

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
FACULTY OF LAW

**A Critical Analysis of the Enforcement Framework
of Consumer Protection in Ethiopia:
Challenges and Prospects**

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SCHOOL OF GRADUATE STUDIES
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Approval Sheet by the Board of Examiners

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OF CONSUMER PROTECTION IN ETHIOPIA:
CHALLENGES AND PROSPECTS**

BY: TESSEMA ELIAS

**A THESIS SUBMITTED TO THE SCHOOL OF GRADUATE
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ABRRRIVATIONS AND ACRONYMS

AACCSA	Addis Ababa Chamber of Commerce and Sectorial Association
ADLI	Agricultural Development Led Industrialization (Ethiopia)
ADR	Alternative Dispute Resolution Mechanisms
CCAS	Consumer Codes Approval Scheme (UK)
COMESA	Common Market for Eastern and Southern Africa
CUTS	Consumer Unity Trust Society
EC	European Community
ECCSA	Ethiopian Chamber of Commerce and Sectorial Association
FDRE	Federal Democratic Republic of Ethiopia
FTC	Fair Trade Commission (UK)
HPR	House of Peoples Representative (Ethiopia)
MIT	Ministry of Trade and Industry (Ethiopia)
MoT	Ministry of Trade
OECD	Organization for Economic Co-operation and Development
OFT	Office of Fair Trading (UK)
PSD	Private Sector Development
RTBs	Regional Trade Bureaus (Ethiopia)
SNNPR	Southern Nation Nationalities and Peoples Regional State
TPCPP	Trade Practice and Consumer Protection Proclamation of Ethiopia Proc.No.685/2010
UNCTAD	United Nations Conference on Trade and Development
UNGCP	United Nations Guidelines for Consumer Protection
WB	World Bank
WTO	World Trade Organization

ABSTRACT

Effectiveness of consumer protection in a market economy is highly determined by the quality of the enforcement framework of competition or/and consumer protection law and institutions entrusted to enforce it.

Despite the efforts that Ethiopia has exerted to bring about effective consumer protection thereby making comprehensive amendments to the previous proclamation (Proc. no.329/2003) and by introducing the new proclamation (Proc no.685/2010) with new institutions, there are still some shortfalls in the enforcement design of the proclamation and institutions entrusted to enforce it which could be causes for the actual or potential problems to the consumers. Hence, the basic objective of the study is to assess and address the problems of the enforcement framework of the proclamation and practical limitations of the institutions.

In conducting the study, general principle pertaining to effective enforcement framework for consumer protection and experiences of some purposively selected courtiers based on their successes and relevance to Ethiopia have been used. In addition, semi-structured depth interview, legislative analysis, case analysis, content analysis and observation have been used as data gathering instruments. And purposively selected individuals from the former commission, Ministry of Trade and Regional Trade Bureaus, Addis Ababa Chamber of Commerce and Sectoral Association, Ethiopia Chamber of Commerce and Sectoral Association, consumers and businesspersons have participated in the study.

Accordingly, the study has found that failure to recognize the representation of stakeholders in the authority, accountability of the authority to the Ministry of Trade (MoT) coupled with powers given to the MoT and Prime Minister to select and appoint members of the authority which erode the independency of the authority, failure to give equivalent or parallel power to regional concerned bodies with the MoT to regulate prices of basic goods and services in the regions, failure to provide for qualification requirements for members of the authority and harsh penalties provided under the proclamation without providing for precise guidelines as to the application of more preservative, educative and less destructive strategy are some of the shortfalls of the enforcement framework of the proclamation which are capable of posing challenge to the institutions affecting effective enforcement of the proclamation. While lack of extensive pre-intervention study, failure to give priority to areas of greater consumer risks and failure to apply more of educative and preventive approaches and resorting to strong and destructive measures are among the major practical failures of the enforcing institutions which have actually resulted in present consumer crisis in Ethiopia. Finally the study has ended up with recommending possible solutions which may serve as inputs for stakeholders to re-design the enforcement framework for consumer protection in Ethiopia so as to bring about effective consumer protection regime to the country.

CHAPTER ONE

Introduction

1.1. Background of the Study

Enforcing consumers rights in modern time dated back to 1962. On 15 March 1962, Consumers' Bill of Rights was proclaimed by the then president of United States (John Kennedy) which incorporated the right to choice, the right to information, the right to safety and the right to be heard.¹ In 1985, the General Assembly of United Nations adopted set of guidelines for consumer protection which can be taken as a turning point for consumer protection regime by setting minimum standards for the consumer protection.² Accordingly, different countries in the world have adopted different consumer protection regulations with a view to safeguard their consumers' interest according to the UN guidelines.

In most of the developed countries, consumer protection has been implemented through promotion of competition because they have a high level of faith in their markets' ability to deliver benefits to consumers and as they have benefited from well informed and stable market. So, they give less emphasis on regulatory intervention in favor of the consumers. In

¹ Cristos, Velasco. The Legal Framework for Consumer Protection in Mexico, Paper Presented in Conference of North American Consumer Project on Electronic Commerce, May 2007.

² United Nations Department of Economic and Social Affairs, (UNDESA), UN Guidelines for Consumer Protection (as expanded in 1999), New York, 2003. There are six guidelines adopted by UN General Assembly. These are:

- I. Physical safety
- II. Protection and promotion of consumers' economic interest
- III. Standards for safety and quality of consumer goods and services
- IV. Measures enabling consumers to obtain redresses
- V. Distribution facilities for essential consumer goods and services
- VI. Consumer education and information program

developing market economy on the other hand, there is the need to follow an interventionist approach due to the existence of a high level of market failure.³

However, there is a strong nexus between competition policy and law on one hand and consumer protection policy and law on the other hand. Competition law concentrates on maintaining the process of competition between enterprises and tries to remedy behavioral and structural problems in order to re-establish effective competition in the market the consequences of which are higher economic efficiency, greater innovation, and consumer welfare.⁴ Consumer law on the other hand is concerned with the nature of consumer transactions trying to improve market conditions for effective exercise of consumer choice.⁵ Consumer law targets the failings in individual consumer transactions to grant individual consumers remedies⁶. In that way it fills gaps that market forces leave unfilled⁷. Thus the two disciplines focus on different market failures and offer different remedies but both are aimed at maintaining well functioning competitive market that promotes consumer welfare. However the effectiveness of both laws is highly determined by the quality of enforcement framework.⁸ Therefore, maintaining both with a well designed implementation mechanism needs a great attention.

³ Kulia, Lampo, Competition Policy and Consumer Policy. CUTS Discussion paper series No1, India, May, 2003. Lack of adequate information, low level of education, existence of infant or /and non competitive market and existence of gross consumer abuses are among the characteristic features of developing countries which affect consumer choice or rights.

⁴ Jaju Kanjo. Recent Development of Consumer Laws in Korea, APEC Information Paper No.6, Korea, may, 2005

⁵ Ibid at 5.

⁶ Max, Huffman, "Competition Law and Consumer Protection", SMU Law Review, Vol.6, No. 4, PP. 103-202, 2007

⁷ Ibid at 103

⁸ Yassmine, Afifi, "Independence of the Egyptian Competition Authority: Assessment and Recommendations", Global Antitrust Review, Voi.6 No. 34, 339-468, 2008. Confirming the importance of effective enforcement framework for consumer protection, Afifi said, "...Certainly, competition in the market will not be achieved by the mere adoption of competition law, i.e. the existence of a perfectly drafted competition law without its effective enforcement is useless..."

In Ethiopia, there has been no integrated consumer protection law until June 8, 2010. Consumer issues had been addressed under different legislations like: the Criminal Code, Civil Code, and other specific legislations and were enforced by different institutions. In 2003 Ethiopia introduced trade practice proclamation No. 329/2003 hereinafter called “the former proclamation” with a view to secure fair competitive process through prevention and elimination of anti-competitive and unfair trade practice, and to safeguard the interest of consumers.⁹ However, due to legal and structural limitations of competition authority¹⁰ on one hand, and non inclusion of consumer protection provisions in a right based interventionist manner¹¹ on the other hand, it has failed to serve the intended purpose.

On June 8, 2010, Ethiopian government introduced a new trade practice and consumer protection proclamation No. 685/2010 hereinafter called “TPCPP” which makes a comprehensive amendment of the previous proclamation making it more functional and inclusive of extensive consumer protection provisions.¹² Although improvements made under the new proclamation are viewed as success, there are still serious shortfalls that might be causes for the hindrances of proper implementation of the Proclamation.

This paper attempts to address those limitations pertaining to the institutional framework and the enforcement strategy for consumer protection from both legal and practical perspectives and assesses those successes as are made. And finally, it has come up with possible solutions.

⁹ Article 3 of The Trade Practice Proclamation, Proc. No.329, 2003, Federal Negarit Gazeta, 9th Year No.49

¹⁰ Harka Haroye. “Competition Policy and Laws: Major Concepts and an Overview of Ethiopian Trade Practice Law.”, Mizan Law Review, vol.2, No.1 (January, 2008), pp.33-5

¹¹ Gebremedhin, Braga.”Competition Regime: Capacity Building on Competition Policy in Selected Countries of Eastern and South Africa 7up3 project, (December, 2002)

¹² Trade Practice and Consumer Protection Proclamation, Proc. No. 685, 2010, Federal Negarit Gazeta, 16th Year No.49

1.2. Conceptual Framework

Consumer protection regulation denotes a body of law designed to protect a consumer's interests at the level of the individual transaction.¹³ Competition law is traditionally conceived as regulation of the market practice to ensure private conduct does not suppress free trade and competition.¹⁴ It has as its goal the preservation of competition. Competition serves to optimize consumers' interests. The two fields share the same ultimate goal (consumer welfare).¹⁵ Their approaches to achieving that goal differ.¹⁶ . However the effectiveness of both laws is highly determined by the quality of enforcement framework.

¹³ Nitya, Nanda, Competition Policy and Consumer Protection Policy, Viewpoint Paper for Competition, Investment and Economic Regulation (CUTS-CCIER) D-218, Bhaskar , Marg, Bani Park, Jaipur 302 016, India, 2005, Available at www.cuts-international.org visited on 13 Jan. 2011

¹⁴ Ibid at 1

¹⁵ See Cornelius, Dube, Competition Law and Consumer Protection, CUTS Centre for Competition, Investment and Economic Regulation Available at www.cuts-international.org last visited on 16 December 2010. Cornelius Dube discusses the relationships between competition and consumer welfare as follows:

“...Competition Promotes:

- Static Efficiency
 - Lower prices
 - Better quality
 - More choice
- Dynamic Efficiency
 - Efficient allocation of resources
 - Management, processing and technological improvements
 - Product innovation

These objectives all have consumers as the ultimate beneficiaries and result in satisfaction in trade (consumer welfare)...”

¹⁶ Ibid

Framework

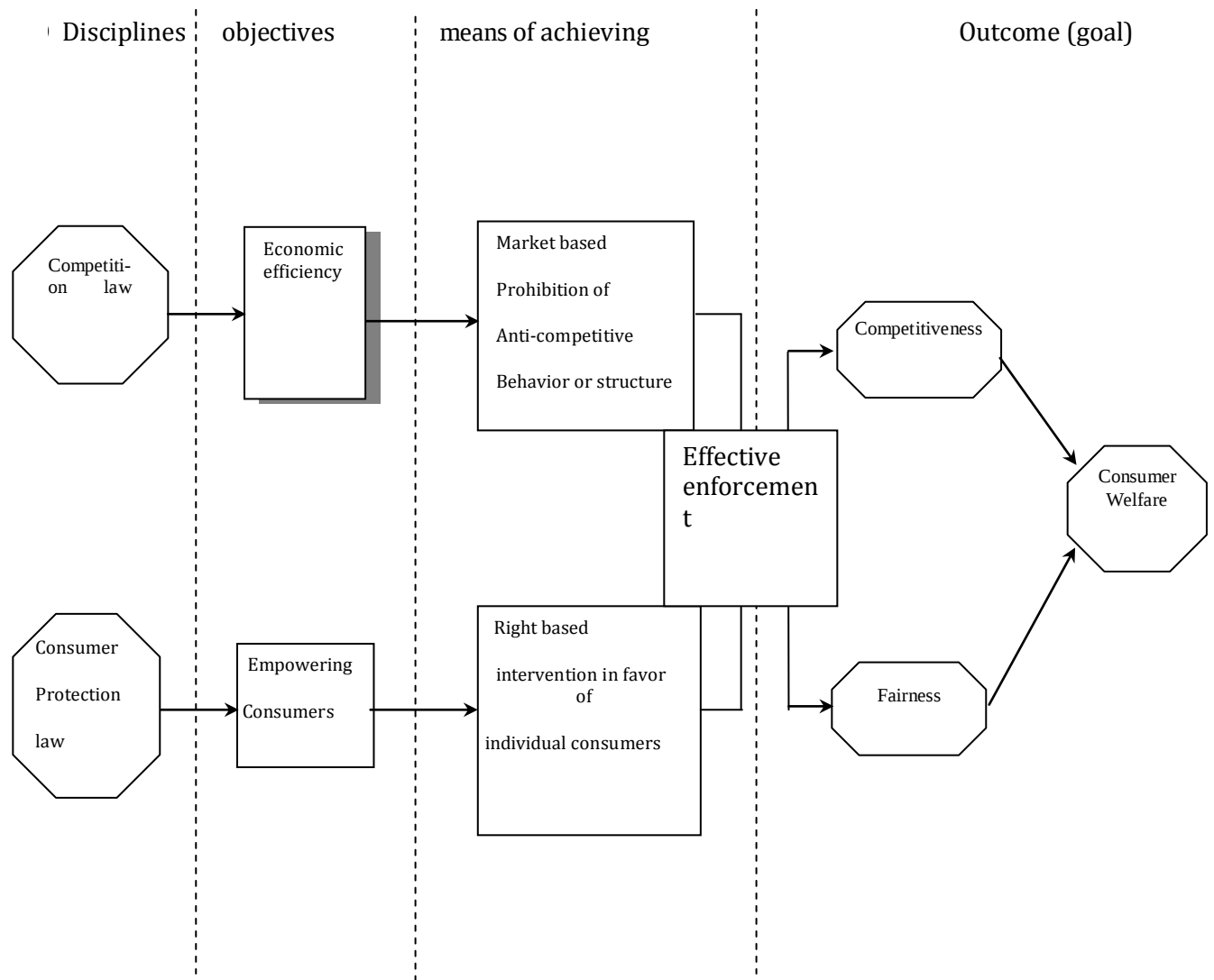


Figure 1 The Relationship Between Competition Law and Consumer Protection Law

1.3. Statements of the Problem

Despite the effort that Ethiopia has exerted to come up with comprehensive amendments to the former proclamation and come up with the new proclamation (TPCPP) with a view to promote competition and protect consumers, the country has been experiencing various consumer abuses. As we can see from our daily life experiences, the economy is still characterized by market anomalies like price fixation, cheating on weight and measurements, price escalation, adulteration of goods, hoarding, lack of quality products and services, problems of alternative access to products, restrictive bargaining position and other market problems which have utterly been affecting consumers. These problems are claimed to be attributable to several factors among which improper enforcement framework of the consumer protection law and poor structural set up of enforcing institutions might be among the core factors hindering effective consumer protection regime in Ethiopia. These problems could continue to be the main challenges to the Ethiopian consumers unless the enforcement framework is redesigned so as to attain an effective level. Hence the study attempts to address shortfalls of the enforcement framework of the trade practice and consumer protection proclamation along with some of the practical problems. In the mean time, the study assesses and appreciated successes as are made in the enforcement framework for consumer protection in Ethiopia and finally it has come up with possible solutions.

Based on the above statements of the problem, the researcher has attempted to address the following couple of research questions:

- Are the institutions entrusted with the duty to enforce consumer protection under the TPCPP designed in such a way that they could enforce it effectively?
- Are the enforcement strategy of the law and the institutions under the TPCPP capable of bringing effective enforcement regime to consumer protection in Ethiopia?

1.4 Objective of the Study.

The general objective of the study is to assess the effectiveness or otherwise of the enforcement framework of consumer protection in Ethiopia in relation to the TPCPP and to assess some successes which are made in the enforcement framework under the TPCPP as compared with the former proclamation and to address the shortfalls of the present

enforcement framework for consumer protection in Ethiopia from both legal and practical perspectives. And specific objectives of the study are; to assess and address the structural limitations of enforcing institutions of the TPCPP mainly focusing on the Trade Practice and Consumer Protection Authority hereinafter to be called “the authority”, assess and address the shortfalls of the enforcement strategies of the TPCPP including some of practical limitations of the enforcing institutions, especially, Ministry of Trade and Industry which presently is re-structured to be Ministry of Trade (MT) and regional trade bureaus, the authority and courts and finally, to come up with possible solutions with a view to address the shortfalls which are assessed by the study.

1.5 Significance of the Study

Generally, the study is considered to have its own academic, policy and other significance. Among other things, the study is aimed to have the following specific significance:

- It shows the basic shortfalls of the enforcement design of Ethiopian trade practice and consumer protection proclamationno.685/2010 from both legal and practical perspectives.
- It gives critical and specific information to the law making body to enable it to amend the proclamation.
- It gives direction to the enforcing institutions so as to follow the recommended effective enforcement strategies for consumer protection which are capable of bringing long lasting positive effect on the Ethiopian consumers.
- It will serve as a stepping stone for further or related study

1.6 The scope of the Study

Since everyone in one or another way is a consumer, the enforcement framework for consumer protection is not limited to particular consumer protection legislation nor to a particular enforcing institution; rather, it covers the whole socio-economic infrastructures of a country. However, the scope of this paper is limited to assessment of the enforcement framework of consumer protection in Ethiopia in relation to abusive and unfair market practices in relation to the Trade Practice and Consumer Protection Proclamation Proc.No.685/2010 (TPCPP) of Ethiopia. This proclamation consists of two parts –trade

practice part and consumer protection part. And the paper particularly focuses on the enforcement framework of the consumer protection part of the proclamation and its practical application from consumer protection perspectives.

1.7. Limitations of the Study

The researcher, in the due course of the study, has faced different challenges. Among others, shortage of time, unwillingness of the participants to participate in the study, lack of knowledge on the part of majority of the participants on the subject matter of the study and shortage of reading materials have been the major challenges faced by the researcher

1.7 Design and methods of the study

1.7.1 Design of the Study

The study has been designed by using **mixed method** (the appropriate mix of qualitative and quantitative methods). The researcher has chosen this method because it has appeared to be the most suitable way for addressing the research questions of the study. Even though the researcher has predominantly focused very much on qualitative method due to the nature of the study which needs acquiring deep information from the informants and deep legislative and some case analysis by using interpretive (qualitative method) so as to assess the effectiveness or otherwise of the enforcement strategy and the institutional framework for consumer protection in Ethiopia, some quantitative method has also been used specially to acquire and analyze some quantifiable practical related information so as to come up with comprehensive findings.

1.7.2 Subjects and Participants of the Study

The subjects of the study are institutions entrusted to enforce the Trade Practice and Consumer Protection Proclamation No.685/2010 (the Authority, Ministry of Trade and Regional Trade Bureaus, and Courts), and legal provisions of the proclamation dealing with enforcement. The participants of the study are selected representatives from the former authority, the Ministry of trade, Regional Bureaus (SNNPR and Oromo Region), Ethiopian Consumers Association, Addis Ababa Chamber of Commerce and Sectorial Association,

Ethiopian Chamber of Commerce and Sectorial association, and some consumers and businesspersons.

1.7.3 Sampling Technique and Data Gathering Instruments

In selecting the concerned participants, the researcher has employed **purposive sampling technique** based on the participants' experience, position, expertise, education, and other attributes so as to acquire generalizable information capable of addressing the research questions of the study.

In collecting data, the researcher has used **semi-structured depth interview, documentary analysis, case analysis, legislative analysis and literatures**. To some extent informal **observations** are also used to supplement the formal data.

1.7.4 Data analysis technique

The data gathered through both primary and secondary sources are analyzed by using an explorative design method where the design starts with qualitative data and then builds it with quantitative data. Forming of themes is done by using qualitative method and supplementing it with developed quantitative data is made where it is necessary to support it and interpretations are made qualitatively. General principles pertaining to effective enforcement framework for consumer protection and experiences of some purposively selected courtiers based on their successes and relevance to Ethiopia are used in the argumentations which are made in the paper.

1.7.5 Ethical consideration

In conducting the study, the following ethical considerations have been employed;

- ❖ **Consent**; all the participants of the study had been requested their free consent before their participation in the study.
- ❖ **Confidentiality**; the informants had been informed that any confidential information acquired from them would be kept in secret unless they consented to, and not to be used for purposes other than the objective of the study.

- ❖ **Anonymity of the participants;** participants had been told in advance that their identity would not be disclosed unless they consented to
- ❖ **Proper acknowledgement;** proper acknowledgement have been made to their contribution to the study.

CHAPTER TWO

2 The General Over view of Effective Enforcement Strategies and Institutional Design of Consumer Protection

2.1. Introduction

“Effective enforcement strategy” for the purpose of this study refers to quality of enforcement designs of a consumer protection law and its practical aspects (implementation), and “effective institutional design” refers to the structural set up institutions entrusted with enforcement of the consumer legislation from both legal and practical aspects.

There is no a single uniform guiding principle for the adoption and application of effective enforcement strategies and institutional design for consumer protection applicable to all countries across the world. This is due to the difference in socio-economic and political realities existing among nations in the world.¹⁷ And hence, countries in the world adjust the legal and institutional framework for their consumers’ protection to their respective country-specific socio-economic and political realities. However, there are some common principles for the effective enforcement framework for consumer protection which are advocated by many experts in the area of law and economics and which have been successfully applied by many countries in the world.

This chapter explores those common features and practices of effective enforcement design for consumer protection with a view to test effectiveness or otherwise of the present

¹⁷ See World Bank, Building Institutions for Markets, World Development Report: Washington D.C., 2002
According to WB, a survey of 50(fifty) countries’ competition laws and their enforcement, conducted for the purpose of world development report 2002, the competition authorities of different countries manifest different features regarding their independence, budget allocation, composition, power and functions and appointment of members of the commission etc. These structural and functional differences among competition authorities observed even among industrial countries.

enforcement framework for consumer protection in Ethiopia under succeeding chapter. Features and practices under this chapter are selected to be relevant to the exiting socio-economic and political set of the country.

2.2.Common Features and Practices of Effective Enforcement Strategies for Consumer Protection

Designing and complying with effective enforcement strategies are central to the success of consumer protection from unfair and abusive market practices. Even though there is no uniform enforcement strategies for consumer protection across the world due to difference in socio-economic and political realities among nations of the world¹⁸, there are some common enforcement strategies which are advocated by many legal scholars and stakeholders as effective designs for consumer protection enforcement, and adopted and applied by many countries in their consumer protection enforcement framework.¹⁹ These are:

- The existence of variety of statutory enforcement options to an enforcing authority and variety ranges of remedies
- Following more of preventive and educative approach than punitive and interventionist approach
- Setting priority to areas of great prone to consumer before intervention
- Well studied, cost effective and flexible approach to intervention
- Facilitation of industrial self-regulation
- Coordination and cooperation with other organs having similar objectives
- Statutory guidelines for alternative dispute resolution mechanisms (ADR)

¹⁸ Ibid

¹⁹ See for example, CHOISE, Good Practices in Consumer Protection, A Review of 12 Australian Regulators, Available at <http://www.choice.com.au>, Marcia, Pardo, Chilean Legal and Institutional Arrangements for Consumer protection, National Economic Prosecutor's Bureau Research Division, August, 2009, Telecommunication Management Group, Legal and Insitutional Frawork for Consumer Protection, ICT Regulation Toolkit, Module 6, February 2011, Available at <http://www.ictregulationtoolkit.org>, WB, supra note 17, UNCTAD Model Law on Competition, United Nations, Geneva, 2000, Mehta, P. S., How to Build an Effective Competition Regime in Developing and Transition Countries, paper published under the '7-Up Project', CUTS Centre, No. 0301, 2003

Variety of Statutory Enforcement Options and Remedies

In order to enforce consumer protection legislation effectively, a consumer protection authority should be given **variety of statutory enforcement options** ranging from formal (criminal prosecutions, civil proceeding and administrative actions) to less formal (education (advocacy), persuasion, training, etc).²⁰. There should also be **Variety of remedies** such as; pecuniary penalties, civil damages, enforceable undertakings, banning order, injunction, disgorgement orders, substantiation notices, infringement notices, etc²¹.

Some countries in the world provide detail legal provisions on enforcement options and remedies for the violations of competition and/or consumer protection legislation where as some others provide only for general legal frameworks so that the authority will have a big discretion as to the enforcement options²². South Africa, India and Australia are some of the countries having detailed legal provisions on consumer protection in general and the enforcement options in particular. Republic of South African Consumer Protection Act of 2008 contains extensively detailed provisions dealing with procedural and institutional framework for consumer protection.²³ The importance of having general statutory guidelines as to the enforcement options and remedies is justified by its flexibility and the fact that it gives wider discretion to an enforcing authority²⁴ while having detailed provisions as to the enforcement options and remedies is justified by its being capable of avoiding arbitrariness as to the decision of the authority and attaining uniformity of the

²⁰ CHOISE, ibid at 34

²¹ Ibid

²² Graham, Branton, Service Standards for Consumer Protection: The Legislative Framework, Department for Business and Regulatory Reform Available at http://www.BSI_better_slide_BERR.org. Visited on 10 Jan. 2011. Branton said, "...legal enforcement framework for consumer protection legislation should be flexible and general so that an enforcing agent could have Variety of options depending up on circumstances of the cases..."

²³ See Consumer Protection Act of Republic of South Africa, No. 68, 2008, Government Gazette, No.467, 29 April 2009. The Act contains 122 provisions on consumer protection and gives power to the established authority (locally called "National Consumer Commission") detail of enforcement procedures and remedies including civil, criminal and administrative.

²⁴ See supra note 13

decision.²⁵ However, effectiveness of each approach is highly dependent upon the existing reality of a country. In a country having enough and qualified human resources, adoption of general guidelines as to the enforcement options and remedies thereby leaving a great discretion to the enforcing authority may be justifiable for the authority would be capable of applying more responsive options while in a countries where there is lack of enough and qualified human resources, adoption of detail legal provisions as to the enforcement options and remedies could be justifiable for the enforcing authority of such country would possibly lack capacity and the detailed legislative provisions help the authority to apply them conveniently than it would be if the provisions were so general.

Another most important point with regard to empowering an enforcing authority of consumer protection or/and competition law is granting the right of inspection to the authority which will essentially enhance the powers of the authority in terms of supervising the competitive environment. The study of international practice shows that availability of the right of inspection is one of the most important preconditions which is necessary for any Competition or/and consumer protection authority to properly perform its functions.²⁶ However the effectiveness or otherwise of the authority in this respect is also highly dependent up on institutional development, quality and quantity of human resource and financial capacity of the authority.²⁷

Having Legislative framework which enable a Competition and/or Consumer Protection Authority to Adopt Less Punitive and More Lenient, Educative and Responsive Enforcement Sanction

A Competition and/or Consumer Protection Authority needs to have guidelines which enable it to adopt less punitive and more lenient, educative and responsive enforcement

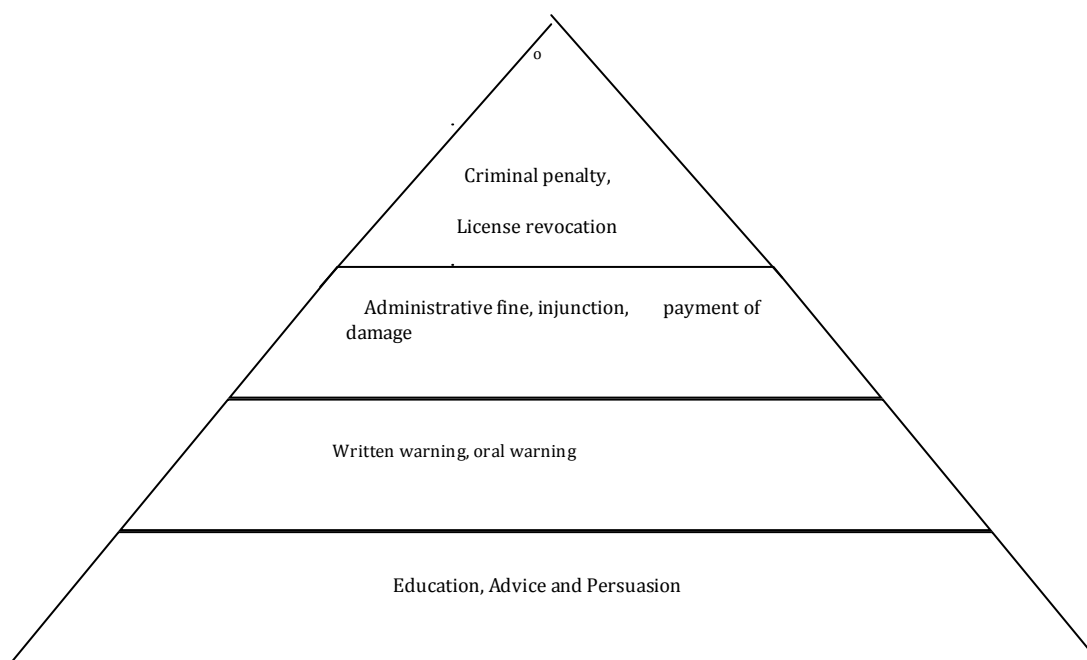
²⁵ CHOICE, *supra* note 10 at 20

²⁶ Davit, Harutyunyan, Assessment of Institutional Standing in the Fields Competition and State Aid, Armenian-European Policy and Legal Advice Centre, Guideline Paper Series No. 1039-A, 2007.

²⁷ *Ibid* at 10

sanction.²⁸ According to Ayres and Braithwaite, a regulator needs to have access to hierarchy of enforcement sanctions as can be seen from the pyramid below:

Figure 2 *Effective and Responsive Enforcement Pyramid*



Source: Figure prepared based on the concept of “Responsive Regulation” by Ayres and Braithwaite

The above enforcement pyramid shows that the effective enforcement strategy for consumer protection needs to give priority for education, advice and persuasion which are less costly, responsive and capable of bringing long lasting positive change to the consumers by facilitating voluntary compliance of businesses to consumer protection rules than criminal penalty and license revocation which are to be applied only in cases where there are gross consumer violations and repeated non-compliance with the regulation.

²⁸ Ayres, I. and Braithwaite, J. *Responsive Regulation: Transcending the Deregulation Debate*, New York, Oxford University Press, 1992.

Setting priority to the areas of intervention based on comprehensive study

Setting priority to the areas of intervention based on comprehensive study is another key strategy for effective implementation of consumer protection. This is true due to the fact that sometimes unnecessary interventions in the market without study or with poor study with a view to protect consumers may result in negative effects to the consumers. Therefore, the enforcing agency should apply its consumer protection enforcement resources to areas of high consumer risk.²⁹ It should select the type of enforcement option most likely to deter unlawful behavior, taking into account the likely extent of potential impact on consumers that is, ensuring the enforcement action is proportional to the risk and level of harm.

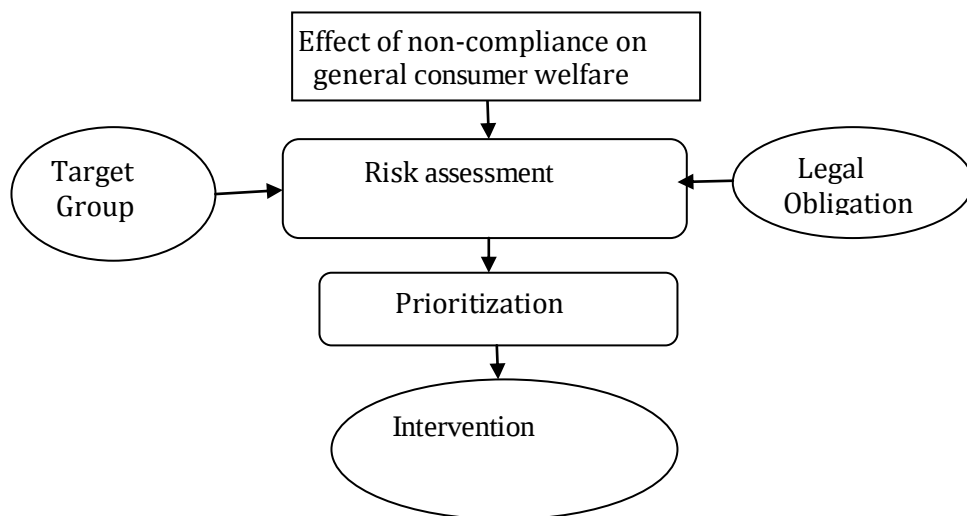
Before prioritization, there should be risk assessment of the effect of non-compliance with consumer protection or/and competition regulation on general consumer welfare. The risk assessment is a start to perform a farther analysis of the compliance behavior of the target group.³⁰

²⁹ CHOISE, supra note 5 at 33

³⁰ European Community Forum for Exchange of Information on Enforcement (ECFEIE), Strategies for enforcement of Regulation (EC) no. 1907/2006 concerning the Registration, Evaluation Authorisation and Restriction of Chemicals (REACH) Paper Prepared on 3rd meeting of E.C. 2-4 December 2008, Available at http://www.strategies_enforcement_reach_.pdf. Visited on 11 February 2011

The prioritized goal can be established based on the processes shown in the figure bellow:

Figure 3 *Intervention Strategies for Consumer Protection Enforcement*



Source: the diagram that is prepared based on E.C. “Strategies for Enforcement of Regulations”, available at http://www.strategies_enforcement_reach_.pdf. Visited on 11 February 2011

In assessing the risk, factors like; the degree of seriousness of consumer harms, cost of enforcement/intervention/ and legal duty are the most important which should be followed by prioritization thereby making a prudent choice as to the enforcement options. Priority should be given to an enforcement option which is more responsive to realize compliance by the target group and less restrictive to free trade.³¹

Facilitation or Encouragement of Industrial Self-Regulations

A well designed implementation of consumer law requires facilitation or encouragement of industrial self-regulations.³² That means, in the enforcement strategy, there is the need to include facilitation of industrial code of conducts which are prepared by the industries. According to Jennifer, voluntary code of conduct which is used by many industries is very

³¹ Ibid at 24

³² Jennifer McNeil. Compliance Strategies for Consumer Protection: Australian Competition and Consumer Commission, Presentation to UNCTED, CIROAP, Asian Conference on Consumer Protection and Competition Law, Kuala Lumpur, February, 2003

important that represents public statements of an industry's responsiveness to consumer needs and concerns.³³

South African Consumer Act provides for an option for the National Consumer Commission of the country to develop and promote the voluntary use of code of practices³⁴. Consumer Affairs in Victoria adopts and applies promotion of industrial self-regulation as a key enforcement strategy.³⁵

For instance, the United Kingdom's Office of Fair Trading (OFT) Consumer Codes Approval Scheme (CCAS) grants its approval to groups of businesses, via their trade association, that voluntarily undertake a code of conduct that promotes or protects consumer interests, and which meets with the criteria set by the OFT to govern the scheme³⁶. Effectively, trade associations draft self-regulatory rules aimed at addressing specific consumer concerns, such as the need for pre-contractual information disclosure, truthful advertising and labelling, and fair contractual terms and conditions. The code is submitted to the OFT, and in order to secure the OFT's "seal" of approval, certain core criteria must be met; for example, membership must include a majority of the firms in a sector; observation and compliance with the code must be mandated for all members; code sponsors should have access to adequate funding and resources to accomplish the objectives of the code, and they must also be able to demonstrate that organizations representing consumers, as well as enforcement bodies, were consulted throughout the preparation of the code.³⁷

In Japan, the Premiums and Representation Act also provides for self-regulation. Its Article 12 states that "[an] entrepreneur or a trade association may, upon obtaining authorization

³³ Ibid

³⁴ See article 106 of the South African Consumer Act, *supra* note 17.

³⁵ Consumer Affairs Victoria, Compliance and Enforcement Policy, Guideline Paper No. 01, 2010, available at www.consumer.vic.gov.au visited on 2 Feb. 2011.

³⁶ Office of Fair Trading "Consumer Codes Approval Scheme. Core Criteria and Guidance", OFT 390, March 2008.

³⁷ Ibid

from the Fair Trade Commission pursuant to the Rules of the Fair Trade Commission, with respect to the matters relevant to premiums or representations, conclude or establish an agreement or a rule, aiming at prevention of unjust inducement of customers and securing fair competition. The same shall apply in the event alterations thereof are attempted”.³⁸

However, effectiveness or otherwise of adopting and applying facilitation of industrial code of conduct depends upon the level of development of industries in a country both morally and economically. In most of the countries with developed competition culture, industrial self-regulation could be more fruitful enforcement strategy than public enforcement mechanisms while in countries where there is no or little competition culture, self-regulation might not be effective. However, the existence of legislative framework empowering an enforcing authority to facilitate the industrial self-regulation is justifiable as it is more responsive and less costly enforcement option.

Statutory Guidelines for Alternative Dispute Resolution Mechanisms (ADR)

An effectively designed consumer protection law usually does have statutory guidelines for alternative dispute resolution mechanisms (ADR) in its enforcement design. The importance of ADR arises from two dimensions. The first one is reluctance of consumers to enforce their rights for a variety of reasons like ignorance of their rights, poverty, and judiciary rigid adherence to strict legal rules that make it very difficult for consumer to prevail.³⁹

The other dimension is the importance of ADR over litigation. Unlike litigation, ADR save time and cost. In addition, voluntary compliance in the case of ADR ends up the dispute more effectively than formal litigation⁴⁰.

³⁸ See Japanese Act Against Unjustifiable Premiums and Misleading Representations, Law No.134 of 1962.

³⁹ Felicia Money. Consumer protection and ADR in Nigeria, (Nigeria: sweet and max, 2006).

⁴⁰ Ibid

Coordination and cooperation of consumer protection authority with other organs having similar objective

Coordination and cooperation of consumer protection and/or competition authority with other organs having similar objective is crucial for proper implementation of consumer protection by avoiding conflict of interests between it and the other regulators.⁴¹ As consumer protection legislations are enforced by both the competition authority or/and the consumer protection agency and other organs having similar objective, concurrent jurisdiction may result in two or more agencies wanting to address the same issue or none of the agencies addressing an issue because each mistakenly believe that the other is pursuing the matter.⁴² There is, therefore, a risk of either a duplication of effort or issues falling through the cracks.

Gustavo Adolf, discussing on jurisdictional overlap among regulators and suggesting the possible way-out said:

While it is clear that there exists the problem of jurisdictional overlap in the issue of the competency for regulated sectors, the greatest problem is that of inter-institutional collaboration among officials in public administration who should support one another in the benefit of a common end⁴³

Therefore, there should be a legal boundary demarcating the jurisdiction and practical steps to reduce the likelihood of such occurrences by establishing a line of communication between the two or more bodies where the work undertaken by each body is discussed so as to take advantage of any synergies and to reduce overlaps and inefficiencies. This in turn requires maintaining of a close relationship which involves frequent discussions and collaboration between or among concerned regulators.

⁴¹ David Miller, Competition and Consumer Protection: The Relationship in Practice in Jamaica, 5th IDRC PRE-INC Forum on Competition and Development, Available at http://www.competition_and_consumer_protection_the_relationship_in_practice_in_Jamaica_Mr_David_Miller.sflb.ashx.pdf

⁴² Ibid

⁴³ Gustavo, Adolf, Institutional Challenges to Competition Policy in Panama, Available at www.PANAMA_institutional_challenges.pdf last visited on 11 February 2011.

2.3 Common Features and Practices of Effective Institutional Design for Consumer Protection Law Enforcement

There is no a common model for assessment of effective institutional design for consumer protection since the design, powers, degree of autonomy, composition and jurisdictional authority depends on a specific country's legal, political and institutional framework.⁴⁴

But there are three different types of general institutional frameworks which are commonly used by different countries in designing their respective institutional framework for competition or/and consumer protection authority.⁴⁵ These are:

- I. Single Authority /Partially Integrated authority model/**
- II. Hybrid Authority/Integrated Authority model/**
- III. Two Separate Institutions/Separate Agency Model/**

I. Single Authority /Partially Integrated Model/

The partially integrated model combines the enforcement of competition law and some specific parts of consumer law related to information, such as rules against deception or misleading advertising.⁴⁶ Where a competition law also includes provisions relating to consumer protection issues (hybrid law) and if a single authority is entrusted to enforce the law, then the system of such design is called **Single Authority System or Partially Integrated Authority Model.**⁴⁷ In this case, the main law is the competition law and the main power and function of the authority are related to competition promotion, but there is inclusion of only few provisions dealing with consumer protection which are to be enforced by the authority. Zambia (Zambian Competition Commission), Zimbabwe (Anti-

⁴⁴ See World Bank, supra note 17

⁴⁵ The three types of classification is made by the researcher based on information from sources like: Kati Cseres, Institutional Design for the Enforcement of Competition Law and Consumer Protection Law, Amsterdam Centre for Law and Economics, University of Amsterdam, Available at www.institutional design for the enforcement of competition law and consumer law.mht visited on 23 February 2011, FTC_ International Activities: Competition and Consumer Protection Authorities Worldwide from <http://www.ftc.gov>, (Last modified lists on Wednesday 1, 2010), visited on February 20, 2011, Cornelius Dube supra note 15,

⁴⁶ Kati Cseres, ibid

⁴⁷ Cornelius Dube supra note 15 at 7

Corrupt and Anti-Monopoly Programme), Tanzania (Fair Competition Commission), Albania (Competition Law Authority), Algeria (Competition Council), Egypt (Egyptian Competition Authority), Italy (Autorita Garante della concorrenza e del Mercato) and Cameroon are some of the countries having hybrid law and single or partially integrated enforcing agent.

II. Hybrid Authority/Integrated Authority/

The integrated model represents an agency with a double mission: responsibilities for the enforcement of both competition law and consumer protection law. Hybrid authority occurs where there are two different laws on competition and consumer protection in a single or separate legislation, but the laws are enforced by one authority. This kind of authority usually contains two divisions within the single authority where one of them deals with competition issues and the other one deals with consumer protection. One authority may be also designed to be subordinate to the other depending up country specific design choice.⁴⁸ Australia (Australian Competition and Consumer Commission), Ethiopia (Trade Practice and Consumer Protection Authority), Bulgaria (Commission for Trade and Consumer Protection), Denmark (Danish Competition and Consumer Protection Authority), Barbados (Fair Trading Commission), Mongolia (Authority for Fair Competition and Consumer Protection), Philippines Bureau of Trade Regulation and Consumer Protection and Department of Trade and Industry), France (Directorate-General of Competition, Consumption and the Repression of Fraud), New Zealand (Commerce Commission), Panama (Authority for Consumer Protection and Competition Defense), Poland (Office of Competition and Consumer Protection) and Sri Lanka (Consumer Affairs Authority), are some of the counties following this approach.⁴⁹

⁴⁸ The trend in institutional design seems to be to house the consumer protection agency with the competition authority. Indeed, there appear to be far more countries housing their competition authorities with their consumer protection agencies – even though a separate department is created for each agency in most instances, for example Australia, Barbados, Canada, France, Jamaica, Japan, Malta, Papua New Guinea, Poland, the Republic of Korea, and the United States, to name a few.

⁴⁹ Supra note 45

III. Two Separate or Independent Authorities/Separate Agency Model/

This occurs where there are two separate authorities for competition and consumer protection which are institutionally and functionally independent to each other. Competition authority handles competition issues while consumer protection authority handles consumer interests including interests under trade practice. Argentina (National Commission for Defense of Competition for competition promotion and Undersecretary of Consumer Defense for consumer protection), South Africa (the Competition Commission and the Tribunal for competition Act, while the National Consumer Commission enforces the Consumer Protection Act), Canada (Competition Bureau Canada and Competition Tribunal for competition and Office of Consumer Affairs for consumer protection), Costa Rica (Commission for Promotion of Competition for competition and Directorate for Consumer Support for consumer protection), Finland (Finish Competition Authority for competition and Consumer Agency and Ombudsman for consumer protection) are some of the countries following this system.⁵⁰

Factors Determining the Choice of the Designs

There are several factors determining the choice of a particular design over the others. Among the factors, country size, resources, expertise consideration are basic factors⁵¹. For small economies, it is normally recommended that hybrid agencies are more appropriate.⁵² Hybrid laws and agencies also save resources, and are also recommended for poor countries. But the main disadvantage that can be experienced in operating a hybrid system is an inefficient balance of focus, skewed towards consumer protection matters.⁵³ Because of the nature of consumer related complaints and the immediate response to resolving such them, too much emphasis has been placed on those matters. Competition matters are often

⁵⁰ Supra note 45

⁵¹ See Cornelius Dube supra note 15, at 8, see also Office of Fair Trading (OFT), Joining Competition and Consumer, Policy, The OFT's Approach to Building an Integrated Agency, OFT 1151, UK, December 2009.

⁵² *ibid*

⁵³ Gustavo Adolf, supra note 43 at 3

times, not given level of attention and dedication that is necessary⁵⁴. In addition, absence of perfect or total complementarities between the competition and consumer protection policies may create difficulties in their implementation by one agency; conflicts are possible, e.g. price controls.⁵⁵

Moreover, it is said that enforcement might not be easier where one regulatory authority is in charge of two policies implying a multiplication of the implementation gaps for the two laws⁵⁶.

However, for effective enforcement, any type of the design should be supported by strong and efficient structural and organizational set up. To regulate effectively, the authority must create institutional frameworks that provide structural, political, and budgetary independence, as well as sufficient competence and the necessary organizational structure to carry out its functions.

UNCTAD Model Law on Competition advocates that the most efficient type of administrative authority is one which is a quasi-autonomous or independent body of the Government with strong judicial and administrative powers for conducting investigations and applying sanctions.⁵⁷ In addition, the CUTS Centre on Competition, Investment and Economic Regulation (hereinafter referred to as 'CUTS') has identified independence, human and financial recourses as the most important factors underpinning the development of successful national competition or/and consumer protection institutions.⁵⁸ Moreover, World Bank recommends that governments need to ensure the independence of the competition authority⁵⁹.

⁵⁴ Ibid

⁵⁵ Supra note 15

⁵⁶ Ibid at 12

⁵⁷ See Article 8, paragraph 121, UNCTAD Model Law on Competition, United Nations, Geneva, 2000)

⁵⁸ CUTS, Towards a Healthy Competition Culture, Jaipurs Printers P.Ltd, India, 2005

⁵⁹ World Bank, Building Institutions for Markets, World Bank Development Report, Oxford University Press published for the World Bank, 2002, at pages 141-142

In developed competition culture, a competition authority is expected to be financially and institutionally independent and accountable to parliament or public of the country even though some of transitional and emerging countries have been tending to make their competition authority accountable to government agencies.⁶⁰ East Asian countries like China, Korea, Singapore, Indonesia and Japan in a one or another way make their competition authority accountable to their respective executive bodies;⁶¹ the same applies to most of the African countries for example, Tanzania, Zambia, Uganda, Ethiopia⁶²

Though not adequate, there are few studies conducted by Ethiopian writers on some of structural limitations of competition and consumer protection in Ethiopia.⁶³ All Ethiopian writers in this area agree that independence, quality of human resources, financial capacity and sufficient empowerment of the competition (and consumer protection) authority as are very important for effective enforcement of the law which they consider the then Ethiopian competition commission ('Trade Practice Investigation Commission') was lacked. Among the most recent writers, Harka has proposed three things (independence, powers and resources) as crucial for a competition authority to effectively enforce a competition law.⁶⁴

⁶⁰ Maher M, Dabbah. Competition Law and policy of developing countries. Cambridge printing press, 2010

⁶¹ Pradeep S. Mehta. Competition Policy in developing countries: An Asia-Pasfic Perspective, bulletin on Asia-Pasfic perspectives. Bangkok, 2002)

⁶² Abebe A., Alemu J. and Jambo B." Competition Scenario in Ethiopia: Consumer Protection Perspective." CUTS-CENTER, (August, 2006)

⁶³ See for example, Gebremedhin Brega, supra note 11, Harka Haroye, supra note 10, ⁶³ Fikremarks Merso, Imiru Tamirat and others, Review of the Legal and Insitutional Framework for Market Competition in Ethiopia, Private Sector Development Hub of the Addis Ababa Chamber of Commerce and Sectorial Association, Publication NO.67, 2009 Hailegabriel G. Feyessa. "European influence on Ethiopian antitrust regime: A Comparative and Functional Analysis of Some Problems." Mizan Law Review. Vol.3, No. 2, PP. 271-287, Sept, 2009), Moges Kibre, Policy-induced Barriers to Competition in Ethiopia, CUTS International, Jaipur, India, 2008), and Alemayehu Fentaw. "Some Observations on Ethiopian Unfair Competition Law". Ethiopian Journal of Legal Education. Vol.2, No. 1, January, 2009, PP. 50

⁶⁴ See Harka Haroye, supra note 10, at 45. Harqa is an Ethiopian writer on competition area and former Chairman of the Ethiopian Trade Practices Investigation Commission.

Furthermore, Harka has summarized the structure of the most independent and the least independent competition or/and consumer protection authority as follows:

Competition authorities may take one of a number of different structures. The most independent competition authorities are not only administratively separated from the government but they are staffed by competition professionals and they do not rely on the government for their budgetary allocations. On the other hand, the least independent authorities are those which form part of government ministry and therefore are subject to civil service restrictions on recruitment and on central budget allocations in their administrative activities⁶⁵

Summary of Chapter Two

To sum up, Even though there is no uniform enforcement strategies and practices for consumer protection across the world due to the existence of differences in socio-economic and political realities among nations of the world, having variety of statutory enforcement options and remedies, following more of advocacy and preventive approaches than punitive and interventionist approaches, prioritizing the areas of intervention based on comprehensive study, flexibility and promotion of self-regulation, coordination and cooperation of enforcing institutions with other relevant organs having similar objectives are some of common enforcement strategies which are advocated by many legal scholars as effective strategies for consumer protection enforcement and, adopted and applied by many countries in their competition and consumer protection enforcement framework.

Though there are no fixed principles and uniform practices across the world as to the choice for effective institutional design for consumer protection enforcement, international practices show that depending up on country specific socio-economic and political realities, common designs are, partially integrated authority model, integrated authority model and separate authority model. Each model has its own advantages and disadvantages. However, for effective enforcement, any types of the designs should be supported by strong and efficient structural and organizational set up. All the reviewed international and national literatures show that, to regulate effectively, the competition and/or consumer protection authority must create institutional frameworks that provide

⁶⁵ Ibid at 46

structural, political, and budgetary independence, as well as sufficient competency and the necessary organizational structure to carry out its functions.

Though few related studies which have been conducted so far in Ethiopia attempted to address some of the problems pertaining to the enforcement framework of competition policy of the country in relation to the former proclamation (proc. No.329/2003) which can be claimed to have served as an input for the amendment of the proclamation and to come up with the new proclamation (the TPCPP), they fail adequately to address the problems related to the enforcement framework for consumer protection in Ethiopia because, in the first place, the studies have focused on competition than consumer protection. Secondly, the studies have been more of theoretical than practical. And in fact, there is no study conducted on the enforcement framework for consumer protection in Ethiopia in relation to the new the proclamation (proc. No. 685/2010). Therefore, this study is aimed at to have a critical analysis of the enforcement framework of consumer protection in Ethiopia in relation to the new proclamation and can be served as a stepping stone for further study.

CHAPTER THREE

2. The enforcement Framework of Consumer protection in Ethiopia

3.1. Institutional Framework

With the enactment of the Trade Practice and Consumer Protection Proclamation No.685/2010 (TPCPP), different organs have been established and entrusted with the powers and duties to enforce it. These are: The Trade Practice and Consumer Protection Authority (hereinafter called “authority”), Ministry of Trade (MoT)⁶⁶ and Regional Trade Bureaus (RTBs) and Courts at both federal and regional levels.

Even though the TPCPP has made lots of improvements on the institutional design of consumer protection as compared with the former proclamation, there are still some shortfalls which are capable of posing challenges to effective enforcement of the proclamation. This section of the paper deals with the structural and functional set up of the enforcing institutions with a view to show the prospects that are made specially as compared with the former proclamation and considering the exiting socio-economic and political set up of the country, and to explore the possible or actual challenges emanating from such design by mainly focusing on the authority.

3.1.1. The Trade Practice and Consumer Protection Authority

3.1.1.1. Structure and composition

The TPCPP has established the Trade Practice and Consumer Protection Authority hereinafter called “authority” as an autonomous federal organ accountable to the MoT (art.31). The authority is headed by a Director General to be appointed by the Prime Minister up on recommendation by the MoT and the authority is to be composed of necessary judges and staff (art.36). The Authority shall have its head office in Addis Ababa

⁶⁶ The former ‘Ministry of Trade and Industry’ is decentgrated into *Ministry of Trade* and *Ministry of Industry* and currently it is the Ministry of Trade which is given mandate in relation to the implementation of the TPCPP. The similar structural modification holds for states.

and may establish branch offices elsewhere as may be necessary (art.32). The proclamation also envisages the establishment of regional consumer protection judiciary organ (art.39).

Prospects

The Trade Practice and Consumer Proclamation (TPCPP) has made lots of improvements in relation to the structural set of the authority as compared with the former proclamation. The former proclamation has established the then ‘Investigation Commission’ by making it structurally, financially and functionally dependant on the MoT⁶⁷. The commission did not have its own legal personality as it was structured to be a department in the Ministry of Trade⁶⁸. There was decisional dependency of the former commission on the Ministry of Trade as penalties and administrative decision must be approved by the MoT before execution by the MoT.⁶⁹ In addition, the commission gets a secretarial service from the department of MoT. Moreover, the former proclamation does not provide for the authority to have branches in regional states.

Challenges

Despite some progresses that have been made under the TPCPP as to the structural set up of the authority as compared with the former proclamation, there are at least two major shortfalls which might pose threat to effective enforcement of consumer protection.

The ***first*** one is the issue of ***composition***. The TPCPP has established the authority headed by a Director General and necessary judges and staff without specifying the number of the staff members and without providing for representation of stakeholders especially, from

⁶⁷ See article 15:2 and 12 of Trade Practice and Proclamation, Proc. No.329, 2003, Federal Negarit Gazeta, 16th year No.49, and article 31 of the TPCPP. As we can infer from these provisions, the former proclamation has established the commission as a mere agent of the MTI whereas the new proclamation has established the “authority”, though structurally accountable to the MoT, operationally and financially independent from the MTI (MoT).

⁶⁸ *ibid*

⁶⁹ See articles 15:2 and 16 *ibid*

the private sector and consumers in the authority.⁷⁰ In this regard, it is plausible to say that the former proclamation, though not practically implemented accordingly, was better than the new proclamation.⁷¹ This can be taken as a defect at least for two main reasons. *Firstly*, competition and consumer protection in a market economy are not government matters alone; rather, great interests of business communities and consumers are involved. The role of the government in this case should be facilitation of the market with some prudent interventions when the market fails rather than taking the whole business in to the hands of the government⁷². The great challenges in this regard are inevitable especially, primarily, to the private sectors and in fact, ultimately, to the consumers in Ethiopia because there is the dominance of public sectors and party affiliated enterprises in the economy of the country, and the fact that the new proclamation starting from its “objectives”⁷³ to the

⁷⁰ There is no a single provision dealing with the representation of the stakeholders in the TPCPP.

⁷¹ See article 13:1 which provides for the representation of private organs, governments and consumers association. However, practically, all the members of the former commission were from high ranking government officials (interviews with the former officials of the commission)

⁷²All interviewees from Addis Abeba Chamber of Commerce and Sectorial Association, Ethiopia Chamber of Commerce and Sectorial Association, and Ethiopian Consumers Association believe in the representation of the private sectors and consumers. See also *Industrial Development Strategy of Ethiopia* prepared in 1994. One of the seven core principles of the working policy of Ethiopia, “Agricultural Development Led-industrialization” (ADLI), is making private sector as engine of the economy.

⁷³ Article 3 of the new proclamation states the objective of the proclamation as follows:

Article 3 OBJECTIVES

This Proclamation has the objectives of:

1/ protecting consumers rights and benefits;

2/ ensuring the suitability of the supply of goods and services to human health and safety and installing a system of follow up;

enforcement design focuses on consumer protection than competition promotion which in effect may affect the long term consumer benefit from well functioning competitive market.

One of the high ranking experts in the Addis Ababa Chamber of Commerce and Sectorial Association (AACCSA) has said:

The problem lies with the economic structure of the country... the question should be 'who owns the economy?'...there is no playing field for private sector in our country. Large and medium scale economy is controlled by either public sector or political party (EPDRF) affiliated enterprises...⁷⁴

One of the legal experts in Addis Ababa University Faculty of Law has also said that the most important cases at least for private sector representation in the authority in Ethiopia is the fact that there is no clear demarcation between government and political party on one hand, and the fact that political party (EPRDF) is a trader and dominating the private sector. He said that unless the private sector puts its influences in the decision making process of the authority,

3/ ensuring that manufacturers, importers, service dispensers and persons engaged in commercial activities in general carry on their activities in a responsible way;

4/ preventing and eliminating trade practices that damage the interests and goodwill of business persons;

5/ accelerating economic development

When we see the above provisions there is no even a single provision dealing with the objective of competition promotion. Sub articles 1, 2 and 3 are talking about consumer protection and sub article 4 is talking about unfair competition which focuses on business-to-business relationships and sub article 5 is talking about development goal which recognizes the development goal of the country.

⁷⁴ Interview with a high ranking expert in AACCSA who was not consented to the disclosure of his name and identity, on May 2, 2011.

government may use the authority as an instrument for facilitation of its political programme than market competition.⁷⁵

In addition, the legal advisor of the Ethiopian Chamber of Commerce and Sectorial Association (ECCSA) has said that private sector representation in the authority would encourage voluntary compliance by the business persons to consumers' protection regulations because it makes business community own the issues of consumer protection and to start to care about social interest⁷⁶.

Moreover, most of the respondents from the private sector and consumers' protection Association replied that their exclusion is capable of affecting their interest in the economy.⁷⁷

On the other hand, Biru Olbamo, the former Secretary of the Trade Practice Investigation Commission and present Temporary Expert of the Trade Practice and Consumer Protection Authority, has said that though there is no explicit provision as to the representation of private sectors and consumers in the authority, the government will take such representation in to consideration while practically structuring the authority as long as there is no prohibition in the proclamation of such representation. Another respondent from legal department of the MoT has also stated that the exclusion of the aforementioned members from the authority by itself may not be as such a problem rather what matters most, in his view, is the fact that verdicts are given in accordance with the law.

However, there is no guarantee as to the practicability or otherwise of the representation of the private sectors and consumers in the authority because both recommending and appointing power of the members of the authority resides in the hands of the political wings of the government as we will see below, and the fact that all members of the former commission were from the government even while the legal provision of the former

⁷⁵ Interview with a legal expert in Addis Ababa University Law School on May 6, 2011

⁷⁶ Interview with a legal advisor of ECCSA on May 10, 2011

⁷⁷ Interviews with consumers and business persons in Addis Ababa, Oromia Regional State and SNNPR.

proclamation provided for representation of private sector and consumers' association.⁷⁸ So, having no legal provision as to such representation may worsen the issue by giving total discretion to the appointing body.

In addition, since the ultimate goal of competition and consumer protection as, described under '*conceptual framework*' in chapter one of the paper, is ensuring consumer welfare and economic development and this goal can be achieved more when stakeholders are allowed to have a say in the formulation and enforcement of competition and consumer protection law, there should be a legal framework for mandatory representation of the stake holders, specially, private sector and consumers association in the authority.

Moreover, cross-country experiences show that though there are some countries which do not provide for the detail of the representation of the stakeholders in their competition or/and consumer protection law, there are some countries which are more relevant to Ethiopia especially from developing countries which provide the details of such representation in their legal framework.

Malawi⁷⁹, Egypt⁸⁰, Zambia and South Africa are some of the examples of the African countries which have detail legal framework dealing with the representation of various stakeholders in their competition or/and consumer protection authority. The important case for developing countries for pre-determination as to the memberships of the stakeholders in their competition or/consumer protection authority could be the fact of political domination of

⁷⁸ See supra, note, 70

⁷⁹See CUTS, 2007, From the Bottom Up Available at www.cuts.international.org Visited on April 4, 2011. Competition law of Malawi provides for the representation of Malawi Confederation of Chamber of Commerce and Industry, The Law Society of Malawi, Economic Society of Malawi, Trade Union of Malawi, Women's' Association of Malawi and Civil Society of Malawi in the Malawi's Competition Authority.

⁸⁰ See article 13 of the Egyptian Consumer Protection Law, Enacted by Law NO. 67, 2006. This provision provides for the representation from General Association of Chamber of Commerce, Association of Egyptian Industry, The Special Union of Associations for Consumer Protection and Central Consumers and Cooperative Association in Egyptian Consumer Authority.

the economy of the countries and fear of imprudent or unnecessary interventions of government in the economy. Denmark, Switzerland and Swaziland are also countries whose competition laws do have legal provisions dealing with mandatory representation of the stakeholders in their competition authority.⁸¹

Secondly, failure to specify the minimum number of staff members and the working condition (i.e., whether full time or par time base) of the members which was the practical problem during the previous commission.⁸²

Most of the reviewed countries do have a legal framework as to the minimum number of the members of their respective competition or /and consumer protection authority. In Singapore, the competition authority is composed of one chairman and commission members between two and sixteen appointed by the Ministry of Trade and Industry (see article 21 of Singapore competition Act). In Japan, competition is composed of one chairman and four commissioners which are appointed by Japanese Prime Ministry with the consent of both Houses of Diet (see article 29 of Japanese Fair Trade Act). In china, the fair Trade commission consists of nine fulltime commissioners (See article 25 of Chinese Fair Trade Act). In Indonesia, the competition authority is composed of a chairman and seven member appointed and terminated by president with the consent of House of peoples representatives (HPR) (See article 31 of prohibition Against Monopolistic practice and Unfair business competition). Korean competition authority (Korean Fair Trade Commission) is composed of nine standing commissioners including a chairman, a vise-chairman and four commissioners as non-standing members.

⁸¹ See Fikremarkos Merso, Imiru Tamirat and Others, *supra* note 61 at 94

⁸² See articles 36 in cumulating with article 38 of the TPCPP. Except for the adjudicative tribunal which the proclamation requires to have one presiding judge and two other judges there is no legal provision providing for the number of the members of the authority nor is there a provision for working conditions of the members.

In addition, COMESA Competition Regulation provides for composition of the Competition Commission of it to contain a minimum of nine (9) and maximum of thirteen (13) commissioners appointed by the Council on the recommendation of the Secretary-General.⁸³

The former Ethiopian proclamation did not specify the minimum number of members of the then commission and working condition. Accordingly, there were five commissioners as can be seen from the table below:

Table 1 *The Number of Members and Working Conditions of the Former Investigation Commission of Ethiopia*

Number of Commissioners	Permanent places of the Commissioners at the time of the formation or functioning of the Commission	Working Condition of the commissioners in the commission
One	The Director of Federal Cooperative Commission (The Commissioner)	part-timer
one	The Ministry of Justice (The Minister)	part-timer
One	Prime Minister (PM) Office (Economic Advisor of the PM)	part-timer
One	The Quality and Standard Authority of Ethiopia (The Director General).	part-timer
one	National Bank of Ethiopia (The Governor)	part-timer

Sources: table prepared based on the interviews of the former commissioners of the commission

As we can see from the above table, there were only five members in the commission and all of them were part-timers having a permanent duty in other places which said to have created big challenges to the commission. Birru Oblamo has said that the fact of the former commission was dominated by offline works (adjudication of complains submitted to it than engaging in field works) was due to lack of enough manpower and all the commissioners were part-timers having permanent duties elsewhere. Harka Haroye (the

⁸³ See article 13 of COMESA Competition Regulations, December, 2004.

chairman of the former commission) has also said, “In spite of the Commission’s power of investigation, only hearings have been conducted so far.”⁸⁴ In fact, most of the cases decided by the commission were unfair competition cases submitted by aggrieved traders than competition cases.⁸⁵

The challenges faced by the former commission in this regard can also be seen from the Four Years Performance Report prepared by the Commission (for period of 2004-2008) on 24/09/2008 bellow:

Table 2 Four Years Performance Report of the Former Commission (2004-2008)

No. of cases decided	25
No. of cases under preliminary decisions	11
No. of cases withdrawn	12
No. of cases to be decided in the near future	4
No. of cases to be heard	17
No. of cases in which it is impossible to find the parties.	2
	Total 71

Source: Table prepared based of the data from the Four Years Performance Report of the Ethiopian Trade Practice Investigation Commission that was prepared on 24 September 2008 (2004-2008) which is annexed at the end of the paper

As we can see from table 2, the commission has decided only 25 cases out of the 71 cases presented before it within four years. This shows that the commission on an average can dispose only 6.25 cases per a year which is, on its face, much lower than even an ordinary court which is bound to follow rigorous legal procedures. The report attributes this underperformance, among other things, to the problem of lack of enough human resources and the fact that members of the commission work on part-time bases.

⁸⁴ see Harka Haroye, *supra* note 10 at 49

⁸⁵ *Ibid* , see also Fikremarkos Merso, Imiru Tamirat and Others, *supra* note 61, at 85

So, these challenges could remain to be the main challenges unless the law comes up with a mandatory provision providing for the minimum number and working conditions of members of the authority which the new proclamation has lacked.

The ***second*** major shortfall as to the structural set up of the authority is the issue of ***independence***.

Even though the TPCPP of Ethiopia has legally established the authority as independent having its own legal personality and budget, there are at least three issues that are capable of affecting the independency of the authority. These are:

- ❖ Accountability to the MoT
- ❖ The fact that members of the authority are selected and appointed by political wings of the government
- ❖ Application of civil service laws to govern judges of the authority

In a developed competition culture, a competition authority, which sometimes also could be consumer protection authority, is expected to be financially, institutionally and operationally independent and accountable to parliament or public of a country though there are also countries, especially from developing, transitional and emerging countries which tend to make their competition authority accountable to executive agencies.⁸⁶

The Chinese competition authority (locally called “Fair Trade commission) is accountable to executive body even though the commission has full independent power in decision making (see circle 26 and 28 of the Chinese fair Trade Act). Japan competition Authority (locally called “Japanese Fair Trade Commission”) is institutionally (administratively) attached to office of the prime ministry but performs its authority independently (see art 27 and 28 of Japan Anti-Monopoly Act) and the similar holds for Singapore, Korea and Indonesia. While UK, Canada, Australia and South Africa are some of countries which have a legally independent competition or/and Consumer protection authority from ministerial hierarchy⁸⁷

⁸⁶ see Meher, M., supra note 58 at 19

⁸⁷ Ibid

Even though, in fact arguably⁸⁸, the MTI (MoT) is claimed to be a more relevant organ that has vested interest in trade related issues and more qualified sector to evaluate the performance of the authority through performance reports justify the structural accountability of the authority to the MoT,⁸⁹ such accountability is capable of influencing the decision of the authority specially in cases where the MoT might become a plaintiff because the proclamation gives power to the MoT to conduct investigation and to institute action against the violation of the proclamation (see Art. 42 and 41:3 respectively)⁹⁰, and in fact, the ministry had been acted as plaintiff in some cases entertained by the former commission⁹¹.

In addition, even though the law is silent on who selects and recommends the judges of the adjudicatory tribunal to be established under the authority being appointed by the Prime Minister, it is the MoT that recommends the Director General to be appointed by the Prime Minister⁹² which directly or indirectly affects the independence of the authority, particularly, in relation to personal independence of the members because the independence of the competition or/and authority will not be complete by merely giving institutional independence to such an authority. Indeed, full institutional independence will be ineffective if the head of the authority, members of top management and the decision-making body do not make use of such institutional independence or when making such use they are influenced by political

⁸⁸ While conducting this paper, lack of knowledge of respondents from the MoT about the concept of competition and consumer protection was one of the big challenges faced by the researcher

⁸⁹ Interview with the representative of Legal Department of the MoT on May 6, 2011. The representative argued that Ministry of Trade to be the only relevant organ in Ethiopia which has mandate in trade related issues and to evaluate the performance of the competition authority.

⁹⁰ Trade Practice and Consumer Protection proclamation, Proc. No. 685, 2010, Federal Negarit Gazeta, 16th Year No. 49

⁹¹ One of the members of the former commission said, “except for cases of unfair trade practices, all other cases have been brought to the commission by the Ministry of Trade and Industry...” In fact the researcher has seen three cases where the MTI has acted as a plaintiff (I.e. MTI vs. Ato Abdulsemed Takele, File No. TPIC/1.2.64, 2008 MTI vs. Kalid Abduraman and MTI vs. Siyoum Kebede File No. T.P.I.C/1.2.65, 2008)

⁹² See articles 37 in copulation with article 38 of the TPCPP

considerations or individual interests.⁹³ Thus, even though the competition authority may on the surface seem to enjoy full institutional independence, such independence will be jeopardized if it is not associated with ‘Personal Independence’.⁹⁴ ‘Personal Independence’ refers to the freedom of the members of the decision making body of the competition authority to decide cases merely on the merit (i.e. based on the law and the facts of the case) and not being influenced by political considerations or their individual interests which are inevitable in the context of Ethiopian socio-political set up.

Moreover, failure to provide for the type of power relationship between the adjudicatory tribunals of the authority and the Director General coupled with making judges of the tribunals be governed by the civil service laws where the servants are duty bound to follow government policy and by its nature there exists superior-subordinate relationship which may arguably⁹⁵ affect the decisional independency of the tribunal.⁹⁶

3.1.1.2. Powers and Duties of the Authority

Prospects

The new Trade Practice and Consumer Protection Proclamation (TPCPP) gives both adjudicatory and administrative powers to the authority and gives investigative power which were under the previous proclamation housed in the then investigation commission to

⁹³ Yassmin Afifi, *Independence of the Egyptian Competition Authority: Assessment and Recommendations*, Available at www.Pub6912%GARJou_%20ECA%20Yaif.pdf visited on February 2, 2011

⁹⁴ Though Fikremarkos Merso, Imiru Tamirat and Others, *supra* note 61, pp. 89-96 have identified institutional autonomy in terms of structural autonomy, operational autonomy and budgetary autonomy, personal autonomy of the members of the authority is very crucial while we are talking about independency of the authority because it has an implication on the institutional independency.

⁹⁵ One may argue alleging that the fact of making judges of the authority be subjected to federal civil servants law is justifiable as long the judges are not judiciary rather they are administrative within the tribunal,

⁹⁶ See article 61: 5 of Federal Civil Servants Proclamation of Ethiopia Proc. No. 515, 2007, *Federal Negarit Gazeta*, 13th Year No.15

Ministry of Trade (MoT)⁹⁷. In the case of the former commission, there was Fusion of adjudicatory and investigatory power. This can be seen from article 15(1) (a) and article 15(l) (g) the former proclamation where the first sub-article talks about commissions' power to investigate complaints submitted to it and the second one talks about the commission's power to adjudicate over the matter submitted to it. So, there was fusion of adjudicatory and investigative power (Function) into one organ which is not only undesirable because it gives the same organ power to judge on a matter that it has investigated⁹⁸ which is unjust but also it creates the problem on overall institutional integrity of the commission as long as the ultimate power of approval or disapproval of the administrative or/and adjudicatory decision of the commission resides in the MTI. Fikremarkos, Imiru and Others have discussed the problems that might emanate from such fusion as follows:

Leaving alone the details, we want to remark that the two tasks are without doubt distinctively different types of tasks. They even require different sets of procedures, and also give us the opportunity for the gradual development of specialized expertise in the two fields. Accordingly, the longer the states of such consolidation of function, the more chances are lost in boosting specialization of functions, and through it, an enhanced capacity to with competition cases...⁹⁹

As it can be seen from the above assertion, housing both powers in a one organ might pose a problem in implementation under the exiting context of Ethiopian where we cannot find enough experts in both fields. And in fact, in practice, the former commission, except for the adjudication, did not engaged in any investigation activity.¹⁰⁰ The new proclamation has addressed these problems (i.e. the problems that could have been emanated from the fusion of both investigative and adjudicative powers in the single authority) thereby dividing the labor between two organs (i.e. investigative power to MoT and adjudicative power to the authority).

⁹⁷ See articles 34 and 35 of the TPCPP

⁹⁸ Fikremarkos Merso, Imiru Tamirat , and others, *supra* note 61, at 82

⁹⁹ *Ibid* at 83

¹⁰⁰ See *Supra* note 82

In addition, the new proclamation has made some progress in terms of sufficiently empowering the authority so that the authority could have variety of the enforcement options as are discussed in the preceding chapter. The proclamation extensively lists the administrative powers and duties of the authority under article 34 and judiciary powers and duties under article 35 as follows:

Article 34 Powers and Duties of the Authority

The Authority shall have the following powers and duties:

1. Takes appropriate measures to increase market transparency;
2. Takes appropriate measures to develop public awareness on the provisions of this proclamation and implementation;
3. Receives and decides on merger notifications;
4. Makes study and research in connection with commercial competition and consumer interests and rights;
5. Regularly announces to consumers goods banned by government or internationally from being consumed or sold;
6. Organizes various education and training fora and provides education and training in order to enhance the awareness of consumers;
7. Ban advertisements of goods and services which are inconsistent with health and safety requirements or with this Proclamation when it is aware of them by itself or when it is reported to it by any person, and order the issuance of announcements of corrections for such advertisements, in the methods the advertisements were made at the expense of the person in whose interest they were made;
8. ensure that the interests of consumers have got proper attention;
9. Protect consumers from unfair activities of business persons and from unfair prices of goods and services aimed at obtaining unjustifiable profit;
10. take administrative and civil measures against business persons or other persons on violation of this Proclamation;
11. give necessary advice and support to branch offices to be established;
12. establish relationship and cooperation with national, continental and international bodies having similar objectives;

13. Own property, enter into contracts, sue and be sued in its own name;
14. perform such other duties as may be defined by law and undertake other necessary for the attainment of its objectives;
15. Determine the employment, administration and dismissal of the staff of the authority in accordance with federal civil servants Proclamation.
16. Initiate policy issues, participate on policy and strategy drafting undertakings by other organs of government.

Article 35 Judicial Power and Duties of Authority

1. The Authority, based on applications submitted to it on violations of this Proclamation, adjudicates, impose administrative and civil sanctions, and gets complainants compensated for damages they sustained.
2. Without limiting the generality of sub article (1) of this Article, the Authority shall have the following judicial powers and duties:
 - a. conduct adjudication on acts of violation prohibited under this Proclamation and provisions stated in other laws which have relevance to the case or regulations or public notices issued to implement this Proclamation and where the acts are committed to take correctional or other appropriate administrative or civil measures;
 - b. Commission any person for the submission of information and documents that are necessary to conduct its adjudicative duty;
 - c. Summon witnesses to appear and testify before the adjudicative tribunal;
 - d. Take affidavits or verifications and makes examinations accordingly;
 - e. Execute civil or administrative decisions it passes and order police or any appropriate organ for their execution.
3. The Authority may take the following administrative and civil measures as it finds appropriate, against any person who violated the provisions of this Proclamation or regulations or public notices issued to implement this Proclamation:
 - a) Order the discontinuation or injunction of the act pronounced inappropriate;

- b) Order the payment of compensation to the person affected by the act including taking any other appropriate measure that enables to reinstate the victims competitive position;
- c) Suspend or cancel business licenses;
- d) Order the payments of compensation to consumers for damages they have sustained;
- e) Order the seizure and/ or selling of goods.

As we can see from the above provisions, the new proclamation gives administrative, adjudicatory and advocacy powers to the authority. Most of the administrative powers and duties are connected with consumer protection (see for example article 34(4), (5), (7), and (9)), taking measures against its violation (article 34 (10) and article 35 (3) (c) and institutional administration (see article 34(11-15)).

Advocacy is another most important duty of the authority under the above provisions of the proclamation. It is a new innovation of the new proclamation which was not included in the former proclamation (see article 34 (1), (2), (6), (16)). Competition advocacy has been defined as:

... those activities conducted by the competition (or/and) authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition.¹⁰¹

Advocacy acts as complimentary to law enforcement activities of the competition authority and help in creating public awareness and influence government policies so as to make them competition-friendly.

¹⁰¹ Jaju Kanjo, Recent Development of Consumer Laws in Korea, APEC Information Paper No.6, Korea, may, 2005)

The new proclamation has also made some improvements in terms of adjudicatory power of the authority. It gives the authority power to adjudicate over civil and administrative matters and mandates criminal matters to ordinary courts which under the former proclamation were adjudicated by the then investigating commission. This can be taken as a progress because though there are some countries in the world which give power to a competition or/and consumer protection authority to adjudicate over criminal matters in the form of fine along with administrative and civil measures, under the existing Ethiopian set up, it is difficult to find professionals in both competition/consumer protection and criminal matters which requires an integrated knowledge in law and economics at least.

In addition, Ato Anteneh Mengistu, the Legal Department Directorate Director of the MoT has said that prohibiting the authority from entertaining criminal matters is necessitated because it was believed to be unfair to interfere the role of ordinary courts.¹⁰²

Moreover, the proclamation gives a wide discretion to the authority under article 35(3) which empower the authority to have variety of the enforcement options with a great flexibility as we have seen in part two under “common features of effective enforcement design of consumer protection law”.

Challenges

Though provisions of the above articles are capable of empowering the authority to enforce the proclamation effectively and flexibly, there are some defects which might affect or hinder effective enforcement. When someone critically observes the whole provisions under the above articles, it appears that the legislator has totally sided to consumers and adopted a punitive policy towards business communities because the substantial issues under these provisions fall either empowering the authority to protect consumers through awareness creation and otherwise, or protecting consumers by taking measures or action against the business communities for the violation of the proclamation, (usually punitive, because it

¹⁰² Interview with Ato Anteneh Mengistu, representative from legal department of the Ministry of Trade on 16 April 2010

doesn't specifically imposes duty on the authority to create awareness in *business communities* nor it does impose duties to facilitate voluntary compliance in businesses).¹⁰³ This can be taken as a great potential challenge to effective enforcement of consumer protection because by focusing only on the consumers, it is impossible or at least difficult to bring about long term consumer welfare.¹⁰⁴ It is like trying to solve a two-sided problem from one direction. The recent crisis which have been occurred pursuant to the recent price cap as are discussed in subsequent part are, among other factors, strongly attributable to the MoT's aggressive measures it has taken against business communities without taking their interests into account with a view to protect consumers which in effect have adversely affected or been affecting the consumers could be one evidence for this.

3.1.1.3. Qualification

Prospects

The TPCPP provides for general qualification requirements for judges of the authority under article 38:2 as follows: *"The judges shall have the necessary professional qualification, educational background and experience needed for the post"*

This provision sets general qualification requirements without specifying in which specific field of study the qualification requirement is needed.

¹⁰³ Dr. Fikremarkos Merso Lecturer of Law in Addis Ababa University Law School has said, "The new proclamation appears as if it was consumer protection law than competition law..." (Emphasis added). See also the whole provisions of articles 34 and 35, supra note 14 with objectives of the proclamation under art. 3

¹⁰⁴ Interview with the representative of Private Sector Development Hub (PSD) of the AACCSA, see also Seid Hessen, The Futility and Damaging Effects of Ethiopian Price Caps Available at www.ethiopia.org visited on 8 May, 2011

In some jurisdiction, competition or/and consumer protection law provides general guidelines as to the qualification of the members of authority with a different degree of generality while some other countries provide for detail provisions requiring the specific fields of specialization. This variation occurs may be due to variation in socio-economic and political set up of countries, and institutional design of the competition or/and consumer protection authority. So, the effectiveness or otherwise of such frameworks highly dependent up on the extent to which how such realities have been taken into consideration while the laws are made. For example, there would be no problem if a country having integrated programmes of law and economic in its educational curriculum of higher education institutions provide only for the specific qualification requirements of members of their competition or/and consumer protection authority as the country could get enough manpower for each specific position which might not be a case for a country which lacks it.

In Ethiopia, where there is no enough manpower, providing for only general qualification requirements could be justifiable for its flexibility.

Challenges

The proclamation, while providing only for general qualification requirements, at the same time under article 40 provides for the civil and criminal procedural laws of Ethiopia to be applied by the authority in conducting adjudication which needs qualification in law which might pose threat to effective enforcement as long as the country does not enough legal professionals having capacity to adjudicate over competition and consumer protection cases.

In addition, the proclamation also doesn't provide for the qualification requirements to other staff members including the Director General while the authority is entrusted with both administrative and adjudicatory powers. This may lead someone to ask questions like, is the main purpose for the establishment of the authority adjudication? Or, are other staff members of the authority established to play a supportive role only?

When we see the essence of establishment of a competition or/and consumer agency, the main roles of the agency (authority) are more of preventive, educative (advocacy) and administrative than adjudicatory because the later normally can be gotten from ordinary courts justifying the need for enough qualification requirements to the enforcing body.¹⁰⁵

It is also difficult to conclude that the “staff” under the proclamation plays supportive roles only as long as the proclamation provides for administrative duties of the authority.

3.1.2. The Ministry of Trade and Regional Trade Bureaus

The Ministry of Trade (MoT) and Regional Trade Bureaus (RTBs) are the most important organs in connection with the implementation of consumer protection under the Trade Practice and Consumer Protection Proclamation No. 685/2010. According to article 44 (5), MoT and RTBs shall have power to implement provisions of ‘Part Three’ of the proclamation which deal with consumer protection except some provisions of this part which are incumbent upon the authority. The law mandates the consumer protection part predominantly to these organs mainly because the consumer protection matters generally and ‘Part Three’ in particular are regulations or prescriptions which need interventions of government in the economy/market in favor of the consumers where the market fails through these sectoral regulators¹⁰⁶, and the fact that the MoT and RTBs are more relevant government sectors (regulators) over the issues connected with trade in federal and regional governments respectively.

This can also be seen from the present Ministry of Trade establishment proclamation No. 691/2010 which defines the powers and duties of executive organs of FDRE government.

¹⁰⁵ One of the legal experts in legal department of the MoT has said, “Normally, the main task of competition and consumer authority should be administrative than adjudicatory”, Emphasis added.

¹⁰⁶ See display prices of goods and services, labels of goods, issuing receipts and keeping pad self disclosure, and others under part three of the proclamation are regulatory requirements.

¹⁰⁷ Article 21 of the proclamation No. 691/2010 provides that the Ministry of Trade has power to promote the *expansion of domestic trade* and *take appropriate measures to maintain lawful trade practices*.

In addition, Ministry of Trade (MoT) has duty to conduct investigation in connection with the implementation of the proclamation (art. 42), power to issue regulation, directive and public notices for the implementation of the proclamation (Art. 55), power to recommend or nominate the Director General of the authority and arguably¹⁰⁸, judges of the authority, and has power to determine and apply price regulation and distribution of basic goods and services upon the approval of Council of Ministers (art. 46 and 47 respectively).

Regional Trade Bureaus (RTBs), on its sphere, are also given power to investigate with implementation of the proclamation (art.42), duty to inspect any acts of hoarding or diverting of goods and to ban the distribution of goods and services that do not fulfill the standard of health and safety (art.44)

The Ministry of Trade (MoT) and Regional Trade Bureaus (RTBs) are given power to conduct investigation in connection with implementation of the proclamation and power to regulate distribution of basic goods and services (art. 44). The MoT has also power to issue public notice and directive for the implementation of the proclamation and regulation to be issued by the council of ministers respectively (art.55). The MoT, when it appears

¹⁰⁷ See The Definition of Powers and Duties of the Executive Organs of the FDRE Proclamation, Proc. No. 691, 2010, Federal Negarit Gazeta, 17th Year No. 1

¹⁰⁸ Article 38 (1) says, “Each division of the adjudicative tribunal shall have one presiding and two other judges to be appointed by the Prime Minister.” But this article does not address the question ‘who nominates the judges to be appointed then?’ But it is plausible to argue that the MoT should be the one because for one hand, it is the MoT that is claimed to be a more relevant ministry to trade/market related issues (see also article 21 supra note 103); on the other hand, it is the MoT that is given the power to recommend the director general of the authority which allow us to bring “*stronger reason*” argument.

necessary, submits to the Council of Ministers its study on basic goods and services that shall be subject to price regulation for approval (art.46).

Generally, one of the most important aspects of the new proclamation in this regard is its recognition of the power of regional states over consumer protection matters, in fact, with big ambiguity and absurdity as it is discussed subsequently.

Challenges

Even though bringing the Regional Trade Bureaus (RTBs) in to picture in relation to the implementation of consumer protection in some areas under the proclamation can be taken as a progress at least as compared with the former proclamation, it does not however “empower”¹⁰⁹ the RTBs sufficiently so as to effectively enforce the consumer protection in their respective spheres. For example the proclamation doesn’t give power to the regional concerned bodies to regulate prices of basic goods and services. Leaving aside the usual questions as to the types of power relationships exist between the federal government and regional governments under the law and practice of Ethiopia for further or other study,¹¹⁰ the researcher wants to focus on what will be the effect of denying such power on effective enforcement of consumer protection. The MoT under articles 46 and 47 respectively is given power to regulate prices of basic goods and services, and distribution of basic goods as follows:

Article 46 Regulating Prices Basic Goods and Services

¹⁰⁹ The researcher is in doubt as to whether parliament of the federal government of Ethiopia has power to “empower” the regional trade bureaus of the regional government not

¹¹⁰ Questions like, is the relationship between the federal government and regional governments in Ethiopia horizontal or vertical? Whether the federal government can play supervisory role over the regional governments?, Whether the federal law making body can confer or deny to confer or impose duties on the regional executive bodies in relation to enforcement of the federal laws? Whether or not of consumer protection is a federal matter or the state matter?, and the like questions are the questions which need to conduct study on “Ethiopian Federalism: The Law and Practice” which should be answered by another study

The Ministry, when deemed necessary, submits to the Council of Ministers its study on basic goods and services that shall be subject to price regulation and upon approval publish their list and prices in public notices.

Article 47 Distribution of Basic Goods

The Ministry in consultation with other concerned government organs may determine the conditions of distribution, sale and movement of basic goods and services and, as may be necessary, order the business person to replenish the stock of the same.

As we can see from the above two provisions, regulating prices of basic goods and services, and distribution of basic goods provided to fall under the MoT without recognizing the same power of the RTBs. This may pose threat to the effective enforcement of the proclamation for at least two reasons.

Firstly giving such power to MoT alone affects the effectiveness of determination and application of such regulation. As we can see from article 46 above, the MoT has to conduct study on basic goods and services before determination of price caps of such goods and services up on approval by the Council of Ministers. In conducting the study, the issues like: basic ness or otherwise of goods and services, cost of production, level of supply, cost of the enforcement and etc on their face appear to be the most important factors which seem be more effective if they are conducted by the relevant regional organs than MoT because the regional organs are more relevant or more near to know whether certain goods and services are basic or not depending up on the existing realities in their respective regions of Ethiopia.¹¹¹ For example, “kocho” may be basic to SNNPR than “Injera” which could be basic to Amhara or Tigray regions or other regions. In addition, prices may also differ depending up on different factors which are not spatially distributed throughout all regions. Moreover, Ethiopian markets are predominantly disintegrated due

¹¹¹ Article 2(1) of the TPCPP defines basic goods and services to mean *goods or services related to the daily need of consumers, the shortage of which in the market may lead to unfair trade practice*. From this definition, we can see that there are no objective criteria to determine a certain good or service basic or not.

to different factors which make the determination difficult to the MoT in terms cost of determination and uniformity.

However, while conducting the study, the researcher has seen some regions and town administrations determining and applying their own price regulations on some of the consumer goods. For example Arbaminch Town Trade bureau and Hosana Town Trade Bureau of the SNNPR has been set prices for some fruits deviating from the price caps determined by MoT.¹¹² Ato Yohannes Mima from SNNPR Trade Bureau Trade Practice Investigation and Research Department also said, *“Minstry of Trade fixes the prices of some of the basic goods taking into consideration the market situation Addis Ababa which is the central market of the country and gives us the price caps thus determined by the Ministry. Then, we re-determine the prices set accordingly by taking different factors like, cost of transportation and other costs into account and apply them accordingly...”* (Emphasis added). He also added, *“Even we have also power to regulate the prices of some other basic goods and services which are not subjected to such regulation by the Ministry.”*

But the most question here is that whether RTBs do have their own consumer protection laws or they are enforcing the federal law (the Trade Practice and Consumer Protection Proclamation 685/2010)? If they are enforcing the federal law, (the TPCPP), yet the proclamation does not give power to RTBs to regulate prices of basic goods and services. Then, where does the power of the regional states in this respect emanated from? In fact, presently there is no any regional state in Ethiopia which has its own law on consumer protection.

¹¹²Observations made by the researcher in Hosana Town in SNNPR on March 31, 2011 for example, the price of one kilogram banana set to be 3 birr against 5 birr as set by the MoT and interview with Ato Yohannes Mima from SNNPR Trade Bureau Trade Practice Investigation and Research Department on 1 May 2011.

Secondly, and in fact arguably,¹¹³ the issue of price regulation is not competition matter rather it is regulation or more of consumer protection and the issue of consumer protection is not under exclusive jurisdictions of federal government under FDRE constitution¹¹⁴ which justifies the need to confer the power of price regulation to the regional relevant bodies (in other words the regional trade bureau should have been given power to make study on price regulation of basic goods and services in the region and to submit its study to regional state administration which is the right counter part of the council of ministers).

3.1.3. Court

The TPCPP gives courts first instance jurisdiction over criminal matters and appellate jurisdiction over the decision of the authority. Article 53 reads:

53. APPEAL

Any person aggrieved by adjudicative decision of the Authority may appeal to the Federal High Court within sixty days from the date of the decision of the Authority

The proclamation also envisages the establishment of regional judiciary organs that adjudicate consumer on the matter of consumer rights protection (39:1). Moreover the proclamation imposes duties on both federal and state courts to organize trade practice and consumer protection divisions in order to expedite the trade and consumer protection activities and gives the power to the division to adjudicate and pass decisions on criminal violations provided under the proclamation as per art. 48.

In fact, the establishment of special division under courts structure at both federal and regional level is necessitated by the need to have more qualified personnel which have

¹¹³ It might be a bit arguable issue because commercial matter under the FDRE constitution is classified under the federal matter and the fact that the consumer issues we are raising here are related to market practices.

¹¹⁴ See article 52:1 cumulative with 55 of FDRE Constitution (1995), Negarit Gazeta, Year 1, No.1, August 1995.

enough qualification to hear competition and consumer protection issues than ordinary judges do in ordinal courts.

3.2. The Enforcement Strategy and Remedies under Consumer Protection Enforcing in Ethiopia

Dealing with enforcement strategies requires seeing the practical and procedural design of consumer protection enforcement. However, the main subject of the study, i.e. the authority, has not functionally been established yet.¹¹⁵ And hence, presentation under this section focuses on assessing the effectiveness or otherwise of the enforcement strategies of consumer protection in Ethiopia based on the effective enforcement strategies discussed under chapter two mainly focusing on the MoT. The recent price cap by MoT, performances of the previous authority and legal design, especially, remedies and procedures to be applied in decision making process under the TPCPP are major focal points which are taken as criteria to assess the effectiveness or otherwise of the enforcement strategies. The researcher does not want to focus on the usual controversies raised by economists in general and Ethiopian economists in particular as to whether price cap is solution to curb prevailing inflation or not which requires further independent and analytic study.¹¹⁶ Rather, the researcher, assuming that prudently determined and

¹¹⁵ Biru Oblamo and other officials of the MoT say that they don't know the reason for such dalliance.

¹¹⁶ See Seid Hassan, The Futillity and Damaging Effects of Ethiopian Price Capes, Murray State University, Available at <http://www.ethiopia.org> Last visited on May 15, 2011. Seid summarizes the issue of price capes in his eye and in the eyes of other economists as follow: “**Economists** are generally opposed to price controls except in special circumstances (during emergencies). It is not that erecting price caps under emergencies would be without negative effects. It is just that, in crises situations, **the positive effects of price controls could outweigh their negative effects. For example, imposing price caps could be necessary and morally acceptable in unusual circumstances such as during wars, unexpected crop failures, and natural disasters. Such special measures may be necessary so that some unscrupulous individuals could not use the sudden and unexpected situations to create big windfall gains for them while hurting so many others. Temporary price controls could also be effective in managing the country’s reserves, such as to buy time until the reserves are put into the supply networks. Nonetheless, both economic theory and the experiences of many nations who used price controls strongly indicate that using price caps as a panacea for a rising inflation is counterproductive and in most cases, the “cure” is more damaging than the disease...**”

effectively enforced price cap on certain basic goods and services in a certain critical situation when it is necessary for the survival of the consumers may benefit the consumers, wants to assess whether the recent price cap in Ethiopia are determined and applied effectively by comparing with “effective enforcement strategies” discussed under chapter two.

One of the effective enforcement strategies to consumer protection is conducting comprehensive study before intervention. However there are some precursors that show the existence of problem in this respect. This can be seen from the recent measure taken by MoT with respect to price cap implementation.

Recently the MoT has announced its decision as to price control of “basic goods and services” in reaction to unrest stem of inflation which it believes as “man made inflation”¹¹⁷. However, in addition to the implementation challenges faced by the MoT due to its failure to make a deep pre-intervention study as to what goods and services to be subjected to the price cap, what amount of prices to be fixed and how to apply them, it has been creating lots of problems in the market. Consumers and business community of Ethiopia are alleging that the price cap have taken the situation from bad to worse.¹¹⁸

One of the butcheries around Kasanchis, retailing meat at the fixed price of 52 birr for a kilo, said it is unthinkable when compared to the price he used to sell, which is 90 birr a kilo.¹¹⁹ This retailer said that he buys an ox within the range of 10,000 birr to 15,000 birr

¹¹⁷ The Prime Minister and other higher officials of Ethiopian government hold that current inflation of prices of goods and services are attributable to the act of business communities.

¹¹⁸ See Most of the interviewed respondents from consumers, business communities and other stakeholders hold that the recent price capes by the MoT has worsen/complicated the market situations. The researcher has also personally observed disappearances of some of the products which has been subjected to the capes, increments of inflation on most of the consumer goods, reduction of the quality of services and lots of conflicts between traders and consumers

¹¹⁹ Interview with Dagin Haile, well known butcher in Addis Ababa, around Kasanchis, on February 2, 2011. See also Solomon Bekele and Groum Abate, Price Setting the Only Option?, Ethiopian Capital

and retailing it at 52 birr a kilo seems suicidal for him. “How on earth can I sell it with the price set by the government? It does not even cover the price of the ox let alone make a profit,” he said irately.¹²⁰

In addition, in Addis Ababa, the lower quality meat previously was sold between 45 to 55 birr.¹²¹ This serves for different kinds of sauce, commonly known as Wot. But the number one quality, usually for raw meat and Kitfo, price per kilo goes up to 100 birr. After the price was set to be 52 birr, the special meat has not been available at the butcheries.¹²² For the special meat, the price of oxen is between 9,000 to 12,000 birr according to butcheries. If the bones are removed, the meat weigh from 150 kg to 200.¹²³ With 52 birr the 200 kg meat brings in 10,400 birr. If it is 150 kg, the sum is 7,800 birr. Financially speaking, the butcher loses money. Mamaru Bekele, one of the well known butchers in Kasanchis said that he had bought 9 oxen with 9, 000 birr for each. Three of them were slaughtered and sold according to the fixed price but he was unable to recover even his cost let alone profit. So, he said he took the remaining 6 oxen to a rural area until better time comes.¹²⁴

The newly fixed price for a liter of oil, 16.50, has failed to materialize as imported oil without the addition of transportation, load and unload price is today over 20 birr. Following negotiations and discussion between wholesalers, importers and the government, the price was re-modified to be 21.50 birr for palm cooking oil of one liter which later again fixed to be 24.50. After a few days, the palm oil has disappeared from the market. Once again, after a few days later, the MoT has decided to collect all edible palm oil from importers who ordered supplies from abroad at higher prices due to the

News, Available at <http://www.capital.com/index.php?view=article&id=1398/%3Aprice-setting-the-only-option=com.content&itemd=9> Last visited on May 3, 2011

¹²⁰ ibid

¹²¹ Observation (informal) made by the researcher in areas like Piasa, Shiromeda and Arat kilo.

¹²² Special meat is, specially, the meat of bulls which come from Harare Region in Ethiopia, commonly called “Harare Sanga” and most of consumers in Addis Ababa used to eat it raw.

¹²³ Researcher has made calculation with three of the famous butcheries in Mexico.

¹²⁴ Interview with Mamaru Bekele, Addis Ababa, Kasanchis, on February 28, 2011. See Solomon and Groum, supra note 118 at 1

international price increment.¹²⁵ The MoT then tried to distribute the palm oil at fixed price thereby organizing small consumers associations at kebele level. Still consumers are experiencing scarcity of oil.¹²⁶ These trial and errors without any positive change to consumer protection can, among other things, be attributed to lack of pre-intervention analysis or studies as to determination and application of the regulation.

In addition, Beer is available in almost all hotels, restaurants and small shops. The problem is in some places they are offered with the newly set price while in another they sale at the previous price.¹²⁷ Sometimes clashes were observed between customers and owners and some big hotel and restaurants have been lodging claims so that their special service nature to be taken into account and the MoT has been fixing and re-fixing now and then based on upcoming complaints.

These and other challenges on determination and application of the price regulation show that there is no or little study that had been conducted before its implementation.

Other more important points in relation to effective enforcement strategy of consumer protection are giving priority to areas of great consumer risk, adopting cost effective less punitive and more educative measures. However, when we see both the legal design (penalties) and practical aspect, especially, priority issue, we can see the existence of failure. Even though there are flexibilities in determination of administrative or civil measures taking into account different circumstances under art.50, when we see criminal penalties provided under article 49 of the TPCPP, they are too harshly and capable of affecting businesses than educating them (it appears as if it were revenge). This is true the fact that the proclamation provides for the maximum of imprisonment up to 20 years

¹²⁵ Fortune, "Government to Take Over Imported Palm Oil", Vol.11, No. 569, Sunday, March 27,2011.

¹²⁶ Observations made in Yirgalem, in sidama zone and most places in Addis Ababa, Gulele sub-city (Menen and Shiro Meda)

¹²⁷ Most of the night clubs in Addis Ababa are tending to charge an entry fee to compensate the balance lost due to the price cap on beer (7 birr and 10 cents). Some of the traders, who choose to be bound by the fixed price, start to reduce rendering friendly service to the customers.

(art.49:4) and fine up to 2,000,000 (art.49:2) which is greater than the total capital most of top businessmen in Ethiopia. The business communities are strongly objecting such harsh penalties under the proclamation.

Business communities are strongly opposing the harshly penalties provided under the new proclamation and their discontent over the failure of the government to accommodate their interests.¹²⁸

According to Fortune, the penalties the importers argue are too high for businesses and can cripple them indefinitely.¹²⁹

According to Fortune, business community walked out from the meeting conducted in the Millennium Hall on the Trade Practice and Consumer Protection and Commercial Registration and Licensing legislations conducted on March 17,2011, and the president of AACCSA at the center asking apologize from the two officials for what had happened.¹³⁰

Fortune has attributed the discontent of the business community to the absence of proper consultations with the business community before the legislations are passed.¹³¹

When we see the experience of the former commission from the performance report accessed in due course of the study as annexed at the end of the paper, except some cases where the commission has undertaken activity on competition advocacy, the commission had mainly focused on taking punitive actions or imposing penalties. This can be seen from the fact that the commission has entertained 71 cases and organized only five workshops that have educatory effect which shows its focus on adjudication than education.¹³²

¹²⁸ See Fortune, Businesses, State Fail to Connect”, Weekly News Vol.11, No. 568, March 20, 2011

¹²⁹ *ibid*

¹³⁰ *ibid*

¹³¹ See *supra* note 119

¹³² See The Performance Report of the Ethiopian Trade Practice Investigation Commission Prepared on 24 May 2008 as annexed at the end of the paper

In addition, measures like closing the businesses and license revocation which have been taken by MoT against business communities can also be considered as poor enforcement strategy for consumer protection and which should be taken after applying other lenient and responsive measures like education, persuasion and warning. About 103 businesses have already been closed down in Addis Ababa since Jan 6, 2011, according to official figures accessed from Addis Ababa City Administration Trade Bureau. In SNNPR, Gurage Zone, about 232 businesses have been closed and 2 traders have been revoked their trade license within three months from the price caps (January).¹³³

Moreover, Failure to give priority to areas of great consumer risk is another defect of enforcement strategy of the enforcing institutions, specially, MoT. This can be seen from the fact that some of goods and services which are selected and subjected to price control are becoming subject to big controversies. Specially, subjecting goods like “beer” and even “soft drinks” to price regulation while leaving rent/lease service unregulated despite the prevailing circumstances which justify giving priority to them.¹³⁴ Moreover, whether some of the goods subjected to the price cape by MoT are “basic” or not under the existing realities of Ethiopia has been under controversial.¹³⁵

Commenting on the price fixation, one businessman said that the government has not considered rental fees of houses that host businesses which inflates the prices of goods and services. “I am now paying double price to what I used to pay last year and triple to what I used to pay two years ago.” “Are they bluffing?” said a former high ranking government official who declined to disclose his identity and who was annoyed by the recent price cap. One government official has said, “House rental fees in Addis Ababa city have been

¹³³ SNNPR Trade Bureau, Quarter Year Performance Report on Prevention Unfair Trade Practices and Protection of Consumers, April 23, 2011.

¹³⁴ Fikremarkos Merso (PHD), Lecturer of Law School in Addis Ababa University, has said that even developed countries of the world regulate business lease due to its far reaching implication on consumer protection let alone Ethiopia (emphasis is mine)

¹³⁵ There have been hot debate among Ethiopian educated people as to whether some goods subjected to the price capes by MoT like ‘beer’ and ‘soft drinks’ are basic or not under Ethiopian context

inflating in the last couple of years despite government's effort to curb the housing problem in the city by constructing condominiums”

More than beer and soft drinks, the problem of lease of residential houses and the price of businesses lease which have been putting consumers into great risk and also having far arching implication on the ultimate price of goods and services justifying prioritizing them.

To sum up, lack of extensive pre-intervention study, failure to give priority to areas of greater consumer risks and failure to apply more of educative and preventive approaches and resorting to strong and destructive measures are among the major practical failures of the enforcing institutions. Harshly penalties provided under the TPCPP without providing for precise guidelines as to the application of more preservative and less destructive strategy can be taken as the potential threat to effective consumer protection regime in the long run.

CHAPTER FOUR

4. Major Findings and Recommendations

The study has come up with the following findings and recommendations which may serve as inputs for stakeholders to re-design the enforcement framework for consumer protection in Ethiopia so as to bring about effective consumer protection regime to the country.

The Institutional Framework

Though there are no fixed principles and uniform practices across the world as to the choice for effective institutional design for consumer protection enforcement, international practices show that depending up country specific socio-economic and political realities, common designs are, partially integrated authority model, integrated authority model and separate authority model. Each model has its own advantages and disadvantages. However, for effective enforcement, any type of the designs should be supported by strong and efficient structural and organizational set up. All the reviewed international and national literatures show that, to regulate effectively, a competition and/or consumer protection authority must create institutional frameworks that provide structural, functional and budgetary independence, as well as sufficient competency and the necessary organizational structure to carry out its functions.

Despite some progresses which have been made under the Trade Practice and Consumer Protection Proclamation of Ethiopia as to the structural set up of the authority as compared with the structural set up of the former commission, the study has found the following shortfalls:

- Failure of the proclamation to provide for the representation of stakeholders in the authority coupled with the power of the Prime Minister (ultimate political leader) to appoint a Director General and judges of the authority tripled with the existing public sector dominance in the economy of the country could be big potential challenges that are capable of adversely affecting primarily the private sector and ultimately the consumers. The recommendation in this respect is that there must be mandatory provision as to the representation of stakeholders, specially, consumers and business community in the authority. However, this might not be enough as

long as the power of selecting and appointing of members of the authority rests on political wings of the government (MoT and PM respectively), and from the experience of the former proclamation where there was a legal provision for the representation of private sector and consumers in the then commission but practically all members were selected from government, we can learn that the mere provision may not be guarantee for the actual representation. Hence, the study further recommends that the power of appointing the members of the authority should shift from the Prime Minister to Parliament (HPR) of the country as most successful countries do.

- The proclamation does not specify the minimum number of staff members of the authority and their working condition which in turn gives total discretionary power to appointing body. The study has also found that failure to specify the minimum number of members of the former commission and their working conditions were among contributory factors for the collapse of the commission by making it understaffed and part-timers. Therefore, the study recommends that there must be a mandatory provision providing for the fixed minimum number or threshold as to the number of the staff members. For proper functioning of the authority, the law should also provide for members to be permanent workers.
- Even though accountability of a competition or/and consumer protection authority to an executive branch of government does not necessarily affect operational or functional independence of the authority as there are many successful countries in the world whose competition or/consumer protection authorities are accountable to such body, the study has found that the existing political set up of Ethiopia where there is no capacity distinction between the ruling party and the government of the country added with given power of selecting and appointing of members of the authority by political wings of government, accountability of the authority to MoT is capable of posing threat to both structural and operational independency of the authority and hence the accountability of the authority should be made to the House of Peoples Representative of Ethiopia.
- The study has found that, except judges of the authority for which the proclamation provides for general qualification requirements, it does not provide for the same

requirement for a Director General and other staff members of the Authority. Since the role of the authority under the proclamation is not only adjudication but also administration and advocacy, and all reviewed cross-country experiences scholarly ligatures show that the role of competition or/and consumer protection authorities are more of administrative and advocacy than adjudicative, the law should be amended to require for necessary qualifications from the Director General and other staff members.

- The study has found that provisions of the proclamation empowering the authority have substantially focused on consumer protection and given less emphasis to competition promotion. Since by focusing only on consumers it is impossible or at least difficult to bring about a long term consumer welfare as it is like trying to solve two-sided problem from one direction, and the fact that a competitive market delivers more protection to consumers than the benefit that the consumers may get from protective intervention of the government in a non-competitive market, the law should maintain balance between consumer protection and competition promotion. For this, the law should impose duties on the authority to create awareness in business community and to promote or facilitate voluntary compliance programme by the business community.
- Even though the proclamation has given some powers to Regional Trade Bureaus (RTBs) in relation to implementation of consumer protection under the proclamation, it does not empower the RTBs sufficiently so as to effectively enforce consumer protection regulations in the proclamation. For example the proclamation gives the power of regulating prices and distribution of basic goods and services to Ministry of Trade but not RTBs. This in turn creates challenges to the determination and application of such regulation which in fact has practically happened during the recent price capes by the MoT. So, for proper determination and successful application, it is better if the RTBs have such powers recognized in the proclamation.

The Enforcement Strategy and Remedies under Consumer Protection Enforcing in Ethiopia

Even though there is no uniform enforcement strategies and practices for consumer protection across the world due to the existence of differences in socio-economic and political realities among nations of the world, the study has found that having variety of statutory enforcement options and remedies, following more of advocatory and preventive approaches than punitive and interventionist approaches, prioritizing the areas of intervention based on comprehensive study, flexibility and promotion of self-regulation, coordination and cooperation of enforcing institutions with other relevant organs having similar objectives are some of common enforcement strategies which are advocated by many legal scholars as effective strategies for consumer protection enforcement and, adopted and applied by many countries in their competition and consumer protection enforcement framework. Under Ethiopian circumstances, the study has found some problems in these respects and recommended possible solutions as follows:

- ✚ One of the most important strategies for effective enforcement of consumer protection is conducting pre-intervention study. However, the study has found that the recent intervention of MoT in the market in the form of price regulation of basic goods and services has lacked proper pre-intervention study in terms of prioritization, determination and application. And hence, the study recommends that institutions entrusted with duty to enforce consumer protection regulations should conduct pre-intervention studies as to prioritization, determination, application and cost benefit analysis before the intervention. For example, if MoT found that ‘beer’ to be basic to Ethiopian consumers and want to apply it, it could be more prudent the MoT in consultation with relevant bodies to give different **levels** for hotels, bars, restaurants, and other places where beer can be sold before its implementation based on different factors such as service quality, location, etc.
- ✚ The study has also found that penalties provided under the proclamation and actions that are being taken by the MoT against business community are more of punitive and revengeful than educative and persuasive which are not capable of bringing long term benefits to consumers. Hence, the study recommends for the

legal amendment there by revising penalties so as to fit to the existing capacity of our traders and focusing more on education, advocacy, persuasion and framework as to alternative dispute resolution mechanisms. There also should be continuous training and experience sharing programs available to the enforcing institutions for practical improvement.

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ANNEX I

Interview Guides Prepared for Ministry of Trade and Regional Trade Bureaus

Personal Detail of Respondent

Name of the Respondent (if he or she consented)_____

Position in the Ministry /Bureau/_____

Type of the Study: A Master Thesis in Law (LL.M Thesis)

Title: A Critical Analysis of the Enforcement Framework for Consumer Protection in Ethiopia: Prospects and Challenges

Objective of this Interview: To gather information so as to assess the roles and performances of the Ministry of Trade and Regional Trade Bureaus in relation to implementation of consumer protection provided under the Trade Practice and Consumer Protection Proclamation No. 685/2010 and to suggest possible solutions based on the findings.

So, you are kindly requested to respond to the interviews as your information will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consented for the disclosure of your identity and personal views.

Thank you, in advance, for your co-operation

Guiding Questions: (for Ministry of Trade)

1. Ministry of Trade, being one of the institutions entrusted with enforcement of the Trade Practice and Consumer Protection Proclamation No. 685/2010, has duty to conduct investigation in connection with the implementation of the proclamation, power to issue directives and public notices for the implementation of the proclamation and has power to determine and apply price regulation and distribution of basic goods and services upon the approval of Council of Ministers. What measures or actions has the Ministry taken so far for fulfillment of the above duties or powers?
2. Recently, the Ministry has issued price lists of some of goods and services. What was/were the objective(s) of such price regulation? Do you think that the Ministry has achieved the objective(s)?
3. What criteria have been employed for selecting and determination of prices of such goods and services?
4. Has there been any challenge faced during determination and/or implementation of the price regulation? Yes ☐ No ☐ If yes, what are the challenges and what counter measures have been taken to overcome such challenges?
5. In which level the fixed price to be applied? (Federal ☐ Regional ☐ Both ☐)

Guiding Questions for Regional Trade Bureaus

1. A Regional Trade Bureau, as one of institutions entrusted with enforcement of the Trade Practice and Consumer Protection Proclamation, power to investigate with implementation of the proclamation, duty to inspect any acts of hoarding or diverting of goods and to ban the distribution of goods and services that do not

fulfill the standard of health and safety. What measures or actions has the Bureau taken so far for fulfillment of the above duties or powers?

2. What is the role of the bureau in relation to regulation of prices and distribution of basic goods and services? What the bureau has so far done in these respects?
3. What criteria have been employed for selecting and determination of prices of basic goods and services of the region?
4. Has there been any challenge faced during determination and/or implementation of the price regulation? Yes ☐ No ☐ If yes, what are the challenges and what counter measures have been taken to overcome such challenges?

ANNEX II

Interview Guides Prepared for Trade Practice and Consumer Protection Authority

Personal Detail of Respondent

Name of the Respondent (if he or she consented) _____

Position in the Authority _____

Type of the Study: A Master Thesis in Law (LL.M Thesis)

Title: A Critical Analysis of the Enforcement Framework for Consumer Protection in Ethiopia: Prospects and Challenges

Objective of this Interview: To gather information so as to assess the enforcement strategies and institutional design of the authority from both legal and practical aspects with the view to evaluate effectiveness or otherwise of the enforcement framework of the authority in relation to implementation the Trade Practice and Consumer Protection Proclamation No._685/2010 and to suggest possible solutions based on the findings.

So, you are kindly re requested to respond to the interviews as the information you give will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consented for the disclosure of your identity and personal views.

Thank you, in advance, for your co-operation.

Guiding Questions:

1. The Trade Practice and Consumer Protection Proclamation No.685/2010 has established the authority (Trade Practice and Consumer Protection Authority) having dual functions of competition promotion and consumer Protection. How do you describe its relevance or otherwise of such design to Ethiopian context?
2. Has the authority been established practically? Yes ☐ No ☐
3. If your answer to the question No. 2. Is 'Yes', what its composition and structure look like? And if 'No', what are the reasons for the delay?
4. How do you see the amendments that are made in the new proclamation in relation to empowering the authority as compared with the former proclamation? Do you think the new proclamation has sufficiently empowered the authority to effectively enforce it?
5. How do you see the effect of the power of the Prime Minister to appoint a Director General and judges of the authority, and accountability of the authority to Ministry of Trade on independency of the authority?
6. Did the former investigation commission have enough financial and human resources for proper implementation of its legal mandate? Yes ☐ No ☐. If your answer to this question is 'No', what were the causes for the problem?
7. What activities has the former commission undertaken to raise awareness in the consumers and business communities of the benefits of competitive markets and the rights and responsibilities of the consumers and business persons?
8. Which of the following enforcement options do you think least or most effective as the enforcement strategies or remedies for non-compliance with consumer protection law?

- A. License revocation/criminal penalty/closing down of the business of violating businessmen/
 - B. Payment of damage/administrative measures like, injunction/
 - C. Warning (oral or written)
 - D. Education/Persuasion/Advocacy/
 - E. Facilitation or promotion of industrial self regulation
9. How do you see the practical applicability of the above options according to Ethiopian context?

ANNEX III

Interview Guides Prepared Ethiopian Consumer Association, Addis Ababa Chamber of Commerce and Sectorial Association, and Consumers and Businesspersons.

Personal Detail of Respondent

Name of the Respondent (if he or she consented)_____

Position in the Authority _____

Type of the Study: A Master Thesis in Law (LL.M Thesis)

Title: A Critical Analysis of the Enforcement Framework for Consumer Protection in Ethiopia: Prospects and Challenges

Objective of this Interview: To gather information as to the attitudes of the stakeholders towards the enforcement framework for consumer protection in Ethiopia with a view to assess the effectiveness or otherwise of the enforcement strategies and institutional framework for consumer protection in Ethiopia in relation to the trade Practice and Consumer Protection Proclamation No.685/2010 and to suggest possible solutions based on the findings.

So, you are kindly requested to respond to the interviews as the information you give will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consented for the disclosure of your identity and personal views.

Thank you, in advance, for your co-operation.

Guiding Questions:

1. The Trade Practice and Consumer Protection Proclamation No.685/2010 has established the authority (Trade Practice and Consumer Protection Authority) having dual functions of competition promotion and consumer Protection. How do you describe its relevance or otherwise of such design to Ethiopia?
2. What do you think should be the composition of the authority in terms of membership and qualification?
3. What do you think will be the effect if consumers or business persons are not represented within the authority?
4. How do you see the effect of the power of the Prime Minister to appoint a Director General and judges of the authority, and accountability of the authority to Ministry of Trade on independency of the authority?
5. What is your attitude on the recent price cap measure taken by the Ethiopian government for some of goods with a view to enforce consumer protection? Do you think it has brought a positive result to the Ethiopian consumers? Yes ☐ No ☐. If 'No' what are the challenges?
6. Which of the following enforcement options do you think least or most effective as the enforcement strategies or remedies for non-compliance with consumer protection law?
 - A. License revocation/criminal penalty/closing down of the business of violating businessmen/
 - B. Payment of damage/administrative measures like, injunction/
 - C. Warning (oral or written)
 - D. Education/Persuasion/Advocacy/
 - E. Facilitation or promotion of industrial self regulation
7. How do you see the practical applicability of the above options according to Ethiopian context?