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Cartel Prevalence in Africa – *A Diagnostic Study*

Most of the African continent is marked by poor competition enforcement – the reasons vary from absence of competition legislation to poor enforcement or structure of existing legislation to widespread corruption. One dangerous outcome of such poor enforcement is the free play of cartels in the African continent with adverse consequences in the form of high prices, low outputs and depressed demand. Cartelisation is particularly strong in sectors that provide essential services or staple items of consumption – health, public transport and food products. By definition, the poor spend a large chunk of their incomes on these sectors and are therefore the biggest victims of cartelisation. It is for this reason that cartels need to be tackled on a war footing in the African continent. Enactment of competition laws in countries presently lacking in these is at best a partial solution and has to be accompanied by development of capacity for competition enforcement. The setting up of an International Competition Fund to meet this objective seems to be a necessity in this regard. Such development in capacity has to be accompanied by a campaign to alleviate if not eradicate corruption so that apprehended cartels are not able to bribe their way out of punishment.

Introduction

A competition law is specifically aimed at preventing anti-competitive business practices, concentration and abuse of market power. There are generally two types of anti-competitive business practices; abuse of dominance and anti-competitive agreements. Anti-competitive agreements come in two forms: vertical and horizontal agreements. Horizontal agreements refer to agreements between competitors on several issues, the aim being to stifle or avoid competition among them. Such agreements are referred to as cartels.

Cartels are arguably the most harmful anti-competitive business conduct from a consumer point of view, as they are schemes by competing business units to 'gang up' against them. Several studies have revealed and quantified the harmful nature of cartels in the form of overcharges, production of low quality commodities and reduced investment in innovation expenditure for development of low cost production techniques. Cartels remove all incentives by business to fight for buyer patronage as the agreements act as both assurance and insurance against risks that could come from corporate rivalry.

Because of experience accumulated by European and US competition authorities in cartel busting both domestic and international cartels have low probabilities of survival in associated regions. However, a majority of African countries are yet to enact competition legislations. The UNCTAD Directory of Competition Authorities (UNCTAD, 2007) lists 25 African countries among 111 countries that have competition laws. However, most of these are hamstrung by inexperience or inadequate legislative provisions to deal with cartels.

The mentioned factors make the African environment attractive for cartelisation and the continent a target for multinational companies. This is supported by the findings by Clarke and Evenett (2002), who found evidence that after the formation of the vitamins cartel in 1990, exports from countries where the cartel conspirators were located to those nations in Africa, Europe, and Latin America that did not have anti-cartel laws tended to grow faster than to those nations that did have such laws. It is also estimated that overcharges by cartels from developing countries amounted to around US$1.71bn, US$67mn, US$8mn, US$1.19bn, US$975mn and US$43mn for the vitamins, citric acid, bromine, seamless steel tubes, graphite electrodes and lysine industries, respectively (Yu, 2003).

This paper examines cartels from the African perspective. A lot of literature already exists about the likely impact of cartels on developing countries[1]. This paper therefore tries to relate existing literature on cartels to information on cartels in Africa with the aid of a few examples. It tries to explore factors that have contributed to making the continent prone to cartelisation, and the economic implications of such cartels; it also explains why there should be more concern about cartels in Africa.

Why Africa is More Prone to Cartels

Evenett, Jenny and Meler (2006) have enumerated 87 cases of cartels being reported in different newspapers in sub-Saharan Africa during the period 1995-2001. This represented about 34.2 percent of all the anti-competitive practice cases during the same period. The number of cartel allegations increased to 102 during the period 2002-2004. Of 189 cases that occurred during the period 1995-2004, alleged or actual involvement by foreign firms numbered 62 cases.

The importance of competition law for the continent can also not be overlooked. Clarke and Evenett (2002) found that there were significant reductions in overcharges on vitamins by the associated cartel due to anti-cartel laws in the 1990s. In Zambia, the average annual reduction in overcharges was about US$10,000 while the reductions were about US$20,000, US$180,000 and US$9.91mn in Tanzania, Kenya and South Africa respectively. It can also be established that most of the other famous international cartels (that have been busted) have had negative impacts on Africa during their life period through imports.

By digging into the literature on the economics of cartels[2] and relating them to the African economy, it may not be difficult to understand why the continent is susceptible to cartelisation. Among the factors that generally facilitate the formation of cartels, the ones that are more important in the African context, include:

- Low level of expected punishment
- Low price elasticity of demand
- High degree of market concentration
- Absence of countervailing buyer power
- Existence of information exchange platforms for producers

A brief discussion of these factors follows:

Low level of expected punishment

Cartels only form if members believe that the costs in the form of expected punishment are less than the gains from cartel membership. Expected losses depend on the time gap between cartel formation and prosecution if the latter at all occurs, the probability of getting caught and the magnitude of sanctions imposed once caught. For those countries with competition laws, in the unlikely event that they succeed in busting cartels, sanctions are not too prohibitive. Cease and desist orders and fines that are often lower than profit from cartelisation commonly characterise competition law provisions in many African countries. There are no jail term provisions, which are now advocated as the most effective of cartel preventing sanctions.

The probability of getting caught is crucial in determining expected benefits, given legislated punishments and depends on several factors, including the extent to which the competition law covers cartels; the enforcement priorities, capabilities and available resources of competition authorities; and the incentives for members to inform about each other. With no competition laws and low enforcement capacities, the probability of being caught is very low. South Africa is probably the only one with leniency provisions to give members the incentive to inform on each other.

Low price elasticity of demand

Profitability of a cartel producing a product is dependent on its elasticity of demand. If the elasticity of demand is high then a cartel will not be profitable as an increase in price will result in lower revenues; low elasticity of demand results in higher revenues when price increases. An elastic demand for a product implies that the product is not a necessity and there are substitutes available to which consumers can easily switch. All these attributes are absent in most African markets, making these fertile ground for cartelisation.

High degree of market concentration

Highly concentrated markets are more likely to result in cartelisation. A small number of firms lowers coordination costs and makes organisation of secret meetings easier. Concentrated markets may also imply that the top firms are large and have similar cost structures and market shares. This makes it easier for members to monitor each other in terms of adherence to the rules of the cartel. Concentrated markets are largely an outcome of barriers blocking entry to a sector, as associated profits are normally expected to attract other firms into markets.

Most of the markets in Africa are highly concentrated[3] – a feature that has been present for quite some time now. Both behavioural and structural barriers to entry exist, often aided by legislative barriers presented by vested interests. Such kinds of barriers imply that entry by new firms into markets might not be effective in reducing incentives for cartels.

Lack of countervailing buyer power

Even firms in highly concentrated markets may find it difficult to profitably form a cartel if customers possess countervailing buyer power. Countervailing buyer power occurs when the buyers have strength to bargain with suppliers, usually due to their size and commercial significance, or through their connections to those in authority.

Firms can have countervailing buyer power if they are strong and are in a position to inflict huge losses on the suppliers if they withhold purchases. The threat to boycott would be seen as of significant consequences to the supplier, hence the supplier would fail to significantly profit from the buyer. Most firms who are the target for anticompetitive practices in the region rarely have the strength to influence behaviour, not only because they are largely small to medium scale enterprises whose individual efforts would not be of significance to the cartels, but also because they are rarely represented and mobilised to speak against the cartels.

Moreover, the same is equally true for end consumers. Consumers are rarely united and seldom possess bargaining strength, and neither have they any idea about the cost structures of commodities they purchase. It is generally consumers' movements which play the most critical part in mobilising consumers to speak with one voice and help them gain some countervailing power. But there is a serious dearth of consumer movements in many African countries, with those in existence being largely inactive and unknown to consumers. This is largely due to lack of necessary capacity and government support for awareness creation.

Availability of information exchange platforms

In most African countries, there are many business associations that have been formed across many sectors of these economies. These provide a platform for producers to meet and discuss viability strategies. In countries with competition laws, these associations are prohibited from discussing pricing or common business arrangements in order to prevent cartels. However, the organisation cost of a cartel is significantly lowered where a trade association exists. Trade associations, by lowering the cost of meetings and coordinating activities, facilitate the establishment and enforcement of a cartel.

Such meetings are usually conducted secretly in countries with competition laws; however, in countries without competition laws open discussion on pricing is very common. As mentioned, many countries in Africa still do not have competition laws and are therefore particularly susceptible to such price fixing. Most cases of price fixing in Africa are a result of formal and informal trade associations, a good example being Mauritius where a Sugar Syndicate, a private association that controls sugar marketing including export is present. (CUTS, 2007)

Corruption

The high incidence of corruption in Africa implies that bribery can be used by large corporations to buy freedom from prosecution even when cartelisation is suspected or supported by evidence. It is not difficult to influence high ranking government officials to exert their influence over competition authorities to dissuade them from investigating cases. Cartels can also use their market influence to ensure that tenders are not made in a transparent manner but manipulated so as to allow each cartel member a chance to make winning bids. Cases of corruption during the tender awarding process are very common in Africa.[4]

Major Concerns About Cartels in Africa

The economic implications of cartels are well known. Cartels enhance profits by reducing output (creating shortages) and raising prices above competitive levels. This leaves intermediate firms with no option except to factor in such higher costs in their own products, implying even higher prices for the end product to be consumed by consumers. Thus, consumers are overcharged and forced to pay more from their hard earned incomes. Moreover, incentives for innovation and quality improvements diminish once a cartel is formed; hence consumers are also forced to buy low quality goods. By also targeting the most critical sectors of the economy (food, medicine, transport, construction, communication), cartels ensure that consumers have no option but to tolerate high prices and pay large amounts of money for scarce goods and services.

Box 1: Cartels in the Food sector

Price Fixing in the Bakeries Sector

In South Africa the Competition Commission launched investigations into an alleged cartel of price fixing in the bakery sector. It was alleged that Blue Ribbon, Albany, Sasko and Duens bakeries had simultaneously increased the price of bread by 30-35 cents per loaf before Christmas, and reduced and fixed the discount awarded to independent distributors to a maximum of 75 cents per loaf, irrespective of the volumes purchased. The Commission acted on information from Premier Foods, trading as Blue Ribbon Bakery, which received conditional immunity under the Commission's corporate leniency program.

Source: Global Competition Review, February 14, 2007

Bid Rigging in the Catering Services

The Namibian government annually spends about US$5.54-7mn on various food supply contracts for service programmes: among others, school hostels, prisons and annual drought relief. It was alleged that two companies, Global Foods and Independence Caterers were acting as a cartel by ensuring that they did not make competing bids on the same contract. As a result, Global got the *Kavango* contracts, while Independence got the *Ohangwena* contracts.

Source: John Grobler, (2003), in 'Penetrating State and Business Organised Crime in Southern Africa', Volume 1, No 86, at website http://www.iss.co.za/pubs/Monographs/No86/Chap2.htm

Price Fixing in the Dairy Market

The South African Competition Commission referred a cartel case against eight dairy processors to the Competition Tribunal. The dairy processors who were involved in the price-fixing cartel include Clover Industries Ltd., Clover SA (Pty) Ltd, Parmalat (Pty) Ltd, Ladismith Cheese (Pty) Ltd, Woodlands Dairy (Pty) Ltd, Lancewood (Pty) Ltd, Nestle SA (Pty) Ltd) and Milkwood Dairy (Pty) Ltd. The investigation of the South African Competition Commission showed that there was evidence of price fixing for raw and retail milk.

Source: http://www.flexnews.com /pages/6263/Dairy/South_Africa/south_africa_competition_commission_prosecutes_milk_cartels.html

Box 1 gives three examples of cartel allegations in the food sector, involving bid rigging and price fixing. The products involved form part of the daily requirements of most of the population in the region, leaving them with no choice but to buy the cartelised products at prices higher than those achievable in the absence of cartels.

Health services are also not spared from cartelisation. Box 2 gives some examples of allegations regarding cartels in the health sector. Given the extent of poverty in Africa, higher prices critically affect access to drugs and medical procedures. Thus, cartelisation increases the incidence and duration of morbidity and possibly the incidence of resulting mortality; this is demonstrative of the extent to which it is difficult for people to escape the clutches of cartels.

The taxi market is one of the most critical sectors, especially for low income earners and the general commuting public. Transport costs constitute a significant proportion of the budgets of employees, the magnitude of which is enhanced by the fact that the sector is also subject to cartelisation. Box 3 gives some two examples of the extent to which the public has to contend with cartel arrangements in the taxi industry.

Communication Sector

Another critical sector that is also the target of cartels in Africa is the communication sector. Following the liberalisation of the sector in most African countries as part of market reforms, many private players were able to enter the market. However, competition is now being curtailed through cartels. A few examples of cartels alleged in the sector are described in Box 1.

Consumer Information Network, with the help of the media in Kenya, stopped a cartel operation of price fixing in the Internet service provision market. In the month of March, 2002, the Cyber Café Operators Association of Kenya attempted to hike prices by 300 percent. They announced the move through a press conference at a Nairobi Hotel. The CIN, an independent national consumer's organisation lodged a complaint saying that there was no justification of the price hike, which was a restrictive trade practice.[5]

Box 2: Cartels in the Health Sector

Price Fixing in the Health Sector

The South African Competition Tribunal determined that the South African Medical Association (SAMA), the Hospital Association of South Africa (HASA) and the Board of Health Care Funders (BHF) had engaged directly or indirectly in fixing prices. This was done through SAMA's recommendations regarding tariffs to be charged by practitioners, HASA's stipulation of varying charges for different services to be provided by private hospital groups and BHF's recommendation of a scale of benefits to members (BHF). The Commission determined that these constitute a prohibited practice regardless of whether the tariffs are adhered to or not. *(CUTS, 2006)*

Market Sharing by Medical Practitioners

An investigation by the South African Competition Commission showed that medical practitioners operating as members of the *Uitenhage* Independent Practitioners Association (UDIPA) had divided the market into territories. Most of the practitioners practising in the area belonged to the UDIPA. The Commission referred the matter to the Competition Tribunal as it believed the conduct of UDIPA constituted a contravention of the Competition Act. The Commission also recommended a fine on UDIPA.

Source: http://www.compcom.co.za/resources/september2002/pages/05_cases.htm#eastern

In Uganda, the government realised that while the promotion of competition was one of the main goals of privatisation and liberalisation process, some privatised mobile phone operators, such as MTN Uganda, UTL Telecel and Celtel Uganda were engaging in price fixing thus "denying customers the full benefits of competition". This induced the government to prepare an antitrust bill to deter these firms from pursuing this kind of activity (Jenny, 2006)

In Togo, it is reported that in December, 2002, members of the trade unions of phone booth owners conspired to raise the price of calls from US$0.15 to US$0.20, despite the fact that only the State was allowed to exogenously change prices.[6]

Box 3: Cartels in the Taxi Sector

In Kenya in November 2003, two members of the *Matatu* (share taxi) Owners Association (MOA) gave an insight into the operations of a cartel. They alleged that a group of city *matatu* owners who wanted monopoly over lucrative routes had formed a cartel with the help of the police and militia gangs.

Along the same lines, a report from South Africa indicated that in the Cape Town area taxi associations are organised into territories in the same way as various gangs control different parts of the town. The taxi associations had come to own the routes they served. Passengers had to transfer at dangerous boundaries between taxi territories and compelled to take 2-4 taxis on every trip to work and back, with long waits at points between association boundaries

Source: Jenny (2006)

Construction Sector

The construction industry is also frequently targeted by cartels. In Egypt in December 2002, *Al Arham* newspaper reported that representatives of almost all local cement producers had met and set a price range for cement between US$30 and US$31 per tonne. Just hours before the meeting, the price had been as low as US$22 per tonne. According to the press report, the involved cement manufacturers had considered the possibility of entering into a market sharing agreement if the price fixing agreement did not succeed in keeping prices up (Jenny, 2006).

In Togo, it was reported that on August 02, 2003, Members of the Trade Union of Sea Sand Haulage Contractors (SYNTRASAM) met and decided to fix prices. They raised the price of sea sand used in house construction, from US$3.04/m^3 to US$5.07/m^3.[7]

In South Africa, the largest cement companies, namely PPC, Anglo-Alpha and Blue Circle, operated as an officially sanctioned cartel until 1996, when the Competition Board forced the companies to discontinue the practice (Jenny, 2006).

In South Africa, the Competition Commission reported that a steel producer, through a Corporate Leniency Policy application, confirmed the existence of a cartel in the industry. The application was received, following raids at Cape Town Iron and Steel Works, Highveld, and the South African Iron and Steel Institute on June 19, 2008. According to information submitted by the leniency applicant, discussions and meetings took place among parties to reach agreements about fixing prices and discounts.[8]

Fuel Sector

In Zambia, in 1999, nine oil marketing companies were prosecuted for participating in a price fixing conspiracy involving the supply of refined petroleum products. The companies had been acting collectively in making price adjustments since 1997. They would select one company to apply for a price adjustment to the sector regulator. They held regular meetings where exchanges of information regarding sales volumes and prices took place. The cartel leaders also forced other companies to comply with standard behaviour on prices (Jenny, 2006).

In Malawi, when the government eliminated price controls on petroleum products, all or most of the oil companies concerned formed a joint company called Petroleum Importers Limited, through which they jointly monopolised the import of all oil products into Malawi and colluded on prices. When a new petroleum importer emerged and introduced new fuel prices lower than those charged by the cartel it was persuaded to join the cartel (Jenny, 2006).

Agriculture Sector

The importance of the agricultural sector to African economies cannot be overemphasised. However, the viability of the sector is often threatened due to cartel practices that disadvantage farmers. In Malawi the two big tobacco companies colluded to manipulate prices of tobacco leaves on the auction floor, thereby affecting poor farmers/peasants who were already reeling under recurring droughts. (CUTS, 2007)

The National Economic Council of Malawi expressed concern at the extremely small number of companies engaged in the business of purchasing raw cotton from growers, one of which is the Agricultural Development and Marketing Corporation of Malawi (ADMARC) and its subsidiary David Whitehead and Sons and Cotton Ginners. These companies collude over the terms and prices they offer to farmers.[9]

The Kenya Tea Development Authority (KTDA) claimed that a group of suppliers had organised themselves into a cartel to control fertiliser tenders. The suppliers were colluding to minimise competition amongst themselves by predetermining who would supply to KTDA each year. KTDA Managing Director, Eric Kimani, noted that in the last two decades as the quantities of fertiliser demanded by the farmers increased, only a small group of fertiliser manufacturers were able to supply the Authority with the input. He mentioned that a group of suppliers then emerged who colluded and formed a ring to minimise competition. There is evidence that fertiliser was not necessarily manufactured by the winning bidder. He said the Board was then compelled to re-advertise the supply tenders to break the monopolistic tendency that had sprung up and denied farmers the benefits of lower prices.[10]

Implications

The few examples given above demonstrate the extent to which cartels are prevalent in the African continent. This has some serious implications, which can be looked at from two perspectives. On one hand, it is worrisome that cartels are prevalent in the most critical sectors of these developing economies. This has serious economic and social implications. On the other hand, intermediate products are also not spared from cartelisation. Connor and Helmers (2006), for example, using a set of data on 283 modern private international cartels discovered anywhere in the world from January 1990 to the end of 2005, found that most cartelised goods are industrial intermediate inputs (62 percent). This also has some serious multiplier effects on the price of the final products.

In cartelising critical services, producers ensure that the poor, with very tight budget constraints, are forced to pay very high prices. This is a very big threat to the basic survival of the poor and their ability to meet social and economic obligations. This also implies challenges for governments in their quest for addressing the issues of poverty alleviation and meeting millennium development goals (MDGs). They have to explicitly acknowledge the threat to the attainment of such goals posed by cartels and consider measures for busting them.

Three intermediate goods mentioned in the paper that have been cartelised can be used as examples to infer about the likely damage; namely cement, fuel and steel. Price fixing cement cartels raise the costs of construction, which would be reflected on the prices of the final critical products and services for consumers such as housing and toll charges while pushing up government budget for services such as road building and bridge construction. The same is equally true for steel cartels, as they result in some increases in the cost of producing steel products resulting in increases in the prices of a wide range of commodities such as cutlery, cooking utensils, construction poles and bicycles.

The impact of fuel cartels is normally the most serious as it has more dire consequences, given that this would put pressure on the final price of every final product. Almost all businesses rely on transportation; commodities have to be supplied from the manufacturer/farmer to the retailers, and transport charges would be reflected in the product prices. Moreover, this also has a direct impact on consumers as fares by public transport operators would be increased, directly impacting their thin budgets.

Given consumer' limited purchasing power, there is always a limit on the extent to which producers of the final goods can successful pass over all incremental costs to the consumers, thus the increase in the costs of production would reduce their profitability. There is thus enough reason for all associated categories of producers who produce for the final market using cartelised inputs to resent the cartels. Thus, in addition to affecting consumers, producers are also negatively affected by cartels.

Conclusion

The fact that most of the examples of proven cartels can only be cited from South Africa, the country with the best competition law administration framework, has implications for other African countries. This implies that there could be a lot of cases which have not been unearthed in these countries due to lack of capacity. This makes it important for all countries in the continent which are still to enact competition laws and policies to seriously consider adopting these. It also makes it imperative for those countries which have adopted competition laws to seriously think of enhancing the capacities of competition agencies to deal with the issue of cartels.

Given the present low probabilities of cartels getting caught, it is important that competition authorities in Africa start thinking seriously about strategies to induce cartel members to inform the authorities about cartel practices in the hope of getting some leniency in punishment. The leniency programme has been working well in identifying cartels in developed countries and even a middle income country like South Africa.

It is also important for countries to ensure that civil society organisations become active in these economies as watchdogs for competition authorities as well as partners in building the capacity of consumers to understand cartels and help to identify cartel activities. Competition authorities alone may not be able to win the battle against cartels, given the various limitations outlined in this paper. A combined effort by the government, the competition authorities and the civil society is the best way to fight cartels.

Expectedly, multinational companies based in countries which have the capacity to fight cartels are now targeting regions like Africa with little experience in this regard. It is important to devise strategies which enable even countries without competition laws to use other means to fight cartels. However, these countries also need to speed up the enactment of competition laws with clauses that enable detection and punishment of cartels. Such enactment should be accompanied by the development of enforcement capacity in the form of competition agencies and related institutions.

Given the much better administered competition enforcement mechanism in developed countries, it is no surprise that they have been and continue to be able to apprehend international cartels and exact compensation from them. African countries which lack such enforcement mechanisms are unable to punish these cartels even though their economies have also suffered heavily at the hands of these cartels. It would therefore be fitting if a portion of the compensation proceeds extracted from proven international cartels in developed countries is paid into an international competition fund. This fund can be used for meeting infrastructure and human capital requirements of all developing countries, including African countries, for developing competition agencies. Needless to say, the development of such agencies will be a big shot in the arm for the fight against cartels.

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Endnotes

1 See for example Levenstein M, Oswald L and Valerie S (2002); Yu Y (2003); and Evenett S, Leveintein M and Valerie S (2001)

2 See for example Veljanovski C (2007) and Grout P.A and Sonderegger S (2005)

3 For example, through the CUTS 7Up3 project, it was established that most of the critical sectors in Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda were highly concentrated

4 Recently the New Vision reported on its July 28 issue that the Auditor General, J Muwanga expressed anger at the manner the private sector in Uganda was fuelling corruption in government through bribes to win tenders and then hiring the world's best lawyers to avoid prosecution. The corruption was alleged in all sectors of the economy.

5 CUTS and Consumer Information Network (2004), 'Competition and Consumer Protection in Kenya'

6 Honore Blao, paper presented at CUTS 7Up4 launch meeting (not published)

7 Supra note 6

8 Sapa, July 17, 2008 at website http://www.iol.co.za/index.php?from=rss_South%20Africa&set_id=1&click_id=13&art_id=nw20080717193119424C991326

9 'Why is a Competition Law Necessary in Malawi?', CUTS and Consumer Association of Malawi (CAMA), 2003

10 The East African Standard, Nairobi, July 03, 2003

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