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Thinking Policy Together

Towards Effective Regulation of Wholesale and Retail firms in Kenya

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Introduction

The wholesale and retail firms are very significant in the country's development process and, as such, the sector was identified as a contributor to the achievement of the Kenya Vision 2030 through job creation. That said, the growth of the wholesale and retail sector has been declining over the years, constraining its ability to contribute to job creation as envisioned by the Kenya Vision 2030. A key factor that influences the growth of the sector is the regulatory framework that has implications on growth of wholesale and retail firms.

In addition, wholesale and retail firms play a major role in the economy due to their linkages with other sectors by providing readily available markets for products and services to consumers. The country has experienced an increase in wholesale and retail firms, a majority of which include supermarkets and hypermarkets, both local and foreign owned which continue to dominate domestic trade in Kenya. As a result, effective regulation of these firms is critical to enhancing the sector's contribution to the improvement of livelihoods through job creation, particularly in the post-COVID-19 period, which is a major concern for the government in achieving the aspirations of the Kenya Vision 2030.

The Constitution of Kenya 2010 devolved the function of regulation and development of wholesale and retail trade to the County governments. Specifically, the issues of market development, trade licences, and fair-trade practices were entirely devolved to County governments through the Fourth Schedule of the Constitution. Since the devolution of the wholesale and retail regulatory function to County governments, new charges such as county fees were introduced, and charges for the existing ones were increased, thus constraining the growth of firms.

Further, the National government agencies also regulate the wholesale and retail firms where registration and incorporation of businesses are done by business registration service (BRS) domiciled at the Office of the Attorney General. In addition, the taxation of businesses is facilitated by the Kenya Revenue Authority (KRA) on behalf of the National government. Other national government agencies similarly regulate the sector depending on the type of business activity the firm is engaged in. As such, it is evident that the wholesale and retail firms are regulated by the two levels of government as illustrated in Table 1 and Table 2.

Table 1: County governments regulations for wholesale and retail firms

Regulations by county government	Responsible
Trade license/permits	County governments
Cess (Infrastructure maintenance fees, inter-county fees, and any other)	County governments
Outdoor advertising (Motor vehicle branding)	County governments
Distribution licenses	County governments
Fair-trade practices in the county include inspection, investigation, and prosecution of offenses arising from the infringement of the weights and measures	County Weights & Measures office
Food, drugs, chemicals, and other substances that require food hygiene	County Public Health Office

Table 1 shows the various regulations imposed by County governments and some of which might hamper the ease of doing business in the country, for example the inter-county fees and distribution licences which increase the costs of trade facilitation from one county to another and pose a trade barrier. Notably is that counties do not rely solely on budgetary allocations from the National government and their own-revenue raising mechanisms is through the County Finance Bill. Therefore, the County Finance Bill may introduce new charges that did not exist or increase the existing charges for the County government to meet its revenue targets for the financial year. For example, some of the counties in their County Finance Bill 2020 have introduced charges such as offloading fees for various agricultural produce, charges on transporting construction materials, and these county business regulations increase the cost of doing business due to the various permits and licenses that the firms require, thus constraining the growth of firms.

Table 2: National government Regulation for wholesale and retail firms

Regulations by National government agencies	Responsible agency
Registration of business/companies	BRS
Taxation	KRA
Trade finance	National Treasury, Central Bank of Kenya
Self-regulation	Micro and Small & Enterprise Authority
Inspection and enforcement of counterfeiting and counterfeit products	Anti-Counterfeit Agency
Quality of products and processes	Kenya Bureau of Standards (KEBS)
Mergers and acquisitions	Competition Authority of Kenya
Retailers operate delis and bakeries	Tourism Fund
Retailers dispense milk	Kenya Dairy Board
Regulate distribution and sale of pest control products	Pest Control Products Board
Retailers dealing with seeds	Kenya Plant Health Inspectorate Service (KEPHIS)

Table 2 shows that several National government agencies regulate various areas of wholesale and retail trade that have to be complied with by firms. These regulations are additional to those provided by the County governments. The presence of both levels of government in regulating wholesale and retail firms demonstrates that the sector is heavily regulated. While regulations cannot be eliminated, making compliance with these regulations easier and less expensive for firms is critical. With multiple licenses and permits required, wholesale and retail firms struggle to grow, considering the cost, time, and processes that go along with complying with multiple regulations.

Business Registration Regulation

Business registration of wholesale and retail firms is regulated under the Companies Act, No. 17 of 2015, Partnership Act, 2012, and Business Registration Service Act, 2015. Registration of businesses is very fundamental as it forms the basis for conducting formal business in the country. The analytical review of the business registration Acts shows that for a firm to operate as a company or in partnership form, under the Companies Act 2015, the Partnerships Act 2012, they have to be registered before commencing their trade activities.

However, firms that operate under the Business Names Act 2015 are not required to be registered before they begin operations. The firm needs to have completed the registration within twenty-eight days from the date of the commencement of the business. We noted major reforms in the registration of business, which include a one easy step registration process where the name reservation and business registration processes have been merged into one easy step with benefits such as National Industrial Training Authority (NITA) registration for companies with up to 100 employees being waived for the first 12 months. Additionally, for ease of doing business, single business permits have been waived for the first 24 months of all new businesses registered. Further, on the E-Citizen online platform, the business registration process should take 3-5 days when all requirements are complied with to issue a business registration certificate.

Notably, from the empirical analysis, business registration regulation was found to negatively affect the growth of wholesale and retail firms. That said, the business registration waivers provided by the business registration service (BRS) to encourage business registration and ease of doing business in the country still impede the growth of wholesale and retail firms. For example, the BRS provides a waiver for single business permit fees for the first 24 months of all new businesses registered, while the County government trade regulations require that every wholesale and retail firm obtain a trading licence or permit from the County government to conduct business irrespective of their registration status. Consequently, the registered firm will still be required to obtain a trading permit or licence from the County government irrespective of the 24 months waiver provided by the BRS, a National government agency, under the State Law Office. Therefore, business registration regulations that are implemented by the BRS tend not to support growth of wholesale and retail firms as the waivers of business permits for 24 months are not fully implemented by County governments on all newly registered firms.

Consequently, every firm has to obtain a county government business permit/licence, which is issued to all firms irrespective of the business registration status upon fulling specific conditions laid out by the County governments. Therefore, the wholesale and retail firms takes advantage of this county business permits as required by the county trade regulations and engage in business without registering their firms with the Business Registration Service. Thus, implementation of waivers provided by the National government for ease of doing business in the country on business registration seems to be less effective and with little coordination by both levels of government as they regulate firms in the sector.

As a result of the inadequate coordination efforts in waivers implementation from the National and County government to support business registration regulation, firms' entry barriers are created, resulting in high start-up costs and this dissuades more productive businesses from entering the formal market as it increases the entry costs, which constrain the growth of firms. When business entry costs are high, businesses shy off from formalization, and it is the reason why a majority of firms in developing countries choose to start their business operations as informal until they perform well and grow.

Licensing Regulations

The County governments issue trading licenses and permits as guided by the County Government Act of 2012, and the various county's trade regulations. To effectively facilitate licensing regulation of the sector, County governments have developed the County Trade Licensing Act, which guides the regulation of licensing of businesses in counties. As such, the county government's trade regulatory framework requires every firm to obtain a trading licence or permits before commencing its business activities. For instance, it is expected that firms involved in distributing goods or services to wholesalers and retailers will obtain a distribution licence from the County governments, among other licenses. According to the Organization for Economic Cooperation and Development (2016), licensing regulations are prevalent in both emerging and developed countries, with two conflicting goals which include regulating the industry and generating revenue for the government. In Kenya, the licensing regulations by the County governments are meant for regulating business activities and raising revenue for the County governments. As result, Table 1 on County regulations shows that wholesale and retail firms suffer from multiple cesses, licences/permits such as trading licence, distribution licences, and inter-county charges especially when transporting goods for trade from one county to another or through other counties. County governments efforts to consolidate all business licences and permits into one single business permit have not fully succeeded, and the County government framework to deal with intercounty trading licences/permits and charges have not been fully put in place by the Council of Governors.

As a result, the licensing regulations not only hurts the wholesale and retail firm's dues to the cost of obtaining the multiple licenses, but it hurts the country's economy by creating trade barriers and the movement of goods across the country especially on the inter-county charges. This is against Article 209 (5) of the Constitution that emphasizes that revenue-raising powers by the County governments should not prejudice economic activities across county boundaries, or national mobility of goods or services.

Further, empirical analysis on licensing regulations shows that wholesale and retail firms experience obstacles to obtaining operating licenses/permits. The licensing regulation affects growth of wholesale and retail firms. This corroborates with OECD (2016) on the two objectives of licensing regulations, which are conflicting at the expense of the firms. It is evident that the growth of firms will be impeded especially where the County government is in pursuit of raising revenue through licensing regulations to supplement their budget shortfalls as this may lead to an increase in cost to the existing licensing charges or introduction of new charges through the County Finance Bill.

Self-Regulation

The concept of self-regulation has been adopted in the wholesale and retail trade sector and is supported by the Ministry of Industrialization, Trade, and Enterprise Development. The government through the Ministry responsible for trade expects the sector to develop regulatory rules that are self-specified, conduct self-monitoring, and have rules that are self-enforced. As such, self-regulation in wholesale and retail trade becomes a collaborative effort of the players in the sector. Currently, the sector business membership and association are regulated under the Micro and Small Enterprise Act of 2012, since the majority of firms in MSMEs, equivalent to 57 per cent are in the wholesale and retail trade sector.

The Competition Authority of Kenya (CAK) gazetted the Retail Trade Code of Practice intending to address buyer power abuse issues in the retail sector and enhance the sector's self-regulation. The retail code of practice applies to all retailers, suppliers, and other sector stakeholders to ensure that they deal with each other fairly and lawfully. To enhance dispute settlement mechanisms within the sector, the retail code establishes a Dispute Settlement Committee whose membership is drawn from retailers, manufacturers, suppliers' associations, county government, and the ministry responsible for trade. Despite this effort to enhance self-regulation in the wholesale and retail trade, the sector business associations need to be strengthened to enable them participate in lobbying on issues of importance that can influence the policy making and eventually spur the growth of the wholesale and retail trade in the country.

Membership in trade associations enhances the growth of wholesale and retail firms. This is linked to the benefits that members access, which include the current business practices, use of technology, employees training, professional developments through workshops and seminars that fuel the growth of the firms[1]. Business associations are crucial in advocating for institutional and legal reforms. Furthermore, business associations have been linked to advocacy initiatives that require greater transparency and accountability when dealing with suppliers, and advocating for simplified procedures to make doing business in the country easier.

Conclusion

Firms in the wholesale and retail sector experience a multiplicity of regulations by the National government agencies and the County governments, reflecting a heavily regulated sector. Additionally, registration regulations by the BRS, a National government agency, was found to impede the growth of wholesale and retail firms in the country. To facilitate ease of doing business in the country, the National government through BRS provided waivers that encourage firms' registration, especially the waiver of business permits for a period of 24 months for newly registered firms which is a requirement to trade in counties. This has not been fully implemented as the County government licensing regulations require all firms irrespective of their business registration status to acquire licences and permits and

1 RETRAK services offered to their retail members.

this increases the costs of doing businesses to firms that undergo registration process before commencing their trade activities. As such, wholesale and retail firms would prefer not to undergo business registration but acquire the County government permit/licences which is a requirement to start a business in counties.

Further, licensing regulation is found to serve two objectives which include regulating business activities and raising revenue for the County governments at the same time. This raises a challenge especially when the County governments have a budget shortfall, which has to be addressed by either increasing the charges or introducing completely new charges through the County Finance Bill. That said, multiple licensing by County governments will not only affect the growth of firms due to the high cost of doing business but also hurt the economy.

Notably, there are very few firms that are members of a formal business association. This situation is against the spirit of the MSEs Act 2012 Section 3(e) on promoting representative associations and registration of business associations. Strengthening of wholesale and retail business associations is critical, as it has been empirically established that firms which are members of the business association are likely to grow compared to those that are not members of business association. Through business associations, firms can have access to current best practices, technology, market trend understanding, customer support and employee trainings, and other seminars and workshops, all of which can help the firm grow.

Policy Recommendations

1. It is important that business registration regulation waivers provided by the BRS for ease of doing business in the country is fully implemented with adequate coordination from the National government and County governments as both regulate the sector. Full implementation of the waivers reduces firms' entry barriers and encourages business registration in the country.

2. Ensure that licensing regulations by County governments support wholesale and retail firms by consolidating the trade licences into a single business permit/licence. This is informed by the multiple county trading licences that a firm acquires to do business in the county. This will reduce the costs and procedures associated with acquiring multiple trade licences.

3. Strengthen self-regulation and encourage membership in trade associations in the sector and support the existing business associations. Further, there is need to fast-track the implementation of the MSEs Act 2012 and the MSEs Regulations (2019) on trade associations, and assess their contribution to the wholesale and retail trade sector's self-regulation.

About KIPPRA Policy Briefs

KIPPRA Policy Briefs are aimed at a wide dissemination of the Institute's policy research findings. The findings are expected to stimulate discussion and also build capacity in the public policy making process in Kenya.

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