



Seychelles ❖

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This paper sets out the background leading to the birth of the Competition Regime in the Seychelles. It presents a profile of the country and the economic scenarios existing in the country both pre and post the enactment of the Competition Law. The explanations provided with respect to the regime span over the different facets of the Fair Competition Act (2009), the Fair Trading Commission that administers this Act, as well as the Consumer Protection Act that is closely related to the Fair Competition Act and also administered by the Commission.

The report ends by painting a picture of the various instruments in the years to come and the scope of possibilities that exists for the regime to make use of in order to ascertain its position as one of the most well respected organisations in the Seychelles economy.

Basic information and Country Profile

The Republic of Seychelles consists of over 116 islands scattered over 1 million square kilometers of sea in the middle of the Western Indian Ocean. The Seychelles archipelago is divided into two distinct collections: the Mahe group, 43 islands in all, granitic with high hills and mountains and the outlying islands; and the coralline group numbering 73 or more for most part only a little above sea-level. Mahe the most important island lies between 4 degrees south latitude and 55 degrees east longitude. Two other islands of major importance as regards to size and population are Praslin, 33.6kms from Mahe and La Digue 48kms away.¹

The first settlements in Seychelles can be traced to 1770 when the islands were first settled by the French, leading a small party of whites, Indians and Africans. The islands were ceded to Britain under the Treaty of Paris in 1814. Seychelles achieved independence in 1976 and became a republic within the Commonwealth.

According to the 2010 statistics, the population of Seychelles is 89,770 with a growth rate of 1.0 percent. It

PROFILE

Population:	89,770 million*
GDP (Current US\$):	962.8 billion (PPP)*
Per Capita Income:	10,727 (PPP)*
Surface Area:	455 sq km*
Life Expectancy:	73.3 years*
Literacy (%):	96 (of ages 15 and above)*
HDI Rank:	57*
<i>Sources:</i> - National Statistics Bureau (Seychelles) - Human Development Report statistics (2009) - Millennium Development Goals Report (Seychelles 2010) (* For the year 2010-11)	

is estimated that around 86 percent of the population is concentrated on Mahe. The life expectancy at birth stands at 73.3 years and 63.1 percent of the population is aged between 15 to 64 years.² The three official languages of the Seychelles are English, French and Creole.

Seychelles is considered a small islands developing state with a GDP per capita of US\$10,727. The economy is heavily dependent on tourism and fisheries which account for 27.5 and 0.9 percent of the GDP respectively whilst manufacturing and construction make up 6.1 and 4.6 percent of the GDP. The country is heavily dependent on import and imports 90 percent of its primary and secondary production inputs and consumption of goods.

Economic background

The Seychelles' economy has two main strong pillars in the tourism and the fisheries industries and is mostly import dependent with limited natural resources. With impending changes taking place in the economy a third pillar with promising potential is emerging in the financial sector.

“Until 2008, the government pursued a state-led economic model of self-sufficiency and direct intervention in

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manufacturing, distribution, trade and other economic activities through parastatals” (The World Bank Report No. 57109-SC, October 2010 para, 5). The interventionist approach of the government was more apparent in certain sectors than others. The Seychelles Marketing Board (SMB) a parastatal body governed by the state had the sole role of importing and wholesaling while simultaneously retailing the essential or basic needs to other retailers and directly to consumers.

A stringent regime of price control ensured adherence to the prices recommended by the government as part of the programme to maintain low and affordable prices for all Seychellois. Other services such as mass transportation and private hire were subjected to government involvement in a bid to regulate the bus fares for the attainment of reasonable fares. Additionally, the Central Bank of Seychelles (CBS) exercised much control over the commercial banks regulating the interest rates, foreign exchange hold and other monetary operations of the commercial banks.

Furthermore, the government had also committed to an aggressive investment programme which was in sync with its socio-economic agenda. The strict price controls and policies to regulate trading conditions were insufficient to manage and create more financial resources to support the implementation of programmed developments.³ These expansionary measures and interventions led to an elevated government spending obliging increased financing.

Ultimately, the current account and fiscal deficit widened coupled with the global economic recession of 2008. This led Seychelles, supported by the expertise of the IMF, to embark on an economic reform programme comprising fiscal and monetary policies to promote macroeconomic stability and sustainable growth. The main components of the reform were: a market-based monetary policy framework, liberalised foreign exchange policy, fiscal policy aimed at attaining sustainability, sustainable public debt, sustainable balance of payments position and structural reforms (including public sector reforms), tax reforms, public finance management, public enterprise reforms and private sector development.⁴

A stability-oriented macroeconomic policy was adopted aimed at reducing the fiscal deficit and improving the primary balance through debt restructuring while other efforts have been directed at maintaining low inflation and implementing new measures to eliminate foreign exchange pressures in the economy. Numerous other remarkable reforms are being implemented in several other areas, such as public sector restructuring, ongoing tax reforms and domestic infrastructure financing. The main objectives of these reforms are to reduce the role of the state in economic activity and enhancing the growth-generating capacity of the private sector by having measures in place to boost the productivity of the private sector through encouraging

entrepreneurial spirit, strengthening best business practices and wealth-creating activities.⁵

The need for new strategies to boost the flow of foreign direct investment (FDI) and relief from the severe financial burden of the economy was all too apparent. Therefore, slow and cautious liberalisation of the economy became an additional viable option for the reforms.

Growth has been remarkable following the macroeconomic reforms. In terms of GDP the Seychelles’ GDP was measured at US\$962.8mn in current terms and US\$800.0mn in real terms in 2010 and has been projected to grow by five percent in the following three years.⁶ The tourism industry which is one of the most lucrative industries in the country contributes about 27.5 percent of the GDP.⁷ Inflation settled from a record 63.3 percent in December 2008 to a moderate 7.0 percent in April 2012.⁸

Despite the depreciation of the local currency against the main international trading currencies, (Euro, Pound and US Dollar), the Seychelles rupee strengthened and stabilised rather quickly towards December 2009. This reflected significant appreciation indicative of excess supply of foreign currency in the market in comparison with a lower demand.⁹ The ready availability of foreign currency wiped out the existence of the informal market of foreign exchange creating space for more private sector economic development ultimately encouraging more competition within the varied economic sectors.

Genesis and Environment of the Competition Regime

The macroeconomic reforms of November 2008 paved the way to a progressively newly liberalised economy and modern economic climate phasing out the welfare state approach with much control and monopolies over many economic activities. These reforms aimed at improving the public, monetary and fiscal sector which would in turn give rise to a buoyant private sector, provided the need for regulation and coordination in the new economic environment.

Many economic tools were employed such as floating of the exchange rate, the privatisation of some state-owned companies such as the Seychelles Marketing Board, the independent auditing of several public entities and the streamlining and downsizing of the public workforce as means towards achieving the new market-driven economy.¹⁰

The private hire operation previously provided by Seychelles Public Transport Corporation (SPTC) solely has been liberalised to encourage more private participation in a bid to create more competition. Price controls have been removed and commercial banks are being allowed more freedom in operation whereas the CBS’ role is increasingly becoming that of a regulator and facilitator for improved financial transactions. The Investment and

Licenses Acts have been reviewed to accommodate the new economic climate and facilitate the ease of doing business while providing more protection for investing firms.¹¹

In all, the government aim is to move towards a system that would organise and regulate the shift from a previously welfare state economy to an open and competitive economy while simultaneously ensuring that the transition is as smooth and as efficient as possible. The overall objective is to reduce the state involvement in directly managing economic activities and to gradually remove administrative and legal barriers to market entry so as to enhance the scope of competition, efficiency and consumer welfare.

Consequently, The Fair Competition Act (FCA) was enacted in November 2009 with the aim “to promote, maintain and encourage competition, to prohibit the prevention, restriction or distortion of competition, and abuse of dominant positions in trade, to ensure that enterprises, irrespective of size, have the opportunity to participate equitably in the market place and provide for matters connected therewith.”(Seychelles Fair Competition Act, 2009)¹²

The Fair Trading Commission (“the Commission”) was also established in November 2009 by the Fair Trading Commission Act to administer the FCA. The Commission mandate is “to safeguard the interests of consumers, to monitor and investigate the conduct of business enterprises, to promote and maintain effective competition in the economy”. (Seychelles, Fair Trading Commission Act, 2009).

Following the establishment of the Commission, various advocacy sessions were conducted with the business community with the aim of ensuring their understanding of this law, how it will be administered and implemented, as well as engaging their compliance through non-punitive measures. Towards this end, the Commission held workshops, drafted and sent documents and made personal one-on-one visits with a cross section of all stakeholders in the economy. The Commission also enlisted expert guidance from SADC and TRADECOM, which resulted in specialists in Competition Law, holding sessions locally with key partners from the Ministry of Finance, Regulators, the Judiciary, members of the Bar and the business community.

The advocacy and awareness sessions revealed a high level of ignorance of Competition Law and policy, and hence the need for continuous work in these areas with the enterprises and governmental departments was felt. The sessions held became the much needed tools for the unmasking and educating of the anti-competitive practices prevailing.

Competition law, institutions and competencies

The Fair Competition Act is a comprehensive and sound one containing all the main provisions usually entailed in competition law in other jurisdictions. It has dual aims which are on the one hand promoting, maintaining and encouraging competition among the enterprises within their respective markets and on the other it has to ensure a level playing field and assert that all enterprises have the same opportunity regardless of size to enter a market and participate actively, equally and competitively by safeguarding the competitive process in the economy. This will be achieved by eliminating the prevention, restriction and distortion of competition in the market resulting in a healthy competitive market, economic wealth and progress, technological advancement, increased consumer welfare while enabling enterprises to thrive financially.¹³

The Commission’s main functions are to carry out, on its own initiative or at the request of a person, investigations in relation to the conduct of business in Seychelles in connection with matters falling within the provisions of the Fair Competition Act and the Consumer Protection Act, to monitor commercial activities and consumer market(s) to ensure that business practices do not affect the interest of consumers and to take action so as to prevent the abuse of dominant enterprises, to eliminate anti-competitive practices and to prevent or control anti-competitive mergers. In addition the Commission is also mandated to educate and assist consumers in resolving complaints, to monitor standard of services supplied by service providers, to advise the government on matters relating to the Fair Competition Act and the Consumer Protection Act, to make available to businesses and consumers, general information with respect to their rights and obligations and to undertake studies and publish reports and information regarding matters affecting the interests of consumers and enterprises.

In order to perform its duties properly the Fair Trading Commission Act 2009 confers certain powers to the Commission. The Commission has the power to carry out investigations in relation to the conduct of business in Seychelles to determine if any enterprise is engaging in practices that are in contravention of the Fair Competition Act and the Consumer Protection Act. The Commission has the power to hold inquiries, to administer oaths, summon and examine witnesses, compel the production of books, records, papers and documents as are necessary for the purpose of the investigation, seize documents, make test purchases, inspect goods, conduct hearings searches and seize documents or articles and to impose remedies or financial penalties.

The Commission comprises 15 staff in all and has been operational for two and half years. It is headed by a board of 5 Commissioners who sit for hearings and impose decisions and penalties.

Given that competition law is new to Seychelles the Commission faces various constraints in implementing the competition law. Firstly, the Commission being budget dependent has limited financial resources to effectively enforce the FCA. Secondly, being a young competition authority in a small island state, the Commission has a lack of experienced personnel with specialist knowledge and technical competencies to enforce and administer both the FCA and the CPA. In addition, having been shifted from a controlled economy to a more liberalised one some companies are still being provided some measure of protection from government such as through exclusivity rights, monopolies established by statute in certain sectors and some markets are still controlled by licensing requirements and government policies. Lastly, the commission faces a challenging task to change the mindset of businesses and the public in general in creating a competition culture and one of responsible consumers in the country.

Anticompetitive Business Practices Prevailing

Understandably, through much discussion and exchanges and based on the number of cases dealt with (14), the most frequent anti-competitive practices prevailing in the country are those of abuse of dominance such as refusal to deal and resale price maintenance. This however, could be directly linked to the former economic set-up of the country with respect to trading and other business transactions.

Therefore, it was rightfully said that, “the full application of the competition rules to both private and state-owned enterprises is certainly very important in the Seychelles context, in view of the current extensive involvement of the State in managing economic activities and in the light of the exclusive or privileged rights previously enjoyed by state-owned enterprises, still existing in some markets.” (Massimiliano Gangi, “Technical Assistance to the Seychelles Ministry of Finance in Implementing the Fair Trading Commission of Seychelles”, December 2010)

Sectoral Regulatory Framework

In order to achieve a successful market-driven economy it is essential for the Commission to establish a framework where all sector regulators can work in collaboration with the Commission to be pro-active and to effectively implement the FCA.

Many institutions and organisations have been identified as having a direct liaison with the Commission since by nature of their activities they hold vital expertise required by the Commission for the analytical aspect of cases. These include institutions, organisations and ministerial departments whose line of work are interrelated to various trade related Laws, trade statistics, trading enterprises, licenses, financial transactions, technology etc. In line with the macroeconomic reforms at the micro level it is essential

to create the competitive climate for the growth of the economy.¹⁴ It must be noted that this framework is a “work-in progress” and it is geared towards ensuring active participation of all players who have an impact on the economy and also affirming the expeditious development of the commission.

The Commission has already taken some steps in acknowledging these stakeholders and their importance to the Commission. This was mostly achieved through education and awareness to the different stakeholders about the commission, its roles and functions and the FCA. All this, coupled with the significance of and diverse information these stakeholders could contribute would greatly enhance the Commission’s expertise, efficiency and capabilities. Consequently, many have expressed their wishes to support the Commission through the signing of Memorandum of Understandings (MOUs).¹⁵

This framework will also increase openness and transparency in the procedures and processes carried out by the Commission. Hence, should a remedy be imposed on an enterprise requiring close monitoring, the sectoral regulator could assist with the monitoring of business practices in the various sectors, considering their expertise in the business operations within their particular sector.

Furthermore, the regulators could act on behalf of the Commission to promote competition in their respective sectors and concurrently raise alerts upon infringements of anti-competitive practices for investigation and remediation. Market or sectoral studies are other areas that could be greatly facilitated by this set up as their expertise will be valuable in the acquisition of data and analysis.

A network with all sector regulators will also enable the flow of information to be more consistent and systematic. It will also broaden the Commission knowledge *vis-a-vis* operating processes within the different sectors and ensure close collaboration and consultation with stakeholders in the economy. Prior to the enactment of the FCA and the establishment of the Commission, certain sectors were able to enforce an element of competition law through their respective statutes. Such legislative overlaps are currently being addressed in order to ensure a smooth operation and enforcement of the FCA. Nonetheless, it is important to note that the Commission is the only institution responsible for the enforcement of the FCA in the Seychelles.¹⁶

Consumer Protection Framework

The macroeconomic reforms brought about definite changes in the economy as aforementioned. The influx of goods imported from different origins flooding the market emphasised the need for more consumer protection. The opening up of markets such as retail, wholesale and imports gave way to anticipated reactions that required legislations to prohibit consumer exploitation and harm.

Following the enactment of the competition law in 2009, the Consumer Protection Act (CPA) was enacted in 2010 causing the Consumer protection Act 1977 to be effectively repealed. The CPA 1977 was not as comprehensive as is presently the case. The CPA 2010 has for aims the protection of consumers' right and ensuring that services and goods supplied by producers are adequate. It is also aimed at promoting and advancing consumer welfare by a fair, accessible, efficient, sustainable and responsible market, reducing disadvantage experience by consumers, promoting fair business practices, protecting consumers from unconscionable, unfair, unreasonable, unjust, misleading, deceptive, fraudulent conduct, improving consumer awareness and information, promoting empowerment and development of culture of responsible consumers and to provide an accessible, efficient, harmonised and effective system of redress for consumers.¹⁷

Competition Law is a necessary tool when it comes to regulating the conduct of enterprises within their relative markets. However, its ultimate aim is to enhance consumer welfare. The consumer protection framework in Seychelles also involves collaboration with stakeholders as is the case with the FCA to facilitate communication and flow of information with regards to consumer related matters.

The National Consumer's forum (Natcof)¹⁸ a nonprofit organisation plays a pivotal role as an advocate of consumer's rights. They are often consulted and could be viewed as an indispensable collaborator regarding consumer issues in the country. As a result, their presence in the framework is deemed crucial.

An example of the vital use of the consumer protection framework is to support the competition issues. Should there be a rise in prices of different service providers in the same market simultaneously this could sound an alarm among the consumers which could be detected by any of the stakeholders within the framework. The information could trickle through to the consumer department who in turn could alert the Competition department of the possibility of an anti-competitive practice such as price fixing or even the early detection of a cartel.

Consequently, though they possess differing roles in the market, the CPA contributes greatly in the sense that it assists the FCA to observe, analyse and assess the end results of the businesses actions in the market. In other words, the FCA and CPA complement each other at achieving greater economic progress, better consumer welfare and enthusiasm and active competition in the related markets.

Future Scenario

What is the future outlook for competition in the Seychelles?

Box 1: Some Notifications of the FTC

1. The Commission received a complaint from Mrs. Anne-Marie Chang Peng Tive. She purchased a mattress at AV Group. Upon arrival of the mattress, she noticed mould on it. When she returned the item to the retailer, she was only offered a discount. The Commission assessed that section 42 of the Consumer Protection Act 2010 had a provision for a refund when goods are not fit for the purpose, not in good quality or are defective. The Commission decided to resolve this case by a fast and effective mediation. The shop owner agreed to refund the price paid. (Case number CPA.12.009 notified on April 17, 2012)
2. A complaint was lodged by Mrs. Jacqueline Hascoet of France with regard to the prepayment of two ship models where only one was received. The Commission investigated the complaint and found that the second ship model was never shipped to France and that it was destroyed in a fire at the workshop. The Commission advised to refund or to rebuild another ship model. The complainant advised the Commission on August 29, 2011 that the second ship model was delivered. (Case number CPA.11.098).

This is a question that needs to be addressed with much attention as many elements of the markets today will affect the successful functioning of the competitive nature of the markets of tomorrow.

The macroeconomic programme has given rise to many challenges especially in the field of competition. On a microeconomic level it is important to promote and maintain the competitive agenda and prohibit the destructive anti-competitive practices so that the results could be reaped at the macro level in terms of high GDP and per capita income, better debt management and low inflation numbers.

All of the above are aims and outcomes that require diligence and determination. The major challenge though that seem to be obstructing the path towards the successful integration of the players in the progressive market-based economy is the complete commitment of the stakeholders with the Commission.

While the government is responsible to initiate and create an atmosphere conducive to competition through the use of the numerous policies, other stakeholders including the private sector should engage actively to promote and fuel the competitiveness of their respective sectors. The

Commission has a crucial and definite role to play as the economic regulator of the competitive process ensuring that contraventions of the law are eliminated and prevented. In other words, the Commission is the only institution with the ability to enforce the competition legislation in the country.

To enable these aims to be achieved the Commission has engineered many projects and plans devised to tackle different aspects of competition in the economy. Projects include workshops, open days, economic mapping exercises, exchange programmes with other jurisdictions, technical assistance and advanced studies.

Given that the Seychelles is still on an IMF reform programme, the Government is taking slow and cautious steps towards complete liberalisation in certain sectors of the economy. This is evident by the many amendments to current laws/regulations geared towards competition albeit not fully embracing all the elements of competition – even then some form of protectionism is still evident.

Recently, Technical Assistance was obtained from the United Nations Conference on Trade and Development (UNCTAD) for the development of the Commission's staff and to educate various government agencies. Similar workshops are envisaged to continue in the next coming years in order to build up the staff capacity and ensure the effectiveness and efficiency of the Commission and to allow the market to safely embrace competition, as intended through the liberalisation process.

Competition awareness though remains on top of the agenda of priorities for the Commission. Without effective

and well-focused awareness in favour of the competition act and its rightful place among the other legislations of the country the success of a competitive market could be minimised.¹⁹

It must be highlighted though that the regime has been in existence for only two and a half years. It has seen a lot of challenges but throughout it has been resilient until now and has managed its challenges quite effectively. With such steam it is not difficult to imagine the innumerable amount of successes that the regime could taste in the future.

In conclusion, Competition should be deemed as one that is healthy for the growth of the Seychelles economy as it has been well established that “markets and economies with greater international competitiveness and consumers' welfare are those featuring strong competition among enterprises.” (Massimiliano Gangi, “Technical Assistance to the Seychelles Ministry of Finance in Implementing the Fair Trading Commission of Seychelles”, December 2010)

However despite the enthusiasm surrounding the emergence of the competition law and its influences, the Commission faces a strenuous task in building awareness and support for competition among the citizens, the business community and even among government actors. The Commission task is more challenging since the dynamics of the business environment are changing rather quickly with the opening up of the economy. In all, the emergence of the new competition regime brought about by the reforms promise to be one that would revolutionise the economic climate of the Seychelles.

Endnotes

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- 6 NBS (National Accounts Estimates Bulletin September 2011)
- 7 NBS (ibid)
- 8 NBS(Consumer Price Index Bulletin April 2012)
- 9 CBS- Annual Report 2009
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- 11 The World Bank Report No. 57109-SC, October 2010
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