law is mandatory, and, unlike art.28 (2), it does not provide for alternative application of any other law. In addition to providing remedies for defects in services purchased, the law, under arts. 28(a)(b) provides for remedies in case where damages happen to the property of consumers during the delivery of the service. It is provided that, where there is written contract between the seller and consumer, the contract shall apply for damages happening to the property of

⁴⁶¹ So consumers can rely on Art.2281-2302 of the Civil Code for warranty on goods they purchased.

consumers. Where there is no written contract, the law mandatorily stipulates that the service provider shall replace the entire or part of the damaged property. From this, we can understand that the law has given priority to the contractual relationships that the parties have entered in to.

Moreover, it is important to note the provision of the Trade Practice and Consumer Protection Law under Art.29 which states:

“The contract shall be of no effect, where the provisions of the contract made between a consumer and a business person, waive legal obligations imposed on the business person by this proclamation or prevent the consumer from exercising his rights under the law.”

This prohibition of the law against waiver of legal obligations imposed by law goes in line with the general provisions of the law of contract which provides that “a contract shall be of no effect where the obligations of one of the parties or one of them are unlawful or immoral⁴⁶².”

Finally, it is important to note the effect of consumer protection law on basic laws of extra contractual liability. Art.4 (5) of the Law provides:

“The application of this proclamation shall not in any way prevent civil actions consumers may file on matters of extra contractual liabilities under the civil code.”

Accordingly, consumers, in addition to the protections they have under this law, may bring actions based on the provisions of the law of extra contractual liability under the Civil Code. This provision of the law is very important. Consumers, in most cases, may not have contractual relationship with the remote producers and distributors. Thus they could not rely on the law of contract for their claims. To bring their claims against those remote producers, it is important to duly recognize the role of extra contractual liability law⁴⁶³. This shows that the role of extra contractual liability law is still very important in consumer protection.

⁴⁶² See Arts. 1716(1) and 1711 of the Civil Code of the Empire of Ethiopia

⁴⁶³ This brings Arts. 2027-2161 of the Civil Code of the Empire of Ethiopia Proclamation No.165 of 1960. Specifically Art. 2085 of this Code provides for the liability of a manufacturer.

5.1.3 Effects on Business Persons

The effect of the law on business operations of traders depends, to a large extent, on whether the law is properly enforced or not. If the law is properly enforced, it would create a level playing field for competition through the prevention of anticompetitive and unfair trading acts. This makes the entry in to and exit out of the market simpler and there by facilitate the emergence of new market players. The proper enforcement of the law makes traders to act fairly not only towards each other and to the market but in the interests of consumers, as well. It is only when the law is properly enforced that traders could be made tuned towards consumers' interests.

All these depend, however, not only by the move of the government but also on the cooperativeness of the business community for proper enforcement of the law. It is only when the business community is cooperative enough that the enforcement would be effective. The role that Traders' Associations could play, in this regard, is very essential. Moreover, the proper enforcement of the law calls for the practical operation of the organs established by law.

On the other hand, when the law is not properly enforced, it would rather bring a detrimental effect on the business operations of traders. The price regulation that was imposed on certain products, for instance, has forced many importers to quit their import businesses⁴⁶⁴. This shows that when the law is not properly enforced, it would rather produce a negative effect on the business operations of market actors.

⁴⁶⁴ According to the Traders' Association, many importers quit as they could not afford to sell at a loss. The determination of price has not taken the market situation in to account and there was no consultation with the business community in putting the ceiling. Interview with Ato Yohaness W/gebriel, Director, The Arbitral Institute, Addis Ababa Chamber of Commerce and Sectoral Association, on April 29, 2011 Though the government does not admit the causes, it admits the quit of import by many importers. For instance, following the imposition of the price cap, the number of importers of products subject to price regulation dropped from 200 to 17. Interview with Ato Taye Challa, Modern Trade Practice Expert, Addis Ababa Trade and Industry Development Bureau, on April 15, 2011

5.1.4. Effects on the Overall Protection of Consumers

The effect of the law on the over all protection of consumers, too, depends on whether the law is properly and cautiously enforced. When there is proper enforcement of the law, according to the letters stipulated, it would enhance the welfare of consumers. The proper enforcement of the law would help avoid anticompetitive market acts, unfair competition and makes traders to act in the interests of consumers. When the law is properly enforced, consumers can effectively exercise their rights stipulated under the law.

For the effective enforcement of the law, there is a need to carry out advocacy program to increase the awareness of consumers about their rights, and the traders about their obligations. For these, the cooperation of Consumer Protection Association and Traders Association is of paramount importance. The practical operation of enforcement organs, too, is essential in enhancing the effective enforcement of the law to the benefit of consumers. As majority of Ethiopian consumers are ignorant about their rights, unless extensive consumer education is carried out, it would be challenging to enforce the law effectively⁴⁶⁵.

On the other hand, improper and ineffective enforcement of the law would not produce the desired result, if not harm, to consumers⁴⁶⁶. The Ministry of Trade, in recent months, began enforcing the law by announcing the lists of goods subject to price regulation through public notice. The attempt was made to curb the problem of inflation on basic consumer goods. There is, however, ambivalence on the effectiveness of this measure⁴⁶⁷. After the imposition of the price cap, there were shortage of goods and consumers were, as a result, forced to buy

⁴⁶⁵ Supra note 312, p.15

⁴⁶⁶ In this regard, the way the current price cap is imposed has been criticized as rushed and ineffective as it failed to produce the result it was intended. There has been shortage of those goods which were subject to price regulation. The government argues that the problem could have been even worse has it not been for the price cap. However, others hold that the problem has not been solved by the price cap as the consumers are rather unable to get the goods they want. According to them this is because the enforcement has not taken various issues in to account and has not been made in consultation with traders association. See Reporter (Amharic) weekly, No.16/1117, 2003, January 12, Wednesday, p.5

⁴⁶⁷ Ibid

goods in black market at exorbitant prices⁴⁶⁸. Many hold that the reason for this was that the price cap was imposed arbitrarily⁴⁶⁹. But the Ministry of Trade did not accept the allegation that the price cap was imposed arbitrarily⁴⁷⁰. From these, it is important to take in to account, once again, that for effective enforcement of the law and for the promotion of the consumers' interests as a result, the law shall be better enforced after due consideration of all factors that may influence its enforcement and after due consultation of all stakeholders⁴⁷¹. The effect of the law on consumer protection still depends on the existence of the required man power to enforce the law and the consistency and regularity of the enforcement. The recent report made by the Ministry of Trade on price regulation enforcement shows that the lack of man power in the Ministry, in Regional Trade Bureaus to enforce the law, and lack of consistency in enforcement affected the proper implementation of the price ceiling⁴⁷².

⁴⁶⁸ Interview with Dr. Minale Arega, Board Member, Ethiopian Consumer Protection Association, on April 17, 2011; Interview with Ato Yohaness W/gebriel, Director, the Arbitral Institute, Addis Ababa Chamber of Commerce and Sectoral Association, April 29, 2011.

⁴⁶⁹ Ibid

⁴⁷⁰ Interview with Ato Biru Aboma, Trade Practice and Consumer Protection Expert, Ministry of Trade, on May 1, 2011; despite this, recently, the Ministry of Trade has lifted the price cap except for edible oil, flour and sugar. The price of many commodities has resorted to what it was before the imposition of the price cap. Meat is one of the commodities, in this regard.

⁴⁷¹ From the previous discussion on the various view points in relation to the enforcement of the price cap, it is possible to say that the enforcement could have brought a better benefit if the measures were taken by considering the market situations and consulting all stakeholders.

⁴⁷² Price Regulation Enforcement Report, Ministry of Trade, March 5, 2011

6. Conclusion and Recommendations

6.1. Conclusion

While manufacturers and market actors are expected to act honestly towards consumers in the market place, they may also be tempted to provide unsafe and defective goods and services to consumers. These acts of producers and market actors have been problematic since long time before. And these undesirable acts affect the interest of consumers at large. Taking these into account, the earliest protection to consumers was extended through the law of contract. Under the law of contract, warranty is one means of protecting the interests of consumers. Warranties may pertain to quality, nature, quantity or particular usage of goods and services in transaction. When a warranty is due a buyer has the right to claim it. So consumers, as buyers, can avail themselves of these warranty based protections. In case of non-performance of contract, parties to a contract may also avail themselves of the remedies of cancellation, forced performance and damage. Consumers, as contracting parties, can have these remedies, as well, in their transactions with suppliers.

However, this contractual based liability rules for defective products were very much to the manufacturers' advantage. Consumers who had not contractual relationship with the manufacturer took the risk that a product was of adequate quality and that it meet the expected consumer safety requirements. They used to assume any injury that results from the usage of the product. The manufacturer could not be liable. Though this was the order of the time, absence of chains of transactions and the ample possibility for consumers to deal directly with the manufacturer made the privity rule less hard than it could have been otherwise.

Later on, the development of complexity in production and transaction brought the need to make manufacturer liable for defects in their manufactures. This imposition of legal liability on manufacturers is known as extra contractual liability. The law of extra contractual liability allows consumers to seek

compensation against manufacturers, in absence of contractual relationship, for damages they incurred as a result of using the latter's products. By making manufacturers liable, the law of extra contractual liability addresses the limitation of privity rules. There are rationales for imposing extra contractual liability against manufacturers. The transactions of goods have become complex and uncertain to the consumer world. And hence consumers need protection. Manufacturers should not also escape for they are not in privity with consumers. Proving the conduct of manufacturers may also be difficult. It is also important to note that, more than consumers, manufacturers are in a much better position to distribute losses as a cost of doing business, either by raising prices or by procuring insurances.

These private law protections of consumers have, however, been proved inadequate. Private laws can not help consumers protect themselves from information asymmetry in the market. Private laws rely upon the victim for their enforcement. Expensive court litigation, stringent court procedure, difficulty of proof of defendant's conduct, ignorance of the law may prohibit consumers to realize their protections.

These limitations in consumer protection sharpen the policy perception that an effective program of consumer protection in the modern market place must embrace public law, too. One of these public laws is criminal law. Criminal law has been employed to deal with consumer protection by punishing and deterring the production and supply of products that are harmful to consumers' health and safety. But criminal law has also its own limitations. Firstly, criminal law requires proof of beyond reasonable doubt to make market actors criminally liable. Unlike civil cases, whose standard of proof is of preponderance of evidence, proof of criminal cases is stringent. Secondly, criminal law has nothing to do with compensating consumers for injury they sustained.

Consumer protection has also become a matter of regulation between government and the market. Through setting standards of production and

distribution of goods and services, regulation plays a key role in consumer protection. Safety regulations, quality regulations, labeling and packaging regulations are the most important regulations that pertain to the protection of consumer rights. Regulation also helps consumer be adequately informed through its disclosure rules. Moreover, regulation works for the interest of consumers by dealing with market failures.

In addition to regulatory laws, the adoption of competition law has also been another means of consumer protection. Competition law enhances the competitive rivalry between and among firms through price, quantity, service quality, or a combination of these and other factors that consumers may value. The availability of greater choice of products and services at competitive prices would enhance the welfare of consumers. On other hand, when anticompetitive practices prevail in the market, producers would not tune to the interest of consumers. Consumers would not have access to wider choices and better quality of goods at competitive prices. As the objective of competition law is preventing these anticompetitive practices of market actors, it would there by enhance the protection of consumers.

But competition law has also its own limitations in consumer protection. Competition law focuses on the supply side of the market. It does not address the demand side. The problem on the demand side may bring flaws on the supply side, as well. Consumers need to have sufficient information and knowledge about market transactions. Consumers also need to be protected from misleading advertisements of market actors. For all these, there is a need to discipline producers to the effect that they act honestly and openly providing the necessary disclosures and warning as a material fact for their transaction with consumers. Competition law does not discipline these. Competition law may not also provide redress for damages consumers sustain. Moreover, it has to be noted that consumer protection may not always be the prime objective of competition law.

In Ethiopia, too, consumer protections have been based on various private laws such as the law of contract and extra contractual liability, and public laws including the criminal law and regulatory laws of different nature. The laws of contract and extra contractual liability under the Civil Code protect consumers from contract-based and tort-based harms in using goods and services. Several conducts of market actors that harm consumers have been criminalized. Various regulatory laws are in place in production and service sectors. However, when evaluated, these private and public laws, for the same reason as discussed earlier in general, are not adequate enough in protecting consumers' rights.

Due to these reasons, the experiences of many countries show that separate consumer protection legal regime has to be in place so that consumers can be effectively protected and hence the above limitations be addressed. Though the degree of protection accorded to consumers may vary from country to country, the objective behind this law remain the same. It aims at protecting consumers in their transactions for goods and services with market actors.

In Ethiopia, a Trade Practice and Consumer Protection Law, the first in its kind, was enacted in August 2010 under Proclamation No.685/2010.

The rationale behind and objectives of this newly enacted Trade Practice and Consumer Protection Law can be summarized, on the one hand, as protecting the rights, health and safety of consumers and, on the other hand, as preventing anticompetitive practices and unfair competition.

Turning to the legal regime, the law provides for the scope of application of the law in that it is applicable to any transaction in goods and services, whether commercial or not. However, it is only natural persons, who buy and use products and services for personal or family consumption and not for resale or manufacture, which are taken as consumers, and hence accorded with protections. Legal persons as whole and natural persons who destine their purchase for resale or manufacture are excluded from protection as consumers.

The law also provides for the rights of consumers and obligations of business persons. Consumers have been endowed with various rights such as the right to

information, the right to be respected and not be obliged to buy for the mere reason that they looked in to price and quality. They have also the right to claim damage for defects in goods and services. Moreover, consumers have the right to consumer education. In addition to providing for the rights of consumers, the law also provides for the obligations of business persons, both positive and negative obligations. It has prescribed civil, administrative and criminal liabilities against business persons for their violation of the law.

Coming to implementation institutions, the law establishes the Trade Practice and Consumer Protection Authority as an autonomous federal government organ responsible to adjudicate matters on the violation of the Trade Practice and Consumer Protection Law. In addition this adjudicative power, the Authority has extensive administrative powers. It has its own director general, judges for its tribunals, and as well as the necessary staff. The law has clearly provided that the Authority is free from any interference in cases it adjudicates. It also provides for separate annual budget of the Authority.

Though there are arguments against the structural set up of the authority that the appointment of judges by the Prime Minister, and the application of the civil service law would affect its independence, this could not be the case. Firstly, the law has clearly prohibited the interference by other government organs in cases the Authority adjudicates. Secondly, there is no parameter to quantify independence. Moreover, when seen in light of the general experiences of countries, the authority can be taken independent.

The Ministry of Trade and the Regional Trade Bureaus are those organs empowered to conduct investigations and institute actions for civil and administrative measures against violators of the law. The Ministry has also the mandate to study on basic goods and services that shall be subject to price regulation and publish their list by public notice upon approval of the study by the Council of Ministers.

The law has also to provide for the establishment of Regional Consumer Protection Organs that adjudicate matters in relation to consumers' protection.

These judicial organs of regional states have been granted jurisdiction on commercial activities licensed by their respective regional states or on commercial activities conducted in their respective regions.

The law ambitiously requires the federal and regional courts to organize trade practice and consumer protection divisions so as to expedite adjudications. Courts at two levels have the power to adjudicate and pass decisions on criminal cases arising out of the violation of the law. The Federal High Court is granted with appellate jurisdiction. Any party who is aggrieved by the decision of the authority is entitled to appeal to the court within sixty days from the date of that decision.

The Police and Prosecution have also their own role in consumer protection by investigating and prosecuting criminal acts committed in violation of the law and other laws that have relevance to consumer protection.

As far as the institutional framework for consumer protection is concerned, the role of regulatory bodies such as the Organs for National Quality Infrastructure and the Ethiopian Food, Medicine and Health Care Administration and Control Authority is essential. Though all regulators have their own role in consumer protection, the role that these organs play is of more importance for consumer protection. The activities of these regulators focus on regulating food, medicine, and on quality and safety standardization of goods. These are the prime concern for consumers.

The Organs for National Quality Infrastructure, embracing the Ethiopian Standards Agency, Ethiopian National Accreditation Office, Ethiopian Conformity Assessment Enterprise, and Ethiopian National Metrology Institute, protect consumers' interests by setting minimum standards of quality and quantity for goods, developing systems of measurement for quality and quantity, as well as assessing whether products are up to the standards.

The Ethiopian Food, Medicine and Health Care Administration and Control Authority has also its own role in consumer protection. It is empowered to prepare and submit to appropriate organ health and regulatory standards for

safety and quality of food, safety, efficacy, quality and proper use of medicines, competence and practice of health professionals, hygiene and environmental health and upon approval ensure the implementation and observance of the same. Not only it sets standards but also supervises the compliance there of and may suspend and revoke the certificate of competence of business persons who fail to live up to the standards.

Coming to the effect of the Trade Practice and Consumer Protection Law, this law has its own impact on regulatory bodies, on the basic laws of contract and extra contractual liability. It would also have its own effect, depending on whether it is enforced properly or not, on business persons and on the over all protection of consumers.

With respect to its effect on regulatory bodies, the law provides that regulatory bodies whose activities are related to the enforcement of the Trade Practice and Consumer Protection Law may be required to concur with the Authority in the enforcement of the law when the latter thinks that they would be of help. This is an obligation beyond mere cooperation that every person lends hand in the enforcement of law.

As far as the effect of consumer protection on basic laws of contract and extra contractual liability is concerned, it is, however, limited only to those transactions that involve consumers. For any other transactions that do not involve consumers, the law would not have any effect on basic laws of contract and extra contractual liability. It is provided by this law that, for defects in goods, consumers may either use the remedies provided under it or resort to any other warranties, legal or contractual provisions if they are more advantageous to them. These alternative options provided by the law show that the provisions of the Civil Code dealing with warranty for defect in goods are still important. On the other hand, when a service purchased is defective, the law mandatorily requires business persons, at the choice of consumer, either to deliver the service again to the consumer free of charge or refund the consumer the fee he paid. This

provision of the law is mandatory and it does not allow for alternative application of any other legal provisions. When damage happens to the property of consumers during the delivery of service, the service provider is mandatorily required to replace the entire or part of the damaged property. But, if there is a written contract, that should apply for any damage happening to the property of consumers during the delivery of the service.

With respect to its effect on the law of extra contractual liability, the law has recognized that consumers may bring actions based on the provisions of the law of extra contractual liability. As consumers may not, in most cases, have contractual relationship with manufacturers, the provisions of the law under the Civil Code are very important in this regard.

The effect of the law on business persons would depend, to a large extent, on whether the law is properly and effectively enforced. When the law is properly enforced, it would bring a positive impact on business persons by preventing anticompetitive practices and unfair competition. For proper enforcement of the law, however, the cooperation of stake holders, particularly that of traders' associations, is essential. On the other hand, when the law is not properly enforced, it would rather bring a detrimental effect on the business operations of traders. Similarly, the effect of the law on the over all protection of consumers depends on whether the law is properly and cautiously enforced. The proper enforcement of the law would help avoid anticompetitive market acts, unfair competition and make business persons act in the interest of consumers.

On the other hand, if the law is not properly and effectively enforced, it would not produce the desired result in consumer protection, if not rather bring harm.

6.2 Recommendations

Based on the findings of this paper, the writer would like to recommend the following.

1. As far as the scope of application of the law is concerned, it is not clear whether it addresses issues of consumer in cross-border transactions. The

experiences of many countries show that it is essential to protect the weaker consumer in cross-border transactions, as well. This protection of the weaker consumer has been based on rules of choice of law and choice of jurisdictions in private international law. In this regard, many countries have adopted their own rules. The need to protect Ethiopian consumers in cases involving cross-border transactions has been clearly shown by “The Draft to Provide for Federal Rules of Private International Law.” This draft clearly provides for choice of law and choice of jurisdiction in private international law cases involving consumers. To protect Ethiopian consumers in this regard, therefore, it is essential either to clearly provide rules of private international law that pertain to consumer protection under the consumer protection law or else adopt “The Draft to Provide for Federal Rules of Private International Law.”

2. The institutional framework of the law should have place for private organs. The role of these organs in the enforcement of consumer protection law is essential. If the law gives them a duly recognized role, they can help the government to properly enforce the law.

The role that should be given for private organs in the institutional framework of the law may not necessarily be that of implementation. They can be given an advisory role in the enforcement of the law just like the role the Ethiopian Consumer Protection Association has under the Ethiopian Food, Medicine and Health Care Administration and Control Authority and under the Ethiopian Standards Agency.

3. There should be extensive consumer education. This is because majority of Ethiopian consumers are prone to exploitation by market actors. The law is enacted recently and consumers are not aware of their rights stipulated under it. Not only for consumers, extensive awareness creation should also be made on business persons about their obligations, their liabilities, about competition, anticompetitive practices and unfair competition, and about the rights of consumers in general.

4. The law shall be properly and effectively enforced. In this regard, the enforcement of the law shall be made after due consideration of all factors that

may influence its implementation. It is also essential to consult the concerned private organs in the enforcement of the law as their participation would be of help. Consultation and cooperation with the concerned government organs is also essential.

5. The criminal penalty imposed against traders has to be reconsidered. It is not fair to impose a two million birr penalty and a twenty years term of imprisonment. Ethiopian traders are too petty to be subject to a fine of two million birr. And the term of imprisonment is very high compared to economic crimes stipulated under the Criminal Code. And it is also unlike the experiences of other countries.

6. The law has to clearly provide for the right to appeal and the organ to which an appeal would be made against the decisions of Regional Consumer Protection Organs. The existence of the right to appeal is very essential as it is the means by which justice would be maintained. This also avoids the possible discrepancy in the enforcement of the law at federal and regional levels.

7. The Trade Practice and Consumer Protection Authority has to be operational. It was established in august 2010 but it is not yet functional until this June of 2011. Given the mounting problems of consumers, the Authority should have been operational soon. Regional governments should also take steps to establish the appropriate consumer protection organs.

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