



**Working Paper Series**

**Trade and Competition Policy  
in the Framework of African  
Countries**

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concentration of market power in the hands of these entities and also the possibility of formation of "international cartels." Furthermore, the globalization and liberalization of world trade has also given rise to a new problem for developing countries: that of dumping excess outputs of subsidized products produced in the developed countries on the markets of developing countries. This development threatens to kill basic manufacturing in developing countries.

3. Foreign direct investment into developing countries and transitional economies has usually had extensive effects in either increasing or reducing competition, as well as in increasing efficiency, in those product markets where it concentrates. The need, therefore, to control "restrictive business practices" is generally acknowledged. Countries have often adopted competition laws in order to avoid the development of concentrated market structures and to promote consumer welfare. Nonetheless, it is acknowledged that while adhering to universally valid principles, competition policy should be applied with flexibility in the light of specific circumstances of individual countries, and taking into account the need to balance "consumer welfare" and "efficiency considerations" as well as the need to win the confidence of the public and the business community.

4. There is growing realization that anti-competitive practices can have a negative influence on international trade. The challenge faced by developed and developing countries alike is to introduce national policies that will promote competition. A firm's competitiveness is essentially a function of the domestic economic environment in which it operates. However, the deepening structural integration of the world economy and the burgeoning of alliance capitalism are widening the geographical scope for creating

or augmenting firm-specific competencies and learning experiences.<sup>2</sup> Several case studies from both developed and developing countries indicate that trade competition is the prime motivation for enterprises to cut waste, improve production parameters through research and development (R&D) and innovation, and allocate resources more efficiently in response to market opportunities or threats. The other market structures that may exist in a country include: monopoly, monopolistic competition and oligopoly.<sup>3</sup>

5. The basic premise for a country adopting competition policy and law is that it will give rise to a more efficient allocation and utilization of resources and promote consumer welfare through "competitive prices" for goods and services. In a "perfectly competitive market structure" there are many, many buyers and sellers and each firm produces a good that is identical to that produced by other firms (Alan Hochstein, 1993). The conditions needed for such a market structure to prevail include: the existence of a market price that is charged by all firms in the market; every buyer has to be perfectly knowledgeable as to the products produced by each firm and the selling price of each firm's output; entry and exit from the market should not be restricted; and any firm considering entry can do so and should be able to sell as much as it

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2 John H. Dunning, *The Geographical sources of the Competitiveness of firms*; TNC, December 1996.

3 A monopoly market structure is one in which there are many, many buyers, but only one firm selling the product that has very few close substitutes; an oligopolistic market structure is one in which there are many, many buyers, but only a few sellers and if the firms in the industry produce a standardized(homogenous) product the market is called "pure oligopoly" and if their product is more heterogenous, it is called a "differentiated oligopoly." See Alan Hochstein: *Microeconomics, An Advanced Introduction*, Thompson Educational Publishing Inc., 1993. It is the desire by countries to minimize monopolistic and oligopolistic market structures that provides the impetus for adopting competition policy and law.

can at the going market price. This is indeed, the ideal situation that would ensure that "competitive prices" prevail.

6. In order to improve competitiveness of their economies, many African countries have embarked on economic reforms, and in many cases this has entailed a shift towards a "market economy." These reforms have often not only involved decontrol of prices, but also liberalization of foreign exchange markets and movement towards market determined exchange rates and interest rates, privatization of state owned enterprises, and reduced government intervention in private sector economic activity.

7. The need for African countries to improve competitiveness of their economies in order to effectively participate in a globalizing and liberalizing world economy is now fully recognized. However, over-facile assumptions that deregulation, particularly trade liberalization, will always lead to more competition should be avoided. Trade liberalization does indeed often lead to greater competition, but not always because products in some sectors may not be tradeable (particularly services). The reasons some commodities may not be tradeable may include: high transport costs, shortage of foreign exchange, foreclosure of distribution channels, and anti-competitive practices by foreign exporters.

The aim of competition policy should be to ensure that the benefits of the removal of governmental restrictions are not reduced by private restriction upon competition.

8. Countries can promote competitiveness of their national economies by ensuring that firms do not indulge in "restrictive business practices", public enterprises do not crowd out the private

sector, and government policies do not bestow monopolistic or oligopolistic powers on certain firms and also do not reward rent-seeking enterprises at the expense of productive investment. Government policies which may contribute to anticompetitive behaviour by firms may include: restrictive entry to certain industries; bestowing monopoly rights to certain firms; selective allocation of foreign exchange and credit rationing; multiple exchange rates and interest rates; and restrictive marketing arrangements for certain products and inputs, especially through the creation of marketing boards.

9. African countries have made significant progress to liberalize their economies and improve competitiveness of these economies. Many have eliminated and/or reduced price controls on a range of products and inputs, except in some cases for strategic commodities such as fuel. A number have also liberalized their foreign exchange markets and moved to remove exchange controls for current account transactions and shifted to market-based exchange rate regimes. Credit rationing and allocation have also been eliminated in a number of countries and some African countries have moved to market-determined interest rates.

10. A number of African countries have also made significant efforts in the more difficult areas of "privatization of public enterprises" and in dismantling monopoly power of "marketing boards" in the purchase and marketing of agricultural products and inputs. The belief of many African countries at the advent of independence was that public enterprises were an important channel for African Governments to "carve a stake" in African economies and to ensure some form of ownership of their economies. Accordingly, these enterprises were designed to play a pivotal role

in the development process of African countries. Experience has shown that these good intentions have not been satisfactorily fulfilled as public enterprises became a serious burden on budgets of many African Governments and were crowding out the private sector. Instead of contributing to development, many became centers of concentration of market power, with disastrous effects on competitiveness of African economies. Privatization of public enterprises in Africa is therefore designed not only to improve efficiency of operation of these entities, but more importantly to unleash market forces which will result in a more efficient allocation and utilization of resources.

11. African countries in deciding on their competition policy and law ought to avoid over-emphasis on deregulation as a panacea to all the problems of African economies. It is essential also to emphasize "regulatory reform." African governments need indeed to disengage from direct intervention in economic activity and from distorting competition, through the granting of exclusive rights, etc. Nonetheless, disengaging from direct intervention in economic activity does not absorb the government from its responsibility to act as the referee to ensure liberalized markets work properly and to assist enterprises through, information, training, and infrastructural development. Competition policy itself is a form of regulation.

12. The purpose of this paper is to contribute to the ongoing debate on competition policy and law, with particular focus on African economies. Section II will deal with the "conceptual framework of competition policy." Section III will highlight the "importance and the role of competition policy." Section IV will review both, the "evolution of competition policy and law" as it has emerged at the national, regional and multilateral levels and "some African country experiences." Section V will deal with the

"constraints on competition in Africa" and Section VI contains "concluding remarks."

13. A better understanding of existing competition policy and law in African countries will not only assist African countries to be better informed of the discussions taking place at the multilateral level, such as within the framework of UNCTAD and the WTO, but more importantly assist those countries that are in the process of adopting competition policy and law. The study is also intended to assist African countries in appreciating the importance of developing "open market structures" and avoiding "anti-competitive practices", elements essential for the development of a dynamic private sector.



## **Section II**

# **THE CONCEPTUAL FRAMEWORK OF COMPETITION POLICY**

14. Competition in a market refers to rivalry among sellers and among buyers of goods or services; the sellers and buyers that can enter the contest constitute the market. The extent and nature of market competition is considered important in determining the performance of economic systems and under "static conditions" performance is judged in terms of efficiency which has two elements: technical efficiency which exists when the production and distribution of goods take place with minimum inputs, given technological constraints; and allocative efficiency, which exists when resources are allocated in the optimal manner.<sup>4</sup> The great majority of real world situations fall between "perfect competition" and "monopoly" and involve imperfect, but workable competition.<sup>5</sup>

15. Competition policy seeks to promote competition through the liberalization of governmental policies and measures where they unduly distort competition. Competition policy is also concerned with the enforcement of rules of the game to ensure that enterprises do not undertake restrictive business practices and many Governments have attempted to ensure incumbent firms do not take

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4 United Nations Conference on Trade and Development (UNCTAD):  
Transnational Corporation, Market Structures and Competition Policy, 1997.

5 The 2 extremes of Perfect Competition and Monopolistic markets are respectively explained in para. 5 and footnote 3.

advantage of liberalization to "privatize" governmental restraints and bloc market entry.<sup>6</sup> Competition allows the market to reward good performance and penalize poor performance by producers. It encourages entrepreneurial activity, stimulates efficiency and market entry by new firms, and encourages production of a greater variety of products of good quality. Many governments have taken into account to ensure that the principles of competition policy are taken into account when developing and implementing other governmental policies.

16. Confusion may exist between **"trade policy"** and **"competition policy"**, although competition policy may aim at making trade policy work better in a framework in which the principles of competition policy are adhered to. Competition policy authorities may have an advocacy role vis-à-vis trade authorities. This does not, nonetheless, imply that the two policies are the same. Competition policy can make a substantial contribution to improved trading environment. In Africa, a major handicap for the development of African economies has been the poor infrastructure which has heightened the cost of both imports and exports. An inevitable solution to this problem is to try and find ways of reducing these transport costs. A possible solution would be to inject some form of competitiveness in this sector, through granting of concessions or selling off to the private sector ports, construction of roads, utilities, etc. Competition policy can help to work out what would be the best method of going about this, and also ensure that the private firms do not subsequently abuse their dominant positions and charge unduly high prices. The relationship between competition law and other trade-related laws and concepts is given in Annex 2.

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<sup>6</sup> United Nations Conference on Trade and Development (UNCTAD): *opcit.*

17. Discussions on "Competition Policy and Law" have tended to center on: identifying "common ground" in the approaches followed on different competition questions by Governments; exchange of views in areas where "identification of common ground" is more difficult, such as the role competition policy should play in the strengthening and improvement of economies of developing countries and countries in transition. The discussions in this regard have focused on, the development of the business community in those countries; identification and adoption of appropriate measures to help those countries that might be hampered by restrictive business practices (RBPs); the interface between competition policy, technological innovation and efficiency; the competition policy treatment of vertical restraints and abuses of dominant position; the competition policy treatment of exercise of intellectual property rights and of licenses of intellectual property rights and know-how. Furthermore, focus has also centred on analysis of differences in the scope of competition laws in individual sectors, in the light of the process of economic globalization and liberalization; and analysis of the effectiveness of enforcement of competition laws, including enforcement in cases of RBPs having effects in more than one country.<sup>7</sup>

### **(a) National and International competitiveness**

18. Competition policy can be analyzed at two levels: the country level (firm competitiveness) and at international level (cross-country competitiveness). Issues that are addressed in this paper are

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<sup>7</sup> United Nations Conference on Trade and Development (UNCTAD): "Review of All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive business Practices: 6Strengthening the Implementation of the Set", document TD/RBP/CONF.4/2, 26 May 1995.

drawn from the notion of international competitiveness. As defined by the American Commission on Industrial Competitiveness, a country's competitiveness is the ability to produce goods and services that meet the test of international markets and simultaneously to maintain and expand the real income of its citizens (Tyson 1992; Ostry 1991).<sup>8</sup>

19. From the above definition, a country's competitiveness must be judged not only against its performance in the world market but also in terms of its capacity to sustain economic growth over a period of time. This is the reason why such countries as Germany, Japan, Korea, and several other East Asian economies appear as strong competitors.<sup>9</sup> At firm level, a firm is considered competitive if it is able to sustain earnings over time and can be viewed as a strong competitor if it is able to increase both its market share and its earnings.<sup>10</sup>

20. Although to a large extent firm performance in the market place is what determines a country's overall economic strength, nonetheless, it also appears that certain national characteristics, such as: how human capital is used, the technical skills of the labour force, managerial practices and government policies, do influence firms' ability to compete.<sup>11</sup>

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8 The World Bank, Trade, Technology and Competitiveness, (IDE Development Studies).

9 The World Bank, Trade, Technology, and Competitiveness.

10 The World Bank, op. cit.

11 The World Bank, op. cit.

21. In any given market, enterprises have a natural tendency to compete with each other. Under the incentive of competition, firms will be obliged to perform the best they can, in order to satisfy consumer needs. They will constantly try to guess those needs of the consumer through R&D and innovation. However, the preferred situation of any supplier in any market is to have a monopoly in order to maximize profits, using RBPs. Accordingly, through competition policy and competition law, governments can ensure that these monopolistic tendencies do not translate into actual situations that retard competition in an economy.

22. Monopoly can exist for a number of reasons. It may arise as a result of investments requiring large outlays such those in electricity, water and telecommunications. These investments often require huge investment resources that cannot be mobilized by average individuals. Accordingly, in these sectors monopolies have often prevailed, although in recent years the private sector has been allowed to play a role. In other cases, monopolies have often emerged as a result of the State regulating entry into such sectors, the reasons often cited are strategic importance and security. However, by so doing, the State has tended to reduce or eliminate competition in such sectors.

23. Competitiveness should not simply be viewed as a country's ability to export or generate trade surpluses, as this can be brought about at least temporarily by means of artificially lowering the exchange rate and/or compressing domestic expenditures. Nor does it arise out of abundant cheap labour or natural resources. In summary, no simple definition of competitiveness would suffice. It also does not seem to depend on the level of productivity. Competitiveness is in fact, a multidimensional concept that embraces

the ability to export, efficient use of factors of production and natural resources, and increasing productivity that ensures rising living standards of a nation.

## **Section III**

# **THE IMPORTANCE AND ROLE OF COMPETITION POLICY**

### **(a) The Importance of Competition Policy**

24. As traditional trade barriers are reduced and globalization progresses, markets tend to become more integrated and competition stiffer. The conclusion of the Uruguay Round (UR) trade negotiation reflects a willingness to adjust the multilateral trading system to these new realities of doing business globally. African countries are now compelled to face these realities and develop urgent responses to the great challenges posed by current global developments. The central feature of Africa's response must be the strengthening of national policies for increased international competitiveness and improved attractiveness to foreign direct investment (FDI).

25. The aim of a law concerning Competition is to promote economic efficiency and to protect freedom of competition and the competitive process. In a monopoly market the quantity of a good or service supplied will be less than that available in a market governed by freedom of competition and the competitive process, and the price charged may be higher than in a competitive market, or same but for product of inferior quality. In addition, since the level of production is lower than that observed where competition prevails, adverse effects on the level of employment ensue. From

this standpoint monopolies are inefficient and detract from social well-being.<sup>12</sup>

26. The international trade system is nowadays concerned as much with domestic policies and measures of countries as with border measures. The effective application of competition policy would put African countries in a better position to fulfil their trading obligations under various bilateral and multilateral agreements, such as those of General Agreement on Tariffs and Trade (GATT) and the world trade organization (WTO). However, a word of caution is necessary as regards adoption of competition policy and law by African countries. Wisdom would have it that African countries should opt for "gradualism" because of the "uncertainty" surrounding the possible impact implementation of "competition policy" at an international level would have on African economies. These concerns pertain to: the possibility that although trade competition could certainly lead to industrial restructuring and efficiency, there is also the possibility that it could wipe out domestic industry in some African countries; and concerns that advanced countries may not necessarily be following the logic of competition, as has been the case of the Common Agricultural Policy of the European Union.

27. The importance of international trade and competition in the world market has progressively come to be acknowledged. There is hardly a country today that does not seek to be more closely

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12 UNCTAD, Review of All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, TD/RBP/CONF.4/3, 26 June 1995.



integrated into the global economy, where the mobility of goods, services and capital has increased to a point unforeseen only two decades ago. However, it is also becoming clear that the ability to compete in the world market differs widely across countries, industrial as well as developing. Notwithstanding the various disagreements, the competitiveness debate has had one important outcome: there is now a much greater appreciation of the critical role innovation and technological improvements play in the relative economic performance of countries.<sup>13</sup>

28. Competition policy encompasses the area commonly known as anti-trust or anti-monopoly law and practice as well as various micro-industrial policies affecting markets. Competition laws address essentially two areas: the conduct of business and the structure of economic markets (The World Bank, 1994). Competition policy prohibits conduct that either unfairly diminishes trade, reduces competition, or abuses a market-dominating position. Competition laws are essentially intended to counter both conduct policies, structural policies, and performance policies.

29. As for **conduct policies**, Competition law is intended to counter a number of elements, including:

- (i) Horizontal restraints: That is, unilateral or collective actions weakening or restraining competition among firms in the same market;
- (ii) Vertical restraints: That is, provisions in contracts between suppliers and their distributors (and retailers);

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13 The World Bank, Trade, Technology and Competitiveness.

- (iii) **Enforcement standards:** The existence of law is necessary, but not sufficient, to achieve the objectives of competition policy.

30. As regards, **structural policies**, competition laws aim to prevent transactions that would reduce the interdependence of competing suppliers (vertical integration) and increase concentration in market (horizontal integration). It deals specifically with:

- (i) **Merger control regulation:** selectively prohibiting mergers that would substantially increase concentration in the market or restrain trade among suppliers;
- (ii) **Pre-merger notification:** allows authorities to review proposed mergers prior to actualization, thereby making merger control administration more efficient;
- (iii) **Enforcement and remedial measures under merger control:** designed to preventing the negative increased concentration effects of the merger.

31. **Performance policies**, which include basically administrative pricing by anti-trust authority, whereby the state compensates for lack of competition by dictating prices or output. This is usually applied to sectors that display significant natural monopoly characteristics.

32. Competition policy can also help to ensure that privatization of state-owned enterprises or government procurement are

conducted in a pro-competitive manner, that granting of exclusive rights or subsidies are subjected to competition criteria, that intellectual property rights are not abused, and that the effects of trade liberalization are not reduced by foreclosure of distribution channels. The basic objective of competition policy in Africa should be to inculcate enterprises and the general public with a dynamic "competition culture."

## **(b) The Role of Competition Policy in Economic Reforms**

33. Although there is broad consensus on the general direction institutional and policy reforms should take. The poor economic recovery in many Africa countries has to a large extent been attributed to "**poor macroeconomic environment**", including the environment in which firms operate. Accordingly, calls have been made for African countries to intensify macroeconomic reforms in order to stimulate economic growth and promote international competitiveness (Williamson 1990).<sup>14</sup>

34. In most of the East Asian economies that are part of the "East Asian Miracle" (Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, Singapore, Taiwan-China, and Thailand) government undertook a package of measures designed to promote economic growth. The East Asian countries success was based on a combination of factors, particularly the high saving rate, interacting with high levels of human capital accumulation, in a stable, market-

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14 The World Bank, The East Asian miracle, 1993.

oriented environment -but one with active government intervention- that was conducive to the transfer of technology (Joseph E. Stiglitz, 1996). The combinations of these policies, led those countries to accomplish three functions of growth: accumulation, efficient allocation, and rapid technological catch-up (Joseph E. Stiglitz, 1996).

35. The general aim from various country competition legislation is to control or eliminate restrictive agreements or arrangements among enterprises, or acquisition and/or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development.

36. In most countries restrictive trade practices, on the one hand, generally refers to cooperation agreements between enterprises, monopolies and concentrations, mergers and takeovers, collusive tendering, and abuses of dominant, which are the practices set out in section C and D of the United Nations Restrictive Business Practices Set. Agreements fixing prices is among the most common forms of restrictive business practices, and irrespective of whether it involves goods or services, imports or exports, is considered as outright prohibition in many countries.<sup>15</sup> On the other hand, certain cooperation agreements between enterprises can be authorized under particular circumstances. This apply particularly where such arrangement are designed to promote overall economic efficiency and/or the competitiveness of such enterprises vis-à-vis large enterprises, or to promote consumer welfare. In any event, it would be up to the Competition Authority to decide on the basis of

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15 This is the case of Algeria, Kenya, Gabon, Côte d'Ivoire, Morocco, South Africa, Tunisia.

an evaluation of agreements or arrangements. This is the case in Algeria (Article 9), Gabon (Article 10), Morocco (Article 7) and Kenya (Part II.5).

37. Competition issues are closely inter-related to the protection of consumer interests. Restrictive business practices affect the consumer either by way of higher prices or limitations on availability or choice of goods or services. In Africa most countries recognise the close interrelationship between competition policy and consumer protection and in some cases include sections covering unfair trade practices within their competition policy legislation.<sup>16</sup> This is in line with the United Nations General Assembly resolution on Consumer Protection in which comprehensive guidelines on this issue were adopted and distributed to appropriate bodies of individual States.<sup>17</sup>

In Gabon, for instance, competition law lays down measures devoted to the promotion and protection of consumers' economic interest, along with standards for the safety and quality of consumer goods and services; distribution facilities for essential consumer goods and services.<sup>18</sup>

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16 See for example Competition Policies of Côte d'Ivoire, Gabon, and the Competition Framework in Malawi.

17 General Assembly resolution 39/248 of 9 April 1985 on Consumer Protection.

18 Règlement de la Concurrence au Gabon, Loi no. 5/89 du 6 juillet, 1989, Titre III, Articles 12-15.

38. Entry of foreign firms as a consequence of the overall economic reform policy can inject competition into a host country market, particularly if the market has a limited number of domestic suppliers relative to its size prior to the foreign firm's entry. In such a situation, the process of competition could involve lower prices (especially if the foreign firm is more cost-efficient than local firms) or, as is more likely, product differentiation and advertising.<sup>19</sup> This could in turn involve the introduction of new products based on innovatory activity by the foreign firm involved. Entry of foreign firms can then be expected to improve the performance of the concerned industry and increase consumer welfare by lowering prices, improving product quality, increasing variety and introducing new products, and ultimately provide the development of the country, provided that the overall local market continue to function efficiently.

39. Foreign investment and ownership regimes are also important complement to trade policy and an element of the import competition framework. Import competition (free trade) provides for market access while foreign investment and ownership provides for market presence (foreign-owned domestic production). Indeed both increase competition. Direct market participation from foreign entities can be a powerful competition devise. Thus, it adds heterogeneity, brings newer technologies and vision, and it limits domestic advantages based on transportation and border related transactions costs and non-tradable factors. In addition, direct foreign investment allows the home country to retain most of the benefits of trade liberalization. Clear legislation, opening domestic market to foreign participation, recovery of foreign investment, and

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19 UNCTAD, World Investment Report 1997.

the absence of ownership restrictions, are all essential for an effective competition policy.<sup>20</sup> The objective is to facilitate the development of technological infrastructure and access to, and transfer of, foreign technology and to foster innovation.

40. In a broad sense, all the provisions of the Uruguay Round Agreements have a bearing upon competition since the encouragement of international competition is the basic rationale of trade liberalization. Since its birth in 1947 the General Agreement on Tariffs and Trade (GATT) has sought to liberalise world trade and provide a secure world trading system by preventing countries adopting protectionist policies as was the case during the inter-war period. This was achieved over the years through a series of rounds of complex negotiations aimed at strengthening the rules of international trade, lowering trade barriers, and expanding the sectoral coverage of the GATT's rules. The success of the GATT in lowering trade barriers and hence, increasing world trade can be seen from the fact that on the one hand, world trade (both export and imports) grew at an annual average rate of 6.5 per cent in the 1950s, 9.2 per cent in the 1960s, and reached phenomenal growth (expanding by over 20 per cent) during the 1970s.<sup>21</sup> The basic causes were a general economic upsurge as a result of the lowering of tariffs by the developed countries either unilaterally or through multilateral trade negotiations (MTNs) carried out under the auspices of the GATT.

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20 The World Bank, *The Interface of Trade, Investment, and Competition Policies*, Policy Research Working Paper no. 1393, December 1994.

21 The World Bank, *The Interface of Trade, Investment, and Competition Policies*, Policy Research Working Paper no. 1393, December 1994.

41. On the other hand, the growth of trade decelerated significantly during the 1980s (6.0 per cent per annum) due to the so-called "new protectionism" in the developed countries. This was due to the slow down in economic growth and raise in unemployment since the mid-1970s. This gave rise to new forms of discriminatory trade practices, which often fell outside of the regular boundaries of the GATT. Important examples of this discriminatory trade practices are the non-tariff barriers (NTBs), which are not transparent in nature, the Multifibre Arrangement (MFA) which exclude textile and clothing from the gamut of the GATT, the evasion of the most-favoured-nation (MFN) treatment by formation of regional trading blocs and the unilateral granting of preferences by the OECD countries to the developing countries. These practices undermined GATT's basic objectives. Even worse, the system of "tariffs escalation" adopted by the developed countries according to the degree and the stage of processing (referred to as phenomenon of "cascading") has been harmful for the developing countries trying to diversify their exports.<sup>22</sup>

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22 The World Bank, op. cit.



## **Section IV**

# **THE EVOLUTION OF COMPETITION POLICY: SOME AFRICAN COUNTRY EXPERIENCES**

42. African countries have made significant strides to liberalize their trade regimes, although much still needs to be done in order for their economies to be effectively integrated into the global economy. The dilemma that continues to face these countries is to respond to the inherent inequities of the world trading system which basically arise from an asymmetrical distribution of economic power between the developed and developing countries.

### **(a) The Legislative and Regulatory Framework for Competition Policy and Law**

43. There is no common rule for the elements of competition law that a country should adopt. The different competition laws enacted by African countries generally reflect the objectives such competition law is intended to achieve as well as the legal traditions of the countries concerned. Furthermore, such laws come under various titles such as: "Ordinance on Competition" in Algeria; "The Restrictive Trade Practices, Monopolies and Price Control Act" in Kenya, "Maintenance and Promotion of Competition Act" in South Africa, "Decree on the Regulation and Control of Prices and

Merchandise Supply and Sells" in Morocco, "The Competition and Fair Trading Act" in Zambia, " Law on Consumer Protection" in Tunisia, "Law on Competition" in Côte d'Ivoire, and "Competition Regulation" in Gabon.

44. Nonetheless, the **"main objectives"** of competition policy and law in African countries appear to be similar, although stated differently. In Algeria, the objectives of this law have been stated as: to organize and promote free and fair markets; to promote economic efficiency; to maximize consumer welfare; and to encourage transparency in trade practices. In Kenya, they have been stated as: to encourage competition; prohibiting restrictive trade practices; controlling/regulating the activities of monopolies; controlling the concentration of economic power; controlling of prices of some commodities believed to be essential to the economic development and the welfare of low income consumers. In South Africa, the objectives of competition policy and law have been stated as: to provide for the maintenance and promotion of competition in the economy; to prevent or control restrictive practices, acquisitions and monopoly situations, and for matters connected therewith (see Annex 1).

45. The **"main elements and focus"** of competition policy and law in African countries relate to: restrictive business practices; monopolies and concentration of economic power; mergers and takeovers; enforcement machinery; and extra-territorial coverage. As regards **"restrictive business practices"** competition policy and law has tended to focus on issues of: limitation of access to markets; limitations to free pricing; market allocation; collusive tendering; customer discrimination; discriminatory discounting; vertical price collusion; horizontal collusion on conditions of supply; and horizontal collusion on market sharing. (see Annex 1). In respect of

**"monopolies and concentration of economic power"** the competition laws enacted in African countries have focused on: unjustified actions to sell; customer discrimination; tied purchasing conditions; resale price maintenance; abusing dominant market position; and unwarranted concentration of economic power.

46. On the issue of **"mergers and takeovers"**, in Cote D'Ivoire mergers and takeovers require prior consultation with the Competition Authority and in Kenya and South Africa such mergers/takeovers are regulated/controlled on a case-by-case basis.

In Zambia, mergers between two or more independent enterprises engaged in manufacturing or distribution require approval. As regards **"enforcement mechanisms"** for non-compliance with competition policy and law, a number of African countries introduced into this legislation ways of exacting penalties for defaulters. Type of punitive measures include: fine, in proportion to gravity and clear-cut illegality of offence or in relation to the illicit gain achieved by the challenged activity; imprisonment, in cases of major violations involving flagrant and intentional breach of the law, or of an enforcement decree, by a natural person; restitution to injured consumer; and suspension and/or termination, in regard to certain mergers, acquisitions or restrictive contract<sup>23</sup>. As regards **"extra-territorial coverage"** of these laws, in a number of African countries these relate to restrictive business practices committed in the country concerned. However, in Côte d'Ivoire, the law has taken into account the impact of globalization of the world economy as well as regional arrangements on the behaviour of firms.

47. Since the mid 1980s, most of the African economies have

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23 See for example Competition Policy of Algeria, Côte d'Ivoire, Gabon, Kenya, South Africa, and Zambia.

been undertaking trade liberalization initiatives in order to benefit from the rapidly globalizing market. This wave of liberalization represents an effective shift in development strategy from an inward-oriented, import-substituting, framework designed strategically to reduce dependence on the outer world, to an outward-oriented export-promoting framework designed to create a virtuous cycle of higher integration and faster growth with expanded opportunities. Before 1985, trade regimes in sub-Saharan Africa were characterized by the severity of quantitative restrictions covering virtually all categories of commodities and by high tariff rates. Most countries including Ghana, Nigeria, and Tanzania, initiated their liberalization by attempting to reform the foreign exchange markets to correct highly overvalued currencies, as manifested in high black market premia. These countries accomplished sustained real devaluation of their currencies by the mid 1980s (see e. g., World Bank, 1996) and both the rate of improvement in price distortions and the rate of trade integration were positive. CFA members, however, failed to devalue their currency during the 1980s or to carry out other trade reforms, only to realize the need for a substantial devaluation in 1994.

## **(b) Some Country Experiences**

48. As part of the general trend towards the adoption or reform of competition legislation, several African countries including Algeria, Cameroon, Côte d'Ivoire, Gabon, Kenya, Morocco,

Senegal, South Africa, Tunisia, Zambia, and Zimbabwe have become relatively open trade regimes whereby introducing competition law and establishing competition authority. In other countries such as Ghana, Egypt and Malawi competition legislation are in preparation.

49. In Kenya, the Restrictive Trade Practices, Monopolies and Price Control Act was introduced in 1988. This law was introduced to curb unfair market prices, ensure that consumer welfare is not violated and reduce direct Government controls and regulations in all economic activities within the country.<sup>24</sup> The main objective of the Act is to encourage competition in Kenyan economy by: prohibiting Restrictive Trade Practices; controlling/regulating the activities of monopolies; controlling the concentration of economic power; controlling of prices of some commodities believed to be essential to economic development and the welfare of low income consumers.

50. In Malawi, the Government has adopted a Competition Policy Framework. By this Framework, the Government is trying to adopt a competition policy and law aimed at further economic liberalisation, leading to greater competitiveness in domestic markets. The Government also intends, by this law, to relinquish a number of means by which it previously influenced private sector operators, notably business licensing, price controls, and exchange controls on current account items. The major goals of competition policy include the protection of consumer interests and the promotion of economic efficiency. The Government envisages to achieve these goals essentially through lowering barriers to entry

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24 Kenya, The Restrictive Trade Practices, Monopolies and Price Control Act, 1988.

and eliminating restrictive business practices. Three primary areas have been targeted including business behaviour calculated to eliminate or reduce competition; market structure which permit abuse by an entity in a position of market power; and government legislation, both existing and proposed, which may impact on the operation of the free market in the country. In addition, a **Competition Policy Tribunal** is expected to be established to resolve contentious issues in certain specific fields. The major components of economic liberalisation which are expected to contribute to increased competitiveness in the economy are:

- (i) the removal of regulatory controls and business licensing legislation which inhibited entry of new firms into the market;
- (ii) the liberalisation of the financial sector through introduction of market-based interest and exchange rates and foreign exchange allocations. Barriers to entry into the banking system have been relaxed so as to increase competition in the provision of financial services;
- (iii) the removal of import licensing and the rationalisation of the custom tariff as well as the removal of domestic price controls;
- (iv) the review of investment incentives to encourage new market entrants; and
- (v) the privatisation of public enterprises with among other, the objectives of promoting economic

efficiency, the encouragement of competition and the reduction of monopoly power.

51. In the Republic of Zambia, **The Competition and Fair Trading Act (Act No. 18 of 1994)**, is the only legislation in Zambia giving the courts jurisdiction to review a code of conduct which is "anti-competitive" or "unfair". The Act considers anti-competitive trade practices as "any category of agreements, decisions and practices which have as their object the prevention, restriction or distortion of competition to an appreciable extent in Zambia". Part II of the Act establishes an enforcement machinery: The **Zambian Competition Commission**. This Commission is responsible for monitoring, controlling and prohibiting acts or behaviour which are likely to adversely affect competition and fair trading in the country. The Commission has power to carry out, on its own initiative or at the request any person investigations in relation to the conduct proscribed by the Act.

The Commission has an Executive Director who has powers to seek from a court a warrant granting: authority to enter any premises; and access to or production of any books, accounts or other documents relating to the trade or business of any person and the taking of copies of any such books account or other documents.<sup>25</sup>

52. The Republic of South Africa has a long history on Competition Legislation going as far back as 1949. While consumer protection is not a facet of the current (1997) competition law,

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25 Zambia, **The Competition and Fair Trading Act, 1994: Part IV, 14 (1)**.

however, other Acts (e.g. The Harmful Business Practices Act, 1988) supply a framework similar in scope and application to the current Competition Act to address consumer related business practices. The main objectives of the current competition legislation are : to provide for the maintenance and promotion of competition in the economy; for the prevention or control of restrictive practices, acquisitions and monopoly situations; and for matters connected therewith.<sup>26</sup>

Box 1: Economic Liberalization in Egypt

Prior to the Uruguay Round (UR), Egypt embarked on a comprehensive shift away from a centralized state toward a market-based, outward-oriented economy, under the guidance of the High Ministerial Economic Reform Committee. These reforms focused essentially on the following areas: macroeconomic stabilization; trade liberalization; deregulation of price controls and other administrative practices; reorganization of public enterprises and privatization; and the creation of a Social Fund for Development.

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26 South Africa, Maintenance and Promotion of Competition Act No. 96 of 1979.



As a main exporter of cotton, rice, citrus fruits, onions and potatoes, a strategy for agriculture was also worked out together with the government, the FAO, the UNDP, UNEP, and the WFP. The main objectives of the strategy includes to:

- further deepen the liberalization and privatizing of the agricultural sector,
- take into consideration the local, regional and international environment;
- conserve, improve and develop resources with optimal utilization;
- achieve efficiency, equity combined with environmental awareness;
- expand exports where there is a comparative advantage and import products where there is no comparative advantage;
- improve opportunities for gainful employment in the agricultural sector.

At the time of the finalization of Uruguay Round negotiations, Egypt committed to bind tariff rates on all items and tariff non-tariff measures on agricultural products according to the terms of the UR, with a compensation mechanism. Egypt has also undertaken tremendous effort to strengthen and modernize legislation in the intellectual property rights area. A new law has been drafted to amend the old patent law of 1954 to conform to the terms of the TRIPs agreement, in particular to ensure protection for rights holders. Progress are also been made in improving copyright protection. Importantly, computer programs are now considered as literary works with a period of protection of 50 years. This conforms to the UR agreement.

Source: CIDA, Africa and the Uruguay Round, January 1996.

## **Section V**

# **CONSTRAINTS ON COMPETITION POLICY IN AFRICA**

53. Responding to the challenges posed by globalization and liberalization requires major adjustments in economic policies, resource allocation and production structure in African countries. The world economy is increasingly being shaped by the processes of globalization and liberalization. These are interrelated and multifaceted processes encompassing the growth of international trade in goods and services and capital flows, the global integration of production processes, the dominance of market-oriented economic policies throughout the world, and a significant degree of institutional harmonization between countries in respect of trade, investment and other policies mediated through multilateral and regional institutions. Globalization and liberalization are processes that are unlikely to be reversed in the foreseeable future and have profound implications for developing countries, including African countries, in terms of their position in the world economy, their development prospects and the nature of their economic policies (Onitiri, 1995). With the new trends towards globalization and liberalization, many developing countries risk being marginalized unless they can adapt and adjust to the new competitive international environment.

## **(a) Low Participation in Multilateral Trading Negotiations**

54. Africa's participation at Multilateral Trade Negotiations (MTNs) that have constituted the landmark of international trade relations has been marginal. Africa's participation in the Uruguay Round of negotiations leading up to the establishment of the World Trade Organization was peripheral. Many African countries have as yet to join the World Trade Organization (only thirty-two countries had joined by the beginning of 1997). Furthermore, even those that have joined very few maintain delegations at the Headquarters of the GATT/WTO in Geneva to be able to effectively follow the discussions held on a daily basis within the framework of the WTO. As a consequence very few sub-Saharan African countries participated in the Uruguay Round of Multilateral Trade Negotiations (UR), or paid attention to the formal negotiating process. The bargaining power of the African countries as a group was therefore not strong.<sup>27</sup>

55. For many African countries, the concepts of competition are not only new, but also very complex. Introduction mechanisms for enforcement of competition policy, legislation and Competition Authority, has associated costs, which cannot be born by many African countries particularly at this stage of budgetary austerity and implementation of public sector reforms by many of these countries.

56. The correct application of such new and complex concepts

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27 The World Bank, The Impact of the Uruguay Round on Africa, Discussion Papers no. 311.

needs some time. First, a learning process with respect to business and consumer behaviour is essential. Second, training to change mentalities and to create a "culture of competition" is also necessary. Moreover, the legislative process itself is, by definition, an evolutionary one, therefore African countries need to go through an evolutionary process of amending and improving their legislation in general and their competition laws, in particular.

## **(b) Lack of Resources**

57. African countries, in parallel with the liberalization of their trade regimes under structural adjustment programmes, are faced with the difficult and challenging task of institutionalizing and upgrading their trade legislation aimed at implementing the WTO Agreements, and developing a regulatory framework that will ensure evolution of market-based economies. In addition, national laws and regulations in several African countries may not yet have been synchronized with basic provisions of the WTO Agreements.

58. African countries have been implementing reform programmes with a view to liberalizing their economies and in order to integrate these economies into the world economy. Many of these countries hope to benefit from the strengthening of the multilateral trading system and expansion of world trade. A number of these countries are now in the process of trying to bring their trade policies in line with demands of a globalizing and liberalizing world economy. Nevertheless, translating trade rights and obligations under multilateral agreements into concrete trade advantages requires coordinated actions at the country, sub-regional and regional levels between African governments, the private sector

and business community as well as regional organizations.

59. It can be observed that in industrialized and some advanced developing countries, preparations for international trade negotiations is an interactive process between government, the private sector, intergovernmental and non-governmental institutions as well as specialized research institutions. This is done in order to arrive at consensus on the issues to be discussed and more importantly to arrive at a country position.

60. In many African countries, this culture and process of consultation in advance of important international negotiations has still to develop and lack of resources also imposes constraints on developing appropriate institutional mechanisms needed to advance the process. Many of these countries find themselves poorly equipped in terms of human and financial resources to enable them to adequately prepare technical background studies and establish peer working groups needed to prepare them for international trade negotiations.<sup>28</sup>

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28 The World Bank, Trade, Technology, and Competitiveness.

## **(c) Persistence of Natural Monopolies**

61. In most economies, there is a set of monopolies that have emerged as result of economies of scale and the huge sunk-in costs needed to operate in such industries. In African countries such monopolies, often called **"natural monopolies"** are prevalent and concentrated in a number of important sectors. There is a grouping of **"strategic industries"** for which arguments are made for the need direct or indirect state intervention. This category often includes water supply, the electricity power, primary health care, primary education, postal service, etc. Technological change and the advance of the private sector have reduced the irrelevancy of the arguments for government intervention in what are called **"natural monopolies."** The private sector has been found to operate as efficiently as the public sector in some of the sectors, and in some cases even better. However, political patronage that control of public enterprises gives to governments in power has proven a major stumbling bloc to privatization of public enterprises in Africa as well as to the elimination of natural monopolies.

## Section VI

### CONCLUDING REMARKS

62. The globalization and liberalization of the world economy, in terms of production processes, marketing and distribution as well as technological advances, has not only opened up opportunities but also brought along tremendous challenges in terms of ensuring **"fair competition"** in such liberalized markets. Furthermore, the end of the Cold War and the shift to market-oriented type of economic structures, not only in the formerly central planned economies, but also in many others, has also heightened the debate on the possibility of **"state monopolies"** giving way to **"private monopolies"** as many governments reduce their direct intervention in economic activity in the context of "economic reforms."

63. The challenges that face the global economy is how to ensure that globalization and liberalization produces a **"pareto optimal"** situation in terms of increasing global welfare. In such a situation promoting competition and a **"level playing field"** in international production and trade becomes an imperative. Reducing restrictive business practices, ensuring that mergers and take-overs do not result in undue concentration of economic power, and minimizing dumping practices are some of the objectives and targets of competition policy and law.

64. Competition in a market refers to rivalry among sellers and among buyers of goods or services. It also refers to a firm's ability to produce goods and services that meet the test of international markets and simultaneously increase its earnings and market share over time. Competition can be analyzed at national and international levels.

65. At national level (firm competitiveness), competition deals mainly with such government actions as: adoption of competition policy and law and/or its improvement, effective enforcement of appropriate legislation, and the implementation of judicial and administrative procedures for the control of Restrictive Business Practices (RBPs). This involves basically issues of monopolies and concentration of economic power; acquisitions, mergers, and takeover; the enforcement mechanism and extra-territorial coverage.

66. At international level, competition is related to a code of conduct designed to promote competitiveness in various markets: the set of multilaterally agreed principles for the control of RBPs. This calls basically for the establishment of consultation procedures whereby a State may request consultation with other States in regard to issues concerning the control of RBPs. The main issues of competition policy and law at international level and within the framework of GATT/WTO are related to: safeguards agreements, subsidies, antidumping, antitrust, trade-related aspects of intellectual property rights (TRIPS), and trade-related investment measures (TRIMS).

67. Lessons derived from available African country case studies suggest that as of 31 December 1996, only 17 per cent of African countries had adopted Competition Policy and Law.<sup>29</sup> The main stated objectives of these Competition Policy and Laws are basically similar, although they are stated differently. In most of these legislations, extra-territorial approach is not properly reflected and virtually all of them do not include such aspects as antidumping, antitrust, subsidies on production, and non-tariff barriers to

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29 Algeria, Cameroon, Côte d'Ivoire, Gabon, Kenya, Morocco, Senegal, South Africa, Tunisia, and Zambia.



competition and trade. These are indeed some of the issues that are likely to be at the center of the debate on a possible multilateral agreement on competition policy and law. Furthermore, all these aspects affect considerably prices of traded and non-traded goods and thereby the competitiveness of products.

68. It has been noted that many of the competition policy and laws enacted by African countries tend to emphasize competition on product markets (goods and services) and not on factor markets (labour, technology, capital). Furthermore, issues of competition in the context of privatization of state-owned enterprises which is currently taking place in the framework of "economic reforms" has not been given due consideration, and its implications on economic concentration.

69. Given the current stage of development of trade in Africa, the challenges of adopting an appropriate competition policy and law are indeed formidable because of the dangers inherent in opening up economies which have hitherto been relatively closed. The need for African economies to be integrated into the world economy is not any more an issue. However, the pace at which this should be done is. Some have called for African countries to adopt a **gradualistic approach** in the implementation of Competition Policy and Law. The choice for each country will be dictated by the state and structure of development of the economy, the institutional infrastructure available as well as the administrative machinery for enforcement of the legislation enacted to promote competition.

70. In the context of developing a multilateral agreement on competition policy and law, the extent to which the final agreement will reflect African countries views on the issue will to a large extent depend on their active participation in the WTO activities. This is essential if Africa is to benefit from the strengthening of the WTO.

This requires constant involvement by these countries in the work of WTO councils, committees, and working groups, as well as in the day-to-day negotiations that take place on some of these issues. This, in turn, requires more resources being allocated by African countries to follow-up on WTO issues, professional back-up and improved coordination between different governmental agencies.

71. This study has tried to provide African countries with some understanding of the issues of Competition Policy and Law within the framework of the international debate currently taking place. More importantly, the study has been undertaken to assist those countries that are in the process of adopting competition policy and law with some insights and lessons that can be derived from other African countries. Furthermore, as the debate on the issue of how to promote competition in the world economy within the framework of the increased momentum towards globalization and liberalization intensifies, African countries need to be abreast of the issues that are likely to occupy center stage in this debate. Indeed these issues will include: safeguards agreements, subsidies, antidumping, antitrust, trade-related aspects of intellectual property rights (TRIPS), and trade-related investment measures (TRIMS).

## ANNEX 1

### Main Features of African Competition Policy and Law

	Algeria	Cote d'Ivoire	Gabon	Kenya	South Africa	Zambia
1. Main objectives of competition policy and law			<ul style="list-style-type: none"> <li>-To organize and promote free and fair competition exercise;</li> <li>-To promote economic efficiency;</li> <li>-To maximize consumer welfare;</li> <li>-To encourage transparency in trade practices.</li> </ul>	<ul style="list-style-type: none"> <li>-To improve enterprise's institutional environment;</li> <li>-To encourage and promote free trade and transparency;</li> <li>-To create conditions for the development of national enterprises.</li> </ul>	<ul style="list-style-type: none"> <li>-To provide for the maintenance and promotion of competition in the economy;</li> <li>-To prevent or control restrictive practices, acquisitions and monopoly situations, and for matters connected therewith.</li> </ul>	<ul style="list-style-type: none"> <li>-To encourage competition in the economy by prohibiting anti-competitive trade practices;</li> <li>-To regulate monopolies and concentrations of economic power;</li> <li>-To protect consumer welfare;</li> <li>-To strengthen the efficiency of production and distribution of goods and services;</li> <li>-To secure the best possible conditions for the freedom of trade;</li> <li>-To expand the base of entrepreneurship;</li> <li>-To provide for matters connected with or incidental to the foregoing.</li> </ul>

	Algeria	Cote d'Ivoire	Gabon	Kenya	South Africa	Zambia
<p>2. Main elements of the competition</p> <p>2.1 Restrictive business practices</p>	<ul style="list-style-type: none"> <li>-Limitation of access to markets;</li> <li>-Limitation and/or control of producers, suppliers, or investors;</li> <li>-Market allocation;</li> <li>-Limitations on free pricing.</li> </ul>	<ul style="list-style-type: none"> <li>-Coordinated activities among economic entities which restrict or impede competition;</li> <li>-Collusive tendering;</li> <li>-Refusal or discrimination in supply;</li> <li>-Limiting or restricting the terms and conditions of sale or supply of goods and services.</li> </ul>	<ul style="list-style-type: none"> <li>-Limitations of access to market or restrictions on free competition;</li> <li>-Market or customer allocation agreement;</li> <li>-Limitations of free pricing;</li> <li>-Limitations or controls of suppliers or investors.</li> </ul>	<ul style="list-style-type: none"> <li>-Price cooperation or collusion;</li> <li>-Resale price maintenance;</li> <li>-Refusal to sell/deal;</li> <li>-Discriminatory discounting;</li> <li>-Customer discrimination;</li> <li>-Market allocation.</li> </ul>	<ul style="list-style-type: none"> <li>-Resale price maintenance;</li> <li>-Vertical price collusion;</li> <li>-Horizontal price collusion;</li> <li>-Horizontal collusion on conditions of supply;</li> <li>-Horizontal collusion on market sharing.</li> </ul>	<ul style="list-style-type: none"> <li>-Trade agreement fixing prices;</li> <li>-Collusive tendering;</li> <li>-Market or customer allocation;</li> <li>-Collective actions to enforce arrangements;</li> <li>-Concerted refusal to supply goods and services to potential purchasers.</li> </ul>
<p>2.2 Monopolies and concentration of economic power</p>	<ul style="list-style-type: none"> <li>-Unjustified actions to sell;</li> <li>-Customer discrimination;</li> <li>-Tied-purchasing conditions;</li> <li>-Resale price maintenance.</li> </ul>	<ul style="list-style-type: none"> <li>-Abusing the dominant position;</li> <li>-Concentration of economic power;</li> <li>-Limitations of access to market or restrictions on free competition;</li> </ul>	<p>Not clear definition, but the law refers to "Any agreement, arrangement, explicit or implicit understanding or method of trading which: *limits access</p>	<ul style="list-style-type: none"> <li>-Unwarranted concentration of economic power.</li> </ul>	<ul style="list-style-type: none"> <li>-No specified.</li> </ul>	<ul style="list-style-type: none"> <li>-No specified.</li> </ul>

	Algeria	Cote d'Ivoire	Gabon	Kenya	South Africa	Zambia
			to the market or restricts competition; *Encourages market sharing or supply distribution; *Limits free pricing; *Limits or controls suppliers or investors".			
2.3 Mergers and takeovers	-No specified.	-Prior consultation with the competition authority is required.	-No specified.	-Regulated/controlled on a case-by-case basis	-Handled on case-by-case basis.	-Merger between two or more independent enterprises engaged in manufacturing or distributing substantially similar goods or providing substantially similar services; -Take over of one or more such enterprises by another enterprise, or by a person who controls another such enterprise.

	Algeria	Cote d'Ivoire	Gabon	Kenya	South Africa	Zambia
<p>3. Enforcement machinery for competition policy and law</p> <p>3.1 Enforcement authority</p>	-Conseil de la Concurrence (Art. 16)	-Commission de la Concurrence (Art. 6)	-Commission de la Concurrence (Art. 2)	-Monopolies and prices commission (Part I, 3 (1))	-Competition Board (Art. 3 (1))	-Zambia Competition Commission (Art 4)
3.2 Penalties for non-compliance	<p>-Violation of the law: (1) price collusion: a fine from DA5.000 to DA500.000; (2) refusal to issue invoices: a fine from DA5.000 to DA1.000.000; or imprisonment from 1 month to 1 year; or any of the two.</p> <p>-Refusal to comply with decisions or orders of the</p>	-Violation of the act and other regulations for its implementation: a fine between CFA200.000 - to CFA5.000.000.	-Violation of RBPs: (1) abusing economic power, coordinated activities which restrict or impede competition, collusion, refusal to sell/deal; imprisonment from 3 months to 3 years and/or a fine from CFA50.000 to	<p>-Violation of RBPs: losses of income or any damage: a fine of two times the value of the losses or damage; restitution to injured consumer;</p> <p>-Merger/Takeover: imprisonment for a term up to five years or a fine up to two hundred thousand shillings or to both</p>	-Violation of RBPs, acquisitions, and monopoly situations: suspension and/or termination of the membership of a member in regard to certain mergers acquisition or restrictive contract.	-Violation of the Act, any regulation made hereunder or any directive: a fine up to ten million kwacha or imprisonment for term up to five years or to both.

	Algeria	Cote d'Ivoire	Gabon	Kenya	South Africa	Zambia
	competition authority: a fine from DA5.000 to DA100.000; imprisonment from 2 months to 2 years; or any of the two.		CFA900.000.000 and a penalty of CFA5.000 per each day after the time-limits; (2) price collusion: imprisonment from 1 to 6 months and/or a fine from CFA30.000 to CFA30.000.000. -Failure to supply information or documents required by the competition authority: imprisonment from 3 months to 3 years and/or a fine from CFA50.000 to CFA90.000 and a penalty of CFA5.000 per each day			

	Algeria	Cote d'Ivoire	Gabon	Kenya	South Africa	Zambia
			after the time-limits.			
4. Extra-territorial coverage	-No indicated	-Competition policy and law takes into account the concept of globalization of the world economy and the country's membership of the UEMOA	-No indicated	-Restrictive trade practices committed within the country	-No indicated	-The anti-competitive trade practices provisions apply to all practices, acts or behaviour whether or not those are embodied in an agreement so long as their object is to discourage competition in Zambia.

Source: ECA compilation



## ANNEX 2

### The relationship between competition law and other laws and concepts

	Competition	Trade law	FDI	IPR	Consumer Protection	Unfair competition/ Unfair trade	Price regulation
Competition		Export cartel Protectionist or discriminatory application of competition legislation	Merger/acquisitions Abuse of DPMP Cartels of FDI RBP by local firms	Prohibition of RBP in licensing procedure	Prohibition of unfair trade practices Obligatory display of prices	Discriminatory application of competition law	Price liberalization Prohibition of resale Price maintenance (RPM)
Trade law	Anti-dumping Subsidies		Export incentives, subsidies to FDI	Counterfeit trade	Safety regulations Health protection Phytosanitary rules	Anti-dumping action Countervailing duties Use of trade marks to prohibit parallel imports VERs	Administrative pricing of imports
Investment (FDI)	FDI incentives, such as tax holidays or granting of	Local content requirements TRIMs		Registration of trade marks and other IPRs in favour of			

	Competition	Trade law	FDI	IPR	Consumer Protection	Unfair competition/ Unfair trade	Price regulation
	monopolies to FDI, can be anti-competitive			FDI			
IPR	Use of trade marks to ban parallel imports	Trade mark import restraints Restraints on trade ancillary to licensing agreement	Licenses and royalties in parent/Subsidiary operations		Trade mark indications of origin	Trade marks copyrights Industrial designs Patents Rules of origin	Resale price maintenance and price regulation resulting from IPR
Consumer protection law	Misleading advertising Misrepresentations	Health and safety standards	Prohibition of imports of goods banned in parent country	Rules of origin Standards		Misleading advertising Weights and measures (metrology)	Prohibition of hoarding and other price manipulations
Unfair trade or unfair competition laws	Provisions sometimes found in competition law	Anti-dumping Subsidies Rules of origin	Predatory pricing of inputs and technology in parent subsidiary relations	Counterfeit trade	Hoarding Predation Pyramid-selling Bait-selling Misleading Representation and advertising		Export subsidies Dumping

	Competition	Trade law	FDI	IPR	Consumer Protection	Unfair competition/ Unfair trade	Price regulation
Price regulation	In case of urgency where competition law is not efficient (e.g. brutal hike of prices of essential goods such as petrol)	Subsidized exports	May either subsidize (if low price of inputs) or hinder FDI (if high price of inputs)	Compulsory licensing Administrative regulation of license conditions, royalties and sales	Low prices and subsidizing of primary necessities	Subsidized exports	

Source: UNCTAD/TD/B/RBP/INF.37

## **ANNEX 3**

### **Format for contributions to the Handbook on Competition and RBPs legislations**

- A.** Description of the reasons for the introduction of the legislation.
- B.** Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation.
- C.** Description of the practices, acts or behaviour subject to control, indicating for each:
  - (a)** The type of control, for example: outright prohibition, prohibition in principle, or examination on a case-by-case basis;
  - (b)** The extent to which the practices, acts or behaviour in Section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection, for example, controls concerning misleading advertising.
- D.** Description of the scope of application of the legislation, indicating:
  - (a)** Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;
  - (b)** Whether it applies to all practices, acts or behaviour having effects on that country, irrespective of where they are committed;
  - (c)** Whether it is dependent upon the existence of an agreement, or of that agreement being put into effect.

- E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body (ies).
- F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices.
- G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered.
- H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by governments, or legislation, or particular parts thereof.

**Source: UNCTAD, TD/B/RBP/94**

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