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About a Competition Law: Ghana

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Economy

There is no doubt that Ghana has been enjoying a period of relatively strong economic performance over the past few years. This is certainly an encouraging change from the previous decades when economic growth was either negative or stagnating. The last twenty years have seen real GDP growing steadily at about five percent per year. Even more impressively, significant progress has been made in reducing poverty: from 51.7 percent in 1992 to 39.6 percent in 1999 and 28.5 percent in 2006. This impressive performance is principally attributable to relative macroeconomic stability, reform, substantial inflows of external financing, debt relief and rising prices for primary commodities. Despite all these positive signs, there is much room for improvement. Ghana remains a poor country, with GDP per capita of only about $600. Agriculture still dominates the economy, accounting for about 39 percent of GDP and 55 percent of the labour force.

Competition Evolution and Environment

Following independence in 1957, Ghana under its first president Dr. Kwame Nkrumah, embarked on a strategy of import-substituting industrialisation through the establishment of state-owned enterprises (SOEs) between 1961 and 1966. This development policy enjoyed a boost from the substantial foreign reserves inherited from colonial rule and the high world market price for cocoa (Ghana's major export crop). Between 1961 and 1965, these policies seemed to bear fruit as real GDP growth averaged more than 3 percent per annum.

However, Ghana began to experience increasing balance of payments problems, due to the extreme dependence by the regime on huge external loans and the fall in world cocoa market prices during 1964-65. At the same time, due to over-staffing and gross mismanagement, most of the SOEs had become unprofitable. The combined effect of all of these internal and external problems was that of a chronic foreign exchange problem and massive foreign debts. In response to these problems, the ruling Convention People's Party (CPP) government resorted to restrictive trade policies: import controls through quantitative restrictions via the issue of import licences.

The state of the Ghanaian economy was characterised by corruption, political instability and poor macroeconomic management, resulting in a steep economic decline. This led to the adoption of the Economic Recovery Programme (ERP) in 1983, under the auspices of the IMF and the World Bank, aimed at correcting the distortions in the economy. Reforms included trade liberalisation, the elimination of exchange rate distortions, price-deregulation, privatisation and divestiture of public enterprises, investment in human capital and institutional capacity building and the rehabilitation of economic and social infrastructure. The ERP reforms succeeded in reversing the decline of the economy and improving the overall economic performance - GDP increased by an average of 5 percent per annum between 1984 and 1992. They also ushered in the transformation from an administrative system of economic management to a market-oriented system.

The advent of democracy in 1992 ushered in a process of transformation with the private sector becoming increasingly important in creating employment and being the engine of growth. Over the course of the following years, various institutions were created to regulate specific economic activities in the country. These institutions included: Ghana Standards Board (GSB), the Food and Drugs Board (FDB), the Public Utilities Regulatory Commission (PURC), the National Communications Authority (NCA) and the Environmental Protection Agency (EPA). Furthermore, a 'Protection against Unfair Competition Act' was passed in 2000 aimed at protecting both producers and consumers against such violations as misleading acts, discrediting acts and violation of trade secrets.

Privatisation and Regulation

Privatisation has been a gradual process. By the mid-eighties, the government of Ghana was engaged in virtually all sectors of the economy including areas like manufacturing, mining and the services sectors. In all, there were about 350 state-owned enterprises. In addition Government owned several boards and commissions which were performing services which could have been easily provided by the private sector. The reform agenda entailed two principal components: divestiture and liberalisation.

As a result of focused efforts, by end of 2000 almost 300 state-owned enterprises had been divested. Despite ongoing privatization, state-owned enterprises continue to play a significant role in the economy, notably in the electricity, petroleum and transport sub-sectors.

Regulation has become necessary with increased globalization and the growth of the private sector. Several independent institutions have been set up to oversee and ensure competition, efficiency, affordable pricing and quality of services and to protect the interests of both producers and consumers. The challenge has been the effective implementation of all the regulations that have been so painstakingly put in place.

Need for a Competition Law and Policy

There is an urgent need for a competition law and policy and this can be seen by looking at particular sectors and also instances of anti-competitive practices.

Energy

Ghana's energy sector is dominated by state-owned enterprises and the transmission of electricity is under a state monopoly (as was the distribution of electricity until only recently). Although Ghana is a net exporter of electrical energy in most years, low water levels at the Volta dam frequently lead to supply shortages and electricity cuts, a situation which points to the need for more investment in the power infrastructure of the nation.

Water

The water sector is severely under-invested and in recent years, several parts of the country have been prone to acute water shortages. As a result, a high percentage of urban consumers depend on water tankers for their drinking water supply. These consumers pay far in excess of those who have access to water from the piped system. The regulatory body in charge is taking steps to try to lower these costs but points to the need for more investment in infrastructure.

Telecoms

After privatisation in 1996, reforms in this sector have stalled, leaving the door open for anti-competitive practices by operators. Ghana has made huge progress in telecommunications services over the past decade or so, especially with the advent and proliferation of mobile lines but there is significant scope for improvement. The provision of basic telecommunications services (essentially, fixed lines) remains a duopoly. The recent entry of Vodafone into the market (through the purchase of 70% share in one of the existing companies) seems likely to increase the level of competition and the quality of services.

Financial Services

The past few years have seen a phenomenal growth in the banking sector and, on the surface, competition seems to be increasing, particularly with the recent entry of a number of Nigerian banks into the market. However, there are several reasons to question the extent to which banks actually compete. The dominant state owned bank still enjoys a substantial market power, a situation that may influence price setting among banks and distort competition.

Furthermore, banks in Ghana are among the most profitable in Sub-Saharan Africa and achieve such high levels of profitability by maintaining very wide interest margins. There are indications of oligopolistic behaviour among banks in stubbornly maintaining very high borrowing rates in spite of central bank efforts to encourage these rates downwards.

Future Scenario

At present, Ghana lacks a composite and comprehensive competition law and/or policy. However, very recently, Government, with the help of Consumer Unity and Trust Society (CUTS), started drafting a Bill on Competition Law. Two draft Bills prepared in the past failed to be developed into Acts of Parliament (the 'Trade Practices Draft Bill' of 1993 and the 'Draft Competition and Fair Trade Practices Bill' of 2004). However, this time there seems to be a real urgency to put a Competition Act in place as soon as possible. It has been realized that the liberalisation policies on their own, cannot create competitive markets. Thus, there is a very strong realization of the need to introduce measures that foster competition in the product, financial and labour markets, as well as in the public utilities, in order to facilitate the attainment of the social objectives associated with development. This is not an easy task but the passing of a Competition Act is the necessary first step. What must follow is the creation of the institutional and human capacity for effective enforcement.

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